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NOMINATIONS OF RONALD D. MCCRAY, CORINNE A. BECKWITH, AND CATHARINE F. EASTERLY

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

NOMINATIONS OF RONALD D. MCCRAY TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD; CORINNE A. BECKWITH AND CATHARINE F. EASTERLY TO BE ASSOCIATE JUDGES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

SEPTEMBER 23, 2011

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NOMINATIONS OF RONALD D. MCCRAY, CORINNE A. BECKWITH, AND CATHARINE F. EASTERLY

FRIDAY, SEPTEMBER 23, 2011

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:06 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, presiding.

Present: Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. This hearing will come to order. Aloha and welcome to everyone here.

Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nomination of Ronald McCray to be a member of the Federal Retirement Thrift Investment Board (FRTIB).

On the second panel, we will consider the nominations of Corinne Beckwith and Catharine Easterly to be Associate Judges of the District of Columbia Court of Appeals.

The Federal Retirement Thrift Investment Board was established in 1986 by legislation that modernized the Federal retirement system and created the Thrift Savings Plan (TSP), which is a retirement savings plan similar to a 401(k) plan for the Federal employees and military service members.

Mr. McCray is well qualified to join this board. He has over 20 years of experience in overseeing and monitoring retirement systems for many large private sector companies and universities, and currently, he is a member of the Board of Directors for A.H. Belo Corporation, a Texas-based newspaper company. In that role, he is responsible for the oversight of the company's retirement and pension plans.

Mr. McCray, I want to congratulate you on your nomination. I understand that you have some family and friends in attendance and I want to give you the opportunity to introduce them to the Committee.

Mr. MCCRAY. Aloha, Senator.

Senator AKAKA. Aloha.

Mr. MCCRAY. Thank you very much.

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I will introduce my family. From your left to right are my Aunt Lucille, my mother, Vivian, my daughter Morgan, and my sister Donna. To my left, my sister Jonnie, my cousin Jackie, my cousin Don, my friend Andrea, and my best friend, Alfredo.

Senator AKAKA. Terrific. Thank you very much again to your family.

Mr. MCCRAY. I should also add a former employee, Dick Kimberly, is here.

Senator AKAKA. I want to say hello to you all and welcome to the Committee.

I just know by the number of people here that your family and friends must be very proud of what you have accomplished.

Our nominee has filed responses to a biographical and financial questionnaire and answered prehearing questions submitted by the Committee.

So, without objection, this information will be made part of the hearing record with the exception of the financial information, which is on file and available for public inspection at the Committee office.

Our Committee rules require that witnesses at nomination hearings give their testimony under oath. So, I ask you, Mr. McCray, to please rise and raise your right hand. Do you solemnly swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God.

Mr. MCCRAY. I do.

Senator AKAKA. Thank you. Let it be noted for the record that the witness answered in the affirmative.

Mr. McCray, please proceed with your statement.

TESTIMONY OF RONALD D. MCCRAY[1] TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Mr. MCCRAY. Thank you again, Mr. Chairman, and thank you to the Committee and its staff as well.

I am honored to be here before you today as a nominee to be a member of the Federal Retirement Thrift Investment Board. I am also deeply grateful for President Obama's confidence in nominating me for this position.

While several dear friends and family are here, many could not attend because conflicts prevented them from attending, but I know they are here in spirit.

My sisters and I lost our father when he had a fatal heart attack when I was 5 years old. Today, coincidentally, would have been his 76th birthday.

As a result of his untimely death, my mother raised four children as a single mother in the public housing projects in the Bronx, New York. Her example inspired each of my sisters and me to obtain college and professional degrees. It is her example and it is his memory that I honor today.

As you know, the FRTIB was established to provide guidance and oversight for the Thrift Savings Plan. This plan is the primary pension fund for Federal employees. I believe I was nominated to be a member of the FRTIB due to my experience with pension

[1] The prepared statement of Mr. McCray appears in the Appendix on page 14.

funds, boards of directors, and my professional background and education. I have had oversight responsibility for corporate and university investments, including pension oversight for plans covering tens of thousands of employees, the establishment of investment policies, the evaluation of pension staff, investment performance, and outside investment managers.

For most of my career, I worked as a senior executive and lawyer for Kimberly-Clark Corporation, which has over 30,000 employees. During that time, I was responsible for, among other things, pension plans holding more than $2 billion in assets. As such, my responsibilities included oversight of investments, setting investment policy, the staff responsible for those investments and for hiring and evaluating outside investment managers.

As chief administrative officer for Nike, Inc., from 2007–2009, I had oversight responsibility for investment of the company's more than $2 billion of cash assets.

As a corporate director, I have been serving as a member of the Board of Directors for A.H. Belo Corp., a Dallas-based newspaper organization, since 2010. In that role, I have oversight responsibilities for the company's retirement and pension plans covering over 2,000 employees.

I previously served from 2003 to 2006 as a member of the Board of Directors for San Jose, California-based Knight Ridder, Inc., then the second largest newspaper organization in the Nation with a market capitalization of $6 billion and over 4,000 employees. In that role, I had oversight responsibilities for that company's retirement plans.

In addition to corporate boards, I currently serve on the Board of Trustees for Cornell University, the Visiting Committee of Harvard Law School, and the Board of Directors of the North Texas Chapter of the National Association of Corporate Directors.

It is these roles with governing boards that have given me experience with oversight and fiduciary responsibilities for staff and investments; the need to reconcile the interests of various stakeholders, such as stockholders, bondholders, employees, communities, government, students, and faculty; and the imperative of collegial decisionmaking required of governing boards.

If confirmed, I will draw on this experience overseeing pension funds as a corporate board member, corporate executive, lawyer, and investor to help oversee and strengthen the TSP. I would focus my energies on those matters required to keep the TSP a well run part of the Federal Employees Retirement System; such as cost, customer service, information technology, reasonable investment options, as well as transparency.

Should I be confirmed, I look forward to working with the Members of the Committee and members of the Federal Retirement Thrift Investment Board to ensure that the TSP continues its important mission of providing for retirement for Federal employees.

Thank you again for the opportunity to appear before you today. I would be happy to answer any questions.

Senator AKAKA. Thank you very much for your testimony, Mr. McCray.

I will begin with the standard questions that this Committee asks of all nominees, and you have partially answered one of them.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. MCCRAY. Senator Akaka, I am not aware that there is anything in my background that would present such a conflict.

As you may know, the Office of Government Ethics did point out to me that investments that I held in MetLife bonds would pose a potential conflict back in the spring and advised me that I would need to divest of those bonds within 90 days of any possible appointment. I sold those bonds last spring.

Senator AKAKA. Thank you.

Do you know of anything personal or otherwise that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. MCCRAY. I do not.

Senator AKAKA. Thank you.

Finally, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. MCCRAY. I do.

Senator AKAKA. Thank you.

Mr. McCray, you have a distinguished private-sector career, but serving on a government retirement board would be a new role for you.

As you know, the Federal Retirement Thrift Investment Board is responsible for making investment and policy decisions that affect millions of Federal employees and retirees.

Please discuss how your experience has prepared you to serve on this board.

Mr. MCCRAY. I would be happy to. I believe that my experience with pension funds as I described earlier has given me some insight into how defined contribution plans work.

I believe I am reasonably current on the best practices from the standpoint of transparency, communication, investment options, fiduciary standards that are required for defined contribution plans.

I am keenly aware that most of my experience, of course, is in the private sector, not the public sector. It is my commitment to talk to current members of the board as well as members of the staff, the Committee, and to consult with the Employee Thrift Advisory Council (ETAC) to give myself a better feel for the context in which the Thrift Savings Plan operates as a public sector defined contribution plan.

Senator AKAKA. Thank you.

Mr. McCray, I am a strong advocate for improving financial literacy, and I have organized hearings on the issue since the year 2004.

Please give specific examples of the steps you will take as a board member to increase participants' education about their investment options.

Mr. MCCRAY. Yes. There are a couple of things that I would do toward the end of increasing investor participants' financial literacy. The first thing I might do would be to get a sense, by census or otherwise, as to what the current level of financial literacy

might be among the 4 million or so participants. I do not have a feel for that today.

Again, I would consult with the various stakeholders as a matter of gaining that insight. To the extent there is information that helps give a baseline understanding, I would be happy to see that. To the extent that information is dated, I might suggest that it be updated.

As I look at the census data, Senator, I would try to understand what opportunities there might be to enhance financial literacy for participants.

I believe and agree with you that financial literacy is the secret sauce that makes the defined contribution plan work.

To the extent that participants are better versed in terms of their retirement plans, financial options, and so forth, the pension plan will serve its purpose.

I would look also at technology to see what technology solutions might be available to give participants ease of access to information about the plan. You can think of webinars, for instance, in which you might offer instruction to employees to increase their financial literacy. Of course, you can think about emails, or you might think about in-person consultations, those kinds of things.

Senator AKAKA. Thank you.

Mr. McCray, as you noted in a number of your answers to this Committee's questionnaire, you are not familiar with many of the administrative aspects of the Thrift Savings Plan. If confirmed, how would you familiarize yourself with the TSP's administrative practices and policies?

Mr. MCCRAY. It is my practice—a discipline when I take on any new role—although I may have a point of view, to take a survey of the land, and in consultation with the ETAC, the staff, perhaps employees of the Committee, to mine those conversations to increase my understanding about the administrative polices and practices of the TSP.

Senator AKAKA. As you know, these are challenging economic times. Many participants in defined contribution plans have seen a decrease in their portfolios, creating uncertainty for those who are close to retirement.

What steps would you take to make sure that the TSP is producing optimal returns for its investors?

Mr. MCCRAY. To ensure that the TSP is producing optimal returns, I think you start with, as we talked about earlier, participant education.

Assuming that you can put participant education at an appropriate level, I think the next question becomes what are the tools that are available for the participants to use their education toward their retirement objectives.

I think it is fairly common practice in financial planning for retirement and otherwise to develop a plan, and I think part of the literacy education would be to help participants develop a plan for their retirement and know that should they adhere to that plan, more likely than not they will be fine.

In that case, the tumult in the markets to which you referred a second ago, although it will be felt by participants, I think will be

less traumatic to participants as long as they understand the plan on which they are pursuing their retirement objectives.

Senator AKAKA. Mr. McCray, employee participation in any retirement savings plan is sometimes a challenge, especially among younger employees.

In 2009, Congress passed language to automatically enroll employees in the TSP as well as provide immediate agency matching contributions.

How will you build on Congress' efforts to increase employee participation?

Mr. MCCRAY. First of all, I would applaud Congress' efforts to increase employee participation. I would say, as a back drop, that as our Nation requires employees to take on more responsibility for their own retirement, it is imperative for employers such as the government to help those employees, I think, as somewhat of an ethical, moral matter.

To that end, I would try to understand, Senator, the reasons that those who are not anticipating are not participating and try to tailor communications in substance and form that might entice those people to participate more fully.

Senator AKAKA. This is my final question to you, Mr. McCray. What are your top three priorities if you are confirmed as a board member?

Mr. MCCRAY. At this time, my top three priorities are, first, to maintain the low-cost reputation of the TSP. A second priority would be to assure that the participants have available to them reasonable investment options, and a third priority would be to assure that we have the technology in place to support all of that because all of that gets tied together by technology.

I would add that those are my priorities based on the study that I have done to date, and I would hope to refine those, should I be confirmed, in consultation with my fellow board members and other stakeholders, such as Congress.

Senator AKAKA. I want to thank you very much for your responses to my questions. I want to wish you and your family well in this endeavor; and without question, your background certainly is helpful in this particular position.

So again, I want to thank you so much for being here. We will move forward in the confirmation process here in the Committee and in the Senate.

Thank you and your family very much. We certainly honor your Dad, too, and I know he has made a huge difference despite his absence, but your mother should be given a medal for bringing you folks up.

Mr. MCCRAY. I agree. Thank you so much, Senator. Thank you for your time.

Senator AKAKA. Thank you, all of you.

So, let me call up the second panel. I want to welcome everyone to the second part of today's proceedings as we consider the nominations of Corinne Beckwith and Catharine Easterly to be Associate Judges of the District of Columbia Court of Appeals.

We consistently receive excellent D.C. court candidates nominated by the President from those recommended by the nonpartisan Judicial Nomination Commission. I am confident that, if

confirmed, these nominees will join others who have appeared before us in making valuable contributions to the District.

Both of our nominees have strong legal backgrounds and have devoted much of their careers to public service. Ms. Beckwith is currently a supervising attorney in the Appellate Division of the D.C. Public Defender Service (PDS).

Before that, she was an attorney with the Michigan State Appellate Defender Office, and she clerked for the U.S. Supreme Court and Federal Court of Appeals for the Seventh Circuit.

Ms. Easterly has been with the Special Litigation Division of the D.C. Public Defender Service since 2003 and was a State appellate defender as well as a civil litigator before that.

I believe these nominees have much to offer to the D.C. Court of Appeals, and I hope we can act quickly to confirm them.

I understand you both have loved ones here with you today, and I would like to give you an opportunity to introduce them to the Committee at this time.

Ms. Beckwith, would you please introduce your family and guests.

Ms. BECKWITH. Thank you, Mr. Chairman.

I have with me my husband, Brent Futrell, my brother, Aaron Beckwith, and a lot of family watching from Michigan, and many colleagues from the Public Defender Service are also here. Thank you.

Senator AKAKA. Thank you. Ms. Easterly, will you please introduce your family and guests.

Ms. EASTERLY. Thank you, Senator. I have with me my husband, Aaron Zebley; my two daughters, Clara and Daphne; my parents, Harry and Patsy Easterly; my sister, Rachel; and my younger brother Noah and his wife, Carly. My older brother was not able to make it. My technology-savvy grandmother, however, is watching online.

Senator AKAKA. Thank you so much to all of you for being here to give the nominees support. We really appreciate seeing that as well. I am sure your loved ones are proud of you and your accomplishments and look forward to this new chapter in your lives.

Each nominee has filed responses to a biographical and financial questionnaire submitted by the Committee. Without objection, this information will be made a part of the hearing record with the exception of financial data, which will be kept on file and made available for public inspection in the Committee office.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. So, I ask you to please stand and raise your right hand.

Do you solemnly swear that the testimony you are about to give this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. BECKWITH. I do.

Ms. EASTERLY. I do.

Senator AKAKA. Thank you. Please note for the record that the witnesses answered in the affirmative.

Ms. Beckwith, will you please proceed with your statement.

TESTIMONY OF CORINNE A. BECKWITH[1] TO BE AN ASSOCIATE JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

Ms. BECKWITH. Thank you. Mr. Chairman, I am greatly honored to appear before you today as you consider my nomination to be an Associate Judge on the District of Columbia Court of Appeals. I am thankful to the Judicial Nomination Commission for selecting me and to President Barack Obama for nominating me. I would also like to thank you, Mr. Chairman, and this Committee for holding this hearing and the Committee staff for all of the work that goes into making these hearings possible.

At the outset, I would like to acknowledge and thank my family and friends who are here and who are watching from home or from their offices. You have met my husband, Brent Futrell, and my brother, Aaron Beckwith, who are both here with me today. And watching from Michigan are my mother, Alice Beckwith; my father and stepmother, Larry and Nancy Beckwith; my three other brothers, David, Joe, and Adam Beckwith; my sister-in-law, Chrissy Beckwith; my nieces, Rachel and Sophia Beckwith; and a slew of beloved aunts, uncles, and cousins who have encouraged and tolerated me over the years. I also feel lucky to have so many friends and colleagues here today.

I grew up in a working class family in Michigan, and I was the first in my family to go to college. I pursued a career as a reporter at a small-town newspaper before changing course and attending law school at the University of Michigan. After clerking for two exceptional judges—Judge Richard Cudahy on the Seventh Circuit in Chicago and Justice John Paul Stevens at the U.S. Supreme Court—I began my legal career as a public defender in Detroit, handling a huge caseload of the criminal appeals of people who could not afford to hire a lawyer.

A few years later, I returned here to the District of Columbia to join the Appellate Division of the Public Defender Service, and for the past 12 years, I have practiced almost exclusively in the D.C. Court of Appeals, again representing indigent people facing serious criminal charges.

Particularly given the high level of practice in that court, serving the D.C. community in this way has been beyond gratifying, and it is my commitment to public service that now motivates me to seek appointment to the D.C. Court of Appeals—the court where I learned so much of what I know about the law and good lawyering.

Because I have filed so many briefs and argued so many cases in the D.C. Court of Appeals, and because I have so much respect for the talented and thoughtful judges on that court, it is an extraordinary honor to be nominated for a position among those judges, and I am truly humbled by it.

Thank you, again, Mr. Chairman, for considering my nomination. I welcome your questions and will do my best to answer them.

Senator AKAKA. Thank you very much, Ms. Beckwith.

Ms. Easterly, please proceed with your statement.

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[1] The prepared statement of Ms. Beckwith appears in the Appendix on page 31.

TESTIMONY OF CATHARINE F. EASTERLY[1] TO BE AN ASSOCIATE JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

Ms. EASTERLY. Mr. Chairman, I am grateful for the opportunity to appear before you today as a nominee to be an Associate Judge on the District of Columbia Court of Appeals. I want to thank President Barack Obama and the District of Columbia Judicial Nomination Commission, in particular, its chair, the Hon. Emmet G. Sullivan, for this honor.

I also want to thank the Committee and your staff for considering my nomination so expeditiously at a time when there are many pressing matters demanding your attention.

You have met my family. I am grateful for their presence here and all the opportunities that they have given me that have led me here today. A number of friends, colleagues, and mentors are also here. Suffice it to say, I would not be here without their support and guidance.

Throughout my career, my abiding interest has been to work to promote fairness of process in our justice system, particularly for those least able to advocate for themselves. After graduating from law school, I worked for almost 5 years as an appellate public defender in New York City. I then moved to a law firm where I focused on civil litigation. In 2003, I joined the Special Litigation Division of the Public Defender Service for the District of Columbia. At PDS, I have had the unparalleled opportunity to apply my skills as an appellate defender and a civil litigator, and to identify and address complex, recurring issues that affect the fairness and efficiency of the District's criminal justice system.

Putting the sum of my experiences here to use as a judge on the Court of Appeals, in service of the District of Columbia community, would be an honor and a privilege. Thank you for considering my nomination. I look forward to answering your questions.

Senator AKAKA. Thank you very much for your statement, Ms. Easterly. I will begin with the standard questions this Committee asks of all nominees, and I would like you both to answer each question.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. BECKWITH. No, Mr. Chairman.

Ms. EASTERLY. No, Mr. Chairman.

Senator AKAKA. Do you know of anything personal or otherwise that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. BECKWITH. No, Mr. Chairman.

Ms. EASTERLY. No, Mr. Chairman.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Ms. BECKWITH. Yes, sir.

Ms. EASTERLY. I do, Mr. Chairman.

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[1] The prepared statement of Ms. Easterly appears in the Appendix on page 58.

Senator AKAKA. Thank you very much.

I see that you both spent a number of years with the D.C. Public Defender Service. I commend your decision to continue public service by joining the D.C. judicial system. Please elaborate on why you are seeking appointment to become an Associate Judge at this point in your career.

Ms. Easterly, I would like you to answer first, followed by Ms. Beckwith.

Ms. EASTERLY. I became a lawyer to do public service, and the bulk of my career has been focused on fairness of process issues, and that is what an appellate judge does. She serves the community by taking a step back to see if the law and the rules were followed and fairly applied, and I can think of no better way to continue my public service and to pursue my interest in fairness of process issues than by serving on the Court of Appeals for the District of Columbia.

Senator AKAKA. Ms. Beckwith.

Ms. BECKWITH. Thank you. I have seen the judges of this court in action over the years, and I think that the work they do and the work of the court is extremely important. I have a great deal of respect not only for the judges of the court, but for the court as an institution; and while I truly love my job as a criminal appellate lawyer, I am interested in playing a broader role in serving my community. I am also interested in having the opportunity to address a wider range of legal issues, something I enjoyed very much as a law clerk and something that I miss.

Finally, I think that this position is a remarkably good fit for my skills and for my experience, and I think it is a very natural next step in my career should I be fortunate enough to be confirmed. Thank you.

Senator AKAKA. Ms. Beckwith, a judge is often challenged to rule on complex issues both quickly and correctly. Please describe how your experience qualifies you to confront this challenge.

Ms. BECKWITH. Well, I have a great deal of experience as a public defender handling very large caseloads. So, I have spent years having to kind of develop a comfort level with producing quality work under pressure. That is definitely something I have done throughout my career, and I think it takes hard work. It takes smart priorities. It takes efficiency and a sense of balance and perspective, but I think that my experience has definitely qualified me to do that.

Senator AKAKA. Ms. Easterly, the role of a judge is very different from the role of an advocate and will be new to you. Please discuss how you will transition to the role of an impartial decisionmaker.

Ms. EASTERLY. I think the critical first step is to recognize that it is a very different job. I have been an advocate, taking a side for my client, zealously representing my client; and now, if I were confirmed, I would be assuming a new role of being the impartial arbiter whose job it is to completely familiarize herself with the record, to understand the applicable law, to look at the parties' pleadings, but then go beyond, if necessary, and come up with a well reasoned opinion.

I do think that my experience as an advocate will assist me in this regard because I think the best advocates are the ones who

can dispassionately look at their position and identify the weaknesses in their own arguments and the strengths in others.

So, I think I can take those skills and, recognizing that I am serving a different role, apply them as a judge.

Senator AKAKA. Thank you.

Ms. Beckwith, the Court of Appeals handles a heavy caseload and needs hard-working individuals like you. Please describe your management style, including the role you envision for law clerks in your chamber.

Ms. BECKWITH. I am not sure what my management style will be as a judge, but I know that I am a very hard worker. I actually enjoy working long hours and weekends, perhaps much to my husband's dismay. So, I think hard work will be the focus if I am fortunate enough to be confirmed.

There is a lot to learn. So, I think that it will be important to consult with my colleagues and see how they have set up their chambers, how they maximize efficiency. It is definitely probably the greatest challenge in the Court of Appeals, managing the very large docket and the need to produce quality opinions very quickly and to manage that balance.

So, I think working hard is the number one thing.

Senator AKAKA. Thank you.

Let me follow up also with Ms. Easterly to respond to that question. Please describe how you would manage your chamber and delegate work.

Ms. EASTERLY. I agree with Ms. Beckwith. I think that managing the workload for the Court of Appeals is the number one challenge. I think the key, at least from speaking to the judges who are currently on the court, is working hard but also working smart and doing the triage that you need to do to identify the cases that maybe really do not warrant much consideration, identifying the cases that are easily resolved, and then identifying the cases that really deserve some careful consideration, additional time.

I have some experience doing that currently in my job where I have attorneys coming to me, bringing me cases and asking me to assist them, and I have to decide if this is something that I am going to have to devote a lot of resources to or something that I can assist them quickly with.

So, I think that is the key—working hard and working smart.

Senator AKAKA. Thank you very much.

This is my final question, and it is for both of you. During your years of practicing law, you have appeared before many judges and no doubt learned a great deal from observing them.

Describe some of the qualities you hope to emulate as a judge and those you hope to avoid.

Ms. Beckwith, please answer first followed by Ms. Easterly.

Ms. BECKWITH. Thank you, Mr. Chairman.

I think the appropriate temperament of a judge includes the qualities of evenhandedness and impartiality, patience, humility, and respect not only for the law, but for the parties who come before you.

I think most lawyers have encountered judges who earn the respect and admiration of all the parties who come before them. I think that is often due in part to, on the one hand, judges who are

very scholarly and thoughtful and take the cases very seriously and everybody knows that by the way they are engaged in court and, on the other hand, simply treating people well.

Those are the qualities that I would ascribe to and obviously would hope not to fall into any arrogance or anything not respecting the litigants who appear in the court.

Senator AKAKA. Thank you. Ms. Easterly.

Ms. EASTERLY. Perhaps not surprisingly I agree with everything Ms. Beckwith said. I would just add that I think concretely one way to show respect for the parties who appear before you is to know the record, to be completely familiar with the facts, to have read the briefs carefully, and to give them that respect of having read their work product and taking it into consideration, and then to write a well-reasoned opinion that fully explains the reasons for your decision because someone is going to prevail and someone will not, and they both deserve a well-reasoned opinion for why you reached the outcome that you reached.

Senator AKAKA. Thank you so much for your responses and for your testimonies. There are no further questions at this time.

Members of this Committee may submit additional statements or questions, which will be submitted to you in writing.

The hearing record will remain open until the close of business on Monday, September 26.

I would also like to note that Congresswoman Eleanor Holmes Norton and Paul Strauss submitted statements for the record in support of the D.C. nominees.[1] I just wanted the nominees to know that.

May I see the hand of Paul Strauss? Thank you so much for your participation.

It is my hope that this Committee and the Senate will be able to act quickly on your nominations. Thank you very much for being here. I thank your families, and I must say your daughters really behaved well.

Ms. EASTERLY. They did a good job, did they not?

Senator AKAKA. Thank you. Whatever noise they make is music to my ears.

Thank you again, everyone. This hearing is adjourned.

[Whereupon, at 10:51 a.m., the Committee adjourned.]

[1] The prepared statement of Ms. Norton appears in the Appendix on page 85.
[1] The prepared statement of Mr. Strauss appears in the Appendix on page 86.

APPENDIX

Statement of Senator Daniel K. Akaka
Nominations of Ronald McCray to be a Member of the Federal Retirement Thrift Investment Board; and Corrine Beckwith and Catharine Easterly to be Associate Judges of the District of Columbia Court of Appeals

Committee on Homeland Security and Governmental Affairs

September 23, 2011

Good morning and welcome. Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nomination of Ronald McCray to be a Member of the Federal Retirement Thrift Investment Board. On the second panel, we will consider the nominations of Corinne Beckwith and Catharine Easterly to be Associate Judges of the District of Columbia Court of Appeals.

The Federal Retirement Thrift Investment Board was established in 1986 by legislation that modernized the Federal retirement system and created the Thrift Savings Plan or "TSP." The Board administers the TSP, which is a retirement savings plan similar to a 401(k) plan for Federal employees and military service members.

Mr. McCray is well qualified to join this Board. He has over 20 years of experience in overseeing and monitoring retirement systems for many large private sector companies and universities, and currently he is a member of the Board of Directors for A.H. Belo Corporation, a Texas-based newspaper company. In that role, he is responsible for oversight of the company's retirement and pension plans.

Furthermore, we consistently receive excellent D.C. court candidates, nominated by the President from those recommended by the non-partisan Judicial Nomination Commission.

Both of our judicial nominees have strong legal backgrounds and have devoted much of their careers to public service. Corrine Beckwith is currently a supervising attorney in the Appellate Division of the D.C. Public Defender Service. Before that, she was an attorney with Michigan's State Appellate Defender Office, and clerked for the U.S. Supreme Court and Federal Court of Appeals for the Seventh Circuit. Catharine Easterly has been with the Special Litigation Division of the D.C. Public Defender Service since 2003, and was a state appellate defender as well as a civil litigator before that.

I am confident that if confirmed, these nominees will join the others who have appeared before us in making valuable contributions to the Federal Government as well as the District of Columbia.

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Statement for the Record

Ronald David McCray
Nominee to be a Member of the Federal Retirement Thrift Investment Board
Senate Committee on Homeland Security and Governmental Affairs
September 23, 2011

Thank you Mr. Chairman, Ranking Member Collins and distinguished members of the Committee. I am honored to appear before you today as a nominee to be a member of the Federal Retirement Thrift Investment Board. I also am deeply grateful to President Obama for his confidence in nominating me for this position.

[subject to change pending confirmation of attendees]
I would like to introduce you to my daughter, Morgan McCray, my mother, Vivian McCray and my sisters Donna Taylor and Jonnie Henderson. Several dear friends and family are here, too; while scheduling conflicts prevented others from attending. We lost our father when he had a fatal heart attack when I was five years old. As a result, my mother raised four children as a single mother in the public housing projects in the Bronx, New York. Her example inspired each of my sisters and me to obtain college and professional degrees. Today would have been my dad's 76th birthday; it is his memory I honor today.

As you know, the FRTIB was established to provide guidance and oversight for the Thrift Savings Plan, which is the primary pension fund for federal employees. I believe I was nominated to be a member of the Thrift Board due to my experience with pension funds, boards of directors, and my professional background and education. I have had oversight responsibility for corporate and university investments, including pension oversight for plans covering tens of thousands of employees, establishment of investment policies, evaluation of pension staff, investment performance and outside investment managers.

For most of my career, I worked as a senior executive and lawyer for Kimberly-Clark Corporation, which has over 30,000 employees. During that time I was responsible for, among other things, pension plans holding more than $2 billion in assets. As such, my responsibilities included oversight of investments, setting investment policy, the staff responsible for those investments and for hiring and evaluating outside investment managers.

As chief administrative officer for Nike, Inc., from 2007-2009, I had oversight responsibility for investment of the company's more than $2 billion of cash assets.

As a corporate director, I have been serving as a member of the board of directors for A. H. Belo Corp., a Dallas-based newspaper organization, since 2010. In that role I have oversight responsibilities for the company's retirement and pension plans covering over 2,000 employees.

I previously served as a member of the board of directors for San Jose, CA -based Knight Ridder, Inc., from 2003 to 2006, then the second largest newspaper organization in the nation with a market capitalization of $6 billion and over 4,000 employees. As such, I had oversight responsibilities for the company's retirement plans.

In addition to corporate board boards, I currently serve on the Board of Trustees for Cornell University, the Visiting Committee of Harvard Law School and the board of directors of the North Texas Chapter of the National Association of Corporate Directors.

These roles with governing boards have given me experience with (i) oversight and fiduciary responsibilities for staff and investments, (ii) the need to reconcile the interests of various stakeholders,

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such as stockholders, bondholders, employees, communities, government, students and faculty, and (iii) the imperative of collegial decision making required of governing boards.

If confirmed, I will draw upon experience overseeing pension funds as a corporate board member, corporate executive, lawyer and investor to help oversee and strengthen the TSP. I would focus my energies on those matters required to keep the TSP a well run part of the Federal Retirement System; such as cost, customer service, information technology, reasonable investment options and transparency.

Should I be confirmed, I look forward to working with the Members of the Committee and members of the Federal Retirement Thrift Investment Board to ensure the TSP continues its important mission of providing for retirement for federal employees.

Thank you again for the opportunity to appear before you today. I would be happy to answer any questions you may have.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name: Ronald David McCray**

2. **Position to which nominated: Member of the Board of Directors/Federal Retirement Thrift Investment Board**

3. **Date of nomination: May 26, 2011**

4. **Address: Home** REDACTED **; Office: same as home**

5. **Date and place of birth: July 2, 1957**

6. **Marital status: Monica Ann Simon McCray**

7. **Names and ages of children: Morgan 23, Adriane, 20, Jordan, 19**

8. **Education:**
   High School: Cardinal Hayes HS, Bronx, NY (1971-1975);
   College: Cornell University (1975-1979 -BA);
   Law School: Harvard Law School (1980-1983- JD)

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

- **1979-1980 - Assistant to General Counsel, Harvard University, Cambridge, MA**
- **1982-1985- Summer Associate, then Associate Attorney, Weil Gotshal & Manges, New York, NY**
- **1985-1987- Associate Attorney, Jones, Day, Reavis & Pouge, Dallas, TX**
- **1987-2007- Kimberly-Clark Corporation**
  - **1987-1991 - Senior Attorney – Corporate Affairs**
    - **Irving, TX**
  - **1991-1993 – Associate Counsel – Corporate Affairs**
    - **Irving, TX**
  - **1993-1996 – Senior Counsel - Neenah Operations**
    - **Neenah, WI**
  - **1996-1999 – VP Chief Counsel – Neenah Operations and Latin America**
    - **Neenah, WI**
  - **1999-2001- VP Chief Counsel and Corporate Secretary**

- 2001-2003 – VP, Associate General GC and Corporate Secretary
  - Irving, TX
- 2003-2005 – Senior Vice President, Law and Government Affairs
  - Irving, TX
- 2005-2007 – Senior Vice President, Law and Government Affairs and Chief Compliance Officer
  - Irving, TX

- **2007-2009-Vice President and Chief Administrative Officer, Nike, Inc., Beaverton, OR**
- **2009-present- Self Employed, Investor/Attorney, Dallas, TX**

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above. **None**

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

- **Director, A.H. Belo 2010 - current**
- **Limited Partner Owner, Boston Celtics 2009-current**
- **Trustee, Cornell University 2009 - current**
- **Vice President, Nike, Inc. 2007-2009**
- **Director, World Affairs Council of Oregon 2008 - 2009**
- **Officer, Kimberly-Clark Corporation 1987-2007**
- **Director, Knight-Ridder, Inc. 2003-2006**
- **Director, Kimberly-Clark de Mexico, S.A. de C.V. 2002-2007**
- **Director, Executive Leadership Council - 2002-2005**
- **Trustee, The Hockaday School - 2003-2007**
- **Member, Visiting Committee, Harard Law School 2010-current**

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

- **Dallas National Golf Club approx 2001 -current**
- **Council of Foreign Relations approx 2004-current**

- **World Affairs Council of Oregon 2008-2009**
- **Cornell Club of New York approx 2008-current**
- **Sigma Pi Phi, 2000 -current**
- **The Sports Club of Las Colinas approx 1999- 2007**
- **Alpha Phi Alpha Fraternity, Incorporated 1976- current**
- **New York State Bar - 1985-current**
- **Texas State Bar -1992-current**

13. **Political affiliations and activities:**

    (a) List all offices with a political party which you have held or any public office for which you have been a candidate. **None**

    (b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years. **None**

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more during the past 5 years.

- **Barack Obama 09/15/2008 $2300**
- **Ron Wyden 05/16/2008 $ 500**
- **Barack Obama 08/14/2007 $2300**

15. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements

- **Scholarships - Cornell University 1975-1979; Harvard Law 1980 -1983**
- **Aleph Semach/Raven and Serpent Junior Honor Society - Cornell 1978**
- **Quill and Dagger Senior Honor Society - Cornell 1978**
- **Minority Corporate Counsel Assoc. award for Leadership in Diversity - (2004 est)**
- **Jurisprudence Award - Anti Defamation League 2006**
- **Hall of Fame inductee: Cardinal Hayes HS - 2009**

16. **Published writings:** Provide the Committee with a list and two copies of any books, articles, reports, or other published materials which you have written. These items can be provided electronically via e-mail or other digital format. **None**

17. **Speeches:**

    (a) Provide the Committee with a list and two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics

relevant to the position for which you have been nominated. Provide a list and copies of any testimony to Congress, or to any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format. **None**

(b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it. **None.**

18. **Selection:**

(a) Do you know why you were chosen for this nomination by the President? **I believe I was chosen because of my background and experience as a corporate director and senior executive and oversight experience over pension fund investments.**

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment? **Yes.**

B. EMPLOYMENT RELATIONSHIPS

19. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? **Membership on the Federal Retirement Thrift Investment Board is a part-time position. If confirmed, I will continue my affiliations with Cornell, Harvard Law School, Council on Foreign Relations, A. H. Belo, and my minority ownership interest in the Boston Celtics organization.**

20. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. **I have no plans to pursue outside employment during the period of service for this position, except as noted above.**

21. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity? **No.**

22. Has anybody made a commitment to employ your services in any capacity after you leave government service? **No.**

23. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? **Yes.**

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24. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain. **No.**

C. POTENTIAL CONFLICTS OF INTEREST

25. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. **None**

26. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity. **None.**

27. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?
Yes.

D. LEGAL MATTERS

28. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint, to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. **I was the subject, along with other Kimberly-Clark executives, in an EEO complaint around 2006, alleging employment discrimination on the basis of gender as a result of a denial of a promotion. The matter was settled with Kimberly-Clark, the defendant agreed to continue employment, and no further action was taken.**

29. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details. **No**

30. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details. **I have been an officer or director of several large**

companies which were regularly subject to civil litigation and administrative proceeding which have been disclosed in filings with the SEC and other agencies as required.

31. For responses to question 30, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. **None.**

32. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. **None.**

E. FINANCIAL DATA - REDACTED

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

AFFIDAVIT

RONALD D. MCCRAY being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 21st day of July, 2011

Notary Public

SHIRLEY LAWSON
Notary Public, State of New York
No. 01LA6002530
Qualified in Kings County
Commission Expires Feb. 8, 2014

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Ronald D. McCray to be
a Member of the Federal Retirement Thrift Investment Board

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as a member of the Federal Retirement Thrift Investment Board ("FRTIB" or "the Thrift Board")?

I believe I was nominated because I am an experienced corporate executive, board member and lawyer having worked for more than 27 years with large, private sector companies and private research universities, as more fully explained below in response to question 3.

As such, I have had extensive oversight responsibility for such companies and universities' investments, including pension oversight for plans covering tens of thousands of employees, establishing investment policies, monitoring investment performance and retaining outside investment managers.

2. Were any conditions, express or implied, attached to your nomination? If so, please explain.

There have been no conditions attached to my nomination.

3. What specific background and experience do you believe affirmatively qualifies you to be a member of the Thrift Board?

I believe that my experience with pensions funds, boards of directors and professional background and education as described below qualify me to be a member of the Thrift Board.

Pension Fund Experience
I am an experienced corporate executive, board member and lawyer having worked for more than 24 years with large, private sector companies and universities. As mentioned in response to question 1 above, I have had extensive oversight responsibility for such firms' investments, including pension oversight for plans covering tens of thousands of employees, establishing investment policies, monitoring investment performance and retaining outside investment managers.

From 1987 to 2007, I worked as a senior executive and lawyer responsible for the pension investments as well as board governance, law, government affairs, internal audit and corporate strategy for Kimberly-Clark Corporation, a $16 billion health and hygiene company based in Dallas, Texas. As such, my responsibilities

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included oversight of investments and the staff responsible for those investments, including the defined contribution and defined benefit plans.

I served as a member of the board of directors for San Jose, CA -based Knight Ridder, Inc., from 2003 to 2006, then the second largest newspaper organization in the nation with a market capitalization of $4 billion. As such, I had oversight responsibilities for the company's retirement plans.

As chief administrative officer for Oregon-based, Nike, Inc. from 2007-2009, a $19 billion sports footwear and apparel company, I had oversight responsibility for investment of the company's cash assets as well as functions such as corporate strategy, law, corporate responsibility and government affairs.

I currently serve as a member of the board of directors for Dallas, Texas-based A. H. Belo Corp. since 2010, a newspaper organization. As such, I have oversight responsibilities for the company's retirement and pension plans.

Governing Board Experience

I have served and currently serve as a member of numerous corporate boards, including Knight Ridder, Inc. and A. H. Belo. I currently serve on the Board of Trustees of Cornell University, the Visiting Committee of Harvard Law School and the board of directors of the North Texas chapter of the National Association of Corporate Directors. In addition, for much of my professional life, I have provided advice and counsel to corporate boards such as Kimberly-Clark Corporation and Nike, Inc.

These roles with governing boards have given me experience with (i) oversight and fiduciary responsibilities for staff and investments, (ii) the need to reconcile the interests of various stakeholders, such as stockholders, bondholders, employees, communities, government, students and faculty, and (iii) the imperative of collegial decision making required of governing boards.

Background and education

I graduated from Cornell University with a B.A. in government and from Harvard Law School with a Juris Doctor degree. I also was selected for advanced training at the Fuqua School of Business at Duke University and the Kellogg School of Management at Northwestern University. I have practiced corporate, securities and finance law for over 20 years at global law firms and in multinational corporations, and served as a member of the senior executive strategic leadership committees of Kimberly-Clark and Nike. I also am a private investor and am responsible for our family investment office.

I believe that my background and education give me a solid understanding of finance, capital markets and investments.

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4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a member?

No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures and/or criteria that you will use to carry out such a recusal or disqualification.

I am not aware of any issues from which I may have to recuse or disqualify myself because of an actual and apparent conflict of interest.

As part of the pre-nomination ethics process, I was advised that conflict of interest rules require that I divest Met Life bonds held in our family portfolio no less than 90 days after confirmation. I have since sold these bonds.

II. Role and Responsibilities of the Federal Retirement Thrift Investment Board and of its Members

6. What do you see as the principal roles and responsibilities of the FRTIB and of each of its members?

I see the principal roles of the FRTIB and each of its members as providing oversight to management of the TSP and adhering to the legislative requirements of overseeing the Thrift Savings Plan as a fiduciary and to safeguard the investments of plan participants and by providing prudent investment options at low cost.

7. What do you see as the main challenges facing the Federal Employees Retirement System, including the Thrift Savings Plan (TSP), and what do you believe the FRTIB can do to help meet those challenges?

While I am not familiar with the FERS, including the TSP, to know its challenges, I would expect that the FERS faces challenges similar to many retirement plans, such as providing investor education, maintaining transparency and offering sufficient investment options.

If confirmed, I would make the identification of these challenges a priority for me.

8. If you are confirmed, what do you expect will be the focus of your efforts during your term?

If confirmed, I would determine the areas of focus based on consultations with various stakeholders and constituencies such as TSP participants, FRTIB staff, Congress and the other members of the FRTIB.

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9. What objectives would you like to achieve in your term as a member, if confirmed? Why do you believe those objectives are important to the TSP and its participants?

I believe that a good balance between reasonable and transparent investment options with low costs should remain a hallmark of the TSP. I also believe that leadership, systems and communications are key elements toward that end.

If confirmed, I would develop my objectives through a process of consultation as referenced in 8 above.

III. Policy Questions

10. What actions do you believe should be taken to ensure that the TSP maintains effective and user-friendly information technology, with systems that offer features as good as, or better than, those offered by mutual funds and private-sector pension plans?

I believe that a commitment to continuous improvement, including in benchmarking reference to comparable plans or mutual funds, would help to identify any shortfalls in technology.

As opportunities are identified, I believe those technology gaps should be evaluated and closed, taking into account such factors as effectiveness and cost.

11. Are there measures that should be considered to strengthen the transparency and accountability of the FRTIB and its operations?

While I am not familiar with current FRTIB policy to have a view about specific measures to strengthen transparency and accountability, I believe transparency and accountability are important principles to which a governing plan fiduciary, including the FRTIB, should adhere.

It is my understanding that the FRTIB interacts regularly with the ETAC, adheres to opening meetings practices and sees that TSP participants receive regular communications about the plan. If confirmed, I will examine the Thrift Board's practices and work to ensure those practices are assessed to ensure appropriate transparency and accountability of the Thrift Board and its operations.

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12. In any defined-contribution retirement program like the TSP, increased customer service and convenience may require increased overhead costs, so trade-offs may be needed.

    a. In your opinion, how does the TSP compare to commercial defined-benefit plans in terms of customer service and convenience, and in terms of efficiency?

    I am not familiar with current customer service and convenience practices or policies or efficiency levels at TSP to know how they compare with commercial defined-benefit plans. If confirmed, I would evaluate this in detail based on my experience, working with the various stakeholders and constituencies and provide feedback, as necessary and appropriate.

    b. Do you believe any adjustments should be made in the level of customer service and convenience that the TSP provides? For example, what improvements, if any, do you believe should be made in the TSP web site and call centers?

    As mentioned above, I not familiar with current customer service and convenience practices or policies at TSP, however, based on my experience I believe a high level of customer service and convenience should be hallmarks of a first rate plan, like the TSP, to help optimize participants' investment experience.

    c. Do you believe that any changes should be made to reduce overhead and make the TSP funds more efficient?

    I am not familiar with the current overhead costs and efficiency levels of the TSP, however, generally, I believe prudent cost control and efficiency should be hallmarks of a first rate plan, like the TSP, to help maximize participants' investment returns, rather than have those returns diluted by undue cost and inefficiency.

13. Do you believe any improvements are needed in the disclosure to TSP participants of overhead costs attributable to particular TSP investment funds?

    I have not studied the matter of the disclosure of overhead costs; however, I am committed to the fullest disclosure in support of the goal to enable TSP participants to make informed and effective investment decisions.

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14. TSP has taken some steps in the past to get participant feedback on TSP operations and how participants can be better served. How satisfied are you with current efforts to seek and receive feedback from TSP participants? Do you believe additional steps should be taken? Going forward, what are some of your suggestions for ensuring that TSP continues both to receive feedback from plan participants and implements positive suggestions?

While I am not familiar with the current TSP processes to solicit feedback, in general, based on my experience I believe that regular feedback is beneficial to plan fiduciaries and plan participants to a plan's goal of ensuring that investment information supporting participants' decisions is available and effective.

15. TSP is looked to as one of the lowest cost defined contribution plans in the United States. What steps would you take to ensure that costs remain low and beneficial to plan participants?

I believe that maintaining low cost is important to the goal of helping participants prepare for retirement. Maintaining low costs helps to maximize investment returns for plan participants, rather than have those returns diluted by undue cost and inefficiency.

As is standard practice, I would encourage continuous vigilance over costs, including in benchmarking reference to comparable plans or mutual funds. I also would encourage adoption of those best practices as are appropriate for the TSP, taking into account its overall objectives.

16. What do you believe should be the role of the Employee Thrift Advisory Council (ETAC), and how do you believe the FRTIB can make best use of it?

I believe the role of the ETAC is to represent the interests of participants in advising the FRTIB on investment policy of the Thrift Savings Fund and on administrative matters, and that the FRTIB should work continuously to improve the way it obtains advice from the ETAC.

17. What do you believe are the respective roles of the FRTIB and of the Office of Personnel Management (OPM) in ensuring that participants have the financial knowledge to make informed investment decisions? Are there any steps that you believe should be undertaken to improve those efforts?

I believe the role of the FRTIB is to stay abreast of the needs of participants through such channels as the ETAC and to see that the staff of the FRTIB develops, in consultation with OPM and for OPM to implement, such plans, training and programs to assure that participants have such knowledge. I am not aware of any areas that need improvement. If confirmed, I would work to understand the current efforts and to develop possible improvements.

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18. What is your opinion of the current menu of investment options that the TSP makes available to participants? Do you believe that additional options should be offered? Different options? Fewer options?

The current menu of investment options of the TSP appears reasonable given the number and risk profile of the options. If confirmed, I would work to ensure that participant needs and available commercial options are reviewed on a regular basis sufficient to ensure that TSP investment options remain reasonable and, if necessary, to adopt such changes to the investment options to accomplish the objectives of the TSP.

19. What do you believe should be the respective roles of the FRTIB, the ETAC, the Congress, or others in ascertaining and deciding what investment options the TSP should make available? Please explain.

In general, I believe the FRTIB, ETAC, Congress and others should work collaboratively in the context of their constitutional and legislative responsibilities to ensure that plan participants have prudent investment options at low administrative cost.

20. What do you believe are the most important legislative changes Congress should make to benefit TSP participants? Please explain.

At this time, I do not have any recommendations for possible legislative changes Congress should make to benefit TSP participants. If confirmed, I will study this matter further and work with the FRTIB to suggest any legislative changes that may be beneficial.

IV. Relations with Congress

21. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

22. Do you agree, without reservation, to reply to any reasonable request for information from any duly constituted committee of Congress if you are confirmed?

Yes.

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V. Assistance

23. Are these answers your own? Have you consulted with the staff of the FRTIB or any interested parties? If so, please indicate which entities.

These answers are my own. Publicly available information was provided to me by the staff of the FRTIB.

AFFIDAVIT RONALD D. MCCRAY

I, R D McC, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate and complete.

R D McC

Subscribed and sworn before me this 7 day of Sep, 2011.

Notary Public

Odell Gibbons Notary expired Aug 18 2018

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United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

JUN 16 2011

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report from any Presidential nominee for a position on the Federal Retirement Thrift Investment Board, along with a written opinion from this Office regarding any possible conflicts of interest. Therefore, I am forwarding a copy of the confidential financial disclosure report (OGE Form 450) of Ronald D. McCray, who has been nominated by President Obama for the position of Member with the Federal Retirement Thrift Investment Board.

We have reviewed the report and have also obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Don W. Fox
Acting Director

Enclosures - REDACTED

Senator Scott P. Brown

Additional Questions for the Record

Confirmation Hearing of Ronald McCray

September 23, 2011

1. What are your views on congressional efforts to divest Thrift Savings Plan investments from all companies based in Iran and all companies with financial ties to the Islamic Republic of Iran or any entity of the Islamic Republic of Iran?

I understand the primary purpose of the TSP is to provide a defined contribution retirement program for federal employees as part of the Federal Employees Retirement System. As such, employees are offered reasonable investment options and educational support to facilitate their ability to make decisions with employees' money consistent with the retirement security objectives as intended by Congress.

In my view, any congressional or other attempt to direct or control employee investment decisions, including divestment directives, would be inconsistent with the original plan objectives and inconsistent with the nature of defined contribution plans, generally and may pose a risk of impairing the ability of TSP participants to achieve their retirement goals.

Corinne A. Beckwith
Nominee to be an Associate Judge of the District of Columbia Court of Appeals
September 23, 2011

Mr. Chairman and members of the Committee, I am greatly honored to appear before you today as you consider my nomination to be an Associate Judge on the District of Columbia Court of Appeals. I am thankful to the Judicial Nomination Commission for selecting me and to President Obama for nominating me. I would also like to thank you, Mr. Chairman, and this Committee for holding this hearing and the Committee staff for all of the work that goes into making these hearings possible.

At the outset, I would like to acknowledge and thank my family and friends who are here and who are watching from home or from their offices. My husband, Brent Futrell, and my brother, Aaron Beckwith, are here with me today. And watching from Michigan are my mother, Alice Beckwith; my father and stepmother, Larry and Nancy Beckwith; my three other brothers, David, Joe, and Adam Beckwith; my sister-in-law, Chrissy Beckwith; my niece, Rachel Beckwith; and a slew of beloved aunts, uncles, and cousins who have encouraged me over the years. I also feel lucky to have so many friends and colleagues here today.

I grew up in a working class family in Michigan and was the first in my family to go to college. I pursued a career as a reporter at a small-town newspaper before changing course and attending law school at the University of Michigan. After clerking for two exceptional judges – Judge Richard Cudahy on the Seventh Circuit in Chicago and Justice John Paul Stevens on the U.S. Supreme Court here in D.C. – I began my legal career as a public defender in Detroit, handling a huge caseload of the criminal appeals of people who could not afford a lawyer. A few years later, I returned to the District of Columbia to join the appellate division of the Public Defender Service, and for the past twelve years I have practiced almost exclusively in the D.C. Court of Appeals, again representing indigent people facing serious criminal charges. Particularly given the high level of practice in the Court, serving the D.C. community in this way has been beyond gratifying, and it is my commitment to public service that now motivates me to seek appointment to the D.C. Court of Appeals – the Court where I learned so much of what I know about the law and good lawyering.

Because I have filed so many briefs and argued so many cases in the D.C. Court of Appeals, and because I have so much respect for the talented and thoughtful judges on the Court, it is an extraordinary honor to be nominated for a position among those judges, and I am truly humbled by it. Thank you, again, for considering my nomination. I welcome your questions, and will do my best to answer them.

72483.019

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

   Corinne Ann Beckwith
   Formerly Corinne Beckwith Yates (1986 – 1998)

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

   I am a citizen of the United States.

3. **Current office address and telephone number.**

   Public Defender Service for the District of Columbia
   633 Indiana Avenue, N.W.
   Washington, DC 20004
   Tel: (202) 824-2341

4. **Date and place of birth.**

   April 3, 1963; Grand Rapids, Michigan

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   I am married to Brent Futrell, who is a graphic designer in the development and public relations department of Georgetown University Law Center, which is located at 600 New Jersey Avenue N.W., Washington, D.C. 20001.

6. **Names and ages of children. List occupation and employer's name if appropriate.**

   I have no children.

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

   University of Michigan Law School (Ann Arbor, Michigan); Attended August 1989 – May 1992; Received Juris Doctor, May 1992.

   University of Illinois (Champaign-Urbana, Illinois); Attended August 1985 – May 1987;

72483.020

Received Master of Science in Journalism, May 1987.

Kalamazoo College (Kalamazoo, Michigan); Attended September 1981 – June 1985; Received Bachelor of Arts, June 1985.

Creston High School (Grand Rapids, Michigan); Attended August 1978 – June 1981; Received high school diploma, June 1981.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

Summer 1991
Sidley & Austin (now Sidley Austin)
One South Dearborn Street
Chicago, IL 60603
Summer Associate

Summer 1990
Reelection Campaign of Senator Carl Levin
Campaign Office in Ferndale, MI 48220
Volunteer Press Assistant

January 1989 – May 1989
Central Michigan University
Departments of English and Journalism
Mount Pleasant, MI 48859
Adjunct Professor

August 1987 – January 1989
Midland Daily News
124 S. McDonald Street
Midland, MI 48640
Reporter

August 1985 – May 1987
University of Illinois News Bureau
807 S. Wright Street
Champaign, IL 61820
Graduate Assistant/Science Writer

September 1984 – February 1985; June 1985 – November 1985
Inland Steel-Ryerson Foundation
30 West Monroe Street
Chicago, IL 60603

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Student Intern/Writer

9. **Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Law School
Henry M. Bates Memorial Scholarship Award (faculty-nominated)
Selected for Michigan Law Review in 1990 and elected Editor-in-Chief for 1991-92
Federal Bar Association Edward H. Rakow Scholarship
Order of the Coif

College
Honors in English
Honors on Oral Comprehensive Examinations in English
Honors on Senior Individualized Project
Selected as Editor-in-Chief of the Kalamazoo College *Index* (college newspaper)
Selected as Captain of the Kalamazoo College Women's Tennis Team
Intercollegiate Tennis Coaches Association Scholar Athlete of the Year
Press Club of Grand Rapids Scholarship
Foster Foundation Scholarship

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

None.

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

I am a member of the District of Columbia Bar and the State of Michigan Bar. In the past, I have been a member of the Criminal Defense Attorneys of Michigan, the National Association of Criminal Defense Lawyers, and the American Bar Association.

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

American Constitution Society
American Civil Liberties Union
Member of the Lawyer's Committee, ACLU of Michigan, 1995 – 1997
Smithsonian Institution

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To my knowledge, none of these organizations discriminates or has ever discriminated on the basis of race, sex, or religion.

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

District of Columbia Bar, 2000
State Bar of Michigan, 1992
United States Supreme Court Bar, 1997
U.S. Court of Appeals for the Sixth Circuit, 1996
U.S. District Court for the Eastern District of Michigan, 1996
U.S. District Court for the Western District of Michigan, 1996

There have been no lapses in membership.

14. **Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

In my first job out of journalism school, I was the education reporter for the Midland Daily News in Midland, Michigan, where from August 1987 to January 1989, I reported on school board meetings and wrote education-related feature stories. As these articles are numerous, I have separately appended a summary of the titles and dates of the articles I was able to retrieve from the newspaper's librarian, who searched the subject files of the beat that I covered during my time at the Daily News. There may be other articles that I wrote while at the Midland Daily News, but I have been unable to locate or identify any such articles after a diligent search of my records.

Prior to that, in 1983, when I was a sophomore in college, I worked as an intern reporter at the Holland Sentinel in Holland, Michigan, where I covered sports events and wrote some features. I have not kept copies of these articles and have been unable to obtain them after a diligent search. I do have a record of the several short pieces I wrote as a freelance writer for the Total Fitness section of The Runner magazine, a publication that later merged with Runner's World, as well as one short piece for Runner's World itself. These articles include: *Walking: Up in Arms* (August 1985, at page 23); *Biking: Get a Grip* (November 1985, at page 27); *Strength Training: Stretching It* (January 1986, at page 22); *Walking: Ups and Downs* (February 1986, at page 27); *Swimming: Flipped Out* (March 1986, at page 27), *Strength Training: Band Aids* (October 1986, at page 24); *Upfront: Swimming – Strokes of Genius* (April 1987, at page 23), *Options: Net Gains* (Runner's World, July 1988, at page 26).

When I was in graduate school, I served as the volunteer publisher and managing editor of the 1985-1986 and 1986-1987 editions of *Sigma Signs*, an annual magazine for disabled students at the University of Illinois published by Delta Sigma Omicron, a

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rehabilitation service fraternity at the university. With respect to legal publications, I authored *Limitations of Sovereign Immunity Under the Clean Water Act: Empowering States To Confront Federal Polluters,* 90 Mich. L. Rev. 183 (1991). Also while in law school, I was co-author, with Christopher P. Yates, of the article, *Fetal Rights: Sources and Implications of an Emerging Legal Concept,* in Abortion, Medicine, and the Law, at 293 (J. Douglas Butler & David F. Walbert eds., 1992). Finally, as the editor-in-chief of the Michigan Law Review in 1991 and 1992, I oversaw the editing of all of the articles and student notes that appeared in Volume 90 of the Michigan Law Review, which included eight editions published in October, November, and December 1991 and February, March, May, June, and August 1992.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

I have not delivered any formal speeches in the past five years. I have for the past two years been a faculty member for the District of Columbia Bar's Continuing Legal Education Program on Appellate Advocacy, which involved participating in two panel discussions on appellate brief writing. These programs took place on October 29, 2009, and October 29, 2010, and I did not use a formal speech text for either presentation.

16. Legal career.

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

(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

I served as a law clerk to the following judges:

Judge Richard D. Cudahy
United States Court of Appeals for the Seventh Circuit
Dirksen Federal Building
219 S. Dearborn
Chicago, IL 60604
September 1992 – July 1993

Justice John Paul Stevens
United States Supreme Court
One First Street, N.E.
Washington, DC 20543
July 1993 – November 1994

(2) Whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

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(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

Summer 1992
Sidley and Austin
1722 I Street, N.W.
Washington, DC 20006
Summer Associate

January 1995 – September 1997
State Appellate Defender Office
3300 Penobscot Building
645 Griswold Street
Detroit, MI 48226
Assistant Defender

September 1997 – August 1999
State Appellate Defender Office
200 Washington Square North
Suite 340
Lansing, MI 48909
Assistant Defender

Spring 1997
Wayne State University Law School
471 W. Palmer
Detroit, MI 48202
Adjunct Faculty, Instructor of Criminal Appellate Practice

September 1999 – Present
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, DC 20004
Staff Attorney (October 1999 – February 2009)
Supervising Attorney (February 2009 – present)

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

I have spent nearly all of my career as a criminal appellate lawyer representing indigent clients who have been convicted of serious crimes. I have also handled various civil matters in my judicial clerkships, in my volunteer work, in some habeas corpus matters stemming from my criminal cases, and in a case I litigated in the U.S. Supreme Court in 2003.

Between September of 1992 and November of 1994, during my judicial

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clerkships with Judge Richard D. Cudahy on the U.S. Court of Appeals for the Seventh Circuit and with Justice John Paul Stevens on the Supreme Court, I handled a mix of civil and criminal cases, which usually involved researching the legal issues in each case, writing memoranda on or discussing these issues with the judge and with my fellow law clerks, attending oral arguments, and writing drafts of opinions.

In my volunteer work as a cooperating attorney for the American Civil Liberties Union of Michigan – off and on between 1994 and 2002 – I played a variety of roles in numerous cases both civil and criminal, from providing research assistance to briefing and arguing appeals to meeting with other attorneys to help the legal director determine which cases or projects to undertake.

From 1995 to 1999, I represented dozens of indigent criminal defendants in the Michigan courts, including the trial courts, the Michigan Court of Appeals, and the Michigan Supreme Court. While I pursued some civil actions on behalf of my clients during that time period under the federal habeas corpus statute in federal district court and in the U.S. Court of Appeals for the Sixth Circuit, my practice was predominantly criminal and predominantly appellate.

Also during that period – specifically, in the spring of 1997 – I taught criminal appellate practice as an adjunct professor at Wayne State University Law School in Detroit, Michigan. The course involved classroom lecturing as well as supervision of law students' preparation of briefs in appeals taken from the caseload of the State Appellate Defender Office, where I worked as an assistant defender.

Since September of 1999, my work at the Public Defender Service for the District of Columbia has also been predominantly a criminal appellate practice. I represent indigent juveniles and adults who have been charged with or convicted of criminal or delinquency offenses. This litigation has primarily been in the District of Columbia Court of Appeals, though I have also handled matters in the Superior Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. One notable non-criminal matter that I handled during this time period was a civil rights case that I briefed and argued on behalf of an indigent prisoner in the United States Supreme Court.

In February of 2009, I became a supervising attorney in the Public Defender Service's Appellate Division. While continuing to handle a reduced caseload of criminal appeals, I now also supervise the work of Appellate Division staff attorneys by helping to identify and refine the legal challenges to be presented to the D.C. Court of Appeals, editing drafts of briefs, assisting in the preparation for oral argument, second-chairing oral arguments, and providing general advice on case-related matters.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

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My typical clients are indigent criminal defendants who have been convicted of serious felonies in the D.C. Superior Court and are seeking to appeal their convictions. I have, since the beginning of my legal career, specialized in criminal appellate practice.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

Throughout my career I have appeared in court frequently.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.):
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
(d) other courts and administrative bodies.

Since 1999, nearly all of my court appearances (more than 90 percent) have been in the D.C. Court of Appeals, with the exception of one oral argument in the United States Supreme Court, one in the U.S. Court of Appeals for the Sixth Circuit, and one in the Michigan Court of Appeals. Prior to 1999, I appeared exclusively in the Michigan state courts – primarily the Michigan Court of Appeals, but on several occasions the Michigan Supreme Court and Michigan trial courts.

(3) What percentage of your litigation has been:

(a) civil;
(b) criminal.

Nearly 100 percent of my practice has been criminal (which I am defining to include the juvenile delinquency matters I sometimes handle at the Public Defender Service). The non-criminal matters I have handled involve a prisoner's civil rights case that I handled in the United States Supreme Court, several federal habeas corpus cases, and occasional matters arising in the Public Defender Service's Mental Health Division.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

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I have been an appellate attorney throughout my career, and although I have handled some matters in the Michigan trial courts and in D.C. Superior Court, I have tried no cases to verdict or judgment.

(5) **What percentage of these trials was to**

(a) a jury
(b) the court (include cases decided on motion but tabulate them separately).

As noted above, I have been an appellate attorney throughout my career, and have tried no cases to verdict or judgment.

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

1. *Muhammad v. Close,* 540 U.S. 749 (2004); United States Supreme Court.

Opposing Counsel: Thomas L. Casey
Former Solicitor General for the State of Michigan
Now Retired
2631 Kewanee Way
Okemos, MI 48864
(517) 349-2099

In 2003, the U.S. Supreme Court appointed me to brief and argue the case of a Michigan prisoner named Shakur Muhammad after the Court granted Mr. Muhammad's pro se petition for writ of certiorari. Mr. Muhammad had sued a prison guard under the Civil Rights Act, 42 U.S.C. § 1983, claiming that the guard used the prison disciplinary system to retaliate against him for having exercised his First Amendment rights by filing previous lawsuits and grievances against the guard. The question at issue in the case was whether the U.S. Court of Appeals for the Sixth Circuit was correct in affirming the district court's grant of summary judgment against Mr. Muhammad on the grounds that his civil rights claim was barred by the "favorable termination requirement" created by the Supreme Court to prevent a successful damages action under section 1983 from eclipsing the more specific terms of the federal habeas corpus statute in actions that attack the legality of a prisoner's custody with the goal of securing immediate or speedier release. The requirement states that in cases in which a prisoner's lawsuit, if successful, would invalidate the criminal judgment under which the plaintiff was imprisoned, a civil

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rights claim under section 1983 cannot go forward unless the prisoner first proves that the conviction or sentence in question has already been deemed invalid on appeal or in a federal habeas action.

In *Muhammad*, the Supreme Court considered whether the favorable termination requirement applied in cases, like Mr. Muhammad's, in which the prisoner's lawsuit, if successful, would invalidate the result of a prison disciplinary hearing, but would not affect the fact or duration of his underlying incarceration. The Sixth Circuit, joined by the Tenth Circuit, had applied the requirement in such circumstances in a series of cases. The Supreme Court reversed the Sixth Circuit, holding that Mr. Muhammad's lawsuit could proceed because it challenged only the conditions of his confinement and did not affect the fact or duration of his incarceration. In a unanimous opinion, this case corrected an increasingly common misreading of the Court's prior precedent regarding the favorable termination requirement and thus restored prisoners' ability to pursue important constitutional claims that were otherwise being barred at the outset. I represented Mr. Muhammad from May 2003 to March 2004.

2. *People v. Boomer*, 655 N.W.2d 255 (Mich. Ct. App. 2002); Michigan Court of Appeals; Judges Sawyer, Murphy, and Hoekstra.

Opposing Counsel: Richard E. Vollbach
Former Arenac County Prosecutor
Now Chief Judge, Arenac County Probate Court
120 North Grove Street
Standish, MI 48658
(989) 846-6941

Timothy Boomer was canoeing on the Rifle River in Michigan when he fell out of his canoe and shouted a stream of profanities that was heard by a couple and their two children who were canoeing a short distance behind Mr. Boomer and his friends. Mr. Boomer was criminally prosecuted and ultimately convicted by a jury of violating a Michigan law (MCL 750.337) that prohibited "indecent, immoral, obscene, vulgar or insulting language in the presence or hearing of any woman or child." I handled Mr. Boomer's appeal on a volunteer basis as a cooperating attorney for the American Civil Liberties Union in Michigan, writing both the opening and reply briefs (with editing by the current and former ACLU legal directors) and arguing the case before a three-judge panel of the Michigan Court of Appeals. I was involved in the case from November 2000 to October 2002. Our appeal attacked Michigan's indecent language statute on various constitutional grounds. The Michigan Court of Appeals agreed that the statute was unconstitutional, stating that "it would be difficult to conceive of a statute that would be more vague" than MCL 750.337, and finding it "unquestionable" that the statute "operates to inhibit the exercise of First Amendment rights." The case – which has often been referred to as the case of the "cussing canoeist" and which received international media attention – was the first published decision to consider Michigan's indecent language statute and struck as unconstitutional a law that had been in effect for more than 100 years.

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3. *Miller v. United States,* 14 A.3d 1094 (D.C. 2011), *petition for reh'g filed* (Apr. 13, 2011); District of Columbia Court of Appeals; Judges Ruiz, Fisher and Schwelb.

Opposing Counsel: Elizabeth H. Danello, Assistant United States Attorney
Office of the United States Attorney
555 Fourth Street, N.W.
Washington, DC 20530
(202) 252-6829

Our client, Tyree Miller, was charged with assault with intent to kill and other related offenses at a trial where the main question was who committed the shooting. Tyree Miller is right-handed. The government's main eyewitness, a man named Timothy Taylor, told the grand jury that he saw a masked man use his left hand to shoot the victim. Though Mr. Taylor gave this description to the grand jury a year before the trial, and though the defense made repeated pretrial requests for exculpatory information of this very nature, the government did not disclose Mr. Taylor's statement that the shooter was left-handed until 9:30 p.m. the night before opening statements, as one item in a large stack of documents.

At trial, defense counsel did the best they could with the information by using Mr. Taylor's grand jury testimony that the shooter was left-handed to impeach his contradictory trial testimony that the shooter was actually right-handed. Counsel did not realize until after they had rested their case and the court was instructing the jury, however, that a videotape of a police interview with another government witness – notably, the man Tyree Miller claimed was the real shooter – showed that man using *his left hand* to sign a form police had given him. Though the government had provided the videotape well in advance of trial, the defense had no reason to view the witness's use of his left hand as significant because it was unaware until the eve of trial that Timothy Taylor had described the shooter as left-handed. When defense counsel realized the videotape contained this goldmine of demonstrative evidence, it asked to reopen its case in order to present the evidence to the jury. The trial judge, indicating that defense counsel should have thought of that sooner, denied the request, noting that counsel "can't blame the government for this one."

On appeal, we argued that the government's suppression of evidence that the shooter was left-handed, for an entire year until the night before opening statements, deprived Tyree Miller of his right to due process by preventing him from developing that evidence into the centerpiece of a compelling defense theory that both proved Mr. Miller's innocence and directly implicated the left-handed suspect. In an opinion written by Judge Schwelb – over the dissent of Judge Fisher – the D.C. Court of Appeals reversed Tyree Miller's convictions, holding that the government had effectively suppressed exculpatory evidence in violation of *Brady v. Maryland,* 373 U.S. 83 (1963), and that the suppression of that evidence was material to the outcome of the case. The case is significant in that it is, to my knowledge, the first time the Court has found a *Brady* violation to constitute reversible error where defense counsel learned about the exculpatory evidence prior to trial, but where the government's disclosure was too late to allow the defense to use it fully and effectively. I wrote the opening and reply briefs and argued the case in the

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Court of Appeals, with valuable supervision from the chief and deputy chief of the PDS appellate division. My representation of Mr. Miller began in June 2009 and is ongoing. The government has filed a petition for rehearing in the case.

4. *McNeil v. United States,* 933 A.2d 354 (D.C. 2007); District of Columbia Court of Appeals; Judges Reid, Glickman, and Pryor.

Opposing Counsel: Florence Pan, former Assistant United States Attorney
Now District of Columbia Superior Court Judge
500 Indiana Avenue, N.W.
Washington, DC 20001
(202) 879-1880

Norma McNeil raised an insanity defense to the government's charges of felony murder and other related offenses arising from the stabbing death of her 15-month-old daughter. The government conceded that Ms. McNeil was in a psychotic state at the time of the offense – the voice of Satan had instructed her to kill her children – but contended that the psychosis was caused by recent use of PCP and that she could therefore not take advantage of the insanity defense. The defense argued, among other things, that Ms. McNeil's actions resulted from a bona fide mental illness unrelated to PCP. At trial, the prosecutor, in an attempt to portray Ms. McNeil as lucid and sane, introduced evidence that Ms. McNeil had exercised her right to remain silent when police explained her rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), during questioning at the police station shortly after the offense. When defense counsel objected, citing the Supreme Court's decision in *Doyle v. Ohio,* 426 U.S. 610 (1976), which precludes evidence of a suspect's post-warning silence to prove guilt, the prosecutor argued that *Doyle* did not apply in insanity cases because factual guilt was not at issue and Ms. McNeil's post-*Miranda* silence was highly relevant to the question whether she was insane when she committed the offense. The trial court agreed with the prosecutor, the evidence came in, and the prosecutor emphasized in closing argument the extent to which Ms. McNeil's clear-headedness in exercising her right to remain silent undermined her claim of insanity.

On appeal, the D.C. Court of Appeals reversed Ms. McNeil's convictions and granted a new trial, agreeing with our position, based upon a subsequent Supreme Court decision applying *Doyle* in the context of an insanity case, that the rule of *Doyle* applied to preclude this evidence and that its admission was not harmless beyond a reasonable doubt. The Court's opinion was most significant in its determination that even in a weeks-long trial in which the government presented extensive testimony, both expert and lay, regarding Ms. McNeil's mental state, the unconstitutional admission of evidence that she had exercised the rights police had read to her was not harmless error. My participation in this case involved writing the opening and reply briefs and appearing for oral argument, with editing and other supervision by senior attorneys in the division. I have represented Ms. McNeil from July 2005 to the present.

5. *Harris v. United States,* 834 A.2d 106 (D.C. 2003); District of Columbia Court of Appeals; Judges Glickman, Washington, and King.

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Opposing Counsel: Lisa H. Schertler, former Assistant United States Attorney
Now at Schertler and Onorato LLP
575 Seventh Street, N.W.
Suite 300 South
Washington, DC 20004
(202) 628-4199

Michael Harris was convicted of voluntary manslaughter and related firearm offenses stemming from the shooting death of a man named James Monroe shortly after Mr. Monroe and another man, Thaddies Lowe, arrived in a car in front of Michael Harris's home. The government's theory was that Mr. Harris and Mr. Monroe were engaging in a drug deal that devolved into violence, and Mr. Harris deliberately shot Mr. Monroe as he and Mr. Lowe were driving away. The defense countered that Mr. Lowe and Mr. Monroe had come not to buy drugs, but to seek revenge against Mr. Harris for an incident that occurred the previous week in which Mr. Harris got the better of Mr. Monroe's nephew, Donald Monroe, during a craps game and an ensuing fist fight. According to the defense, Mr. Harris shot James Monroe in an attempt to defend himself from shots Mr. Lowe was firing at him while James Monroe was also reaching for a gun.

Michael Harris sought to bolster this defense theory that Donald Monroe had sent his uncle and Mr. Lowe to shoot him on the date of the offense in this case (in July of 1995), with evidence that Donald Monroe continued to seek revenge against Mr. Harris in April of 1996 when he sent yet another cohort to shoot Mr. Harris – this time succeeding and paralyzing Mr. Harris. Two rulings by the trial court precluded the defense from fully developing this theory. First, the court excluded evidence that the government itself firmly believed, and previously represented in a sworn affidavit, that Donald Monroe hired someone to kill Michael Harris, which was contrary to the government's effort at trial to convince the jury that Donald Monroe was *not* involved in that shooting. Second, the trial court refused to send marshals to enforce the subpoena that had been served on a defense witness who would have corroborated Mr. Harris's own testimony by stating that he saw Donald Monroe's car drive past just before Mr. Harris was shot in April 1996.

The D.C. Court of Appeals reversed Mr. Harris's convictions and granted a new trial based upon Mr. Harris's challenge to both of these rulings, which I presented to the Court both in the briefs and at the oral argument, under the supervision of senior attorneys in the appellate division. First, the Court held that a detective's statement, made in a sworn affidavit supporting a search warrant, that there was a basis to believe Donald Monroe had sought to kill Michael Harris was admissible as an adoptive admission by a party opponent where the prosecutor manifested an intent to adopt the statement by signing the affidavit with the knowledge that the document would be submitted to the court. Second, the Court held that the trial court's refusal to send marshals to find a properly subpoenaed defense witness violated Mr. Harris's constitutional right to compulsory process. The Court held that neither error was harmless.

The Court's holding that the substance of a search warrant affidavit could constitute an admission by the prosecutor who signed the affidavit brought clarity to a matter of considerable confusion in this jurisdiction, confirmed that a prior related D.C. Court of

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Appeals decision was not limited to its narrower facts, and methodically rejected the view that treating such statements as admissions of a party opponent was unwarranted because it would cause significant complications for police and prosecutors. The decision was also notable for the precision and detail of the Court's separate analyses of the harm associated with the trial court's two errors, one constitutional and one non-constitutional. My representation of Mr. Harris extended from October 2001 to June 2004.

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Because of the nature of my practice as an appellate public defender, all of the most significant legal activities I have pursued are litigated matters. In question 17, I list the five most significant litigated matters. Here, I will describe five more important matters in which I wrote the briefs and presented argument to the court, under the supervision of senior colleagues.

1. *Brown v. United States,* 952 A.2d 942 (D.C. 2008); District of Columbia Court of Appeals; Judges Glickman, Kramer, and Ferren.

Opposing Counsel: Patricia A. Heffernan, Assistant United States Attorney
Office of the United States Attorney
555 Fourth Street, N.W.
Washington, DC 20530
(202) 252-6829

Melvin Brown, charged with first-degree murder in connection with the shooting of two men in a vehicle outside a night club, testified that he fired his gun in self-defense when one of the complainants threatened him and reached under the seat of the vehicle as though for a gun. Another occupant of the vehicle, a woman named Falah Joe, provided key testimony for the government. During the prosecutor's questioning of Ms. Joe, who was the mother of Melvin Brown's son, it became clear that her testimony may have been affected by threats she had received from a man who was close to the decedent in this case and who had previously pulled a gun on Falah Joe and her son and threatened to kill her because of her connection to Melvin Brown. When Mr. Brown sought to introduce these prior threats to expose Ms. Joe's bias in favor of the prosecution's case, the trial court denied the request on the grounds that the evidence involved extraneous matters and ruled that the defense could ask *whether* Ms. Joe was afraid of the man, but not *why*.

We argued on appeal that evidence that a man closely associated with the decedent and hostile to the defendant made threats on the life of a government witness prior to trial, and then carried that threat to the trial proceedings by showing up in the courtroom and making hostile faces at the witness, was the prototypical form of bias evidence and that Mr. Brown had a fundamental constitutional right to elicit the underlying facts that establish that bias. The Court of Appeals agreed, holding that the curtailment of cross-

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examination of Ms. Joe required reversal of Mr. Brown's convictions. The reversal was an important decision reaffirming and securing the right of a defendant to elicit evidence of a witness's bias. My representation of Mr. Brown began in February 2005 and is ongoing.

2. *People v. Odell,* No. 93-6945-FC; Shiawassee County Circuit Court; Judge Gerald Lostracco presided.

Opposing Counsel: Randy Colbry
Shiawassee County Prosecutor's Office
201 North Shiawassee Street
Corunna, MI 48817
(989) 743-2373

Rick Odell was convicted of one count each of first- and second-degree criminal sexual conduct based primarily upon his stepdaughter's testimony about unusual dreams that triggered memories of sexual misconduct that had allegedly occurred years earlier and of which she had no prior memory. When the complainant was in 10th grade, three years after the charged offenses allegedly occurred, she began having dreams about a faceless person coming into her room and touching her. According to the complainant, the faceless man in the dreams eventually acquired the face of her stepfather, Mr. Odell, triggering "memories" that he had abused her sexually when she was in 6th and 7th grade. We first persuaded the Michigan Court of Appeals to remand the case to the trial court for an evidentiary hearing on our claim that Mr. Odell's trial attorney had rendered constitutionally ineffective assistance of counsel in failing to challenge the reliability of the complainant's purported repressed memories. At the hearing, we presented expert testimony to establish that repressed memories such as those the complaining witness had described in her testimony against Mr. Odell are often inaccurate or completely false. We also established that the trial attorney had no sound strategic basis for failing to attack the complaining witness's credibility on these grounds, or for failing to attack the prosecution's expert witness's questionable conclusions regarding the significance of certain medical evidence. At the conclusion of the evidentiary hearing, the trial judge ruled that the trial attorney's performance had been deficient and that Mr. Odell was prejudiced by the ineffective representation. The judge granted our motion for new trial and permitted Mr. Odell – who had been sentenced to concurrent sentences of 9 to 30 years and 8 to 15 years in prison – to walk out of the courthouse that day without returning to prison. The government never retried him.

I represented Mr. Odell from June 1995 to May 1997, and my participation in this case involved drafting all of the pleadings that were filed in the trial court and the Court of Appeals, preparing all of the witnesses and questioning them at the evidentiary hearing, and presenting argument to the judge in support of our new trial motion, all with the assistance of a staff investigator and under the supervision of a senior attorney. Besides freeing a man with a compelling claim of actual innocence, the case established important precedent for future cases involving allegations arising from repressed memories.

3. *Edwards v. United States,* 923 A.2d 840 (D.C. 2007); District of Columbia Court of

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Appeals; Chief Judge Washington and Judges Glickman and Kramer.

Opposing Counsel: John Gidez, Assistant United States Attorney
Office of the United States Attorney
555 Fourth Street, N.W.
Washington, DC 20530
(202) 252-6829

Kevin Edwards was convicted of first-degree murder and related firearm charges based largely upon a statement he made to police after police interrogated him without *Miranda* warnings, elicited a statement that the government conceded was inadmissible under *Miranda,* and then read him his rights and obtained additional statements that became a key aspect of the government's case against him. The D.C. Court of Appeals reversed his convictions and remanded for a new trial, holding that the admission of the post-*Miranda* statement ran afoul of the Supreme Court's then-recent decision in *Missouri v. Seibert,* 542 U.S. 600 (2004), which struck as unconstitutional the police practice of first obtaining an inadmissible confession without giving *Miranda* warnings, then warning the suspect and obtaining a second confession. The *Edwards* case, which was one of the Court's first applications of *Seibert,* made clear that the rule of *Seibert* applies even where the unwarned statement that preceded the subsequent warned statement was arguably an exculpatory statement rather than a complete and integrated confession and even where the second statement was quite different from the first (thus rejecting the government's argument that *Seibert* only excluded confessions that essentially repeated the statement the suspect made during the unwarned interrogation). The case's significance is also marked by the unusually strong language the Court employed in sending a direct message to the police department: "We are compelled to 'sound the warning' to police in this jurisdiction concerning the 'deliberate failure of the police to inform a criminal suspect promptly of his rights under *Miranda.*'" *Edwards,* 923 A.2d at 842 (citations omitted).

My former colleague, Giovanna Shay, was the principal author of the opening brief in this case, while I wrote the reply brief and presented the oral argument after Ms. Shay left the office. My representation of Mr. Edwards began in January 2005 and is ongoing.

4. *Martin v. United States,* 991 A.2d 791 (D.C. 2010); District of Columbia Court of Appeals; Judges Reid, Glickman, and Oberly.

Opposing Counsel: Chrisellen Kolb and Ann K.H. Simon, Assistant U.S. Attorneys
Office of the United States Attorney
555 Fourth Street, N.W.
Washington, DC 20530
(202) 252-6829

In his trial on a charge of assaulting a police officer, Kelvin Martin took the stand on his own behalf on a Friday afternoon. After his direct examination was completed and the prosecutor had begun to question Mr. Martin, the trial court interrupted the cross-examination to adjourn the trial until Monday morning. The prosecutor then asked the

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court to instruct Mr. Martin not to "talk about his testimony with counsel" over the weekend, to which the judge responded, "Sure, that you'll follow that instruction," and directed Mr. Martin "not to speak to anyone pending the examination on Monday at 10:30." On appeal, we argued that the trial court's order violated Mr. Martin's Sixth Amendment right to the assistance of counsel, and that a new trial was required notwithstanding trial counsel's failure to object to the trial court's order. The Court of Appeals agreed, and reversed Mr. Martin's convictions under a plain error standard of review. Based upon prior decisions of the U.S. Supreme Court and the en banc D.C. Court of Appeals, the Court held that it was "beyond dispute" that the order barring Mr. Martin from conferring with his attorney during the weekend recess was erroneous and that it violated Mr. Martin's Sixth Amendment right. The opinion was significant, in particular, in its rejection of the government's argument that reversal was not required because the record contained no evidence that Mr. Martin actually wanted to exercise his right or had tried to assert it: "[T]he burden is on the government to establish a valid waiver [of Sixth Amendment rights] in this case, not on appellant to disprove it." I represented Mr. Martin from April 2006 to June 2010.

5. *United States v. Turner,* 761 A.2d 845 (D.C. 2000); District of Columbia Court of Appeals; Judges Steadman, Glickman, and Washington.

Opposing Counsel: Ann K.H. Simon, Assistant United States Attorney
Office of the United States Attorney
555 Fourth Street N.W.
Washington, DC 20530

In a case involving allegations of serial rape and murder, the government appealed the trial court's granting of Darryl Turner's pretrial motion to suppress statements that he had made at the FBI field office after police had informed him that they had a search warrant authorizing them to take samples of his blood, his saliva, and his head and pubic hair. The main question on appeal from the suppression ruling was whether a murder suspect who voluntarily accompanies the police to the FBI building for questioning is in custody for purposes of *Miranda v. Arizona* when the police tell him during the questioning that they are about to execute a search warrant for his hair and bodily fluids and where they continue questioning him while they conduct the search. The Court upheld the trial court's ruling that the execution of the search warrant created a restraint on freedom of movement of a degree associated with formal arrest, and that the admission of the statements would therefore violate *Miranda.* The case has become an important example of a circumstance in which a suspect is in custody for purposes of *Miranda* even where he came to the police station voluntarily and where police informed him that he was not under arrest and that he would be taken wherever he wanted to go after the questioning. I represented Mr. Turner from December 1999 to November 2000.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

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A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

I have not held judicial office.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

No.

21. **Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

None.

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

In October and November of 2008, I canvassed in Virginia as a volunteer for Barack Obama's presidential campaign.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

In 2008, I contributed $300 to Obama for America.
In 2009, I contributed $100 to Matt Dunne, a candidate for governor of Vermont.

22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

No.

23. **Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

I was involved as a party in *Corinne Beckwith Yates v. Christopher Paul Yates,* No. 98-

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06264-DO (Kent County Circuit Court), a divorce proceeding. A judgment of divorce was entered on September 11, 1998.

I have also been sued by two clients while I was working at the State Appellate Defender Office in Michigan. One case, *Kelvin D. Moffitt v. Corinne A. Beckwith,* Case No. 01-042120 in the Saginaw (Michigan) County Circuit Court, was dismissed by the court. In the other case, *Ronald E. Starks v. Corinne B. Yates,* Case No. 98-818849-NM, Wayne County (MI) Circuit Court, I was one of several attorneys at the State Appellate Defender Office in Detroit who were sued by Mr. Starks. The client's primary complaint against me was that I had not filed a formal grievance against the prosecuting attorney in Mr. Starks's case given that I had presented a claim of prosecutorial misconduct in our appellate brief challenging Mr. Starks's convictions. The Michigan Attorney Grievance Commission dismissed a complaint against me based upon the same claim by Mr. Starks. The State Appellate Defender Office settled the suit in exchange for Mr. Starks's agreement to dismiss numerous lawsuits against SADO attorneys and the attorneys who were representing them in Mr. Starks's many lawsuits.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

I have never been disciplined or cited for a breach of ethics for unprofessional conduct, but the two clients who sued me, Kelvin Moffitt and Ronald Starks, also submitted requests for investigation to the Michigan Attorney Grievance Commission on the same grounds asserted in the civil lawsuits. The Grievance Commission dismissed these complaints.

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II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   Yes.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   None.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   None.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   A conflict of interest would be presented should I have to preside over any case in which I was involved while an attorney at the Public Defender Service.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   None.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

   No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

   If a possible conflict arises, I would resolve it pursuant to the District of Columbia Code of Judicial Conduct. I would also plan to recuse myself from any case in which the Public Defender Service provided representation while I was an attorney at that office.

8. **If confirmed, do you expect to serve out your full term?** Yes.

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III. FINANCIAL DATA - REDACTED

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

F. Provide for the Committee copies of your Federal income tax returns for the past three (3) years. These documents will be made available only to Senators and staff persons designated by the Chairman and Ranking Minority Member. They will not be available for public inspection.

Copies are supplied.

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. **Are you a citizen of the United States?**

   Yes.

2. **Are you a member of the bar of the District of Columbia?**

   Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes. I was admitted to the bar of the District of Columbia on February 4, 2000.

4. **If the answer to Question 3 is "no" --**

   A. **Are you a professor of law in a law school in the District of Columbia?**

   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**

   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**

   D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia?**

   Yes.

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode**

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(including temporary residences) with dates of occupancy for the last five (5) years.

Yes. Since December 1, 2010, I have resided at REDACTED Washington, DC 20002. From August of 2000 until December of 2010, I resided at REDACTED Washington, DC 20003.

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

No.

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

Four copies are supplied.

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ADDENDUM to Question 14

Midland Daily News articles

"Meridian hires coach, saves programs," Aug. 11, 1987
"MISD may manage alternative ed program," Aug. 19, 1987
"MISD agrees to run alternative ed school," Aug. 20, 1987
"Midland school board's public hearing to be on budget with millage increase," Aug. 24, 1987
"MPS budget approved," Aug. 25, 1987
"MPS, Bullock Creek to form cooperative education program," Aug. 25, 1987
"Alternative education hires 4, sets registration," Aug. 31, 1987
"Meridian budget cuts subject of public information meeting," Sept. 8, 1987
"Meridian's budget woes source of frustration for angry parents," Sept. 10, 1987
"Thomas retiring as director of MPS adult ed," Sept. 15, 1987
"Meridian softball team gets legislative honor," Sept. 15, 1987
"Fog delays school starts," Sept. 16, 1987
"Enrollment strong in alternative ed program," Sept. 17, 1987
"Meridian honors academic 'all-stars,' Sept. 19, 1987
"Meridian, Gladwin, Beaverton to share in substance abuse grant," Sept. 22, 1987
"Meridian teacher ARC's state teacher of the year," Sept. 28, 1987
"Windover – a school to 'drop in,'" Sept. 29, 1987
"MPS recommends foreign languages curriculum for elementary students," Sept. 29, 1987
"Meridian students want drama program reinstated," Oct. 13, 1987
"MPS board to consider maintenance millage," Oct 26, 1987
"MPS to ask for .63 mills for maintenance," Oct. 27, 1987
"Local educators travel to Lansing in unique effort to voice concerns," Nov. 3, 1987
"Educators listen, learn, lobby," Nov. 5, 1987
"Trzcinski became a popular neighbor," Nov. 10, 1987
"Meridian reinstates drama club," Nov. 12, 1987
"Malone describes 'I Care' program," Nov. 24, 1987
"Small dog causing not-so-small fuss at Meridian High," Nov. 27, 1987
"Students give up some rights," Nov. 27, 1987
"High schools to present information on financial aid to parents, students," Nov. 30, 1987
"MPS students get chance to praise, complain at meeting," Dec. 8, 1987
"Meridian wastes no time in starting new drug program," Dec. 15, 1987
"Teachers show MPS board project does indeed work," Dec. 16, 1987
"Meridian board disappointed by MDOT inaction," Dec. 17, 1987
"'Ideal' high school doesn't meet all needs," Dec. 30, 1987
"Schools' state aid cut accompanied by warning," Jan. 6, 1988
"Voter sign-up cutoff near," Jan. 7, 1988
"Meridian 'state of the schools' message planned," Jan. 22, 1988
"Area students fare well on annual aptitude tests," Jan. 25, 1988
"AIDS video for intermediate schools topic," Jan. 26, 1988
"Midland school millage vote set for Tuesday," Feb. 8, 1988
"King's birthday considered as holiday for MPS students," Feb. 9, 1988
"Midland school millage wins big," Feb. 10, 1988

"2 schools planning millage requests," Feb. 11, 1988
"Videotape attempts to dispel stereotypes surrounding Hispanic culture, traditions," Feb. 13, 1988
"Meridian board sets millage request level," Feb. 16, 1988
"AIDS videotape approved for intermediate students," Feb. 23, 1988
"Meridian official says dispute over softball behind recall campaign," March 3, 1988
"Meridian approves AIDS education curriculum," March 15, 1988
"Meridian board calls meeting to discuss mismanagement charges," March 15, 1988
"Meridian official says false notice put in trash to trace info leak," March 18, 1988
"Meridian board faces critics tonight," March 21, 1988
"Meridian officials ask citizens to clear the air," March 22, 1988
"Local school board petitions due Monday," April 9, 1988
"100 Woodcrest students may be transferred to Parkdale school," April 11, 1988
"Candidates file for school board posts," April 12, 1988
"Teacher says Midland has 'white-collar' bias," April 12, 1988
"Meridian schools financial woes not unique – just first," April 14, 1988
"One parent fears school issue could break the community," April 15, 1988
"Would new tax plan help schools?" April 16, 1988
"Meridian millage vote set Tuesday," April 18, 1988
"Meridian millage OK'd by record number of voters," April 20, 1988
"Meridian board reinstates programs," April 22, 1988
"Up, up and away: Students launch science experiment," April 26, 1988
"Student transfer draws criticism," April 26, 1988
"Meridian parents angered by strip search of students," April 27, 1988
"Johnson wants to quietly settle strip-search incident," April 28, 1988
"Meridian officials agree strip-search was mistake," May 2, 1988
"Board suspends 2 officials involved in strip search," May 5, 1988
"Meridian bus driver says school principal made 'pat down' search of boys, girl," May 10, 1988
"ACLU may sue Meridian over strip search," May 17, 1988
"Kelsey withdraws bid for Meridian board," May 24, 1988
"MPS board Oks plan to move Woodcrest students," May 24, 1988
"Split classes upset Chestnut Hill parents," May 24, 1988
"Meridian's baccalaureate service draws ACLU protests," May 26, 1988
"Meridian board may cancel baccalaureate," May 27, 1988
"Meridian school board to discuss pat search," June 13, 1988
"No disciplinary action planned following 'pat search' investigation," June 14, 1988
"Schneider, Townley win MPS board seat," June 14, 1988
"Cosens to end tenure as president," June 15, 1988
"In the midst of cutbacks, MPS has resources to expand," June 28, 2988
"School district leaders selected," July 12, 1988
"Meridian lawsuit 'almost' a certainty," Aug. 5, 1988
"MPS board names special ed coordinator," Aug. 9, 1988
"$38.3 million schools budget Okd," Aug. 23, 1988
"Committee recommends foreign language options," Aug. 23, 1988
"Officials leery of school finance referendum," Sept. 2, 1988
"Committee to continue foreign language study," Sept. 13, 1988

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"Meridian to reduce district millage if MCISD charter millage passes," Sept. 13, 1988
"Midland teachers approve contract by large margin," Sept. 14, 1988
"Curriculum overhaul planned for Meridian," Sept. 20, 1988
"Curriculum group presents report to board," Sept. 27, 1988
"MPS phys ed program called 'shallow,'" Sept. 28, 1988
"Meridian's board Oks district goals," Oct. 11, 1988
"Teacher drain frustrates small districts," Oct. 18, 1988
"Panel proposes same or higher school millage request in 1989," Oct. 25, 1988
"MPS sets objectives for 1988-89 school year," Oct. 27, 1988
"Meridian schools get good and bad news," Nov. 11, 1988
"MPS names task force to study at-risk report," Nov. 15, 1988
"Meridian to study energy management program," Nov. 17, 1988
"Board, MECPA reach tentative pact," Nov. 22, 1988
"School board to seek 0.9-mill tax hike," Nov. 29, 1988
"Midland schools gear up for campaign," Dec. 14, 1988
"Meridian board shuffles school administration," Dec. 14, 1988
"Gifted student programs set for 3 area districts," Dec. 28, 1988
"MPS board told to expect 440 enrollment drop," Jan. 10, 1989

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AFFIDAVIT

Corinne Ann Beckwith, being duly sworn, hereby states that she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 15th day of June 2011.

Notary Public

Lisa Partlow
Notary Public, District of Columbia
My Commission Expires 10/14/2014

Opening Statement of Catharine F. Easterly
Nominee to be an Associate Judge of the District of Columbia Court of Appeals
September 23, 2011

Mr. Chairman and members of the Committee, I am grateful for the opportunity to appear before you today as a nominee to be an Associate Judge of the District of Columbia Court of Appeals. I want to thank President Obama and the District of Columbia Judicial Nomination Commission, in particular, its Chair, the Honorable Emmet G. Sullivan, for this great honor. I also want to thank the Committee and your staff for considering my nomination so expeditiously, at a time when there are many pressing matters demanding your attention.

A number of my family members are here with me today: my husband Aaron Zebley, my daughters Clara and Daphne, my parents, and my sister and my two brothers. A number of friends, colleagues and mentors are also here. Suffice it to say, I would not be here today without their support and guidance.

Throughout my career, my abiding interest has been to work to promote fairness of process in our justice system, particularly for those least able to advocate for themselves. After graduating from law school, I worked for almost five years as an appellate public defender in New York City. I then moved to a law firm where I focused on civil litigation. In 2003, I joined the Special Litigation Division of the Public Defender Service for the District of Columbia (PDS). At PDS, I have had the unparalleled opportunity to apply my skills as an appellate defender and a civil litigator, and to identify and address complex, recurring issues that affect the fairness and efficiency of the District's criminal justice system.

Putting the sum of my experiences to use as a judge on the Court of Appeals, in service of the District of Columbia community, would be an honor and a privilege. Thank you for considering my nomination, and I look forward to answering your questions.

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QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

   Catharine Friend Easterly (known by friends and colleagues as Kate Easterly).

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

   I am a United States citizen.

3. **Current office address and telephone number.**

   Public Defender Service for the District of Columbia
   633 Indiana Avenue, N.W.
   Washington, D.C. 20004
   (202) 628-1200 (main)
   (202) 824-2446 (direct)

4. **Date and place of birth.**

   December 18, 1970; Boston, Massachusetts

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   I am married to Aaron Zebley. He is Chief of Staff to the Director of the Federal Bureau of Investigation. His business address is 935 Pennsylvania Avenue, N.W., Washington D.C. 20535.

6. **Names and ages of children. List occupation and employer's name if appropriate.**

   REDACTED

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

   University of Virginia School of Law (Charlottesville, Virginia); Attended August 1993 – May 1996; Received Juris Doctor, May 1996.

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Yale University (New Haven, Connecticut): Attended September 1988 – May 1992; Received Bachelor of Arts *cum laude* and with Distinction in History, May 1992.

St. Catherine's School (Richmond, Virginia); Attended September 1978 – May 1988; Received high school diploma, May 1988.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

Summer 1995
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Law Clerk

Summer 1995
Legal Aid Society of the District of Columbia
1331 H Street, N.W., Suite 350
Washington, D.C. 20005
Law Clerk

Summer 1994
Maryland Office of the Public Defender
201 Saint Paul Place
Baltimore, Maryland 21202
Law Clerk

September 1992 – February 1993
Books Etc.
60 Fenchurch Street
London, England EC3
Sales Clerk

Summer 1992
Central Virginia Legal Aid Society, Inc.
101 W. Broad Street, Suite 101
Richmond, Virginia 23220
Law Clerk

9. **Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

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I graduated *cum laude* from Yale University and received distinction in my major, History.

In my second year at the University of Virginia School of Law, I was selected to be a Dillard Fellow, a legal research and writing teacher for the first-year law students.

10. Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

I practiced law alone from June 2002 to March 2003. My primary client was the Metropolitan Opera, for whom I had previously worked as an associate at the law firm of Stillman & Friedman, P.C. During this time, I also worked on one case (*People v. Berroa*, discussed in Question 17) for the Office of the Appellate Defender, another former employer.

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

National Association of Criminal Defense Attorneys

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

Board Member/Secretary, Friends of Garfield Park, 2009 – present
Member, Brent Elementary School PTA, 2009 – present
Vice President of the Board, Jenkins Hill Child Development Center, 2007 – 2008

To my knowledge, none of these organizations formerly discriminated or currently discriminates on the basis of race, sex or religion.

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

New York, 1997
United States Court of Appeals for the Second Circuit, 2000
United States District Court for the Southern District of New York, 2001
District of Columbia, 2003

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Supreme Court of the United States, 2003
United States District Court for the District of Columbia, 2004
United States Court of Appeals for the District of Columbia Circuit, 2004

There have been no lapses in membership.

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

Timothy P. O'Toole & Catharine Easterly, *Davis v. Washington: Confrontation Wins the Day*, THE CHAMPION, at 20-23 (March 2007).

Richard S. Schmechel, Timothy P. O'Toole, Catharine Easterly, & Elizabeth F. Loftus, *Beyond the Ken? Testing Jurors' Understanding of Eyewitness Reliability Evidence*, 46 JURIMETRICS J. 177-214 (2006).

Libretta Stennes & Catharine Easterly, *Locked Up, Missing School*, LEGAL TIMES (Aug. 7, 2006).

Timothy P. O'Toole et al., *District of Columbia Public Defender Survey: What Do Jurors Understand About Eyewitness Reliability? Survey Says...*, THE CHAMPION, at 28-30 (April 2005).

Elizabeth F. Loftus, Timothy P. O'Toole, & Catharine Easterly, *Juror Understanding of Eyewitness Testimony: A Survey of 1000 Potential Jurors in the District of Columbia*, REPORT OF THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA, *available at* http://www.pdsdc.org/PDS/Resources.aspx (2004 or 2005) (last visited June 29, 2011).

Tim O'Toole & Kate Easterly, *Jury Note Essentials*, TRAINING MANUAL OF THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA, *available at* http://www.pdsdc.org/PDS/Resources.aspx (est. 2004) (last visited June 29, 2011).

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

I have testified twice before the District of Columbia Council, on March 18, 2009, and May 18, 2009. I did so on behalf of the Public Defender Service as an agency. On both occasions, I read from a prepared text. I have attached four copies of my testimony from those two dates.

Over the course of my career, I have served as a speaker or panelist at a number of legal trainings, conferences, and bar association events. Speeches and panel discussions I have given or participated in during the past five years are listed below. I did not use formal speech texts in any of these presentations.

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"Litigating *Brady* Issues Before and at Trial," co-presenter, 2010 Criminal Defender Training Program Summer Series, Washington, D.C., July 15, 2010

"Legal Issues in DNA: Making the Government Prove Its Case," co-presenter, 2011 PDS Forensic Science Conference, Decoding DNA: The Fundamentals of DNA Defense, Washington, D.C., June 4, 2011

"The Confrontation Clause: Litigating *Melendez-Diaz* Issues in Juvenile Court," co-presenter, Bar Association of the District of Columbia Neglect & Delinquency Practice Institute, University of the District of Columbia David A. Clarke School of Law, Washington, D.C., March 9, 2010

"The Eyewitness Identification Procedures Act of 2008," panelist, Criminal Law and Individual Rights Section, District of Columbia Bar, Washington, D.C., October 28, 2008

"Litigating Eyewitness Identification Issues," presenter, Georgetown Law, Prettyman/Stiller Post-Graduate Fellowship Program, Washington, D.C., September 18, 2007

"Eyewitness Testimony: What the Researchers Know, What Jurors Think and How It Can Affect Your Cases" and "Defense Strategies and Tactics in Eyewitness ID Cases," co-presenter, Arizona Public Defender Association Conference, Tempe, Arizona, June 20, 2007

"Justice Delayed? The Report to the Legislature of Illinois on Sequential Double-Blind Identification Procedures and How It Has Affected the Criminal Justice Process," presenter, John Jay College of Criminal Justice Symposium, Off the Witness Stand: Using Psychology in the Practice of Justice, New York, New York, March 1-3, 2007

"Defending Clients against Mistaken Eyewitness Identifications," co-presenter, National Legal Aid and Defender Association Conference, Charlotte, North Carolina, November 8, 2006

"The Reliability of Eyewitness Identification," co-presenter, National Defense Investigator Association, Northeast Regional Conference, Washington, D.C., September 22, 2006

"Eyewitness Research: Confidence, Stress, Race, and Other Factors," co-presenter, Litigating Eyewitness Identification Conference, Arlington, Virginia, June 16, 2006

16. Legal career.

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

(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

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I have not served as a law clerk to a judge.

(2) Whether you practiced alone, and if so, the addresses and dates;

I practiced law alone from June 2002 to March 2003. I worked from my home, then located at 231 C Street, N.E., Washington, D.C. 20002.

(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

October 1996 – August 1997
Legal Aid Society of Nassau County
Appeals Bureau
One Helen Keller Way
Hempstead, New York 11550
Staff Attorney

September 1997 – February 2001
Office of the Appellate Defender
11 Park Place, Suite 1601
New York, New York 10007
Staff Attorney (September 1997 – September 1999)
Senior Staff Attorney (September 1999 – February 2001)

March 2001 – May 2002
Stillman & Friedman, P.C. (now Stillman, Friedman & Schechtman, P.C.)
425 Park Avenue
New York, New York 10022
Associate

April 2003 – present
Public Defender Service for the District of Columbia
Special Litigation Division
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Staff Attorney

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

For the first four and one-half years of my career as a practicing attorney, October 1996 to February 2001, I worked as an appellate public defender in New York, first at the Legal Aid Society of Nassau County and then at the Office of the Appellate Defender (OAD) in New York City. I briefed and argued appeals in the intermediate and highest appellate courts in New York State. I also argued a habeas appeal in the United States Court of Appeals for the Second Circuit and

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sought collateral relief in New York State trial court.

In 2001, I joined Stillman & Friedman, P.C. (now Stillman, Friedman & Schechtman, P.C.) as an associate. At the firm, I focused on civil matters and handled all aspects of pretrial litigation, including amending a complaint, drafting and responding to discovery requests, taking and defending depositions, litigating discovery disputes, and preparing for trial. I also worked on white collar criminal cases, primarily preparing clients for prosecution proffers and assisting with negotiated pleas and sentences. I continued to represent indigent clients pro bono in criminal appeals referred to me by my former employer, OAD.

In May 2002, I moved to the District to join my husband, who had been transferred there by his employer. When I left the firm, one of my clients, the Metropolitan Opera, asked me to continue my work on a pending civil action in the United States District Court for the Southern District of New York. I worked on the Met's case and on criminal appeals referred to me by my former employer, OAD, until I joined the Special Litigation Division (SLD) at the Public Defender Service for the District of Columbia (PDS) in April 2003. I am currently employed at PDS.

While at PDS/SLD, I have argued appeals in the United States Court of Appeals for the District of Columbia Circuit and litigated civil suits and habeas petitions in the United States District Court for the District of Columbia, raising issues that affect D.C. defendants, detainees, prisoners, and civilly committed persons. I have written numerous *amicus* briefs to the Supreme Court of the United States on behalf of PDS and others addressing criminal justice issues. I have also applied my appellate skills to motions practice in the Superior Court of the District of Columbia, where I have assisted in the litigation of a wide range of cases, from misdemeanors to murders, to delinquency and civil commitment proceedings.

While at PDS, I have also assisted PDS General Counsel and Legislative Counsel in evaluating and commenting on local criminal justice proposals on behalf of PDS as an agency. I have testified on behalf of PDS before the D.C. Council, drafted written submissions to legislators, represented PDS in meetings with legislators, and worked with organizations and community groups on legislative issues relevant to PDS. In 2010, I served as PDS's representative on the Counsel for Court Excellence Working Group to revise the District of Columbia's disorderly conduct statutes.

Lastly, a significant portion of my work at PDS has been advising and training other lawyers, including other defense counsel, Criminal Justice Act (CJA) attorneys, and attorneys handling criminal cases pro bono. I advise other PDS counsel on legal issues on an almost daily basis, and I regularly give in-house trainings. I have also conducted trainings in D.C. for the CJA Bar and across the country for the National Association of Criminal Defense Lawyers, the National

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Legal Aid and Defender Association, as well as state defender organizations.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

With the exception of the time when I worked for a law firm and as a solo practitioner, my typical former clients have been indigent individuals who are either facing criminal prosecution or have been convicted of a crime. I have represented these clients in criminal and civil proceedings (*e.g.*, I have sought to ensure that incarcerated youth have access to adequate special education and related services and that civilly committed individuals have access to their own medical records).

When I worked at a law firm and as a solo practitioner, my primary client was the Metropolitan Opera, which I represented in a civil action in the United States District Court for the Southern District of New York.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
(d) other courts and administrative bodies.

(3) What percentage of your litigation has been:
(a) civil;
(b) criminal.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

(5) What percentage of these trials was to

(a) a jury;
(b) the court (include cases decided on motion but tabulate them separately).

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Since 2003, I have worked in the Special Litigation Division (SLD) of the Public Defender Service for the District of Columbia (PDS). My litigation work during this timeframe can be divided into three general categories: (1) appellate and civil litigation in federal court, primarily the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit; (2) *amicus* work in the Supreme Court of the United States, and (3) criminal litigation in the Superior Court of the District of Columbia. During this time, I appeared in court occasionally. I estimate that 60% of my court appearances were in federal court, and 40% in Superior Court. Classifying habeas work as civil, I estimate that 40% of my litigation practice was civil and 60% was criminal. I worked extensively on pretrial motions but did not try any cases to verdict. I settled one case in the United States District Court for the District of Columbia (*J.C. v. Vance*, noted below in response to Question 18). I estimate that 40% of my litigation practice was in appellate courts.

From 2001 to 2003, while at the firm and then as a solo practitioner, I appeared in the United States District Court for the Southern District of New York periodically for status hearings in a civil action brought by the Metropolitan Opera. I estimate that 85% of my work during this time was civil and 15% criminal. I estimate that 95% of my work was in federal court and 5% was in the New York State Court of Appeals. I estimate that 5% of my practice was in appellate courts. During this time, I did not try any cases to verdict. I did not settle any cases, but one of my clients, the Metropolitan Opera, was awarded a default judgment in a civil suit in the United States District Court for the Southern District of New York.

From 1996 to 2001, while at the Office of the Appellate Defender and the Legal Aid Society of Nassau County, I appeared in court approximately once every two months to argue criminal appeals in the intermediate courts and highest appellate court in New York State and to seek collateral relief for my clients in New York State trial courts. I also argued one case in the United States Court of Appeals for the Second Circuit. 100% of my work was criminal. I estimate that 5% of my work was in federal court, and 95% of it was in New York state courts. I estimate that 95% of my practice was in appellate courts. During this time, I did not try any cases to verdict, and I did not settle any cases.

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and,**

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telephone number(s) of co-counsel and of the principal counsel for the other parties.

1. *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (June 23, 2011) (Ginsburg, J.); Supreme Court of the United States.

I filed an *amicus* brief in this case. It is significant because the Supreme Court clarified the scope of the Sixth Amendment right to Confrontation by holding that, if the prosecution wishes to rely on a lab report, it must call the analyst/author of the report to testify in its case-in-chief.

In *Bullcoming*, the state of New Mexico argued that the Sixth Amendment permitted the prosecution to rely on a lab report without calling the analyst/author of the report so long as the state introduced the report through the testimony of a surrogate expert who had no involvement in the testing but who was familiar with the normal operating procedures of the lab. At the request of counsel for Mr. Bullcoming, I wrote a brief signed by the Public Defender Service for the District of Columbia (PDS) and 25 public defender offices and organizations across the country documenting that other jurisdictions, including the District of Columbia, already require the prosecution to present live testimony from the forensic analyst who wrote the report and that courts in these jurisdictions continue to function effectively and efficiently. I began work on the brief in October 2010 and filed it in December 2010.

Mr. Bullcoming prevailed in the Supreme Court. The Court held that the introduction of a forensic laboratory report by someone other than the scientist who signed the testimonial certification or performed or observed the test reported in the certification violated the Confrontation Clause, because "[t]he accused's right is to be confronted with the analyst who made the certification, unless that analyst is unavailable at trial, and the accused had an opportunity, pretrial, to cross-examine that particular scientist." Part IV of the opinion rejected the arguments made by New Mexico and its *amici* about the burden of such a rule, and PDS's brief was favorably cited multiple times.

Mr. Bullcoming was represented by Jeffrey L. Fisher and Pamela S. Karlan of Stanford Law School Supreme Court Litigation Clinic, 559 Nathan Abbott Way, Stanford, CA 94305, (650) 724-7081, and with them on the briefs were Susan Roth of the New Mexico Public Defender Department, 301 N. Guadalupe Street, Santa Fe, NM 87501, (505) 827-3909, and Amy Howe and Kevin K. Russell of Goldstein, Howe & Russell, P.C., 7272 Wisconsin Avenue, Suite 300, Bethesda, MD 20814, (301) 941-1913. The State of New Mexico was represented by Gary K. King, Attorney General of New Mexico, and with him on the State's brief were Assistant Attorney General Ann Marie Harvey, Assistant Attorney General James W. Grayson, and Assistant Attorney General M. Victoria Wilson, 111 Lomas Boulevard, N.W., Suite 300, Albuquerque, NM 87102, (505) 222-9057. Also on the PDS/Defender brief from PDS were Sandra K. Levick (listed as Counsel of Record) and Tara Mikklineni, Public Defender Service for the District of Columbia, 633 Indiana Avenue, N.W., Washington D.C. 20004, (202) 628-1200.

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2. *Woodard v. John Howard Pavilion Review Bd.*, 258 Fed. Appx. 349 (D.C. Cir. 2007); United States Court of Appeals for the District of Columbia Circuit; Before Judges Karen LeCraft Henderson, David S. Tatel and Brett M. Kavanaugh.

This case is significant because the St. Elizabeth's Hospital staff conceded that Mr. Woodard, an individual found not guilty by reason of insanity in the D.C. Superior Court and civilly committed to St. Elizabeth's Hospital, was entitled to his medical records so that he could challenge his treatment and level of supervision.

Representing himself, Mr. Woodard unsuccessfully sought access to his medical records as well as modification of his treatment and level of supervision in the District of Columbia courts and in the U.S. District Court for the District of Columbia. After the District Court denied his *pro se* habeas petition/civil rights complaint and denied him a certificate of appealability, PDS was appointed to represent Mr. Woodard in the U.S. Court of Appeals for the District of Columbia Circuit in the Spring of 2007. I briefed the case and then argued Mr. Woodard's appeal in October 2007.

The hospital staff, who were respondent/defendants to Mr. Woodard's petition/suit and were represented by the Office of the Attorney General for the District of Columbia (OAG), pressed the court to affirm the District Court's determination that Mr. Woodard had failed to satisfy habeas exhaustion requirements for state prisoners. The United States submitted an *amicus* brief supporting the OAG's exhaustion arguments. I argued that these exhaustion requirements, which are founded in federalism and comity concerns, had no application to an individual challenging the deprivation of his liberty under D.C. law given the District's unique status as a component of the federal government. At oral argument, the hospital staff conceded on the merits and agreed to provide him access to his medical records. Based on this concession, the Court of Appeals affirmed the District Court's denial of a certificate of appealability and the dismissal of his petition/suit.

The St. Elizabeth's Hospital staff were represented by Senior Assistant Attorney General Mary L. Wilson, and with her on the District's brief were Attorney General Linda Singer, Solicitor General Todd S. Kim, and Deputy Solicitor General Edward E. Schwab, Office of the Attorney General, One Judiciary Square, 441 4th Street, N.W., Washington, D.C. 20001, (202) 727-3400. Assistant United States Attorney Elizabeth H. Danello submitted an *amicus* brief for the United States and with her on the brief were United States Attorney Jeffrey A. Taylor and Assistant United States Attorney Roy W. McLeese, III, United States Attorney's Office for the District of Columbia, 555 4th Street, N.W., Washington, D.C. 20530, (202) 252-7566. I was supervised by then-Chief of the Special Litigation Division, Timothy P. O'Toole, Public Defender Service for the District of Columbia, 633 Indiana Avenue, N.W., Washington, D.C. 20004, (202) 628-1200.

3. *Singletary v. Reilly*, 452 F.3d 868 (D.C. Cir. 2006); United States Court of Appeals for the District of Columbia Circuit; Before Judges David B. Sentelle, Janice Rogers Brown, and Harry T. Edwards.

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This case is significant because the United States Court of Appeals for the District of Columbia Circuit reaffirmed that the Due Process Clause imposes limits on the United States Parole Commission's (USPC) use of hearsay at parole revocation hearings for D.C. prisoners.

Mr. Singletary, a D.C. Code offender, was brought before the USPC on charges that he had violated the conditions of his release to parole by committing another crime. At the hearing, the only witnesses who testified were two individuals who had no personal knowledge of Mr. Singletary's asserted culpability, but who related to the hearing examiner what two other individuals had said a third individual (Mr. Singletary's alleged co-defendant) had said about Mr. Singletary's involvement in the crime. On this testimony, the USPC revoked Mr. Singletary's release to parole and reincarcerated him.

Mr. Singletary filed a *pro se* petition for a writ of habeas corpus challenging the revocation decision. I entered the case in May 2005, after the petition was denied. I successfully opposed the District's Motion for Summary Affirmance. I then briefed the case and successfully argued the appeal in May 2006. The Court of Appeals held that, before the USPC can rely on hearsay as a basis for a revocation decision, it must find sufficient indicia of reliability. The Court of Appeals found such indicia were absent in Mr. Singletary's case and ordered the USPC to hold a new revocation hearing for Mr. Singletary. At that hearing, the hearsay declarants testified and were determined not to be credible. Mr. Singletary was subsequently released.

The United States was represented on appeal by Assistant United States Attorney Elizabeth H. Danello, and with her on the brief were United States Attorney Kenneth L. Wainstein, and Assistant United States Attorneys Roy W. McLeese, III and Thomas J. Tourish, Jr., United States Attorney's Office for the District of Columbia, 555 4th Street, N.W., Washington D.C. 20530, (202) 252-7566. I was supervised by then-Chief of the Special Litigation Division, Timothy P. O'Toole, Public Defender Service for the District of Columbia. 633 Indiana Avenue, N.W., Washington D.C. 20004, (202) 628-1200.

4. *People v. Berroa*, 99 N.Y.2d 134 (N.Y. 2002) (Wesley, J.); New York Court of Appeals.

This case is significant because it clarified the scope of a defendant's right to the effective assistance of counsel, free from conflicts of interests.

Mr. Berroa was charged with second-degree murder in the Bronx Supreme Court. In her opening statement, defense counsel argued that Mr. Berroa had been misidentified, but one of the defense witnesses subsequently suggested that he might have an alibi. Because no notice of alibi had been given, the court called counsel to the bench. When pressed by the court about the failure to provide alibi notice, defense counsel informed the court that none of the witnesses had ever provided her with information to support an alibi. The court speculated that defense counsel might be called as a witness on this

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point. Defense counsel then agreed to stipulate that she had not been given alibi information prior to trial. Mr. Berroa was convicted, and I was assigned to represent him on appeal. I briefed and argued Mr. Berroa's case in the First Department, one of New York's intermediate appellate courts, in 2001. I then successfully sought leave to appeal to the New York Court of Appeals, where I briefed and argued the case again in 2002.

The Court of Appeals reversed Mr. Berroa's conviction and held that defense counsel may not enter into a stipulation at trial that pits her credibility against the credibility of other defense witnesses. The court's decision in Mr. Berroa's case is now a common citation for the right to the effective assistance of counsel free from conflicts of interest and has been cited by New York courts in dozens of decisions.

The State was represented on appeal by Assistant District Attorney Peter D. Coddington, and with him on the State's brief was the District Attorney, Robert T. Johnson, Office of the Bronx District Attorney, 198 East 161st Street, Bronx, NY 10451, (718) 590-2000. I was supervised by Daniel Warshawsky and Richard Greenberg, both of the Office of the Appellate Defender, then located at 45 West 45th Street, New York, NY 10036, now located at 11 Park Place, Suite 1601, New York, NY 10007, (212) 402-4100.

5. *People v. Lee*, 96 N.Y.2d 157 (N.Y. 2001) (Graffeo, J.); New York Court of Appeals.

This case is significant because the highest court of New York State held that expert testimony educating the fact-finder about the potential reasons eyewitness evidence might be unreliable is admissible evidence. Prior to this decision, the issue of the admissibility of expert testimony regarding eyewitness reliability had been unresolved in New York State, as a practical matter resulting in its universal exclusion. The District of Columbia Court of Appeals has favorably cited *Lee* in *Russell v. United States*, 17 A.3d 581, 587 (D.C. 2011); *Benn v. United States*, 978 A.2d 1257, 1278 n.89 (D.C. 2009), and *Hager v. United States*, 856 A.2d 1143, 1147-48 (D.C. 2004).

Mr. Lee was charged with robbery based on a carjacking that occurred in the early morning hours in the Wall Street area of Manhattan. Months after the incident, Mr. Lee was found in possession of the car and the owner of the car identified Mr. Lee, first in a photographic array and then in a lineup. At trial, Mr. Lee sought to introduce an expert to testify about the factors that are linked to eyewitness unreliability, but the court held that such evidence was per se inadmissible. Mr. Lee was convicted. I briefed and argued Mr. Lee's case in the First Department, one of New York's intermediate appellate courts, in 1999. I then successfully sought leave to appeal to the New York Court of Appeals in 2000, and I briefed and argued the case in that court in 2000-2001.

The Court of Appeals held that the trial court had failed to exercise its discretion regarding the presentation of expert testimony and that expert testimony regarding the factors that may undermine the reliability of an eyewitness is not per se inadmissible in New York. Given the other evidence in the case, the Court of Appeals found the trial court's error harmless and affirmed Mr. Lee's conviction.

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The State was represented on appeal by Assistant District Attorney Susan Gliner, and with her on the State's brief were Assistant District Attorneys Mark Dwyer and Deborah L. Morse, New York County District Attorney's Office, One Hogan Place, New York, NY 10013, (212) 335-9000. I was supervised by Daniel Warshawsky and Richard Greenberg, both of the Office of the Appellate Defender, then located at 45 West 45th Street, New York, NY 10036, now located at 11 Park Place, Suite 1601, New York, NY 10007, (212) 402-4100.

18. **Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).**

Because I have spent the majority of my career as a litigator and public defender, I have included here the five most significant litigated matters that I have handled, in addition to those described in response to Question 17.

1. *United States v. Payne*, 2010 CF1 002883; Superior Court of the District of Columbia; Before Judge Gerald I. Fisher.

This case is significant because it clarified the scope of the government's obligation to disclose favorable and material information pursuant to *Brady v. Maryland* to the defense prior to trial.

In this case, the prosecution made various disclosures of information favorable to Mr. Payne, but declined to identify the individuals who were the sources of this information. The prosecution took the position that it could withhold this information and instead set up interviews for defense counsel with unnamed *Brady* witnesses at the United States Attorney's Office. The prosecution had not argued that it was withholding identifying or contact information for security reasons and did not seek permission from the court to make its *Brady* disclosures in this manner.

Trial counsel sought my assistance. I filed a motion in April 2011 explaining why Supreme Court and Court of Appeals precedent compels the prosecution to disclose identifying and contact information for *Brady* witnesses. Ruling in Mr. Payne's favor, the court determined that, absent a well-founded motion for a protective order, the prosecution is obligated to disclose this information. The case against Mr. Payne was subsequently dismissed.

The United States was represented by Assistant United States Attorneys Erin Lyons and Todd Gee, United States Attorney's Office for the District of Columbia, 555 4th Street, N.W., Washington, D.C. 20530, (202) 252-7566. Madalyn Harvey and David Knight of the Public Defender Service, 633 Indiana Avenue, N.W., Washington D.C. 20004, (202)

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628-1200, were trial counsel for Mr. Payne.

2. *United States v. Ross*, 2010 CMD 003631; Superior Court of the District of Columbia; Before Judge Florence Y. Pan.

This case is significant because it clarified the scope of the production of discovery under Superior Court Criminal Rule 16 in cases where forensic drug testing is at issue.

The defendant in this case was charged with possession with intent to distribute marijuana. The Drug Enforcement Administration (DEA) Mid-Atlantic Laboratory tested the substance and, pursuant to Superior Court Criminal Rule 16, trial counsel asked for discovery of relevant documents "material to the preparation of a defendant's defense," including the standard operating procedures for the tests used and the validation studies for those standard operating procedures. The prosecution disclosed the one-page chemist's report and two-page chemist's worksheet. Trial counsel filed a motion to compel other documents, arguing, in part, that the defense could not evaluate the chemist's work without them. The prosecution opposed the motion. I then joined the defense team and assumed responsibility for briefing and in-court legal argument.

Beginning in July 2010, I filed multiple pleadings in support of the motion to compel. I also assisted in preparing for and conducting the multi-day evidentiary hearing in September 2010 on the motion to compel and took the lead making oral argument. In the midst of the evidentiary hearing, the prosecution agreed to turn over some of the documents that serve as the DEA Mid-Atlantic Laboratory's standard operating procedures; the prosecution also stated that it would disclose these documents in every future case where the results of its drug identification analysis are at issue. The court subsequently held in Mr. Ross's favor that Rule 16 requires disclosure of these and other documents that serve as standard operating procedures. The case against Mr. Ross was subsequently dismissed.

The United States was represented by Assistant United States Attorneys Tejpal S. Chawla and Brandon Estela, United States Attorney's Office for the District of Columbia, 555 4th Street, N.W., Washington, D.C. 20530, (202) 252-7566. Stephen Cooper and Ed Shacklee of the Public Defender Service, 633 Indiana Avenue, N.W., Washington, D.C. 20004, (202) 628-1200, were trial counsel for Mr. Ross.

3. *J.C. v. Vance*, Civil Action No. 03-0971; United States District Court for the District of Columbia; Before Judge Ricardo M. Urbina.

This case is significant because it prompted the District of Columbia to establish a program to provide special education and related services to juveniles (under 18) and young adults (ages 18 through 21) who are incarcerated in the District at the D.C. Jail and the Central Treatment Facility (CTF).

In 2003, the Public Defender Service for the District of Columbia (PDS) sued the District

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of Columbia Department of Corrections (DCDOC) and the District of Columbia Public Schools (DCPS) on behalf of five named juveniles and young adults. PDS alleged that these District agencies had violated the Individual with Disabilities Education Act (IDEA) by failing to provide plaintiffs, who were housed at the Jail and CTF, with special education and related services. In return for federal funds under the IDEA, the District is obligated to provide such services to all eligible students under age 22.

I entered and assumed primary responsibility for the case in the summer of 2003, soon after the complaint was filed. PDS subsequently engaged Steptoe & Johnson to be lead counsel. Throughout the case, I worked closely with Libretta Stennes, the Steptoe associate (now partner) assigned to handle the case for the firm. I was the primary drafter of all the pleadings that we filed.

Almost from the outset, the District acknowledged that it was not complying with its obligations under the IDEA. While preliminary litigation was underway, Ms. Stennes and I met regularly with the District to discuss the multiple impediments to the delivery of services, including security considerations, space restrictions, the average length of stay of eligible students in the short-term facility, and questions about the allocation of responsibility between DCDOC and DCPS. On the court's recommendation, the parties agreed to mediation. At mediation, the parties worked out a settlement agreement that required the District to draft a policies and procedures manual for a special education program for incarcerated youth. The District also committed to a one-year timetable for implementation of this program and hired an auditor to issue reports about the District's compliance with its commitments. This settlement agreement was filed with the court.

For two years, Ms. Stennes and I met regularly with counsel from the Office of the Attorney General for the District of Columbia and representatives from DCDOC and DCPS to oversee implementation of the special education program for incarcerated youth. In February 2009, we agreed that the District had fulfilled its commitment pursuant to the settlement agreement after the District established a functioning school for incarcerated youth at CTF that provided access to special education and related services.

The District of Columbia was represented by Edward P. Taptich, Chief, Equity Section, Office of the Attorney General for the District of Columbia, One Judiciary Square, 441 4th Street, N.W., Washington, D.C. 20001, (202) 727-3400. Although multiple counsel are listed on the docket for the plaintiffs, Libretta Stennes of Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036, (202) 429-8099, and I were the primary attorneys involved in the litigation and settlement of the case.

4. *Mobley v. Reilly*, Civil Action No. 03-2159; United States District Court for the District of Columbia; Before Judge Gladys Kessler.

This case is significant because the court held that the United States Parole Commission (USPC) could not indefinitely incarcerate a mentally ill parolee solely because he was not

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competent to have a parole revocation hearing.

Mr. Mobley, a D.C. Code offender and parolee, had been charged by the USPC with violating various conditions of his parole. After taking Mr. Mobley into custody, the USPC determined that he was not competent to participate in a parole revocation hearing. It then ordered him to be incarcerated indefinitely, until he became competent. The USPC held Mr. Mobley first at the D.C. Jail and then in a federal prison for almost two years before his case was referred to me. I filed a habeas petition on Mr. Mobley's behalf in October 2003. I subsequently filed a reply in support of the petition seeking Mr. Mobley's release, and I presented oral argument at the hearing on the petition.

I argued that Mr. Mobley, once deemed incompetent, could only be held a reasonable amount of time to determine if there was a substantial probability that he would become competent in the future. I also argued that because Mr. Mobley had already spent more time incarcerated than he would have received had he been revoked for violating the conditions of his parole, he should be immediately released.

The court agreed that the USPC could not hold Mr. Mobley indefinitely and initially ordered the USPC to assess Mr. Mobley's likelihood to become competent in the future. The USPC did not conduct this assessment and instead held a revocation hearing for Mr. Mobley. I challenged this action by the USPC, arguing that it violated the court's order and the Constitution. After a second hearing, the court invalidated the USPC's revocation of Mr. Mobley's parole and ordered the USPC to release Mr. Mobley from custody. With the assistance of PDS social workers, Mr. Mobley was able to resume living in the community in December 2003 in a halfway house that provided mental health services.

The Commissioners of the United States Parole Commission were represented by Assistant United States Attorney Daniel M. Cisin, and with him on the pleadings were United States Attorney Roscoe C. Howard Jr. and Chief of the Special Proceedings Section Robert D. Okun, United States Attorney's Office for the District of Columbia, 555 4th Street, N.W., Washington, D.C. 20530, (202) 252-7566.

5. *United States v. L.T.*, Case No. 02-F-8237; Superior Court of the District of Columbia; Before Judge Ann O'Regan Keary.

This case is significant because the court found that the prosecution had violated its disclosure obligations under *Brady v. Maryland,* and the prosecution subsequently dismissed the case and conceded it had charged an innocent man.

The prosecution's case against the defendant (named only by his initials since his arrest was sealed) was based on the observations of a single eyewitness. On the eve of trial, the prosecution disclosed the existence of a second eyewitness who provided a detailed description of the shooter that did not match the defendant. The prosecution also disclosed knowledge of other witnesses who saw someone fleeing the scene and who

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corroborated the exculpatory eyewitness's description of the shooter. The prosecution had not responded to pretrial *Brady* requests and did not disclose the exculpatory eyewitness at a pre-trial status hearing regarding outstanding *Brady* issues.

Trial counsel filed the initial motion to dismiss. I entered the case in April 2004 after the prosecution filed an opposition. For trial counsel's signature, I drafted a reply brief and a supplemental brief in which I more fully explained the facts and procedural history of the case, the scope of the prosecution's *Brady* obligations, and the court's power to remedy the situation. The court found that the prosecution had violated its *Brady* obligations, and granted the defense a lengthy continuance. The prosecution subsequently dismissed the case and consented to the sealing of defendant's arrest record.

The United States was represented by Assistant United States Attorneys Douglas Klein and Daniel Friedman, United States Attorney's Office for the District of Columbia, 555 4th Street, N.W., Washington, D.C. 20530, (202) 252-7566. Santha Sonenberg of the Public Defender Service, 633 Indiana Avenue, N.W., Washington, D.C. 20004, (202) 628-1200, was trial counsel for L.T.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

I have never held judicial office.

A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

No.

21. **Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

I applied to be a judge on the Superior Court of the District of Columbia in October 2010 and then again in February 2011.

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

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I am registered as a Democrat. I have not held any office in any political party nor have I rendered any services to any political party or election committee during the past ten years.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

To the best of my recollection, I gave $300-400 to Obama for America in 2008. Although I have searched my records, I have been unable to locate documentation confirming this amount.

22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

No.

23. **Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

Yes. My husband and I were named as respondents in *Riverside Holdings LLC v. Samuel Neal McKnight and Melanie McKnight, Respondents/Tenants, Aaron Zebley and Catharine Easterly, Respondents/Subtenants,* Civil Court of New York City (Housing Court), New York County. This case was settled almost immediately in my husband's and my favor.

In October 1999, my husband and I were living at 230 Riverside Drive, Apt. 14H, New York, New York, under a legal two-year sublease running from October 1998 to December 2000. Riverside Holdings LLC (Riverside) bought the building in the course of our subtenancy and filed a Notice of Petition Holdover (Riverside filed similar actions against numerous other subtenants). We had at that point lived in the apartment for only one of the two years for which we had contracted; the action nevertheless alleged that my husband and I were illegal holdover tenants. Given that we held a valid two-year sublease for the property, we filed a motion to dismiss the action. Shortly thereafter, Riverside signed a Stipulation of Settlement that terminated the action, allowed us to remain in the apartment for the remainder of our sublease, and credited us for two months rent to compensate us for responding to the action. Counsel for Riverside acknowledged that the action was the result of poor record keeping by his client's predecessor, the

former owner of 230 Riverside Drive with whom we had contracted.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No.

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II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   Yes.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   None. I am paid a salary by the Public Defender Service for the District of Columbia (PDS). Compensation at PDS is based on the GS system but "shall not exceed the compensation which may be paid to persons of similar qualifications and experience in the office of the United States Attorney for the District of Columbia." *See* D.C. Code 2-1605(a).

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   None.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   A conflict of interest would be presented should I have to preside over any case in which I was involved while an attorney at the Public Defender Service.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   In the past ten years, I have worked at the Public Defender Service for the District of Columbia (PDS), where I have engaged in such activity on behalf of PDS as an institution, but never for any individual or client. In my official capacity, and in conjunction with the General Counsel and the Special Counsel to the Director for legislative matters, I have testified before the D.C. Council, represented PDS in meetings with legislators, and worked with organizations and community groups on legislative issues relevant to PDS.

   I have never engaged in such activities in my personal capacity, nor have I worked for any private enterprise or not-for-profit that engage in activities for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting

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the administration and execution of law or public policy.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

If a possible conflict arises, I would resolve it pursuant to the District of Columbia Code of Judicial Conduct.

8. **If confirmed, do you expect to serve out your full term?**

Yes.

III. FINANCIAL DATA – REDACTED

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

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IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11 - 1501 (b), as amended.

1. **Are you a citizen of the United States?**

   Yes.

2. **Are you a member of the bar of the District of Columbia?**

   Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes, I was admitted to the bar of the District of Columbia in December 2003.

4. **If the answer to Question 3 is "no" --**

   A. **Are you a professor of law in a law school in the District of Columbia?**

   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**

   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**

   D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia?**

   Yes.

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   My current address is REDACTED Washington, D.C. 20003. I have lived there since November 2010.

   From October 2009 to November 2010, I lived at REDACTED Washington, D.C. 20003.

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From August 2003 to October 2009, I lived at REDACTED Washington, D.C. 20003.

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

No.

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

Four copies are attached.

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AFFIDAVIT

Catharine Easterly being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Catharine Easterly

SUBSCRIBED and SWORN TO before me this 5th day of August 2011.

Notary Public

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES
RANKING MEMBER, ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT
AVIATION
WATER RESOURCES AND ENVIRONMENT

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEES
HEALTH CARE, DISTRICT OF COLUMBIA, CENSUS AND THE NATIONAL ARCHIVES
FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND LABOR POLICY
GOVERNMENT ORGANIZATION, EFFICIENCY AND FINANCIAL MANAGEMENT

Congress of the United States
House of Representatives
Washington, DC 20515–1501

Statement of Congresswoman Eleanor Holmes Norton Before the Committee on Homeland Security and Governmental Affairs.

The Nominations of Corinne Ann Beckwith and Catherine Friend Easterly for Associate Judges of the District of Columbia Court of Appeals.

September 23, 2011.

Chairman Akaka and Ranking Member Johnson, I am pleased today to introduce two eminently qualified attorneys who were nominated by President Barack Obama for seats as Associate Judges on the District of Columbia Court of Appeals. As the highest appellate court in the District of Columbia, the District of Columbia Court of Appeals is the District's supreme court. It has a very busy docket and, therefore, it requires high-quality experience and brainpower. These two nominees more than meet the qualifications necessary for our highest court.

Corinne Ann Beckwith has been an attorney in the Appellate Division of the Public Defender Service for the District of Columbia since 1999, and a supervisor in that office since 2009. Ms. Beckwith did similar work for the Michigan State Appellate Defender Office, has also taught criminal appellate practice at Wayne State University Law School and journalism and English composition at Central Michigan University. She earned a Bachelor of Arts degree in English from Kalamazoo College, a Master of Science degree in journalism from the University of Illinois, and a Juris Doctor degree from the University of Michigan Law School, where she was editor-in-chief of the *Michigan Law Review*. After law school, Ms. Beckwith clerked for Judge Richard D. Cudahy on the U.S. Court of Appeals for the Seventh Circuit and then for Associate Justice John Paul Stevens on the U.S. Supreme Court.

Catherine Friend Easterly works in the Special Litigation Division of the District of Columbia Public Defender Service, where she litigates complex, recurring criminal justice issues in the Superior Court of the District of Columbia and works closely with the general and legislative counsels on legislative and policy matters. She also has an extensive U.S. Supreme Court practice, where she has filed numerous amicus briefs on behalf of the Public Defender Service and others. In addition, Ms. Easterly litigates *habeas* petitions and appeals arising from those matters in the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the District of Columbia Circuit. Prior to joining the Public Defender Service in 2003, Ms. Easterly was an associate at the New York law firm Stillman & Friedman, P.C. (now Stillman, Friedman & Schechtman, P.C.). She also worked as an appellate public defender at the Legal Aid Society of Nassau County and then at the Office of the Appellate Defender in New York City. Ms. Easterly earned a Bachelor of Arts degree, *cum laude* and with distinction in history, from Yale College, and a Juris Doctor degree from the School of Law at the University of Virginia.

I think you will agree with me that Corrine Ann Beckwith and Catherine Friend Easterly are particularly outstanding nominees. I am pleased and proud to recommend them both to you without reservation.

STATEMENT OF SENATOR PAUL STRAUSS
U.S. SHADOW SENATOR FOR THE DISTRICT OF COLUMBIA
On the Nominations of
Corinne Ann Beckwith and Catherine Friend Easterly
to be Associate Judges on the District of Columbia Court of Appeals

Chairman Akaka and distinguished Members of the Senate Committee on Homeland Security and Governmental Affairs, I am Paul Strauss, United States Senator for the District of Columbia, and I am also a practicing attorney in the District of Columbia. In each of these capacities, I appreciate the opportunity to provide this statement on behalf of my constituents in the District of Columbia. I wish to express my enthusiastic and wholehearted support of President Barack Obama's nominations to the District of Columbia Court of Appeals, Ms. Corinne Ann Beckwith, Esquire and the Catherine Friend Easterly, Esquire. I have personally taken the time to familiarize myself with the record of both nominees, and have spent some time with each of them on an individual basis. As a result of these efforts, I am confident that both nominees are extremely well-qualified candidates and will undoubtedly make excellent additions to our highest State Court, the District of Columbia Court of Appeals.

I will begin with Ms. Corinne Ann Beckwith, an accomplished attorney who has spent many years serving the public, particularly in the District of Columbia. Ms. Beckwith has been an attorney in the Appellate Division of the Public Defender Service for the District of Columbia since 1999. She has been a supervisor in that office since 2009. In this capacity, Ms. Beckwith handles the appeals of indigent criminal defendants who have been convicted of serious offenses. Prior to that, she worked as an appellate attorney at Michigan's State Appellate Defender Office and taught criminal appellate practice at Wayne State University Law School in Detroit, Michigan. Prior to law school, Ms. Beckwith worked as a newspaper reporter and also taught journalism and English composition at Central Michigan University.

Ms. Beckwith has a Bachelor of Arts degree in English from Kalamazoo College and a Master of Science degree in journalism from the University of Illinois. She earned her law degree from the University Of Michigan Law School, where she was editor-in-chief of the Michigan Law Review. After law school, Ms. Beckwith served as a law clerk to Judge Richard D. Cudahy on the United States Court of Appeals for the Seventh Circuit and then to Associate Justice John Paul Stevens on the Supreme Court of the United States.

Ms. Beckwith's extensive professional experience in the District and exceptional education have inarguably prepared her for the immense responsibilities of an Associate Judge of the District of Columbia Court of Appeals, and I have full faith that she will serve as a competent and honorable jurist. After such a significant career in public service she deserves this honor, but more importantly, the

appellant litigants of the District of Columbia deserve the benefit of her experience.

I would now like to offer my full support for the nomination of Catherine Friend Easterly another long-time District resident who has admirably and consistently demonstrated her commitment to the pursuit of justice and her community. Ms. Easterly has a Bachelor of Arts degree, cum laude and with distinction in History, from Yale College and earned her law degree from the University of Virginia School of Law. Ms. Easterly is an attorney in the Special Litigation Division of the Public Defender Service for the District of Columbia. She litigates complex, recurring criminal justice issues in the Superior Court of the District of Columbia. In addition, Ms. Easterly litigates civil suits, habeas petitions, and appeals arising from these matters in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. She has filed numerous amicus briefs on behalf of the Public Defender Service and others in the Supreme Court of the United States. She also works closely with the Public Defender Service's General Counsel and Legislative Counsel on legislative and policy matters. Before joining the Public Defender Service, in 2003, Ms. Easterly was an associate at the New York law firm of Stillman & Friedman, P.C. (now Stillman, Friedman & Schechtman, P.C.).

She also worked as an appellate public defender, first at the Legal Aid Society of Nassau County and later at the Office of the Appellate Defender in New York City. While we expect our Judges to have some experience on both sides of the bench, it is a special opportunity to have one who has known the unique pressures of being an actual litigant in the PDS Division. Despite her superb intellectual credentials, what I find most compelling about this nominee are her personal credentials, and not merely her judicial qualifications. She is a dedicated and outstanding parent of two lovely children.

There is no question that Ms. Easterly possesses the requisite criteria to serve the District in this capacity, and certainly the citizens of D.C. deserve to have such an accomplished and dignified associate judge sitting on the District of Columbia Court of Appeals.

I urge the committee to promptly move on these nominations. Although, these individuals are deserving of all the requisite prestige which accompanies a Presidential nomination and the advise and consent of this esteemed Senate, I look forward to the day when all of us in the District of Columbia will enjoy the even greater dignity of full citizenship. Until that day, since neither I, nor any other District resident can cast a vote in the Senate, I am limited to asking you to cast your votes to confirm Judge's Beckwith and Easterly on our behalf. In closing I want to thank Ms. Angely Sema, a member of my staff for her assistance in coordinating the meetings with our nominees, and for assisting in the background research necessary for the preparation of this statement. Thank you again, Senator Akaka, for the opportunity to present this statement for the record.

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