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S. HRG. 112–72, Pt.4

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

SEPTEMBER 7, SEPTEMBER 20, AND OCTOBER 4, 2011

Serial No. J–112–4

PART 4

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EXECUTIVE COMMITTEE MEETING TO CONSIDER THE NOMINATIONS OF EVAN WALLACH, TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT; DANA CHRISTENSEN, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MONTANA; CATHY BENCIVENGO, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA; GINA MARIE GROH, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA; AND MARGO BRODIE, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

WEDNESDAY, SEPTEMBER 7, 2011

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

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

Present: Senators Franken, Schumer, Feinstein, and Grassley.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. This hearing will come to order. We have a number of nominees for Federal court to consider today and we have a number of colleagues who are here to make introductions, and I will call on my colleagues in the following order. I'll start with Senator Baucus and Senator Feinstein, and then Senator Tester, then Senator Manchin, unless the Majority Leader comes, in which case he will be next.

[Laughter.]

Senator WHITEHOUSE. Senator Baucus, would you care to proceed?

PRESENATATION OF DANA CHRISTENSEN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MONTANA BY HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator BAUCUS. Thank you very much, Senator. I appreciate it very much. I am very please here today to introduce Dana Christiansen as a nominee to serve as U.S. District Judge for the District of Montana.

President Dwight D. Eisenhower once said, "The qualities of a great man are vision, integrity, courage, understanding, the power of articulation, and a profundity of character. One might also say these are qualities of a great Federal judge. These, too, are the qualities I consider when speaking of Dana Christiansen. It is a personal pleasure to be able to introduce Dana to this Committee. Dana will be introducing his family later in his testimony, but I would like to personally congratulate Dana and his wife Stephanie on this momentous occasion.

Dana is a fourth-generation Montanan. He was raised in Missoula, Montana. He graduated from Stanford University in 1973, and then received his law degree from the University of Montana School of Law in 1976. Since graduating from law school, Dana has commended the respect of other bar members throughout the State of Montana.

In 1998, Dana and two of his partners formed a new firm in Kalispell, Montana which specializes in civil defense, business law, real estate, and estate planning. Dana has tried more than 50 trials in State and Federal courts. He has an active mediation and arbitration practice and has represented many clients on a probono basis.

Both Dana and his firm have received the highest rankings from Chambers USA, and Dana has been ranked as one of the top 75 lawyers in the northwestern United States by Super Lawyers over the last decade. Dana is also a member of the American Board of Trial Advocates and American College of Trial Lawyers. I cannot say enough about Dana's ability and commitment to justice.

Outside of the office, Dana is very active in his community. He has been a member of the board of directors of his local Chamber of Commerce, president of the Montana Defense Trial Lawyers Association, a member of the University of Montana School of Law Board of Visitors, and a member of the faculty of the University of Montana Advanced Trial Advocacy Program.

To ensure that the most ethical and qualified attorney is appointed as District Judge, I created an advisory selection panel made up of five members with diverse legal backgrounds from across our State and across party lines. My colleague, Senator Tester, very aggressively helped me in that endeavor.

The panel was charged with recommending an individual with a breath of legal experience, ethics above reproach, sharp analytical skills, superior writing skills, and respect for precedent. The panel unanimously and enthusiastically recommended the nomination of Dana Christiansen. Clearly, Dana has earned respect from all segments of the Montana legal community and I am certain that his experience, leadership, and prudent will serve Montana as well.

Dana embodies those qualities President Eisenhower articulated and the qualities that Montana, and America, need on the Federal

bench: intellect, extensive experience in the courtroom, commitment to public service, integrity, and respect for precedent and the rule of law.

I must say as an aside, Mr. Chairman, I can think of nobody in the State of Montana, or anybody else I have ever had the pleasure to meet, who will do a better job in serving our country, especially as a Federal judge, than Dana Christiansen.

Senator WHITEHOUSE. Thank you, Senator Baucus. That is high praise, indeed, and of particular weight coming from you.

I will now turn to Senator Feinstein.

PRESENATION OF CATHY BENCIVENCO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I am very pleased today to indicate my strong support for Judge Cathy Ann Bencivengo, whom I recommended to the President for nomination to become a District Judge in the Southern District of California.

Judge Bencivengo has been a U.S. Magistrate Judge in San Diego for the last 6 years. In that time she has earned an outstanding reputation among her colleagues on the bench and among the lawyers who appear in her courtroom. She was recommended to me by a bipartisan judicial screening Committee which I have established in California, and this Committee reviews judicial candidates based on their legal skill, reputation, experience, temperament, and overall commitment to excellence.

Throughout the Committee process Judge Bencivengo set herself apart as a person who would be a truly exceptional addition to the District Court. She is a descendant of immigrants who came to California through Ellis Island at the turn of the 20th century. She was born in Teaneck, New Jersey. She wanted to be in public service from an early age. Her father was involved in local politics and her upbringing instilled in her a desire to serve the public.

She began her undergraduate career at Rutgers in New Jersey, where she earned her Bachelor's degree in Journalism and Political Science in 1980. The following year she earned her Master's degree from Rutgers. From 1981 to 1984, she worked for a major American corporation, Johnson & Johnson, in New Brunswick, New Jersey. She then attended the University of Michigan Law School, where she excelled, graduated magna cum laude, and was inducted into the Order of the Coif.

After law school she moved to San Diego, where she joined the San Diego-based firm, Grey Carey, which later became part of a major international law firm, DLA Piper, LLP. Soon after starting work as an associate, she became a founding member of the firm's Patent Litigation Group. Her knowledge of patent law, which she honed in law school and private practice, makes her a valued resource for colleagues and clients. She quickly rose through the ranks of her firm.

In 2005 she was selected as the national co-chair of her firm's Patent Litigation Group, a role for which she managed a group of 70 patent attorneys—which, if you know patent attorneys, is a job

in itself—around the country. Judge Bencivengo also worked to protect one of the mainstays of American children's literature, Dr. Seuss, as the lead partner on trademark and copyright issues for Dr. Seuss Enterprises.

In 2005, she became a Magistrate Judge, where she served as a thoughtful jurist. Since her appointment, she has issued roughly 178 published opinions, over 190 reports and recommendations, and over 1,800 orders on non-dispositive motions. Nearly 800 of those orders involved felony criminal cases. A premier San Diego criminal defense attorney described her as "seasoned, bright, responsive, fair, hardworking, and reflective". I think that pretty much does it.

In addition, her substantial expertise in patent law will be welcomed in the Southern District, which is part of a new Federal judicial program designed to assign more patent cases to judges who are experts in the field of patent law. In short, Judge Bencivengo will make a fine addition to the U.S. District Court, and I urge my colleagues to support her nomination.

Thank you very much, Mr. Chairman.

Senator BAUCUS. Mr. Chairman, if I might be excused. I have a matter I must urgently attend to.

Senator WHITEHOUSE. Of course. Of course.

Senator Baucus. But I urge you to report out——

Senator WHITEHOUSE. You were here with all of your—Senator Baucus.

Senator BAUCUS [continuing]. Dana Christiansen very quickly. Thank you.

Senator WHITEHOUSE. Since we're going by seniority and since Senator Schumer has now arrived, let me call on Senator Schumer. Of course, everyone is free to go on about their business once they've concluded their statements.

PRESENTATION OF MARGO BRODIE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman. I'll be very brief. I want to thank you for the opportunity to introduce yet another gifted New Yorker to this Committee. Margo Brodie has been nominated by the President to serve on the Eastern District of New York. I was pleased and proud to recommend her for this position as someone who has chosen to make her home in this country, and specifically in the neighborhood served by this court, and who has already graced her community with outstanding and dedicated service. Ms. Brodie was born in St. John's Antigua. She and her brother Euan were raised by a single mother with the help of her mother's parents and siblings.

After graduating from high school at the age of 16, she attended St. Francis College in Brooklyn. She worked full-time, graduated magna cum laude, went on to the University of Pennsylvania Law School, where, in addition to work and her academic achievements, she dedicated herself to improving Pen's minority student recruitment.

After graduating from law school, Ms. Brodie worked for the New York City Law Department for 3 years, where she learned how to litigate cases. She spent 5 years at Carter, Ledyard & Milburn, founded in 1854 and known for alums who include Franklin D. Roosevelt.

Ms. Brodie returned to public service in 1999 by joining the U.S. Attorney's Office in the Eastern District, one of the preeminent U.S. Attorney's Offices in the Nation and one of the largest. She rose to become Deputy Chief and then Chief of the General Crimes Unit, where she trained more than half of the current AUSAs in the Eastern District.

Since July 2010, she's been the Deputy Chief of the Criminal Division, supervision all 100-plus criminal AUSAs in cases involving public corruption, civil rights, business and security fraud, terrorism, or organized crime, narcotics, and many other areas. She has also lent her considerable talents to training prosecutors and law enforcement officers on the rule of law in developing countries, and spent 10 years in Nigeria as a legal advisor on behalf of DOJ's Overseas Training Program.

There is one other part of her lift story, perhaps the most important, that I wanted to highlight in conclusion. In 1996, Ms. Brodie became a citizen of the United States in the very courthouse where she would serve as a judge. I can't think of a more fitting candidate to serve the people in Brooklyn, Queens and Long Island and all the communities in between than someone who pledged her allegiance to this country just footsteps from where she will decide cases.

I look forward to Ms. Brodie's hearing and her continued service to this country and welcome her mother, her brother, as well as the Antiguan ambassador, Ms. Lovell, who is here to endorse her candidacy.

Thank you, Mr. Chairman, and I thank my colleagues.

Senator WHITEHOUSE. Thank you, Senator Schumer.

The Chair now recognizes Senator Jon Tester.

PRESENTATION OF DANA CHRISTIANSEN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MONTANA BY HON. JON TESTER, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator TESTER. Thank you, Mr. Chairman. I very much appreciate the opportunity to turn our focus back on a fellow by the name of Dana Christiansen, whom Max talked to eloquently about. Max covered most of the bases on Dana, and I guess—doesn't it make you feel uncomfortable when people are saying nice things about you, Dana?

But when I came in here, Senator Manchin says, gee, it takes two of you? I said, here's my point: this guy has got such a great resume, yes, it does take two of us. The fact is, Dana is a great guy. You know, you guys on the Judiciary Committee have to sit down and make a decision on somebody that you probably don't know a large portion of the time, and that's unfortunate in this particular case because Dana Christiansen is such a quality human being.

Senator Grassley will appreciate this. This guy was an Eagle Scout and a millworker. He knows how to work with his hands. You've got to appreciate somebody who's going to be in a Federal judge position that not only has integrity and knows fairness, but knows how to work hard, and not only work with his head, but work with his hands. It will help a lot. Plus, he exhibits a level of common sense that, quite frankly, we can all be proud of.

I hope Dana comes out of here and moves forward and we can get it through the Senate, because quite frankly he deserves Senate confirmation. This is a quality man who has got an impeccable record on what he's done in his life. He deserves our report. He is right for this job and good people deserve good things to happen to them. He is the right man for this job.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Senator Reid, would you like to be recognized and introduce your nominee? I'm sure Senator Manchin will be happy to allow you priority.

PRESENTATION OF EVAN WALLACH, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. We just had our caucus, as you know. I have to always do my once-a-week press event.

Evan Wallach is really a good man and has been a tremendous judge. I think he's a perfect nominee for the Court of Appeals for the Federal Circuit. He is also a scholar, and I don't use that term flippantly. He's graduated from the University of Arizona and got his law degree from Berkeley, but that one law degree obviously wasn't enough. He went and got a graduate degree at Cambridge in England. By the way, he was a partner in a law firm when he did that, took a leave of absence to go get that degree.

He is also a patriot. Again, I don't use that term loosely. As a boy, guided by the patriotism taught to him by his mom, dad, and his two older brothers, he is a 115-pound man—nothing wrong with small people. I have lots of them in my family—he volunteered for the military and went to Vietnam, carried a rifle, and did all the other things that happened during that brutal war. He and his two older brothers, as I indicated, volunteered to serve in Vietnam. He was awarded a Bronze Star.

Evan Wallach served his country in Vietnam. When he was a partner in a law firm, very, very busy, the first Iraq war broke out. He quite his job on a temporary basis, came back, and again reentered the military, served in the Pentagon for many months. Took a leave of absence from his law practice and served as an active-duty attorney. He served in the office of the Judge Advocate General of the Army at the Pentagon station at the Pentagon. He really is a patriot.

He served his country bravely in war, he has served his country well as a judge in the U.S. Court of International Trade. He has written hundreds of opinions as a judge on the Court of International Trade. He has also served as a circuit judge in the second, third, and ninth circuits, and a district court judge in Nevada, New York, and the District of Columbia. Because so much of his respon-

sibility will be what we do with the new patent law, one of the cases he heard in Nevada is a patent case.

I introduce my friend to all of you, but also say that—and I don't want to be overly rambunctious here and I hope this doesn't hurt him, but he's my friend. He is one of the best friends I've ever had. I think the world of this man. I recommended him to President Clinton to leave this lucrative law practice to go into public service, and he did that. He is someone who I admire do greatly. He is a poet. He writes poetry. His mom was a wonderful artist, who just died. I have some of her paintings and etchings in my home in Nevada.

I wish I had the ability to convey to this Committee what a wonderful human being he is and how fortunate we are as a country that he would be willing to not see how much money he can make, but he's decided instead to see what a difference he can make in public service.

Senator WHITEHOUSE. Thank you, Leader Reid.

Senator REID. Could I be excused?

Senator WHITEHOUSE. You certainly may.

Senator REID. Thank you all very much.

Senator WHITEHOUSE. Senator Manchin? The patient Senator Manchin.

PRESENTATION OF GINA MARIE GROH, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA BY HON. JOE MANCHIN, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator MANCHIN. Thank you, Mr. Chairman. And thanks to all the members of the Judiciary Committee. I am greatly honored to be able to join you today to introduce an exemplary candidate for the U.S. District Court for the Northern District of West Virginia, and someone who has become truly a dear friend of mine, Judge Gina Marie Groh. I want you to know that I really appreciate the opportunity to be here to speak to Judge Groh's exemplary experience and contributions to public service.

First, I would like to thank Senator Jay Rockefeller for recommending Judge Groh for this prestigious position, and for his stead fast support of her nomination. I know that he has been instrumental in promoting Judge Groh's impressive background here in Washington, and I am truly grateful for his efforts.

I would also like to recognize Judge Groh's husband, Steve Groh. Steve is with us today and her sons, 12-year-old Stephen and 6-year-old Michael—raise your hands, boys—and other members of our family who are also here. Now, I'm delighted that all of them were able to attend.

Judge Groh is a well-respected and recognized member of her community in the eastern panhandle of West Virginia. As I have known her for many years, as West Virginia's Governor I had the privilege of appointing Judge Groh to her current position as the Circuit Judge of the Twenty-third Judicial Circuit in 2006.

Judge Groh was recommended to me by a bipartisan merit selection Committee made up of the most notable figures in West Virginia, legal and business community, including the president of the West Virginia State bar, the dean of the WVU's law school, former

Senator Carr Goodwin, and other distinguished representatives in the State.

Judge Groh's in-depth knowledge of the courtroom and excellent reputation with the State bar made her a stand-out candidate, and she was selected as the committee's overwhelming consensus choice for the Circuit Court appointment. Judge Groh was also the first female Circuit judge to serve in the eastern panhandle, and one of only six female Circuit Court judges in the entire State of West Virginia.

Prior to her Circuit Court appointment, Judge Groh served as an Assistant Prosecuting Attorney at the Prosecuting Attorney's Office in Berkley County and Jefferson County, West Virginia. During her 8 years as prosecutor, she established a strong record of protecting her fellow West Virginians by tirelessly pursuing convictions for such crimes as murder, robbery, rape, child abuse, drunk driving, and drug-related offenses.

Judge Groh has not only excelled professionally, but she has also risen to become a true pillar of her community in the eastern panhandle of West Virginia. She dedicates her time to countless charitable foundations and serves on a number of boards.

For many years she has worked for such programs as Robes to School and the Mills with Love Ministry, and has been very involved with her alma mater, Shepherd University, serving both with the Wellness Center and as a member of the Alumni Board. These are really only a few examples of her extensive contribution to the area for which I am personally very grateful.

Judge Groh graduated summa cum laude from Shepherd University in 1986 with a Bachelor of Science degree. She earned the university's highest academic honor as a McMurran Scholar. In addition to serving as editor-in-chief of the newspaper and vice president of her graduating class, Judge Groh went on to earn her J.D. from the West Virginia University College of Law in Morgantown, West Virginia.

I believe that Judge Groh's experience, intellect, leadership, and impartiality and deep roots in the community make her a prudent choice for the vacancy in the Northern District of West Virginia. If appointed, she will be the first resident of the eastern panhandle to sit as a U.S. District judge in Martinsburg. Her extensive legal experience and dedication to public service demonstrate that she exemplifies not only the qualities of a talented jurist, but also the high moral character and sense of justice necessary to make a great judge.

I thank you, Mr. Chairman, for holding this hearing today on Judge Groh's nomination and allowing me the opportunity to speak to her abilities. Along with Senator Rockefeller, I wholeheartedly support Judge Groh's nomination and I look forward to working with you to confirm her to the Federal bench as swiftly as possible.

Thank you, sir.

Senator WHITEHOUSE. Thank you, Senator Manchin. I know you have important business elsewhere and you may also be excused.

We do have a statement from your senior Senator, Senator Rockefeller, who could not be here today. I will not read the entire statement, but he does say that "this is a very important nomination for the people of West Virginia and deeply personal to me",

and describes the candidate as a "supremely talented lawyer, a meticulous student of the law, a proven leader in her community, and a West Virginian through and through."

So without objection his entire statement will be added to the record of these proceedings.

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

Senator WHITEHOUSE. I will now have the privilege of yielding to the Ranking Member to make a brief opening statement, and after that we will have Judge Wallach as the first panel, then the four District nominees as the second panel.

STATEMENT OF CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. And it will be very brief. I'll put the entirety of my statement in the record.

But I want to welcome all the nominees and their families and friends, and to say that we're moving along on confirmation of nominees. This week we confirmed another nominee on the Senate floor for the Federal Judiciary. We have now confirmed 34 nominees this Congress. We have taken positive action in one way or another on 78 percent of the judicial nominees that have been submitted by the President during this Congress, so we continue to move forward as I indicated I would do on the consensus nominees. It looks to me like we have a group that fall into that category this time.

I'll put the rest of the statement in the record.

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

Senator WHITEHOUSE. Very well. Thank you, Senator Grassley.

Could Judge Wallach please come forward and remain standing?

[Whereupon, the witness was duly sworn.]

Senator WHITEHOUSE. Please be seated.

Welcome.

Judge WALLACH. Thank you, Senator.

Senator WHITEHOUSE. It is the custom of the Committee to allow for a brief statement by the nominee, and in particular for the nominee to take the occasion to recognize family and friends whom he or she may wish to recognize at this point in these proceedings.

STATEMENT OF EVAN WALLACH, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

Judge WALLACH. Thank you, Senator. I'd like to introduce my wife, Dr. Katherine Tobin, who's sitting behind me, who has her Ph.D from Stanford University. She's a very smart person, but her distinction to me is she's the nicest person I've ever met.

I've also got my friend David Olive here, a former client. My friends, Frank and Judy Stearns, I did their wedding. Frank just came back from Afghanistan a couple of weeks ago.

I'd like to thank some folks, if I may, please, Senator.

Senator WHITEHOUSE. Please.

Judge WALLACH. I'd like to thank, first off, the members of this Committee and the staff who I know work very hard preparing for these kinds of hearings, and all the folks who helped me in this

process, the people from the DOJ, the FBI, and the ABA, and the AO. All of them do an awful lot of work and I think they don't get recognized for what they do.

Of course, some of my family is watching this from one place or another. I never met KT's dad. He was a career Naval aviator who died when she was a little girl. But he obviously influenced her. And I met her mom, whom I love dearly. Both her parents passed, and both mine have passed. As Senator Reid said, my mom was an artist and she just passed in May.

My dad was an engineer. You know, on my birth certificate—the Senator mentioned millwork on my birth certificate. It says my dad's occupation is millworker, and that was true, he was. But he was also working the graveyard shift while he attended the university at night. He went on to get an honorary doctorate from the University of Arizona.

But that wasn't what he was about. He taught me a large thing in life—he taught all three of us boys—and that was to try and figure out what the right thing to do was, and then to do it.

My oldest brother was, I think if you know the term, 4F. He was physically unqualified to serve in the Armed Forces. In Vietnam, a lot of people considered that a blessing. He went as a civilian employee and served 4 years over there. His wife Susan went as well and worked for the army.

My middle brother enlisted in the U.S. Marine Corps and he did a full tour where he was the sole survivor from his unit once, came back, served 30 days in the United States, and went back to Vietnam, where he stepped on a mine and he was one of two survivors the second time. He came back here and got his Ph.D in Engineering, despite the fact that he is 100 percent disabled. He held several patents in the space industry. I'm very proud of them and I know they're watching, as I said, from one place or another.

Thank you.

Senator WHITEHOUSE. Thank you very much, Judge Wallach.

Could you just briefly describe the nature of your work on the Court of International Trade and how you think that prepares you and compares to the work you'll be asked to do as a U.S. Court of Appeals judge?

Judge Wallach. Sure. We sit, Senator, as both trial judges in matters like Customs and in administrative appeals, in effect, in trade matters. One is regulated by the Chevron doctrine, the other is heard as a new case, sometimes with juries. And it's obviously specialized work, but the essence of it is the same as any law. That is, a judge should look at it, try to know the background, read what record you have in front of you, and learn the law and be prepared for a hearing. I think I've sat on some appellate benches and I think it's the same on an appellate bench as it is a trial bench.

Senator WHITEHOUSE. Well,

I'm very impressed at the legacy of service that you bring to this appointment, and I wish you a speedy confirmation.

I will turn over to our Ranking Member, Senator Grassley, then to Senator Franken.

Judge WALLACH. Thank you, Senator.

Senator GRASSLEY. Let me say something before I ask some questions. It may sound like I'm trying to get you or something on

an issue that is very personal to me from a policy standpoint, and I'm not trying to do that at all. But I'm trying to bring attention to your court and you'll probably be a member of that court, and maybe you can help this court be a little more reasonable in an area where I don't think they've been very reasonable. So, I've got some questions along that line.

Congress has consistently recognized the value of whistleblowers in government and private sector. I was an original co-sponsor of the Whistleblower Protection Act of 1989, and I've always pushed for strong whistleblower protections for Federal employees.

I think that most of my oversight work comes from one or two areas, either good, substantial evidence that I get from whistleblowers or from enterprising investigative journalism. So whistleblowers, I think, are a very important part in, is government going to be responsible and transparent and accountable and all that?

The Federal Circuit has issued a number of decisions that have substantially limited the type of disclosures that are protected under the Whistleblower Protection Act, and I wouldn't expect you to be acquainted with these statistics, but up until February 2011 only 3 out of 219 cases that whistleblowers have brought for appeal has a whistleblower won. Three out of 219. Last year, the court was zero for nine against whistleblowers.

Perhaps the most egregious example of the Federal Circuit placing hurdles in front of the Federal Government whisteblowers is a 1999 decision, *LaChance* v. *White*. In that case the Federal Circuit held that a whistleblower had to present "irrefragable" proof that wronging actually occurred in order to provide a claim. So my questions are kind of along the lines of what maybe you think about or we can think about bringing some reasoning to these figures that I just gave you.

I mean, I would expect that not every whistleblower appeal would be in favor of the whistleblower. In fact, maybe a minority would be in favor of the whistleblower. But in the case of these statistics I gave you, you can see how overwhelmingly it is against it. Now, maybe you can blame those of us that wrote the 1989 law for not giving enough protection or enough direction to the court.

So my first question is, considering that the Federal Circuit has exclusive jurisdiction over these cases, so you're the only one that's going to hear them. What, if any, experience do you have with the Whistleblower Protection Act? If you say none that's OK, but I just have to ask the question.

Judge WALLACH. Senator, thank you. Thank you for that question. I know about your work with whistleblowers and NIGs. I can't say I have any direct experience at all. I just say that in journalism, I used to argue a lot that the phrase "consent of the governed" always had to mean informed consent when I argued to a court. It's vital that government and the people be kept informed, and obviously whistleblowers have something to do with that.

Senator GRASSLEY. Yes. Have you ever heard of the irrefragable proof standard? If so, what's your understanding of that standard?

Judge WALLACH. My understanding of it is, Senator, that it means that it cannot be refuted, that it's irrefutable proof. It's a very high standard.

Senator GRASSLEY. OK.

So then I suppose the next question is, what does a whistleblower need to prove under that standard to meet it?

Judge WALLACH. Senator, I don't know the answer to that. Obviously I'd look at the case authority and the statute to try to determine it in each case.

Senator GRASSLEY. OK.

Can I ask you whether or not you believe that the irrefragable proof standard or a substantial evidence standard should apply to whistleblower cases? Because, you know, the irrefragable one is a judicial standard, not in the law.

Judge WALLACH. Like everything, Senator, I would be bound by stare decisis. I'd have to look at it, but principle decisionmaking requires me to say that.

Senator GRASSLEY. Wouldn't stare decisis, though, make it almost impossible under that standard to ever improve these statistics I just gave you?

Judge WALLACH. It might be, Senator, that the Supreme Court or obviously the national legislature might be taking a look at it if the courts are wrong. That happens.

Senator GRASSLEY. Well, I would give you this opportunity. Would you be willing to put in writing your understanding of the irrefragable proof standard and whether or not you agree with this standard for reviewing decisions of the Merit System Protection Board?

Judge WALLACH. Sure. I'd be delighted to, Senator.

Senator GRASSLEY. I would like to have you—since this is a very unique body you're going to, I'd like to ask you any experience you've had, if any—and emphasis upon if any, because maybe you haven't where you have served in the past—but would you please identify what experiences you have had that would come before this court in these four areas: patent law, trade law, government contracts, and claims against the government.

Judge WALLACH. Well, in trade, Senator—thank you. Obviously I've sat for 16 years and so I've learned something in that time, and I like to think I know a bit about it. In patent, as Senator Reid said, I sat on a case. I did some IP, intellectual property, work for my press clients, but it was more along the lines of trademark. I've taught overseas for the U.S. Patent & Trademark Office, teaching foreign judges intellectual property.

Senator GRASSLEY. OK.

Then beyond what you just said that you've had, if confirmed would you feel a need to prepare yourself in any way to handle these cases, and how would you do that?

Judge WALLACH. Absolutely I'd feel the need, Senator. I would obviously—I'd try to educate myself, so I'd read the law first, the governing authorities from my superior court, the Supreme Court, and from the prior cases of the Court of Appeals, as well as any other cases coming up from other courts that might inform me.

Senator GRASSLEY. I'd like to—the last series of questions would deal with any political activity you've had, and they aren't asked to denigrate any activity or say it's wrong, or that it would have undue influence. But I feel it necessary to ask, because prior to being appointed as a judge on the International Trade Court, you were actively involved in Nevada politics. You worked on Demo-

cratic campaigns as the counsel for the State's Democratic party. There's certainly nothing wrong with that, but your political history may concern future litigants after you're confirmed.

Could you provide the Committee an example of a case you decided as a judge on the Court of International Trade where you put your political views aside to make an independent, sound legal judgment? And I'm not insinuating that politics would enter into your decision, but if there's any case where there was conflict, that maybe you could show where you put it aside.

Judge WALLACH. Senator, thank you for asking that, but I never saw anything where I thought there was a political aspect to it. There were probably some cases where I walked into it feeling one way and the lawyers convinced me the other way, but that was a question of how the law was going, not politics.

Senator GRASSLEY. Well, then I think you'll satisfy me with one last question. I think the answer is probably very obvious, how you've held your demeanor here at this meeting. I'm sure you can assure the Committee then, if confirmed, your decisions will remain grounded in precedent and the text of the law. You said that in the case of the whistleblower cases, but in addition to all other cases rather than any underlying political ideology or motivation.

Judge WALLACH. Yes, sir. Absolutely.

Senator GRASSLEY. Thank you.

Judge WALLACH. Thank you, sir.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Grassley.

Senator Franken.

Senator FRANKEN. Thank you, Judge, for testifying. Congratulations on your nomination.

Judge WALLACH. Thank you, Senator.

Senator FRANKEN. Thank you for your service and for your family's service.

I'm interested actually in the International Court of Trade because I don't know much about it. What kind of stuff comes before you? In other words, are you judging whether a country is violating trade laws or a segment of an industry and the country that's doing that? What kind of stuff? Can you give me some examples?

Judge WALLACH. Yes, sir. It's not so much a country, although once in a while you have a national entity appear in front of you. But it's several things. First, we do antidumping and countervailing duty cases. We are a National Geographic court with limited subject matter jurisdiction.

Senator FRANKEN. I don't know what that means, a National Geographic court. What does that mean?

Judge WALLACH. So we hear any case in the United States that comes from anywhere in the U.S., as long as it falls within our limited area of jurisdiction of law. So that, for example, a claim by the U.S. industry that a foreign company is selling goods for less than the fair market value, in effect antitrust law, that foreign company is trying to capture the market in the United States by undercutting, will be investigated by U.S. Government entities. They're going to rule one way or the other for somebody, and somebody is not going to like it. Whoever it is who doesn't like that ruling takes

it up to us. That's why I said before we sit in that area, in effect, in an administrative appellate review.

Senator FRANKEN. I see.

Judge WALLACH. We also do Customs cases. Those are brand-new ones where somebody imports something into the country and they're saying one of two things, either Customs said it was one thing and it's really something different so we should pay a different tariff, or we agree what it is, but Customs says it's worth a whole bunch more money than we think it's worth, so you're imposing a much higher value on it and, as a consequence, a higher duty. And so they come in and they actually have trials about that.

Senator FRANKEN. OK. So you're an appellate court on trade matters.

Judge WALLACH. Yes, sir.

Senator FRANKEN. And what happens? Can they appeal higher than you?

Judge WALLACH. YES, SIR.

Senator FRANKEN. Where do they go then?

Judge WALLACH. They come to the Court of Appeals for the Federal Circuit. It's our appellate court.

Senator FRANKEN. OK.

So if some—China, say, is dumping a certain kind of finished paper product, that might be something that you would hear?

Judge WALLACH. We would hear a case involving a Chinese company. I have heard such cases.

Senator FRANKEN. OK.

Then you decide and then it goes to an appellate court.

Judge WALLACH. If a party doesn't like it, they take it up to the court for which I'm nominated.

Senator FRANKEN. OK.

And then if they don't like that, where do they go?

Judge WALLACH. The Supreme Court, sir.

Senator FRANKEN. OK.

And how often do those kind of things go to the Supreme Court?

Judge WALLACH. Not often that they actually grant a writ of certiorari, but it happens occasionally.

Senator FRANKEN. OK.

And so China has to abide by it since it's shipping into the United States?

Judge WALLACH. That's correct. In effect, what happens is, there's a tariff imposed. So as the goods come in, that money is going to have to be paid.

Senator FRANKEN. So there's no international trade adjudicator on trade agreements?

Judge WALLACH. Well, there's the World Trade Organization.

Senator FRANKEN. Yes. Where does that fit into this process?

Judge WALLACH. We pay no homage to the WTO. We are purely a U.S. court and we follow the U.S. law and what the Congress tells us to do.

Senator FRANKEN. So you don't have to pay homage to them?

Judge WALLACH. We don't have to.

Senator FRANKEN. I think that's good.

Judge WALLACH. We don't kiss rings or anything.

Senator FRANKEN. But I meant, it seems to me then—I just want to get this clear. Are there—who has jurisdiction sometimes? Is there a question whether you have jurisdiction or the World Trade Organization has jurisdiction?

Judge WALLACH. No, sir. We would have jurisdiction over a case. It might well be that they're hearing the same issue over in their appellate panels and they might decide it totally differently.

Senator FRANKEN. Well, who wins, then?

Judge WALLACH. Well, as far as we're concerned, as far as the U.S. courts are concerned and the U.S. Government, our rulings are rulings in the United States and they apply. If a WTO decision is contrary, it might be that they give the litigants the ability to enter sanctions on an international basis, apply tariffs or something along those lines. But it really has nothing to do with us as a court.

Senator FRANKEN. I'm just trying to think of who has the ultimate authority.

Judge WALLACH. As far as we're concerned, the Supreme Court of the United States, and that's it.

Senator FRANKEN. OK. But if you're in conflict with the WTO it's not like you're calling Ban Ki-moon or something.

Judge WALLACH. No, sir.

Senator FRANKEN. OK. OK.

Well, that's good. I just wanted to learn a little bit. It's not that often in these things that I learn about something in this way.

Judge WALLACH. Thank you, Senator. That's very kind of you say.

Senator FRANKEN. I'd like to learn more sometime. Thank you.

Judge WALLACH. Thank you, Senator.

Senator WHITEHOUSE. Judge Wallach, I wish you well as you go through the confirmation process under the leadership of Chairman Leahy and Ranking Member Grassley. We have moved fairly smoothly through the nominees here at the Committee level; the floor is a different question. There tends to be a considerable backup there, so don't be discouraged that you get through the Committee and then there are delays on the floor. But I think you've been a very impressive nominee and I hope that you can see to rapid progress for your nomination through both of the obstacles that are ahead of you in the Senate. I wish you well, and thank you for being here. I appreciate that your family and friends have attended.

Judge WALLACH. Thank you, Senator. Thank you, Senator Grassley, as well.

Senator GRASSLEY. You bet. Thank you.

Senator WHITEHOUSE. Can we now call up Dana Christiansen, Cathy Bencivengo, Gina Groh, and Margo Brodie? We'll take a 2-minute break while everybody gets to chairs and signs sorted out.

[Pause]

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Evan Jonathan Wallach

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

   United States Circuit Judge for the Federal Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   United States Court of International Trade
   One Federal Plaza
   New York, New York 10278

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

   1949; Superior, Arizona

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1990 – 1992, United States Army Judge Advocate General School, Judge Advocate Officer Advanced Course; Diploma, 1992

   1980 – 1981, University of Cambridge Law School; L.L.B., 1981

   1973 – 1976, University of California, Berkeley, Boalt Hall School of Law; J.D., 1976

   1971 – 1973, University of Arizona, School of Journalism; B.A., 1973

   1967 – 1968, Diablo Valley Junior College; No degree received

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation

from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1995 – present
United States Court of International Trade
One Federal Plaza
New York, New York 10278
Judge

2000 – present
Brooklyn Law School
250 Joralemon Street
Brooklyn, New York 11201
Adjunct Law Professor, Law of War

2001 – 2008 (still affiliated with institution)
Fachspezifische Fremdsprachenausbildung (FFA)
University of Muenster
Universitätsstrasse 14-16
48143 Münster, Germany
Visiting Professor, Law of War

1997 – 2000; Spring 2006 (still affiliated with institution)
New York Law School
185 West Broadway
New York, New York 10013
Adjunct Law Professor, Law of War

2004
George Mason University Law School
3301 Fairfax Drive
Arlington, Virginia 22201
Adjunct Professor, Law of War

1976 – 1995
Lionel Sawyer & Collins
300 South Fourth Street
Las Vegas, Nevada 89101
Partner (1983 – 1995)
Associate (1976 – 1983)

1994 – 1995
New Times Newspaper
Las Vegas, Nevada
(no longer in business)
Restaurant Critic

1989 – 1995
Nevada Army National Guard
Battle Born Brigade
(No longer exists. Successor unit is Nevada Army National Guard, Joint Forces Headquarters, 2460 Fairview Drive, Carson City, Nevada 89701)
Judge Advocate CPT to MAJ

1991
United States Army
Office of the Judge Advocate General of the Army
International Affairs Division
The Pentagon
Washington, D.C. 20310
Active Duty Attorney-Advisor (on unpaid leave from law firm)

1987 – 1988
United States Senator Harry Reid
United States Senate
Office of the Majority Leader, S-221
The Capitol
Washington, D.C. 20510
General Counsel and Public Policy Advisor (on unpaid leave from law firm)

1981 – 1982
University of Nevada, Las Vegas
Political Science Department
4505 South Maryland Parkway
Las Vegas, Nevada 89154
Instructor, graduate-level course in international law

Summer 1974
University of Arizona
Tucson, Arizona 85721
Legal Secretary/Law Clerk to Counsel to the University

Other Affiliations (uncompensated unless otherwise indicated):

2001 – 2010
Judicial Advisory Board
George Mason Law and Economics Center
3301 Fairfax Drive
Arlington, Virginia 22201
Member

2001 – 2006
Hughes Hall Alumni Association
Hughes Hall College
Cambridge, England CB1 2EW
President

Approx. 1992 – 1995
National Conference of Christians and Jews
(now known as National Conference for Community and Justice)
1095 Day Hill Road, Suite 100
Windsor, Connecticut 06095
Board Member

1977 – 1979
Nevada B'Nai Brith Anti-Defamation League
Address Unknown
Director

Approx. 1977
Nevadans for ERA
Address Unknown
Board member

Approx. 2001 – present
Speedway Stone Associates, LLC
c/o Les Wallach
627 East Speedway
Tucson, Arizona 85719
Part-owner (previously received rental income)

Approx. 1984 – present
WWH Partnership
c/o Les Wallach
627 East Speedway
Tucson, Arizona 85719
Part-owner (previously received rental income)

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

1969 – 1971
United States Army, PVT (E-1) to SGT (E-5) RA 18932400, Active service for training and combat service as Reconnaissance Sergeant, S-2, HHC, 8th Engineer Battalion, First

Cavalry Division (Air Mobile), Republic of Vietnam, 1970 – 1971. Honorable Discharge.

1971 – 1975 (Ready Reserve 1973 – 1974; Inactive Reserve balance of time)
United States Army, SGT (E-5), Reserve service in Basic Combat Training Group, as Infantry Training Instructor (11B4H), HHC 91st Div. Comm. Grp. (BCT), 3225 Willow Pass Road, Concord, CA 94519. Transfer to inactive reserve due to law school work commitments.

1989 – 1995
Nevada Army National Guard, CPT (O-3) to MAJ (O-4), Army, Active Service for Persian Gulf War, as Attorney/Advisor, International Affairs Division, Office of the Judge Advocate of the United States Army, 1991. Honorable Discharge.

I have registered for Selective Service.

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

Scholarships:

Douglas Martin Journalism Scholarship, University of Arizona
Rufenacht French Language Prize, University of Arizona
University of Arizona Rhodes Scholar nominee

Fellowships:

Honorary Fellow, Hughes Hall College, Cambridge, England

Honorary Society Memberships:

Phi Beta Kappa (1973)
Phi Kappa Phi (1973)
Kappa Tau Alpha (1973)
Alpha Gamma Sigma (1968)

Military Awards:

Meritorious Service Medal (1991, 1995)
Nevada Medal of Merit (1995)
Bronze Star Medal (1970)
Air Medal (1970)
Good Conduct Medal (1970)
Valorous Unit Citation (1970)
Republic of Vietnam Cross of Gallantry with palm (1970)

Honor Graduate Diploma Radio Operator Course (1969)
Honor Graduate Diploma Radio Teletype Operator Course (1969)
Honor Graduate Diploma Radio Teletype NCO Candidate Course (1969)

Special Recognition:

B'Nai Brith Distinguished Service Award for Service as Nevada Anti-Defamation League Director (1979)
American Bar Association Liberty Bell Award for contributions to equality and justice under the law which have benefited the public (1992)
President's Award, Nevada State Press Association for contributions to freedom of the press (1994)
Intellectual Freedom Award, Clark County School Librarians (1995)
New York Law School, Otto L. Walter Writing Award (2006)
United States Court of International Trade, Resolutions of the Court for service as Chairman of the Rules and Technology Committees (2005)

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

American Bar Association (1977 – 1995)
Clark County Bar Association (1977 – 1995)
D.C. Bar Association (1987 – approx. 2000)
International Judicial Relations Committee, Judicial Conference of the U.S. (2004 – 2010)
Nevada State Bar Association (1977 – present)
United States Court of International Trade
Budget Committee (1999 – 2004)
Chair, Rules Committee (1999 – 2004)
Public Affairs and Education Committee (2011 – present)
Technology Committee (1999 – 2011)
Chair (1999 – 2004)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Nevada, 1977
District of Columbia, 1987

I discontinued my membership in the District of Columbia bar in approximately 2000. Otherwise, there have been no lapses in membership.

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

Supreme Court of the United States, 1984
United States Court of Appeals for the Ninth Circuit, 1989
United States District Court for the District of Nevada, 1977
Nevada Supreme Court, 1977
District of Columbia Court of Appeals, 1987

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

American Law Institute (2003 – present)
Adviser: ALI Project: Legal and Economic Principles of World Trade Law
Consultative Group: International Jurisdiction and Judgments Project
Consultative Group: Recognition and Enforcement of Foreign Judgments
Cambridge University Law Tennis Club (1980 – 1981)
Cambridge War Studies Group (1980 – 1981)
First Cavalry Division Association (1970 – present)
Hughes Hall Alumni Association
President (2001 – 2006)
Hughes Hall College, Honorary Fellow, Cambridge, England (2007 – present)
Hughes Hall Rowing Club (1980 – 1981)
Las Vegas Rotary Club (1994)
National Association for the Advancement of Colored People (approx. 1982 – 1995)
National Conference of Christians and Jews
Board Member (approx. 1992 – 1995)
Member, Fundraising Committee (1992 – 1995)
National Guard Association of the United States (1989 – 1995)
National Rifle Association (approx. 1977 – 1978)
Nevada B'Nai Brith Anti-Defamation League
Director (1977 – 1979)
Nevada State Press Association (approx. 1977 – 1995)
Nevadans for ERA
Board member (approx. 1977)

Oxford Cambridge Club, London, England (approx. 1983 – 1995)
Society of Professional Journalists (intermittently, including student chapters, 1967 – 1995)
Veterans of Foreign Wars Post 8063 (approx. 1973 – 1976)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

International Law of War Association Web Site, designer and author www.lawofwar.org (on-line casebook for law of war students 1999 to present). Print-out of current (2011) version of on-line casebook supplied.

Foreword to 42 GEO. J. INT'L L. 1 (Fall 2010). Copy supplied.

A Tiny Problem with Huge Implications – Nanotech Agents as Enablers or Substitutes for Banned Chemical Weapons: Is a New Treaty Needed?, 33 FORDHAM INT'L L.J. 858 (2010). Copy supplied.

Partisans, Pirates, and Pancho Villa: How International and National Law Handled Non-State Fighters in "the Good old Days" Before 1949 and that Approach's Applicability to the "War on Terror," 24 EMORY INT'L L. REV. 549 (2010). Copy supplied.

Rule of Law: A U.S. Federal Judge's View, Federal Judiciary of Pakistan, Federal Judicial Academy Bulletin, Jan.-June 2010. Copy supplied.

With I. Maxine Marcus, INTERNATIONAL CRIMINAL LAW, Chapter 4.1 *Command Responsibility*, (M. Cherif Bassiouni, ed., 3rd ed. 2008). Copy supplied.

Waterboarding Used to be a Crime, WASHINGTON POST, Nov. 4, 2007. Copy supplied.

Drop by Drop: Forgetting the History of Water Torture in U.S. Courts, 45 COLUM. J. TRANSNAT'L L. 468 (2007). Copy supplied.

The Logical Nexus Between the Decision to Deny Application of the Third Geneva Convention to the Taliban and Al Qaeda and the Mistreatment of Prisoners in Abu Ghraib, 36 CASE W. RES. J. INT'L L. 541 (2004). Copy supplied.

Afghanistan, Quirin and Uchiyama: Does the Sauce Suit the Gander?, ARMY LAW. 18 (2003). Copy supplied.

The Procedural and Evidentiary Rules of The Post-World War II War Crimes Trials: Did They Provide An Outline For International Legal Procedure?, 37 COLUM. J. TRANSNAT'L L. 851 (1999). Copy supplied.

Extradition To The Rwandan War Crimes Tribunal: Is Another Treaty Required?, 3 UCLA J. INT'L L. & FOREIGN AFF. 59 (1998). Copy supplied.

Informed Consent, LAS VEGAS REVIEW-JOURNAL, Sept. 14, 1995. Copy supplied.

Stop the Presses: Three Ways Nevada Unconstitutionally Chills the Media, 22 NEV. LAW. 17 (1994). Copy supplied.

Legal Handbook for Nevada Reporters, Published by Nevada State Press Association and Lionel Sawyers & Collins (1994). Updated on-line, at http://web.mac.com/nevadapress/nevadapress.com/Reporters_legal_handbook.html. August, 2008. Copy supplied.

NEVADA CIVIL PRACTICE MANUAL, Chapter 11, *Motions, Affidavits, Stipulations and Orders* (Brent T. Adams, ed., 3rd ed. 1993). Copy supplied.

President's Much Ballyhooed Foreign-Policy Prowess an Illusion, LAS VEGAS REVIEW-JOURNAL, Oct. 18, 1992. Copy supplied.

The Use of Crude Oil by an Occupying Belligerent State as a Munition De Guerre, 41 INT'L & COMP. L.Q. 287 (1992). Copy supplied.

U.N. Should Consider Military Action to Halt Iraqi Aggression, LAS VEGAS REVIEW-JOURNAL, Aug. 7, 1990. Copy supplied.

Founding Fathers Sought to Protect Expression of Even Vile Ideas, LAS VEGAS REVIEW-JOURNAL, July 1, 1990. Copy supplied.

Free Nation Won't Muzzle Vile Ideas, LAS VEGAS REVIEW-JOURNAL, July 4, 1989, at 7B. Copy supplied.

Executive Powers of Prior Restraint over Publication of National Security Information: The UK and The USA Compared, 36 INT'L & COMP. L.Q. 541 (1983).

I was a food critic for the Las Vegas New Times between August 1994 and August 1995. The columns I was able to obtain are supplied, as is an excerpt from a column that is posted on a web site.

I also wrote and edited numerous articles as a journalism student and student editor between 1967 and 1973 but do not have and have been unable to obtain copies of those materials.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As a judge on the United States Court of International Trade, I authored the following:

Chambers Procedures (continuously revised, 1995 – present). Copy supplied.

As a judge on the United States Court of International Trade, I served on a committee approving the following reports, memoranda to the judges, and policy statements of the court.

Procedures for Producing and Posting Slip Opinions (July 2010). Copy supplied.

Guidelines for Acceptable/Responsible Use of the Internet, DCN/J-Net and Electronic Mail (June 2002, revised Jan. 2008). Copy supplied.

Administrative Order regarding Practice by Students Enrolled in an Approved Law School Clinical Program (Jan. 24, 2006). Copy supplied.

Procedures for Portable Wireless Communications Devices in the Court (Aug. 16, 2005). Copy supplied.

Manual for a Uniform System for Slip Opinions (Aug. 2005). Copy supplied.

Guidelines regarding Bill of Costs (May 25, 2004). Copy supplied.

Procedures for Publication of Opinions and Orders (Mar. 23, 2004). Copy supplied.

Guidelines for Court-Annexed Mediation (Sept. 30, 2003). Copy supplied.

Memo regarding Pending Case Report (Sept. 27, 1999). Copy supplied.

I authored several reports for the International Judicial Relations Committee of the Judicial Conference of the United States. They contain information about United States diplomatic facilities and contacts with the judiciaries of foreign countries and may contain information related to judicial security, personal information about judges, or other material of a diplomatic or intelligence nature. The reports are listed below, but because they contain sensitive material that could impact the foreign relations of the United States, and in some cases, contain national security information, they are not provided:

Afghanistan Trip Report (approx. Apr. 15, 2009).

Pakistan Trip Report (Dec. 29, 2008).

Mongolia Trip Report (June 17, 2008).

Second Interim Report to International Judicial Relations Committee (Nov. 19, 2007).

Report to International Judicial Relations Committee (Aug. 21, 2007).

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On July 18, 1995, I testified before the United States Senate Judiciary Committee as a nominee to be United States Judge for the Court of International Trade. Transcript supplied.

On July 14, 1994, as General Counsel for the Nevada State Press Association, I wrote a letter to the University and Community College System of the Nevada Board of Regents requesting them to conduct candidate interviews during open meetings. I do not have a copy of the letter, but the UCCSN Board of Regents meeting minutes relating the contents of the letter are supplied.

On June 24, 1994, as General Counsel for the Nevada State Press Association, I wrote a letter to Nevada Attorney General Frankie Sue Del Papa requesting the Attorney General to require the University and Community College System of Nevada (UCCSN) to hold public interviews for candidates to head the UCCSN. I do not have a copy of the letter, but press coverage is supplied.

On April 19, 1993, I submitted written testimony to the Nevada State Senate Committee on Judiciary that included proposed amendments to anti-stalking legislation. The testimony was read into the record by Andrea Engleman, a lobbyist for the Nevada State Press Association. I do not have a copy of my testimony, but committee meeting minutes are supplied.

On April 13 and 14, 1993, as General Counsel for the Nevada State Press Association, I testified before the Nevada State Assembly Committee on Government Affairs about state laws concerning public books and records. I do not have a copy of my testimony, but committee meeting minutes from both days are supplied.

On March 15, 1993, as General Counsel for the Nevada State Press Association, I testified before the Nevada State Senate Committee on Judiciary and Assembly Committee on Judiciary about anti-stalking legislation. Committee meeting minutes supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

March 3, 2011: Bench and Bar Dialogue panel discussion concerning practice before the court, Georgetown Law CLE. I have no notes, transcript, or recording. The address of Georgetown Law is 600 New Jersey Avenue, NW, Washington, D.C. 20001.

November 18, 2010: United States Court of International Trade Judicial Conference. Panelist on Procedural and Remedy Issues. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

March 1, 2010: Emory Law School, Atlanta, Georgia. I discussed how the United States had handled unconventional enemies in the past. Notes supplied. The basis of my remarks was also later published as the paper *Pirates, Partisans and*

Pancho Villa: How International and National Law Handled Non-State Fighters in "the Good old Days" Before 1949 and that Approach's Applicability to the War on Terror, which was supplied in response to 12(a).

November 9, 2009: Goldstone Report Panel Discussion on Implications for the Future of International Criminal Accountability and Human Rights Advocacy, International Law Society, ILS Human Rights Committee, and the Secular Legal Society of Brooklyn Law School. I discussed general law of armed conflict issues. I have no notes, transcript, or recording. The address of Brooklyn Law School is 250 Joralemon Street, Brooklyn, NY 11201.

September 30, 2009: Participated in a UN-World Bank knowledge exchange workshop to chair a panel on "Support for rule of law in fragile states/post-conflict situations." I spoke on importance of rule of law. I have no notes, transcript or recording. The address of the UN is 405 East 42nd Street, New York, NY 10017. The address of the World Bank is 1818 H Street, NW, Washington, DC 20433.

July 10, 2009: Army JAG School Rule of Law Keynote. I have no notes, transcript or recording, but my remarks were based on the Pakistan and Afghanistan International Judicial Committee Reports referenced in response to 12(b) and the Rule of Law Article supplied in response to 12(a). The address of the Army JAG School is 600 Massie Road, Charlottesville, VA 22903.

March 28-31, 2009: Talks to Afghan Judges and Law Students, United States Agency for International Development, Kabul, Afghanistan. I have no notes, transcript or recording, but my remarks were based on the Afghanistan Trip Report referenced in response to 12(b). The address for USAID is Ronald Reagan Building, Washington, DC 20523.

December 15-19, 2008: Talks to Pakistani judges sponsored by USAID, Islamabad, Pakistan. PowerPoint slides supplied for talks on Judicial Independence and on Foundational Evidence and Equity. I have no notes, transcripts or recording for another talk on the rule of law, but the Rule of Law in Pakistan article supplied in response to 12(a) was the basis of this talk. The address for USAID is Ronald Reagan Building, Washington, D.C. 20523.

November 19, 2008: United States Court of International Trade Judicial Conference, panelist on New Directions in Customs Practice. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

October 16, 2008: presided over a Trial Skills Seminar, U.S. Court of International Trade and the Customs & International Trade Bar. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

June 2-6, 2008: Talks to Mongolian judges, sponsored by United States Patent and Trademark Office, Ulan Bator, Mongolia. PowerPoint slides supplied for speeches on The Basics of Intellectual Property and International Trade, Intellectual Property Protection, The American Media and The Law, and a separate speech to the Mongolian National Military Academy on the Law of Armed Conflict.

October 2-3, 2007: George Mason Law and Economics Center, seminar for judges on "International, Law Economic Perspective," with Prof. Eric Posner. My presentation was limited to discussion of military tribunals, law of armed conflict and their application to game theory. I have no notes, transcript, or recording. The address of George Mason University School of Law is 3301 Fairfax Drive Arlington, VA 22201.

November 18, 2006: Speaker, National Communication Association, "Splendid Little Wars," San Antonio, Texas. Speech supplied; I no longer have a copy of the slides that accompanied the speech.

November 6, 2006: United States Court of International Trade Judicial Conference, panelist on judges' panel. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

November 2, 2006: DiCarlo Lecture, John Marshall Law School, Chicago, Illinois. Remarks supplied.

October 2006: United States Court of International Trade Judicial Conference, panelist on judges' panel on emerging issues. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

October 10, 2006: Foundation for Responsible Environmental Economics (FREE), Racine, Wisconsin, Panel on terrorism. PowerPoint slides supplied.

February 2, 2006: Georgetown University Law Center Continuing Legal Education International Trade Update, participant in Bench and Bar Roundtable Discussion. I have no notes, transcript, or recording. The address for the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, D.C. 20001.

January 15, 2006: Talk on Intellectual Property Protection to Judges from Moslem countries, United States Patent and Trademark Office, Dubai. Notes supplied.

April 19, 2005: United States Court of International Trade, United States Court of International Trade Bar Association, and American Bar Association joint presentation on "Litigating Trade Adjustment Assistance Cases before the United

States Court Of International Trade." I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

October 2004: George Mason Law and Economics Center, seminar for judges on "International Law in American Courts," with Professor John Yoo. My presentation was limited to discussion of military tribunals and law of armed conflict. I have no notes, transcript, or recording. The address of George Mason University School of Law is 3301 Fairfax Drive Arlington, VA 22201.

October 2004: Panelist, "Terrorism on Trial" conference, Case Western Reserve University School of Law, Cleveland, Ohio. The paper I presented was published as *The Logical Nexus between the Decision to Deny Application of the Third Geneva Convention to the Taliban and Al Qaeda and the Mistreatment of Prisoners in Abu Ghraib*, which was supplied in response to 12(a).

September 2004: Panel with Professor John Yoo at Federalist Society, New York, New York. I spoke about military tribunals. I have no notes, transcript, or recording. The address of the New York Federalist Society is at Hogan Lovells US LLP, 875 Third Avenue, New York, NY 10022.

September 13, 2004: Operation Homecoming, Fort Richardson, Alaska. Subject matter was the use of literature, and particularly poetry for combat veterans to articulate their wartime experience. I also spoke to officers on a general overview of the law of war. I have no notes, transcript or recording, but press coverage is supplied. The address of Fort Richardson is Anchorage, AK 99505.

August 2004: American Bar Association, Committee on Military Law, panel discussion on military tribunals. I have no notes, transcript, or recording, but the remarks were similar in content to the 2003 Army Lawyer article submitted in response to 12(a). The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

January 29, 2004: Presided over a mock U.S. Court of International Trade oral argument, Georgetown Law School. I have no notes, transcript, or recording. The address of Georgetown Law School is 600 New Jersey Avenue, NW, Washington, D.C. 20001. Since approximately 1996, I have also presided over mock hearings every 2-3 years for Professor Lenni Benson of New York Law School. I do not recall the specific dates, and I have no notes, transcript, or recording. The address of New York Law School is 185 West Broadway, New York, NY 10013.

August 2003: Presenter, Foundation for Responsible Environmental Economics (FREE), Seminar on Terrorism, Bozeman, Montana. Handout supplied.

October 15, 2002: United States Court of International Trade Bar Association, speaker at "Discovery Seminar" and panelist on a judges' panel. I have no notes,

transcript, or recording. The president of CITBA, Michael S. O'Rourke, may be reached at Rode & Qualey, 55 West 39th Street, New York, NY 10018.

March 2002: District Court Judges Convention, New Orleans, Louisiana. Invited to replace panelist for discussion of war on terror sponsored by the American Society of International Law. I spoke on the history of military tribunals and the structure of the Geneva Convention. I have no notes, transcript, or recording, but the content was based on and similar to the 2003 Army Lawyer article submitted in response to 12(a). The address of the American Society of International Law is 2223 Massachusetts Avenue, NW, Washington, D.C. 20008.

October 2001: Columbia Law School, talk with international trade class, Professor Meri Janow. I have no notes, transcript, or recording. The address is 435 West 116th Street, Mail Code 4004, New York, NY 10027.

September 21, 2001: Hughes Hall Speech, Hughes Hall College, Cambridge England. Speech supplied.

June 1999: Talk for Russian Judges on Enforcement of Foreign Judgments sponsored by United States Agency for International Development, Moscow and St. Petersburg, Russia. Introduction supplied, but I have no notes, transcript, or recording for the rest of talk, which was conducted as a Socratic dialogue. The address for USAID is Ronald Reagan Building, Washington, D.C. 20520.

May 13, 1999: New York Law School Commencement, New York, New York. Outline supplied.

May 11, 1999: Speech to American Foundation for Suicide Prevention accepting award for Senator Harry Reid. Speech supplied.

April 1999: United States Court of International Trade Bar Association, speaker at annual dinner. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

April 1999: New York Law School Journal of International & Comparative Law, guest speaker at dinner. I have no notes, transcript, or recording. The address of New York Law School is 185 West Broadway, New York, NY 10013.

November 20, 1998: Talk on relations among bench, bar and media for American Bar Association Rule of Law Initiative (CEELI), Zagreb, Croatia. Notes supplied.

May 1998: John Jay College of Criminal Justice, City University of New York. Guest lectured to class on international criminal law for Professor George Andreapoulis. I have no notes, transcript, or recording. The address of John Jay College of Criminal Justice is 899 Tenth Avenue, New York, NY 10019.

April 1998: University of California, Berkeley. Trade Panel with Professor David Caron. I have no notes, transcript, or recording. The address is 215 Boalt Hall, Berkeley, CA 94720.

September 10, 1997: presentation on practice and procedure at the Court of International Trade, International Law Section of the Michigan Bar, Detroit, Michigan. I have no notes, transcript, or recording. The address of the USCIT is One Federal Plaza, New York, NY 10278.

1991 or 1992: Speaker, Las Vegas Rotary Club, Iraq War remarks. Speech supplied.

1990s: speaker at seminars sponsored by the National Conference of Christians and Jews. I do not have records of the specific dates, but in 1994 I spoke on the topic of the Holocaust, and in 1995, I spoke on the topic of the separation of Church and State. I have no notes, transcript, or recording. The address of the Conference (now known as National Conference for Community and Justice) is 1095 Day Hill Road, Suite 100, Windsor, CT 06095.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Independent Judiciary Must Protect Rights of People, Balochistan Times, Dec. 19, 2008. Copy supplied.

US Judge, Justice Department Adviser Visit FJA, Balochistan Times, Dec. 18, 2008 [re-printed in multiple outlets]. Copy supplied.

Phil Reisman, *Hartsdale Dogs Strut Their Stuff at July Fourth Walk*, The Journal News, July 8, 2003. Copy supplied.

Tim Collie, *Tribunals Would Be Models for Future Terrorist Trials*, Sun-Sentinel, Jan. 12, 2002. Copy supplied.

Monica Dias, *Leggett's Case Revives Talk about Shield Law*, News Media & the Law, Jan. 1, 2002. Copy supplied.

Warren Richey, *Tribunals on Trial*, Christian Science Monitor, Dec. 14, 2001. Copy supplied.

Warren Bates, *Eclectic Local Attorney in Line for Taste of Federal Judgeship*, Las Vegas Review-Journal, May 22, 1995. Copy supplied.

Michael Reynolds, *Attorney Fights to Open Government to the People*, North Lake Tahoe Bonanza, undated but approximately 1992. Copy supplied.

Associated Press, *Las Vegas Attorney Says Allies Can Attack*, Nevada Appeal Aug. 6, 1991. Copy supplied.

K.J. Evans, *LV Lawyer Kept Eye on U.S. Troops*, Las Vegas Review-Journal, Aug. 5, 1991. Copy supplied.

Jane Ann Morrison, *Nevada GOP to Pay $25,000 Fine*, Las Vegas Review-Journal, July 30, 1991 [quote re-printed in multiple outlets]. Copy supplied.

Interview on July 12, 1984 with quote re-printed: Staff, *Path to Geraldine Ferraro's Place in History Passed through Tahoe*, Reno Gazette-Journal, Mar. 27, 2011. Copy of the 2011 article supplied.

State-by-State Results of Voting in Primaries and Caucuses, Washington Post, Mar. 15, 1984. Copy supplied.

Hart Wins in Nevada, Associated Press, Mar. 14, 1984. Copy supplied.

Untitled, United Press International, Mar. 14, 1984. Copy supplied.

Cy Ryan, *Untitled*, United Press International, Mar. 14, 1984. Copy supplied.

Jeff Rabin, *Hart Gains Make Race in Nevada*, Sacramento Bee, Mar. 11, 1984. Copy supplied.

Cy Ryan, *Campaign '84: Hart Seen Close Behind Mondale in Nevada's 'Super Tuesday' Caucuses*, United Press International, Mar. 10, 1984. Copy supplied.

Jay Mathews, *Hart Riding High as West Saddles Up for 'Super Tuesday'*, Washington Post, Mar. 10, 1984. Copy supplied.

John Glisch, *Hart Aims to Uproot the Well-Rooted Mondale in Nevada*, Christian Science Monitor, Mar. 8, 1984. Copy supplied.

John Glisch, *Organizer's Drive Gives Mondale an Advantage*, Las Vegas Review-Journal, Jan. 15, 1984. Copy supplied.

I also recall giving interviews to two local television stations and one radio station during the period 1987-1995, usually in my role as counsel for the Nevada State Press Association or the Democratic Party of Nevada, but also occasionally as a commentator on legal issues or political election coverage. I do not have copies or transcripts of any of those appearances, and have been unable to obtain them.

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

I have served as an Article III judge on the U.S. Court of International Trade since my appointment in 1995. During this time, I have also sat by designation on three courts of appeal and three district courts.

The U.S. Court of International Trade has national geographic jurisdiction but limited subject matter jurisdiction. Its subject matter jurisdiction was expanded by Congress in 1980. The court hears international trade and customs cases and also deals, among other matters, with specific issues such as denial or revocation of customs brokers' licenses, civil penalties for alleged improper importation of goods, and trade adjustment assistance to displaced workers. The court has full legal and equitable powers.

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

I have presided over 15 bench or jury trials, presided over approximately 140 additional cases that resulted in judgment, and sat on appellate panels in approximately 85 additional cases.

(Most of the judgments in cases over which I presided were not the product of a trial. Many of these cases were decided on motions to dismiss, motions for summary judgment, or motions for judgment on the agency record. In particular, 28 U.S.C. § 2640 directs that certain cases that come before the U.S. Court of International Trade are to be decided on the basis of the underlying administrative record rather than de novo.)

i. Of these, approximately what percent were:

jury trials:	13 %
bench trials:	87 %
civil proceedings:	100%
criminal proceedings:	0%

(If appellate proceedings are included, these percentages are 88 % civil and 12 % criminal.)

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

See attachment 13b.

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

1) Ammex, Inc. v. United States, Court No.: 99-01-00013, 23 C.I.T. 1066, 86 F. Supp. 2d 1278 (Ct. Int'l Trade 1999); 23 C.I.T. 549, 62 F. Supp. 2d 1148 (Ct. Int'l Trade 1999); 24 C.I.T. 851, 116 F. Supp. 2d 1269 (Ct. Int'l Trade 2000); 26 C.I.T. 247, 193 F. Supp. 2d 1325 (Ct. Int'l Trade 2002), aff'd, 334 F.3d 1052 (Fed. Cir. 2003), cert. denied, 541 U.S. 1041 (2004); 26 C.I.T. 510, 201 F. Supp. 2d 1374 (Ct. Int'l Trade 2002), aff'd, 334 F.3d 1052 (Fed. Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

The operator of a duty-free store challenged the U.S. Customs Service's refusal to permit the sale of duty-free fuel at that store. After granting limited discovery to the plaintiff but denying the plaintiff's motion to supplement the administrative record submitted by the agency, I decided that the agency acted unlawfully. I granted the plaintiff's motion for judgment on the agency record but denied the plaintiff's motion alleging contempt. Following this decision, the agency identified new information that led it to again reject the sale of duty-free fuel. I decided that this determination had not contravened the previous ruling and could be challenged anew by the plaintiff, but only through the proper channels.

Counsel:

Amy Michelle Rubin
U.S. Department of Justice
International Trade Field Office
26 Federal Plaza
New York, NY 10278
(212) 264-9230

Herbert Carl Shelley
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-8146

2) Mikohn Gaming Corp. v. Acres Gaming, Inc., Court Nos.: CV-S-97-1383-EJW (LRL) and CV-S-98-1462-EJW (LRL), 2001 U.S. Dist. LEXIS 23416 (D. Nev. Aug. 1, 2001)

The jury in a patent infringement case found that the plaintiff had infringed on the defendant's patents related to a system of networked gaming devices and

awarded $1.5 million in damages. I then denied the plaintiff's challenges to that verdict and granted the defendant's requests for interest, an accounting of sales, and a permanent injunction barring the plaintiff from using the defendant's system, which I stayed pending appeal. Ultimately, the case settled and the appeal was dismissed.

Counsel:

Adam P. Segal
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(702) 382-2101

Steven E. Shapiro
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Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101
(206) 583-8418

William R. Urga
Jolley Urga Wirth Woodbury & Standish
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169
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3) NSK Ltd. v. United States, Consol. Court No.: 02-00627, 28 C.I.T. 1535, 346 F. Supp. 2d 1312 (Ct. Int'l Trade 2004); 29 C.I.T. 74, 358 F. Supp. 2d 1313 (Ct. Int'l Trade 2005), aff'd, 481 F.3d 1355 (Fed. Cir. 2007), cert. denied, 2008 U.S. LEXIS 1173 (Jan. 22, 2008)

In one of the first cases concerning a particular statistical approach known as zeroing, I held that the United States Department of Commerce's decision to assign a zero margin to sales above normal value of ball bearings was consistent with both U.S. statutory law and U.S. W.T.O. obligations. Additionally, I held Commerce's administrative review on a non-notified exporter, use of mode-specific methodology in calculating cost, application and use of adverse facts available, and acceptance of the exporter's reported cost data were proper. I remanded the case to correct clerical errors related to one of the exporters. The determination was sustained in all other respects.

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4) Optrex America, Inc. v. United States, Court No.: 00-08-00382, 30 C.I.T. 192, 427 F. Supp. 2d 1177 (Ct. Int'l Trade 2006), aff'd, 475 F.3d 1367 (Fed. Cir. 2007)

An importer challenged the U.S. Customs Service's tariff classification of liquid crystal displays (LCDs). Following a bench trial, I concluded that the proper classification was under an alternate heading proposed by the defendant.

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5) PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n, Court No.: 02-00635, 30 C.I.T. 858, 442 F. Supp. 2d 1329 (Ct. Int'l Trade 2006); 31 C.I.T. 1155, 502 F. Supp. 2d 1318 (Ct. Int'l Trade 2007); 533 F. Supp. 2d 1359 (Ct. Int'l Trade 2008); 545 F. Supp. 2d 1345 (Ct. Int'l Trade 2008); 558 F. Supp. 2d 1370 (Ct. Int'l Trade 2008)

The Continued Dumping and Subsidy Act of 2000 (CDSOA) gave money to affected domestic producers, but only to those who stated in writing they supported antidumping investigations that resulted in findings of harmful dumping. A domestic seafood producer challenged its exclusion from these payments because it had taken no position on the investigation. Because that producer had not supported the underlying antidumping petition, it was ineligible for payments under the CDSOA. I concluded that this restriction interfered with the plaintiff's political speech, that it did not satisfy a permissible exception or serve a compelling government interest, and that it therefore violated the First Amendment. The Court of Appeals for the Federal Circuit considered these arguments in a related case and decided that a particular saving construction of the CDSOA could pass constitutional muster. See SKF USA, Inc. v. U.S. Customs and Border Protection, 556 F. 3d 1337 (Fed. Cir. 2009).

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6) RSM Prod. Corp. v. Fridman, Court No.: 06-cv-11512, 2008 U.S. Dist. LEXIS 12840 (S.D.N.Y. Feb. 19, 2008); 2008 U.S. Dist. LEXIS 72058 (S.D.N.Y. Sept. 23, 2008); 643 F. Supp. 2d 382 (S.D.N.Y. 2009), aff'd, 387 Fed. Appx. 72 (2d Cir. 2010)

Various companies sued a former official of the government of Grenada for not issuing a license as promised in a contract formed among the parties as well as other individuals and companies for conspiracy and other claims. I dismissed the case for lack of jurisdiction under the Foreign Sovereign Immunities Act. I also found that the former government official was entitled to the protection of the Foreign Sovereign Immunities Act and that plaintiffs had not demonstrated that any of the exceptions to immunity applied.

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7) SKF USA, Inc. v. United States, Court No.: 03-00490, 28 C.I.T. 170, 316 F. Supp. 2d 1322 (Ct. Int'l Trade 2004), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007); 29 C.I.T. 969, 391 F. Supp. 2d 1327 (Ct. Int'l Trade 2005), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007); 30 C.I.T. 1263, 435 F. Supp. 2d 1247 (Ct. Int'l Trade 2006), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007); 30 C.I.T. 1402, 452 F. Supp. 2d 1335 (Ct. Int'l Trade 2006), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007); 533 F. Supp. 2d 1347 (Ct. Int'l Trade 2008)

In three separate opinions, I granted a preliminary injunction prohibiting liquidation (final processing) of the plaintiff's entries, denied the defendant's motion to dismiss the case, and remanded the Department of Commerce's decision to the agency. Commerce then submitted its redetermination, which I affirmed in part and struck in part. My decisions were vacated by and remanded by the Federal Circuit in SKF USA, Inc. v. United States, 512 F.3d 1326, 246 Fed. Appx. 692, 2007 U.S. App. LEXIS 20919 (Fed. Cir. 2007), which held that the entries had been liquidated by operation of law before the court ruled on the initial request for preliminary injunction, precluding the court from granting relief. I then dismissed the case as moot.

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8) United States v. Tri-State Hospital Supply Corp., Court No.: 97-04-00678, 23 C.I.T. 736, 74 F. Supp. 2d 1311 (Ct. Int'l Trade 1994)

The United States sought civil penalties against an importer of surgical instruments for alleged negligence, gross negligence, and fraud with respect to such importation. I denied the government's pre-trial motion to rule that allegedly false statements made by the importer were material. Following trial, the jury returned a verdict for the importer.

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9) Usinor v. United States, Consol. Court No.: 01-00010, 26 C.I.T. 767 (Ct. Int'l Trade 2002); 28 C.I.T. 1107, 342 F. Supp. 2d 1267 (Ct. Int'l Trade 2004)

Under its international obligations, the government is required to review antidumping and countervailing decisions no later than five years after issuance to determine if those decisions are still necessary (in a proceeding called a sunset review). I affirmed in part and remanded in part the International Trade Commission's five-year sunset review determinations in Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom. I then held as supported by substantial evidence numerous post-remand ITC sunset review determinations: the ITC's decision to cumulate subject imports, the ITC's decision to not conduct a strict quantitative negligibility analysis in a five-year review, the ITC's finding of likely discernible adverse impact, and the overall ITC determination that the revocation of the orders on subject imports were likely to cause the continuation or recurrence of material injury within a reasonably foreseeable time. I sustained the ITC's sunset review following remand.

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10) Wooten v. United States Sec'y of Agric., Court No.: 05-00208, 30 C.I.T. 849, 441 F. Supp. 2d 1253 (Ct. Int'l Trade 2006); 30 C.I.T. 99, 414 F. Supp. 2d 1313 (Ct. Int'l Trade 2006)

The USDA had denied the plaintiff's application for trade adjustment assistance because his net income from fishing increased from a loss to a gain in the relevant two years. After I granted the plaintiff's motion to supplement the record, the plaintiff argued that the definition of "net farm income" adopted by USDA violated the intent of Congress. I held that the Secretary of Agriculture has broad discretion in choosing a definition and that the definition chosen was reasonable and rational and therefore permissible.

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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1) Ad Hoc Shrimp Trade Action Comm. v. United States, 616 F. Supp. 2d 1354 (Ct. Int'l Trade 2009), aff'd, 596 F.3d 1365 (Fed. Cir. 2010)

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2) Int'l Trading Co. v. United States, 28 C.I.T. 1, 306 F. Supp. 2d 1265 (Ct. Int'l Trade 2004), aff'd, 412 F.3d 1303 (Fed. Cir. 2005)

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3) Mikohn Gaming Corp. v. Acres Gaming, Inc., 2001 U.S. Dist. LEXIS 23416 (D. Nev. Aug. 1, 2001)

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5) Nufarm America's, Inc. v. United States, 29 C.I.T. 1317, 398 F. Supp. 2d 1338 (Ct. Int'l Trade 2005)

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6) Precision Specialty Metals v. United States, 24 C.I.T. 1016, 116 F. Supp. 2d 1350 (Ct. Int'l Trade 2000); see also Precision Specialty Metals v. United States, No. 98-02-00291 (Ct. Int'l Trade Sept. 20, 2000) (not for publication), aff'd, 315 F.3d 1346 (Fed. Cir. 2003)

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7) PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n, 30 C.I.T. 858, 442 F. Supp. 2d 1329 (Ct. Int'l Trade 2006)

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8) RSM Prod. Corp. v. Fridman, 643 F. Supp. 2d 382 (S.D.N.Y. 2009), aff'd, 387 Fed. Appx. 72 (2d Cir. 2010)

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9) United States v. Berke, 170 F.3d 882 (9th Cir. 1999) (Wallach, J., dissenting)

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10) USEC Inc. v. United States, 31 C.I.T. 1049, 498 F. Supp. 2d 1337 (Ct. Int'l Trade 2007)

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

1) Ammex, Inc. v. United States, 26 C.I.T. 247, 193 F. Supp. 2d 1325 (Ct. Int'l Trade 2002), aff'd, 334 F.3d 1052 (Fed. Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

2) Californians for Safe & Competitive Dump Truck Transp. v. Mendonca, 152 F.3d 1184 (9th Cir. 1998), cert. denied, 1999 U.S. LEXIS 2508 (Apr. 5, 1999)

3) Eurodif S.A. v. United States, 30 C.I.T. 1139, 442 F. Supp. 2d 1367 (Ct. Int'l Trade 2006), appeal dismissed, 506 F.3d 1051 (Fed. Cir. Sept. 21, 2007), rev'd, 555 U.S. 305 (Jan. 26, 2009)

4) Kulas v. Valdez, 159 F.3d 453 (9th Cir. 1998) (Wallach, J., dissenting), cert. denied, 2000 U.S. LEXIS 1209 (Feb. 22, 2000)

5) NSK Ltd. v. United States, 28 C.I.T. 1535, 346 F. Supp. 2d 1312 (Ct. Int'l Trade 2004), aff'd, 481 F.3d 1355 (Fed. Cir. 2007), cert. denied, 2008 U.S. LEXIS 1173 (Jan. 22, 2008)

6) Nufarm America's, Inc. v. United States, 31 C.I.T. 203, 477 F. Supp. 2d 1290 (Ct. Int'l Trade 2007), aff'd, 521 F.3d 1366 (Fed. Cir. 2007), cert. denied, 2008 U.S. LEXIS 8336 (Nov. 10, 2008)

7) United States v. Aviles, 1998 U.S. App. LEXIS 38820 (9th Cir. Apr. 14, 1998), cert. denied, 1999 U.S. LEXIS 5461 (Oct. 4, 1999)

8) United States v. Dee, 1997 U.S. App. LEXIS 22448 (9th Cir. Apr. 14, 1998), cert. denied, 1998 U.S. LEXIS 5015 (Oct. 5, 1998)

9) United States v. Doe, 149 F.3d 945 (9th Cir. 1998), cert. denied, 1998 U.S. LEXIS 7208 (Nov. 9, 1998)

10) United States v. Etsitty, 140 F.3d 1274 (9th Cir. 1997) (per curiam), cert. denied, 1998 U.S. LEXIS 7317 (Nov. 16, 1998)

11) United States v. Fredericks, 1998 U.S. App. LEXIS 10350 (9th Cir. Apr. 16, 1998), cert. denied, 1998 U.S. LEXIS 6292 (Oct. 5, 1998)

12) United States v. Guerrero-Acosta, 1998 U.S. App. LEXIS 12855 (9th Cir. Apr. 14, 1998), cert. denied, 1998 U.S. LEXIS 6796 (Oct. 19, 1998)

13) United States v. Liddawi, 1998 U.S. App. LEXIS 9780 (9th Cir. Apr. 15, 1998), cert. denied, 1999 U.S. LEXIS 335 (Jan. 11, 1999)

14) Walker v. Univ. of Rochester, Strong Mem'l Hosp., 368 Fed. Appx. 188 (2d Cir. 2010), cert. denied, 2010 U.S. LEXIS 5958 (Oct. 4, 2010)

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

1) In Allegheny Ludlum Corp. v. United States, 24 C.I.T. 858, 116 F. Supp. 2d 1276 (Ct. Int'l Trade 2000), vacated and remanded, 287 F.3d 1365 (Fed. Cir.

2002), I held that, although there were errors committed by the ITC and evidence detracting from the substantiality of the evidence, the evidence was significant enough to find that subject imports did not cause material injury to the cold-rolled plate industry. In vacating and remanding, the Federal Circuit held that the ITC's price determination was not supported by substantial evidence and therefore my decision to affirm the Commission was incorrect.

2) The Federal Circuit affirmed my decision in Ammex, Inc. v. United States, 26 C.I.T. 247, 193 F. Supp. 2d 1325 (Ct. Int'l Trade 2002), aff'd, 334 F.3d 1052 (Fed. Cir. 2003), cert. denied, 541 U.S. 1041 (2004) to deny the plaintiff's Motion for an Order to Show Cause Why the United States Customs Service Should Not be Held in Contempt. However, the Federal Circuit stated that I had "erred in [my] initial decision by applying the elements of collateral estoppel (or issue preclusion) instead of those of res judicata." 334 F.3d at 1055.

3) In Archer Daniels Midland Co. v. United States, 559 F. Supp. 2d 1347 (Ct. Int'l Trade 2008), rev'd and remanded, 561 F.3d 1308 (Fed. Cir. 2009), I held that imported deodorizer distillate was not prima facie classifiable in the U.S. Harmonized Tariff Schedule. The Federal Circuit disagreed.

4) In USEC Inc. v. United States, 27 C.I.T. 1419, 281 F. Supp. 2d 1334 (Ct. Int'l Trade 2003) (Pogue, J.), a three-judge panel on which I sat decided, among other things, that certain low-enriched uranium was transacted as a service rather than as a good but was nonetheless subject to the countervailing duty statute. On interlocutory appeal, the Federal Circuit affirmed the nature of the transactions but reversed on the applicability of the statute. Eurodif S.A. v. United States, 411 F.3d 1355 (Fed. Cir. 2005). Following additional decisions by the Court of International Trade panel and the Federal Circuit, the U.S. Supreme Court ultimately held that the U.S. Department of Commerce had reasonably treated the transacted uranium as a good. United States v. Eurodif S.A., 555 U.S. 305 (2009).

5) In Former Emps. of Quality Fabricating, Inc. v. United States, 28 C.I.T. 679, 343 F. Supp. 2d 1272, motion for reconsideration denied at 28 C.I.T. 1061, 353 F. Supp. 2d 1284 (Ct. Int'l Trade 2004), vacated and remanded 448 F.3d 1351 (Fed. Cir. 2006), I held that the court had jurisdiction over secondarily-affected worker groups with regard to trade adjustment certifications under the Trade Act of 1974. The Federal Circuit disagreed.

6) In Gallant Ocean (Thailand) Co. v. United States, 602 F. Supp. 2d 1337 (Ct. Int'l Trade 2009), vacated and remanded, 602 F.3d 1319 (Fed. Cir. 2010), I held that, due to the plaintiff's unwillingness to supply information in the investigation, Commerce permissibly assigned an adverse facts available rate. The Federal Circuit held, however, that this rate did not represent "commercial reality." 602 F.3d at 1322.

7) In GE Med. Sys. Group v. United States, 24 C.I.T. 12, 86 F. Supp. 2d 1291 (Ct. Int'l Trade 2000), rev'd, 247 F.3d 1231 (Fed. Cir. 2001), I held that certain medical photographic equipment should be classified as cameras. The Federal Circuit reversed, finding that this equipment should be classified as accessories.

8) The Federal Circuit affirmed my decision in Horizon Lines, LLC v. United States, 659 F. Supp. 2d 1285 (Ct. Int'l Trade 2009), aff'd, 626 F.3d 1354 (Fed. Cir. 2010) that certain work done on the plaintiff's ship was not dutiable under the vessel repair statute. The Federal Circuit nonetheless stated that "the Court of International Trade erred when it held that the prior condition of replaced parts is irrelevant to the determination of whether work constitutes a nondutiable modification or a dutiable repair. However, because the Court of International Trade determined that the replaced parts on the HAWAII were in proper working order prior to modification, this error was harmless." 626 F.3d at 1356.

9) In reviewing NMB Sing. Ltd. v. United States, 31 C.I.T. 1943, 533 F. Supp. 2d 1244 (Ct. Int'l Trade 2007), aff'd in part, vacated in part, remanded in part, 557 F.3d 1316 (Fed. Cir. 2009), the Federal Circuit upheld Commerce's antidumping determination, but only with regards to the continuation of the antidumping order; with regards to the antidumping duty rates, the Federal Circuit vacated and remanded.

10) In reversing Orlando Food Corp. v. United States, 28 C.I.T. 1244, 343 F. Supp. 2d 1375 (Ct. Int'l Trade 2004), rev'd and remanded, 423 F.3d 1318 (Fed. Cir. 2005), the Federal Circuit held that I "erred in holding that 19 U.S.C. § 1505 did not apply to amounts determined to be excess money deposited as a result of a reliquidation pursuant to section 1408 of the Tariff Suspension and Trade Act of 2000." 423 F.3d at 1325.

11) In Rubie's Costume Co. v. United States, 26 C.I.T. 209, 196 F. Supp. 2d 1320 (Ct. Int'l Trade 2002), rev'd, 337 F.3d 1350 (Fed. Cir. 2003), I held that the classification decision by United States Customs was not entitled to Chevron deference and found the agency's reasoning unpersuasive under Skidmore deference. In reversing, the Federal Circuit agreed that Chevron deference did not apply but found the reasoning of Customs persuasive under Skidmore deference.

12) In SKF USA Inc. v. United States, 28 C.I.T. 170, 316 F. Supp. 2d 1322 (Ct. Int'l Trade 2004), vacated and remanded, 512 F.3d 1326 (Fed. Cir. 2007), I issued a preliminary injunction prohibiting liquidation of entries. In vacating and remanding this decision, the Federal Circuit held that the entries had been liquidated by operation of law before the court ruled on the initial request for preliminary injunction, removing the court's ability to grant relief.

13) The Federal Circuit affirmed my decision in Tung Mung Dev. Co. v. United States, 26 C.I.T. 969, 219 F. Supp. 2d 1333 (Ct. Int'l Trade 2002), aff'd, 354 F.3d 1371 (Fed. Cir. 2004), which in turn affirmed the U.S. Department of Commerce's remand determination. The Federal Circuit stated that while I "erred in holding that Commerce's decisions were not entitled to Chevron deference . . . , it is not clear that this error was the basis for the Court of International Trade's decisions." 354 F.3d at 1379 n.8.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

All public slip opinions issued in U.S. Court of International Trade cases over which I presided are available in official reporters or commercial databases such as Lexis and Westlaw. When the inclusion of business proprietary or other confidential information has required a confidential version of a slip opinion, I have issued a corresponding public version of that slip opinion from which the confidential information was redacted.

At the U.S. Court of International Trade, all final decisions whether in a contested action or with regards to a preliminary injunction must be accompanied by a statement of findings of fact and conclusions of law or an opinion stating the reasons and facts behind the decision. These statements and opinions in addition to all orders and judgments can be found at the Office of the Clerk as public records. All parties to a given action are automatically provided with a copy of all judgments, orders, opinions, decisions, etc. associated with their case.

Although I rarely issue unpublished opinions, I issued one such opinion that formally reprimanded an attorney in Precision Specialty Metals, Inc. v. United States, Court No.: 98-02-00291, and that the Federal Circuit affirmed in Precision Specialty Metals, Inc. v. United States, 315 F.3d 1346 (Fed. Cir. 2003).

In general, opinions issued in cases for which I sat by designation are available in official reporters or commercial databases such as Lexis and Westlaw. However, I am aware of one opinion in a case at the District Court for the District of Columbia that is not provided in any official or unofficial reporter, and is instead available only within the case docket.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

1) Int'l Trading Co. v. United States, 24 C.I.T. 596, 110 F. Supp. 2d 977 (Ct. Int'l Trade 2000), aff'd, 281 F.3d 1268 (Fed. Cir. 2002)

2) Nereida Trading Co. v. United States, 683 F. Supp. 2d 1348 (Ct. Int'l Trade 2010)

3) Nufarm America's, Inc. v. United States, 29 C.I.T. 1317, 398 F. Supp. 2d 1338 (Ct. Int'l Trade 2005)

4) Nufarm America's, Inc. v. United States, 31 C.I.T. 203, 477 F. Supp. 2d 1290 (Ct. Int'l Trade 2007), aff'd, 521 F.3d 1366 (Fed. Cir. 2007), cert. denied, 2008 U.S. LEXIS 8336 (Nov. 10, 2008)

5) PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n, 30 C.I.T. 858, 442 F. Supp. 2d 1329 (Ct. Int'l Trade 2006)

6) PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n, 31 C.I.T. 1155, 502 F. Supp. 2d 1318 (Ct. Int'l Trade 2007)

7) United States v. Berke, 170 F.3d 882 (9th Cir. 1999) (Wallach, J., dissenting)

8) United States v. Etsitty, 140 F.3d 1274 (9th Cir. 1997) (per curiam), cert. denied, 1998 U.S. LEXIS 7317 (Nov. 16, 1998)

9) United States v. Sloan, 1998 U.S. App. LEXIS 5454 (9th Cir. June 11, 1997)

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

In the following cases, I sat by designation and authored a majority, dissenting or concurring opinion.

1) Boesch v. Sacco, 2003 U.S. App. LEXIS 9006 (3d Cir. Apr. 29, 2003)

The appellant's appeal of the district court's dismissal of her complaint was dismissed for lack of jurisdiction. The plaintiff failed the redressability prong of the Article III standing inquiry. She was unable to demonstrate that relief could be granted to her by the federal courts for the injury she alleged.

2) Boyce v. Barnhart, 66 Fed. Appx. 297, 2003 U.S. App. LEXIS 6004 (3d Cir. 2003)

The administrative law judge denied the plaintiff's application for disability, disability benefits, and Social Security income. We affirmed the decision because it was supported by substantial evidence.

3) Ho by Ho v. San Francisco Unified Sch. Dist., 147 F.3d 854 (9th Cir. 1998) (Wallach, J., dissenting)

I dissented from the majority opinion which found a lack of jurisdiction to hear an appeal regarding this desegregation case. Summary judgment should

have been granted at the trial level; there was sufficient information on the record to determine there were no genuinely contested facts to create a genuine issue or to deprive us of jurisdiction. Therefore, the trial court's denial of summary judgment should have been reversed.

4) Kulas v. Valdez, 159 F.3d 453 (9th Cir. 1998), cert. denied, 2000 U.S. LEXIS 1209 (Feb. 22, 2000) (Wallach, J., dissenting)

I dissented from the majority opinion, which upheld the qualified immunity of a prison doctor who forced an inmate to take medication. I argued that the forced medication of the inmate was not reasonably within the scope of the order of the judge who had committed the inmate to an institution after determining him momentarily incompetent to stand trial.

5) Neal v. Comm'r of Soc. Sec., 57 Fed. Appx. 976 (3d Cir. 2003)

The administrative law judge's decision regarding the onset of appellant's disability for the purposes of Social Security disability benefits was upheld as being supported by substantial evidence. Therefore the district court's affirmation of the administrative law judge's decision was affirmed.

6) United States v. Berke, 170 F.3d 882 (9th Cir. 1999) (Wallach, J., dissenting)

I dissented from the majority opinion, which upheld the district court's determination that the defendant knowingly and voluntarily waived his First Amendment rights with regards to a consent decree that permanently enjoined him from involvement in the production, sale, or distribution of any sexually explicit materials. In my view, the consent decree acted in part as a prior restraint on the defendant's First Amendment rights and therefore was void as contrary to public policy.

7) United States v. Brannon, 146 F.3d 1194 (9th Cir. 1998) (Wallach, J., dissenting)

I dissented from the majority opinion that upheld the district court's decision to admit evidence from an uncompleted breathalyzer test. In my view, the government had not shown that the results of the partial breathalyzer test were reliable under Daubert.

8) United States v. Etsitty, 140 F.3d 1274 (9th Cir. 1997) (per curiam), cert. denied, 1998 U.S. LEXIS 7317 (Nov. 16, 1998)

We affirmed the defendant's convictions for kidnapping and assault with a dangerous weapon, as the defendant's brother's suicide note was properly excluded.

9) United States v. McElyea, 158 F.3d 1016 (9th Cir. 1998)

We affirmed the conviction of the lower court but remanded the case for resentencing, because we held that, under the Armed Career Criminal Act, the appellant's previous burglaries "arose out of a single criminal episode."

10) United States v. Parmelee, 319 F.3d 583 (3d Cir. 2003)

The plaintiff was charged with four counts of possession of child pornography using media that traveled in interstate commerce. We reversed the plaintiff's sentence and remanded for re-sentencing consistent with the Sentencing Guidelines.

11) United States v. Shumway, 199 F.3d 1093 (9th Cir. 1997) (Wallach, J., concurring)

I concurred with the majority and wrote separately to highlight a particular aspect of mining that was important to the decision.

12) United States v. Torres, 56 Fed. Appx. 556 (3d Cir. 2002)

We affirmed the district court's determination that the defendant was the leader or supervisor in a drug importation conspiracy, an aggravating factor under the U.S. Sentencing Guidelines Manual § 3B1.1.

In the following cases, I sat by designation on a federal court of appeals and joined the majority opinion.

1) Allen v. Great Am. Ins. Co., 1998 U.S. App. LEXIS 8370 (9th Cir. Apr. 27, 1998)
2) Bailey v. United States, 1997 U.S. App. LEXIS 17443 (9th Cir. June 11, 1997)
3) Blixt v. Stockton Unified Sch. Dist., 1997 U.S. App. LEXIS 19978 (9th Cir. July 30, 1997)
4) Californians for Safe & Competitive Dump Truck Transp. v. Mendonca, 152 F.3d 1184 (9th Cir. 1998), cert. denied, 1999 U.S. LEXIS 2508 (Apr. 5, 1999)
5) Cann v. Woodborough Dev. Co. (In re Woodborough Dev. Co.), 1997 U.S. App. LEXIS 25175 (9th Cir. Sept. 15, 1997)
6) Concrete Equip. v. Fox (In re Vigil Bros. Constr.), 1997 U.S. App. LEXIS 17197 (9th Cir. July 7, 1997)
7) D.C. Hollingsworth Enters. v. United States, Dep't of Agric., 1998 U.S. App. LEXIS 11755 (9th Cir. June 2, 1998)
8) Fonteno v. Equitable Life Assur. Soc'y of the United States, 1997 U.S. App. LEXIS 19776 (9th Cir. July 28, 1997)

9) Foodland Supermarket v. Hamada, 1997 U.S. App. LEXIS 30045 (9th Cir. Oct. 23, 1997)

10) Gonzales-Neyra v. INS, 133 F.3d 726 (9th Cir. 1997)

11) Gonzalez v. INS, 1997 U.S. App. LEXIS 19779 (9th Cir. June 9, 1997)

12) Lopez-Smith v. Hood, 121 F.3d 1322 (9th Cir. 1997)

13) Luan v. INS, 1997 U.S. App. LEXIS 26543 (9th Cir. June 13, 1997)

14) Nelson v. United States, 1997 U.S. App. LEXIS 17189 (9th Cir. June 11, 1997)

15) Nickel v. Bank of Am. Nat'l Trust & Sav. Ass'n, 1997 U.S. App. LEXIS 19307 (9th Cir. June 12, 1997)

16) O'Hara v. Teamsters Union Local #856, 151 F.3d 1152 (9th Cir. 1998)

17) Pherson v. Chater, 1997 U.S. App. LEXIS 21587 (9th Cir. June 13, 1997)

18) Rhinehart v. IBM, 1997 U.S. App. LEXIS 21589 (9th Cir. June 9, 1997)

19) Rodriguez v. INS, 1997 U.S. App. LEXIS 24657 (9th Cir. June 9, 1997)

20) Security Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999 (9th Cir. 1997)

21) Security Farms v. Int'l Bhd. of Teamsters, 2000 U.S. App. LEXIS 1557 (9th Cir. Dec. 6, 1999)

22) Sherber v. O'Brien Corp., 1997 U.S. App. LEXIS 19109 (9th Cir. June 10, 1997)

23) Sierra Club v. Babbitt, 1998 U.S. App. LEXIS 7915 (9th Cir. Apr 14, 1998)

24) Simpson v. City of Reno, 1997 U.S. App. LEXIS 17425 (9th Cir. June 10, 1997)

25) Stoimenov v. INS, 1998 U.S. App. LEXIS 9538 (9th Cir. Apr. 13, 1998)

26) Suma Fruit Int'l v. Albany Ins. Co., 122 F.3d 34 (9th Cir. 1997)

27) SVT Corp. v. Federal Express Corp., 1998 U.S. App. LEXIS 17791 (9th Cir. Apr. 17, 1998)

28) United States Fid. & Guar. Co. v. Riggs, 1997 U.S. App. LEXIS 19775 (9th Cir. June 13, 1997)

29) United States v. Atkins, 1998 U.S. App. LEXIS 12567 (9th Cir. Apr. 15, 1998)

30) United States v. Aviles, 216 F.3d 881 (9th Cir. 2000)

31) United States v. Aviles, 1998 U.S. App. LEXIS 38820 (9th Cir. Apr. 14, 1998), cert. denied 1999 U.S. LEXIS 5461 (Oct. 4, 1999)

32) United States v. Cretacci, 1998 U.S. App. LEXIS 11754 (9th Cir. Apr. 14, 1998)

33) United States v. Dee, 1997 U.S. App. LEXIS 22448 (9th Cir. Apr. 14, 1998), cert. denied, 1998 U.S. LEXIS 5015 (Oct. 5, 1998)

34) United States v. Doe, 149 F.3d 945 (9th Cir. 1998), cert. denied, 1998 U.S. LEXIS 7208 (Nov. 9, 1998)

35) United States v. Fredericks, 1998 U.S. App. LEXIS 10350 (9th Cir. Apr. 16, 1998), cert. denied, 1998 U.S. LEXIS 6292 (Oct. 5, 1998)

36) United States v. Guerrero-Acosta, 1998 U.S. App. LEXIS 12855 (9th Cir. Apr. 14, 1998), cert. denied, 1998 U.S. LEXIS 6796 (Oct. 19, 1998)

37) United States v. Liddawi, 1998 U.S. App. LEXIS 20111 (Aug. 12, 1998)

38) United States v. Liddawi, 1998 U.S. App. LEXIS 9780 (9th Cir. Apr. 15, 1998), cert. denied, 1999 U.S. LEXIS 335 (Jan. 11, 1999)

39) United States v. Lobo-Osuna, 1998 U.S. App. LEXIS 8995 (9th Cir. Apr. 14, 1998)

40) United States v. Madera-Reyes, 1998 U.S. App. LEXIS 11753 (9th Cir. Apr. 16, 1998)

41) United States v. McDermott, 1997 U.S. App. LEXIS 27194 (9th Cir. June 13, 1997)

42) United States v. Ordaz, 145 F.3d 1111 (9th Cir. 1998)

43) United States v. Padilla, 1998 U.S. App. LEXIS 9496 (9th Cir. Dec. 10, 2002)

44) United States v. Preusch, 1997 U.S. App. LEXIS 19225 (9th Cir. June 11, 1997)

45) United States v. Sloan, 1998 U.S. App. LEXIS 5454 (9th Cir. June 11, 1997)

46) United States v. Wallen, 1997 U.S. App. LEXIS 21604 (9th Cir. June 13, 1997)

47) United States v. Washington, 1998 U.S. App. LEXIS 8842 (9th Cir. Apr. 16, 1998)

48) Vera-Valera v. INS, 147 F.3d 1036 (9th Cir. 1997)

49) Booker v. Doe, 368 Fed. Appx. 186 (2d Cir. 2010)

50) Duemmel v. Fischer, 368 Fed. Appx. 180 (2d Cir. 2010)

51) Murphy v. Allied World Assur. Co. (U.S.), 370 Fed. Appx. 193 (2d Cir. 2010)

52) Robinson v. Citibank S.D., N.A., 368 Fed. Appx. 185 (2d Cir. 2010)

53) Terreri v. Astrue, 368 Fed. Appx. 204 (2d Cir. 2010)

54) Travelers Indem. Co. v. Kabir, 368 Fed. Appx. 209 (2d Cir. 2010)

55) United States v. Harper, 374 Fed. Appx. 124 (2d Cir. 2010)

56) United States v. Lee, 368 Fed. Appx. 183 (2d Cir. 2010)

57) United States v. Rodriguez, 368 Fed. Appx. 178 (2d Cir. 2010)

58) Walker v. Univ. of Rochester, Strong Mem'l Hosp., 368 Fed. Appx. 188 (2d Cir. 2010), cert. denied, 2010 U.S. LEXIS 5958 (Oct. 4, 2010)

59) Warren v. Goord, 368 Fed. Appx. 161 (2d Cir. 2010)

60) Wetherby v. Astrue, 368 Fed. Appx. 199 (2d Cir. 2010)

61) Buffa v. N.J. State Dep't of Judiciary, 56 Fed. Appx. 571 (3d Cir. 2003)

62) Davis v. Ashcroft, 57 Fed. Appx. 968 (3d Cir. 2003)

63) Eeoc v. Hesco Parts Corp., 57 Fed. Appx. 518 (3d Cir. 2003)

64) Fed. Home Loan Mortg. Corp. v. Scottsdale Ins. Co., 316 F.3d 431 (3d Cir. 2003)

65) Gibbons v. Anton Noll, Inc. (In re RFE Indus.), 65 Fed. Appx. 405 (3d Cir. 2003)

66) Gibbons v. Anton Noll, Inc. (In re RFE Indus.), 59 Fed. Appx. 501 (3d Cir. 2003)

67) Matlin v. Langkow, 65 Fed. Appx. 373 (3d Cir. 2003)

68) Nembhard v. United States, 56 Fed. Appx. 73 (3d Cir. 2002)

69) Palm Bay Imps., Inc. v. Miron, 55 Fed. Appx. 52 (3d Cir. 2002)

70) Rivera v. Cont'l Airlines, 56 Fed. Appx. 567 (3d Cir. 2010)

71) Scopia Mortg. Corp. v. Greentree Mortg. Co., L.P., 56 Fed. Appx. 93 (3d Cir. 2003)

72) United States v. Martinez, 54 Fed. Appx. 761 (3d Cir. 2002)

73) United States v. Reyes, 56 Fed. Appx. 559 (3d Cir. 2002)

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

    a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

    b. a brief description of the asserted conflict of interest or other ground for recusal;

    c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I assess the necessity and propriety of recusal in accordance with 28 U.S.C. §§ 144 and 455 as well as the Code of Conduct for United States Judges.

I am not aware of any cases, motions or matters that came before me in which a litigant or party requested that I recuse myself due to an asserted conflict of interest. The U.S. Court of International Trade's Case Management / Electronic Case File System (CM/ECF), which encompasses case activity since 2001, contains no records of any such requests by a litigant or party. It also contains no records of any instances where I recused myself sua sponte.

Because I participate in automated conflict checking through CM/ECF, cases that would otherwise have been assigned to me may have been automatically assigned to another judge without my knowledge.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than judicial office. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member Democratic Party of Nevada, 1976 – 1995

General Counsel, Nevada Democratic Party, 1982 – 1987 and 1989 – 1995 (with breaks in service while on military duty)
General legal representation including appearances before the Federal Election Commission

General Counsel, Nevada Assembly Democratic Caucus, 1982 – 1995
General legal representation including appearances before the Federal Election Commission

Harry Reid campaigns for House of Representatives, 1982 and 1984; United States Senate, 1986 and 1992; 1982 – 1987 and 1989 – 1995 (with breaks in service while on military duty)

No title; served as general counsel, speech writer, researcher and policy advisor; defended and filed Federal Election Complaints, and provided representation before the Ethics Committee of the House of Representatives

Richard Bryan, campaigns for United States Senate, 1988; Governor, 1982, 1986

No title; served as general counsel and researcher; defended Federal Election Complaint

Rep. James H. Bilbray, General campaign legal advice, 1986 – 1994

Albert Gore, Jr. President, 1988

State Director, Nevada and Arizona; organized campaign staff, volunteers and strategy

Walter Mondale, President 1984

Chair, Nevadans for Mondale, personal candidate representative

Delegate, 1984 and 1988, and alternate, 1980, to Democratic National Conventions

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

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

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

I did not serve as a law clerk to a judge.

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

I did not practice alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1976 – 1995
Lionel Sawyer & Collins
300 South Fourth Street
Las Vegas, Nevada 89101
Associate (1976 – 1983)
Partner (1983 – 1995) (with breaks in employment in 1987 to 1988 to work for Sen. Harry Reid, and in 1991 for active duty service, United States Army)

1987 – 1988
United States Senator Harry Reid
United States Senate
Office of the Majority Leader, S-221
The Capitol
Washington, D.C. 20510
General Counsel and Public Policy Advisor (on unpaid leave from law firm)

1991
United States Army
Office of the Judge Advocate General of the Army
International Affairs Division
The Pentagon
Washington, D.C. 20310
Active Duty Attorney-Advisor (on unpaid leave from law firm)

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

I have not served as a mediator.

b. Describe:

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

From 1977 to 1986, I had a general litigation practice with emphasis on Employee Retirement Income Security Act (ERISA) collection litigation. The bulk of my work involved representation of trustees of employee benefit trust funds to collect unpaid benefits. In addition, I was engaged in

a general practice with increasing emphasis on representing Nevada's media.

From 1987 to 1995, I had a general litigation practice with emphasis on media law and with a significant amount of appellate practice before the Nevada Supreme Court and the United States Court of Appeals for the Ninth Circuit. From 1987 forward, the bulk of my work involved representing media companies in Nevada in work other than broadcast licensing. I obtained access to information for reporters and protected their work against subpoenas. I defended libel actions. I also did the business work associated with a newspaper including employee grievances, pollution issues, collection actions, copyright protection and general legal counsel.

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

Typical clients from 1977 to 1986 included ERISA-regulated employee benefit trust funds. Typical clients from 1987 to 1995 included the Nevada State Press Association, the Las Vegas Review Journal, the Society of Professional Journalists and various other newspapers and electronic media outlets.

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

I appeared in court frequently. While the number of trials varied from year to year (many of the non-trial appearances were evidentiary proceedings to establish damages where liability had been established by summary judgment) the frequency of court appearances did not, except for those periods when I was on leave from the firm to work for Sen. Reid or the Army.

i. Indicate the percentage of your practice in:
   1. federal courts: 20%
   2. state courts of record: 80%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 99%
   2. criminal proceedings: 1%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

My records indicate that for the period between 1982 and 1995 I tried twenty trials, in all but one as lead counsel.

i. What percentage of these trials were:
   1. jury: 10%
   2. non-jury: 90%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Operating Engineers Pension Trust v. G. C. Wallace, Inc., Case No. CV-S-91-026-PMP (RLH), United States District Court for the District of Nevada, Judge Philip M. Pro (1993 – 1995).

This was an ERISA collection action claiming alter-ego. Twenty days before all motions were due I was retained by the main defendant (G. C. Wallace, Inc.) at the request of its past counsel to try the case. I had previously represented only plaintiffs in ERISA collection actions. Upon review of the extensive file (including a file of an earlier connected case on similar issues which had been tried and lost, and lost again on appeal to the Ninth Circuit), I determined that our client was entitled to a summary judgment. I assembled evidence, researched the issues, and wrote, filed and argued a Motion for Summary Judgment. That Motion was granted and later affirmed on appeal in an unpublished opinion by the Ninth Circuit. See Operating Eng'rs Pension Trust v. G.C. Wallace, Inc., No. 93-

15421, 1994 WL 521194 (9th Cir. Sept. 23, 1994). I also wrote, filed and argued a Motion for Sanctions pursuant to Fed. R. Civ. P. 11, and 28 U.S.C. § 1927 and ERISA, which resulted in an award of attorneys fees against plaintiffs and their counsel for more than $100,000. See Operating Eng'rs Pension Trust v. G.C. Wallace, Inc., 159 F.R.D. 536 (D. Nev. 1994).

Co-Counsel for G.C. Wallace:

Kevin C. Efroymson
2915 West Charleston Boulevard, #9
Las Vegas, Nevada 89102
(702) 870-9601

Co-Counsel for Co-Defendant Surveyors, Inc.:

Richard A. Avila
5711 Alfred Drive
Las Vegas, Nevada 89108
(702) 877-0141

Co-Counsel for Plaintiffs:

Kevin B. Christiansen
Christiansen & Boggess
7440 West Sahara Avenue
Las Vegas, Nevada 89117
(702) 255-1718

Michael Urban
Jett & Laquer
800 Bellevue Way, NE, Suite 300
Bellevue, Washington
(206) 637-3009

2. Hawley v. Hall, Case No. CV-S-88-259-LDG (RJJ), United States District Court for the District of Nevada, Magistrate Judge Robert J. Johnson (1990).

This was an action for alleged wrongful termination and civil rights violations by the former Las Vegas City Clerk against the City Manager, Mayor, and other public officials. Defendants moved for a protective order to seal any depositions taken in the case. I successfully moved to intervene on behalf of the Las Vegas Review Journal and successfully opposed the Motion for Protective Order. Reported at Hawley v. Hall, 131 F.R.D. 578 (D. Nev. 1990). This argument resulted in a major extension of the law relating to access to discovery by the press in suits involving public officials.

Counsel for Plaintiff:

Eric Zubel
7251 West Lake Mead Boulevard, Suite 300
Las Vegas, Nevada 89128
(702) 369-3369

Counsel for Defendant Hall:

William R. Morse
Morse & Mobray
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
(702) 384-6340

Counsel for Other Defendants:

Roy A. Woofter
218 601 Greenway Road #D
Henderson, Nevada 89002
(702) 598-4620

3. United States v. Spencer, Case No. CR-S-92-276-LDG (RLH), United States District Court for the District of Nevada, Judge Lloyd D. George (1993).

In this criminal case, the defendant sought to subpoena information from a Las Vegas television station. I moved to quash on behalf of the media witnesses. The court denied the motion (one of only two such denials out of a number filed between 1990 and 1995). I moved for reconsideration or withdrawal of the Order Denying the Motion to Quash. That motion was also denied although the court issued an order clarifying its previous ruling.

Counsel for the United States:

Thomas O'Connell
Office of the United States Attorney
701 East Bridger, Suite 800
Las Vegas, Nevada 89101
(702) 388-6336

Counsel for Defendant:

Dwight E. Duncan
Federal Public Defender
330 South Third Street, Suite 700
Las Vegas, Nevada 89101
(702) 388-6577

4. Bart v. City of Caliente, Case No. CV-LV-82-277 (RDF), United States District Court for the District of Nevada, Judge Lloyd D. George (1984 – 1985).

I represented the city of Caliente, Nevada, and its elected officials in the defense of an action for wrongful termination and defamation. My examination of witnesses demonstrated that plaintiff, the former city constable, could only have based the gravamen of his Complaint upon illegally obtained wiretap evidence. The case was resolved in favor of defendants by a motion pursuant to Fed. R. Civ. P. 41(b) at the close of plaintiff's evidence. In a later Motion for Sanctions, the court awarded attorney's fees and costs pursuant to Fed. R. Civ. P. 11 against plaintiff and his counsel.

Counsel for Plaintiff:

Marilyn V. Romanelli
1404 South 17th Street
Las Vegas, Nevada 89104
(702) 384-7852

5. Dick v. United States and Sandia Corp., Case No. CIV-LV 81-208 RDF, United States District Court for the District of Nevada, Judge Roger D. Foley (1987 – 1993).

Plaintiff alleged that he had been exposed to ionizing radiation during his employment by defendant Sandia, which allegedly caused cancer. On behalf of Sandia I researched, wrote and filed a Motion to Dismiss based on various immunities, including governmental immunity doctrines and workers' compensation defenses. All motions by other defendants were decided adverse to them. The Court, however, repeatedly stated that while it was aware of my pending motion it had not yet determined how to rule. That motion placed my client in an extremely advantageous position since the Court did not rule on it for over six years. Eventually, on the eve of trial, when all other counsel were consulting with the Court, and my client had still not filed an answer and could not be taken to trial, the United States Congress modified the Federal Tort Claims Act and the government substituted into the case in place of my client, and settled the matter.

Counsel for Co-Defendant United States:

Leon B. Taranto (formerly with Torts Branch, Civil Division, United States Department of Justice)
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
(202) 772-5846

Counsel for Co-Defendant Reynolds Electrical & Engineering:

John Thorndal
Thorndal, Armstrong, Delk, Balkenbush & Elsinger
1100 East Bridger Avenue
Las Vegas, Nevada 89101
(702) 366-0622

Counsel for Plaintiff:

Larry C. Johns
3107 East Charleston Boulevard #30
Las Vegas, Nevada 89104
(702) 387-5003

6. Trustees v. Sparks, Adv. 82-0942, United States Bankruptcy Court for the District of Nevada, Judge Clive Jones (1985 – 1986).

In this case on behalf of the Trustees of an ERISA regulated trust, I filed a motion which set aside a discharge in bankruptcy, filed an adversary proceeding, and then filed and won a detailed and factually complex Motion for Summary Judgment for Non-Dischargability for bankruptcy fraud. The debtor had transferred and concealed assets, set up a new business under a new name, and did business through hidden bank accounts. Through extensive discovery I determined sufficient facts to support a successful motion for summary judgment. When I argued this motion, a number of a long-time bankruptcy attorneys in the courtroom indicated their skepticism when I said to the judge that the plaintiffs were moving for a summary judgment for non-dischargability based on fraud. The judge granted the motion, despite commenting that he was known for not granting summary judgments, especially in fraud cases.

Opposing Counsel:

John E. Kelly
2211 Paradise Road
Las Vegas, Nevada 89104
(702) 369-2111

7. Trustees v. Whittaker Plastering, Case No. A 213788, Eighth Judicial District Court for the State of Nevada, Judge Myron E. Leavitt (1984 – 1985).

This was a large and complex action to collect unpaid employee benefit trust fund contributions in which I represented the trustees of ERISA regulated trusts. The case involved multiple time periods of liability with differing grounds for liability in each (liability was established by a summary judgment motion I wrote and argued) as well as a trial involving complex proof of damages during those differing time periods with the testimony of competing expert witnesses. The judge specifically complimented me on my handling of the case and later requested the charts I had created for trial for use in a seminar on how counsel should use demonstrative evidence.

Counsel for Defendants:

John F. O'Reilly
O'Reilly Law Group
325 South Maryland Parkway, #1
Las Vegas, Nevada 89101
(702) 382-2500

Donald Haight
8972 West Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 862-8200

8. Klas v. Caesars Palace, Case No. A 329704, Eighth Judicial District Court for the State of Nevada, Judge John S. McGroarty (1994 – 1995).

On behalf of Caesars Palace Casino, I successfully rewrote and argued a Motion for Judgment on the Pleadings in a high profile case involving the interplay of federal Internal Revenue Service tip withholding regulations and Section 401(k) employee retirement plans. The motion was previously written and argued by another attorney and denied. I rewrote the motion and re-argued before the same Judge, and despite his reluctance convinced him to grant a Judgment on the Pleadings and a Summary Judgment.

Opposing Counsel:

John Brannelly
4632 South Maryland Parkway, Suite 20
Las Vegas, Nevada 89101
(702) 386-3999

9. Fox v. Wines, Case No. 8796, Fifth Judicial District Court for the State of Nevada, Judge Stanley Smart (1979).

In my first trial as lead counsel and in a high profile proceeding, I successfully defended a removal action against my client, the incumbent Sheriff of Nye County, Nevada. Plaintiff, who was a former deputy terminated by the Sheriff, sought to remove her from office on grounds of misfeasance and malfeasance. Under Nevada law, a removal action had to be tried within twenty days after filing. I prepared a motion and successfully argued it, striking most of plaintiff's claims. The case went to a bench trial on the remaining allegations. After my cross examination of the plaintiff, the District Court judge trying the case told counsel that he did not believe a word the plaintiff had said.

Opposing Counsel:

Jerry Collier Lane
630 South Third Street
Las Vegas, Nevada 89101
(775) 329-2936

10. DiPietro v. WTMJ, Inc., Case No. A318148, Eighth Judicial District Court for the State of Nevada, Judge Jack Lehman (1993).

This was the defense of an action for defamation brought by a plaintiff who complained about the broadcast of the image of his face in a television story he found objectionable. I participated in preparing a retraction, successfully moved to dismiss all claims for general and punitive damages, and then settled the case for a minimal payment following discovery on special damages.

Opposing Counsel:

David Riddle
1850 East Flamingo Road
Las Vegas, Nevada 89119
(702) 408-3800

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

1. I represented Nevada Army National Guard soldiers in hearings before disciplinary and separation boards and appeals from those boards, and in appeals

of determinations relating to statements of charges for lost, missing or damaged government property, and to whether injuries or illnesses were incurred in the line of duty.

2. I represented members of the Nevada Press Association in open government complaints before the Attorney General of Nevada and various county district attorneys in Nevada.

3. I served as counsel for Sen. Harry Reid, Sen. Richard Bryan, Rep. James Bilbray, the Nevada Democratic Party, and the Nevada Assembly Democratic Caucus. In that representation I have appeared before the Federal Election Commission and the Ethics Committee of the House of Representatives.

4. I represented various clients before the Nevada State Contractors Board, Nevada Industrial and Occupational Safety and Health Division, and the Labor Commissioner of the State of Nevada.

5. Between 1990 and 1995, I created and operated the Nevada Press Association telephone hotline which provided free legal advice to reporters and newspapers.

6. I wrote the Legal Handbook for Nevada Reporters for the Nevada Press Association.

7. Between 1989 and 1995, I created and operated the "Battle Born Brigade hotline" which provided free legal advice to Army National Guard members and other United States military personnel.

8. Prior to my activation for Operation Desert Storm I provided, pro bono and in my free time, over two hundred wills for Nevada National Guard and military reserve personnel who were subject to activation.

9. I served as a Senior Editor for the Nevada Civil Practice Manual (Third Edition, 1993) and author of a chapter of that book (attached under writings).

10. I drafted legislation and lobbied for the Nevada State Press Association at the Nevada Legislature for open meeting and open records laws and reporters' shield laws.

11. I represented, pro bono, Clark County school librarians before the Clark County Commission when there was an attempt to remove certain books from school libraries.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

1. Public International Law

   University of Nevada Las Vegas, Political Science Department, 1981 to 1982.

   I do not have a course syllabus but the general subject matter of the course was sources of international law, existence and recognition of states and governments, territorial sovereignty, law of the sea, state jurisdiction including privileges and immunities, legal responsibility of states, human rights, international treaties, state succession, and international organizations including international tribunals.

2. Law of War

   a. New York Law School, 1997, 1998, 2000, and 2005

   b. Brooklyn Law School, 2001 to present

   c. George Mason Law School, 2004

   d. Fachspezifische Fremdsprachenausbildung (FFA), University of Muenster, 2001 to 2008

   The syllabus for this course at all these law schools is the same. A copy is supplied and the on-line course casebook was supplied in response to Question 12a.

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

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I have no specific plans, commitments or agreements, but I expect I will continue to teach law of war should the opportunity arise.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

My wife, Dr. Katherine C. Tobin, was Deputy Assistant Secretary of Education for Performance Improvement from 2009 until February 2011. If any matter came before me in which she had been involved, I would recuse myself. Hearing a case involving any publicly-traded corporations in which I hold stock, which currently includes General Electric, Alcatel-Lucent, LSI Corporation, or MVC Corporation, would constitute a conflict of interest and I would recuse myself.

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

In my present position, I always review a case assigned to me to determine if a potential conflict exists, by adhering to 28 U.S.C. § 455, other relevant statutes, the Code of Conduct for United States Judges, and any applicable policies and procedures of the United States Courts and of the United States Court of International Trade. If a conflict is evident I will recuse myself. If there is a potential for conflict I advise counsel and discuss recusal on the record. If confirmed for this position I will observe the same practice.

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

I performed extensive pro bono work as a lawyer for military personnel, media persons and entities, and political persons and organizations. This work has included creating and providing all services for legal hotlines for journalists and for military personnel between 1989 and 1995; drafting over 200 wills for military personnel; representing political persons and organizations without charge before the Federal Election Commission; and

representing school librarians, journalists, and media entities without charge or at a reduced rate. In addition, all services provided to political candidates and party organizations between 1977 and 1995 were without charge. In 1994, my last full year of practice, I devoted over 600 hours to pro bono work. I am no longer obligated under Canon 2 of the American Bar Association's Code of Professional Responsibility, and cannot, of course, practice law as a sitting judge. However, as a member of the International Judicial Relations Committee of the Judicial Conference of the United States I have devoted a considerable amount of work to assistance to foreign judiciaries through travel, teaching and writing.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I have long been interested in public service at the Circuit Court level, and Senator Reid has been very supportive of this desire. As far as I know, because of his requests I participated in interviews at the White House with Deputy White House Counsel and/or White House Counsel for various Circuits in January 2009, July 2009, and July 2010. Since February 4, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 28, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Wallach, Evan J.	Federal Circuit	07/28/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge	☑ Nomination, Date 07/28/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 07/26/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
U.S. Court of International Trade One Federal Plaza New York, NY 10278	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	WWH Partnership (Investment Partnership)
2.	Member	Speedway Stone Associates, LLC (Investment)
3.	Board of Advisors	International Humanitarian Law Clinic at Emory Law School
4.	Member	American Law Institute
5.	Honorary Fellow	Hughes Hall College
6.	Executor	Estate #1
7.	Trustee	Trust #1

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Wallach, Evan J.	Date of Report 07/28/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2011	Brooklyn Law School-Teaching	$8,200.00
2.	2010	Brooklyn Law School Teaching	$8,200.00
3.	2009	Brooklyn Law School Teaching	$8,200.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2011	US Department of Education, Salary
2.	2010	US Department of Education, Salary
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting	Date of Report
	Wallach, Evan J.	07/28/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Wallach, Evan J.	07/28/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Citibank Cash	A	Interest	J	T	Exempt				
2. Citibank Cash	A	Interest	K	T					
3. Chase Bank Household Escrow Account	A	Interest	J	T					
4. Charles Schwab Cash	A	Int./Div.	L	T					
5. Fidelity Contrafund (IRA)	B	Dividend	L	T					
6. Fidelity Magellan (IRA)	C	Dividend	L	T					
7. Fidelity Puritan (IRA)	B	Dividend	L	T					
8. TIAA-Traditional	B	Interest	K	T					
9. TIAA-CREF Stock	D	Dividend	L	T					
10. TIAA-Growth Stock	A	Dividend	J	T					
11. TIAA-Global Equities	C	Dividend	K	T					
12. TIAA-Soc Ch	C	Dividend	L	T					
13. Addison Ave- Federal Credit Union	A	Dividend	J	T					
14. Fidelity Advisor Ser. I Equity Growth (IRA)	A	Dividend	L	T					
15. Fidelity Advisor Equity Port Income (IRA)	A	Dividend	K	T					
16. Franklin Strategic Biotechnology (IRA)	A	Dividend	L	T					
17. Growth Fund America (IRA)	A	Dividend	K	T					

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Wallach, Evan J.	07/28/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of spouse and dependent children; see pp. 34-58 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Seligman Communications & Information Fund (IRA)	A	Dividend	K	T					
19. Alcatel-Lucent Corp Commonstock (IRA)	A	Dividend	J	T					
20. General Electric Co (IRA)	B	Dividend	K	T					
21. LSI Corp (IRA)	A	Dividend	J	T					
22. Microsoft Corp (IRA)	A	Dividend	K	T					
23. MVC Capital (IRA)	B	Dividend	K	T					
24. Pfizer Incorporated (IRA)	A	Dividend			Exempt				
25. Wells Fargo Cash (IRA)	A	Interest	K	T					
26. Wells-Fargo First Clearing, LLC	E	Distribution			Exempt				
27. General Electric	A	Dividend			Exempt				
28. 1 Parcel Real Property, Tucson AZ (1/3) Interest	A	Rent	K	W					
29. 1 Parcel real Property, Tucson, AZ (1/3) Interest	A	Rent	M	W					
30. Trustee UBS Cash Account (Trust #1)	A	None	P1	T					

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Wallach, Evan J.	Date of Report 07/28/2011

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

The only asset WWH partership owns is one parcel of land in Tucson, (part VII line 28) and the only asset Speedway/Stone LLC owns is a contiguous parcel (part VII line 27).
I am the executor of Trust #1 whose sole asses is cash account referenced in line 30. Trust is in the process of being liquidated.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Wallach, Evan J.	Date of Report 07/28/2011

IX. CERTIFICATION.

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

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

Signature Evan J. Wallach

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		91	567	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		857	910	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		124	738
Real estate owned – see schedule	1	050	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		250	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		30	200				
				Total liabilities		124	738
				Net Worth	2	154	939
Total Assets	2	279	677	Total liabilities and net worth	2	279	677
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Alcatel-Lucent	$9,475
General Electric	48,133
LSI Corporation	3,862
Microsoft	27,664
MVC Capital	32,375
401(k) cash account	21,993
Growth Fund of America CLC	39,798
Columbia Seligman Comm'ns & Info. Fund	42,405
Fidelity Advisor Equity Income Class T	33,027
Fidelity Advisor Equity Growth Class T	75,951
Fidelity Contra Fund	116,561
Fidelity Magellan Fund	67,960
Fidelity Puritan	87,138
Franklin Biotechnology Discovery Fund	66,086
TIAA-Traditional	25,289
TIAA-CREF Global Equities	24,615
TIAA-CREF Growth	4,546
TIAA-CREF Social Choice	54,737
TIAA-CREF Stock	76,295
Total Listed Securities	$857,910

Real Estate Owned	
Personal residence	$750,000
2 undeveloped contiguous lots (1/3 interest)	300,000
Total Real Estate Owned	$1,050,000

Note: Not later than August 3, 2011, I will receive a distribution of approximately $430,000 as a 1/3 beneficiary of my parent's living trust

AFFIDAVIT

I, Evan J Wallach, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

26 July 2011
(DATE)

Evan J. Wallach
(NAME)

Linda Sue Sloane
(NOTARY)

LINDA SUE SLOANE
Notary Public, State of New York
No.01SL4634165
Qualified in New York County
Commission Expires June 30, 2014

Senator WHITEHOUSE. All right. I welcome each of the nominees who are here today. I congratulate you on the recommendation by my colleagues and your selection by the President of the United States as a candidate for a lifetime appointment on the U.S. Judiciary.

I'm delighted that you have brought family and friends with you. I think we'll just go right across the table, from my left to my right.

We'll start with Dana Christensen. If you would care to make any kind of an opening statement, Mr. Christensen, and recognize any family or friends or any expressions of appreciation you'd care to make, now is the time.

STATEMENT OF DANA CHRISTENSEN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MONTANA

Mr. CHRISTENSEN. Thank you, Senator. I want to thank this Committee for the privilege of this hearing. I would like to thank Senators Baucus and Tester for those very kind introductions. Obviously I'd like to thank the President for the honor of this nomination.

If I am confirmed by this Senate and sworn in, I understand that I will be the 17th Article 3 Federal judge in the history of the State of Montana, which is a very significant privilege and honor.

I have a small family, but a very close one. With me here today is my wife Stephanie. I met her 41 years ago when we were sophomores at Stanford University, and we spent last weekend celebrating our 37th wedding anniversary backpacking for three days and two nights along the Highline Trail in Glacier National Park. If Senators Baucus and Tester were still here, they could attest to the fact that that's one of the most beautiful places in the world.

I also have with me here today my brother-in-law, Jack Adalaar, who is a lawyer in Vancouver, British Columbia and an avid and very well-informed student of American government and American politics.

Watching on webcast either live or this evening is my 32-year-old daughter, who is a special education teacher in Seattle. She and her fiance Josh live there, and she's currently with her 5th grade students. My 29-year-old son and his wife Anya live in San Francisco and he works for a small venture capital company in Palo Alto.

I have obviously a number of other family members and very close friends: my law partners for many years, the wonderful folks that work in my office that are all watching this, presumably live, and I want to thank you again for this opportunity.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Dana Lewis Christensen

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

   United States District Judge for the District of Montana

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Christensen, Moore, Cockrell, Cummings, & Axelberg, P.C.
   P.O. Box 7370
   145 Commons Loop, Suite 200
   Kalispell, Montana 59904

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

   1951; New York, New York

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1973 – 1976, University of Montana School of Law; J.D., 1976

   1969 – 1973, Stanford University; B.A., 1973

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1996 – Present
Christensen, Moore, Cockrell, Cummings & Axelberg, P.C.
145 Commons Loop, Suite 200
P.O. Box 7370
Kalispell, Montana 59904
Founding Shareholder, President

1981 – 1996
Murphy, Robinson, Heckathorn & Phillips, P.C.
P.O. Box 759
Kalispell, Montana 59904
Shareholder

1977 – 1981
Moulton, Bellingham, Longo & Mather, P.C.
P.O. Box 2559
Billings, Montana 59103
Associate

1975 – 1976
Garlington, Lohn & Robinson, PLLP
199 West Pine
P.O. Box 7909
Missoula, Montana 59807
Legal intern

Other affiliations (uncompensated):

2003 – 2011
The Montana Nature Conservancy
32 South Ewing, Suite 215
Helena, Montana 59601
Trustee (2003 – 2011)
Chair of the Board of Trustees (2008 – 2011)

1992 – 1998
Flathead Festival
No physical address
Board Member (1992 – 1998)
President of the Board (1995 – 1996)

1992 – 1993
Montana Defense Trial Lawyers
36 South Last Chance Gulch, Suite A
Helena, Montana 59601
President

1985 – 1992
Friendship House
606 Second Avenue West
Kalispell, Montana 59901
Board Member

1981 – 1985
Kalispell Chamber of Commerce
15 Depot Park
Kalispell, Montana 59901
Board Member

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I did not serve in the U.S. Military. I registered for the Selective Service upon turning 18.

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

   Chambers USA – highest ranking ("Star Individual") (2008 – present)
   Super Lawyers – top 75 lawyers in northwest United States (2008 – present)
   Best Lawyers in America (1995 – present)
   Martindale-Hubbell AV ranking (1994 – present)
   Flathead County Bar Association "Boss of the Year" Award (1990)
   Recipient, University of Montana School of Law Award for highest grades in clinical and trial advocacy courses (1976)
   Member, University of Montana School of Law Moot Court Team (1975)
   Student Body President, Sentinel High School, Missoula, Montana (1968 – 1969)
   Governor, Montana Boys State (1968)
   Eagle Scout and Boy Scout God and Country Award (1966)

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

   Advisory Board of the Ninth Circuit (2010 – present)
   American Bar Association (1976 – present)
   American Board of Trial Advocates (1994 – present)
   American College of Trial Lawyers (ACTL), Fellow (2001 – present)
   Chair, Montana Chapter (2005 – 2006)

Association of Ski Defense Attorneys (1993 – 2002)
Defense Research Institute (DRI) (1990 – 2000)
Federal Bar Association (2003 – present)
Federal Court Local Rules Revision Committee (1999 – present)
International Association of Defense Counsel (IADC) (2000 – present)
Medical Defense & Health Law Committee (2000 – present)
Professional Liability Committee (2000 – present)
Montana Defense Trial Lawyers, Inc. (MDTL) (1985 – 2004)
President (1992 – 1993)
Montana Supreme Court Advisory Commission on Rules of Civil and Appellate Procedure (1998 – present)
Ninth Circuit Judicial Conference, Lawyer Representative (2007 – 2009)
State Bar of Montana (1976 – present)
State Bar of Montana Lawyers Helping Lawyers Network (1986 – present)
United States Supreme Court Historical Society (2001 – present)

I also served on the Merit Selection Panels which resulted ultimately in the appointments of U.S. District Court Judge Donald W. Molloy and U.S. Magistrate Judge Carolyn S. Ostby. I was chairperson of the panel associated with Judge Molloy's appointment.

At the request of U.S. Senator Max Baucus I vetted the names of U.S. Attorney applicants for the State of Montana in December 2008 – January 2009.

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

State Bar of Montana, 1976.

There have been no lapses in membership.

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

United States Court of Appeals for the Ninth Circuit, 1986.
United States District Court for the District of Montana, 1976.
Montana Supreme Court and Montana State Courts, 1976.

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Flathead Festival (non-profit organization that sponsored summer music festivals in Flathead County, Montana)
Board Member (1992 – 1998)
President of the Board (1995 – 1996)
Flathead Land Trust (2007 – present)
Friendship House (non-profit residential senior assisted living facility, Kalispell, Montana)
Board Member (1985 – 1992)
Governor's Advisory Council, Montana Department of Corrections (relating to treatment of alcoholism and chemical dependency at the Montana State Prison and other State of Montana facilities) (1988 – 1993)
Kalispell Chamber of Commerce
Board Member (1981 – 1985)
Montana Land Reliance (1998 – present)
The Montana Nature Conservancy
Trustee (2003 – 2011)
Chair of the Board of Trustees (2008 – 2011)
Trout Unlimited (1999 – present)
University of Montana School of Law
Development Committee (2005 – 2009)
Board of Visitors (1981 – 1984)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Two Montana Defense Trial Lawyers Association "President's Message" Editorials, both from 1992. Copies supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Report to the Montana Supreme Court Advisory Commission on Rules of Civil and Appellate Procedure, dated April 18, 2008. Copy supplied.

Report to the Montana Supreme Court Advisory Commission on Rules of Civil and Appellate Procedure, dated January 12, 2008. Copy supplied.

Since 1999, I have served as a member of the Federal Court Local Rules Revision Committee. As a member, I have voted on multiple occasions to make changes to the procedural rules, but I have not authored any of these proposed amendments. I do not have a record of the amendments, but the current version of the local rules reflects the decisions of the committee. A version of the rules is available on-line at http://www.mtd.uscourts.gov/rules.htm.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

In July 2009, I endorsed an open letter from the Montana Chapter of the American Board of Trial Advocates about the jury verdict in a trial against W.R. Grace's mining operations. Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter.

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

November 13, 2009: Participant, Trial Demonstration of a personal injury case at the University of Montana School of Law, American Board of Trial Advocates. I gave the closing argument on behalf of the defense for a hypothetical automobile accident case. I have no notes, transcript or recording. The address of the ABOTA is 2001 Bryan Street, Suite 3000, Dallas, Texas 75201.

March 16, 2007: Seminar Presentation, CLE Institute State Bar of Montana, All Ethics, Nothing But Ethics, "Conflicts of Interest: Appearance of Impropriety," Butte, Montana. Outline supplied.

June 27, 2005: Presentation on Informed Consent, Northwest Montana Physicians Association. Outline supplied.

December 3, 2003: Presentation on Claims Handling, Northwest Montana Physicians Association. Outline supplied.

September 20, 2002: Keynote address, "A Tribute to Bill Bellingham," State Bar of Montana Annual Meeting. I discussed the role of mentors in the development of new attorneys. I have no notes, transcript or recording. The address of the State Bar is 7 West Sixth Avenue, Suite 2B, P.O. Box 577, Helena, Montana 59624.

July 27, 2000: Speech – "Preserving the Right to Trial by Jury," Montana Trial Lawyers Association "Seminar of the Masters," Polson, Montana. I have no notes, transcript or recording. The address of the MTLA is 32 South Ewing, Suite 312, P.O. Box 838, Helena, Montana 59624.

October 16-17, 1998: Seminar Presentation, ABOTA "Masters Trial Notebook – Montana Ultimate Trial Notebook (Direct Examination)," University of Montana School of Law, Missoula, Montana. Outline supplied.

In addition, from 1997 to 2009, I have served as a faculty member of an advanced trial advocacy course offered every spring at the University of Montana School of Law. This course is offered to approximately 20 second and third year law students and practicing attorneys, and is five days long. The faculty consists of practicing Montana trial lawyers, and the program is based on the NITA trial programs. The faculty members demonstrate certain aspects of a trial, and the students perform all aspects of a trial, from jury voir dire to closing arguments based on the fact scenario presented in the course materials. For the last ten years the course subject has involved a medical malpractice case. I have demonstrated jury voir dire, opening statement, direct and cross-examination of an expert, and closing argument. I have no notes, transcript or recording. The address of the School of Law is The University of Montana, Missoula, Montana 59812.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Jessica Headley, *Flathead Valley Man Nominated for District Judge Position*, NBCMontana.com, May 4, 2011. Copy supplied.

Tristan Scott, *Kalispell Attorney Dana Christensen Nominated to Replace Judge Molloy*, The Missoulian, Feb. 12, 2011 (quotes re-printed in multiple outlets). Copy supplied.

Tom Lutey, *Kalispell Attorney Recommended for U.S. Judge Molloy's Post*, The Billings Gazette, Feb. 11, 2011. Copy supplied.

Daniel Person, *Meet Donald Molloy, Missoula Judge Who Presided Over Wolf Case*, The Missoulian, Sept. 20, 2010. Copy supplied.

Matthew Brown, *Baucus Girlfriend Eyed US Attorney Post for Years*, Associated Press, Dec. 8, 2009. Copy supplied.

Charles S. Johnson, *Baucus Says Hanes Nomination Handled in "Above-Board Way," Despite Failure to Reveal Relationship*, The Missoulian, Dec. 8, 2009. Copy supplied.

Brody Mullins and Julie Jargon, *Baucus Tie to Nominee Kept Mum*, The Wall Street Journal, Dec. 7, 2009. Copy supplied.

John Grant Emeigh, *Montana Power Co. Shareholders Reach $115M Settlement with Defunct Company*, The Missoulian, Oct. 3, 2009. Copy supplied.

Tristan Scott, *Obama Still Hasn't Selected U.S. Attorney for Montana*, The Missoulian, June 22, 2009. Copy supplied.

Jodi Rave, *2 Interviewed for U.S. Attorney Post*, The Missoulian, Mar. 12, 2009. Copy supplied.

Michael Jamison, *Plum Creek Conservation Deal Biggest in U.S.*, The Missoulian, July 1, 2008. Copy supplied.

Dan Testa, *Baucus, Plum Creek, Conservation Groups Announce Massive Land Deal*, Flathead Beacon, June 30, 2008. Copy supplied.

Susan Gallagher, *Baucus, Plum Creek Announce Land Agreement*, Associated Press, May 24, 2008. Copy supplied.

Montana in Short, Associated Press, Dec. 3, 2004. Copy supplied.

Charles Johnson, *Investors Agree to $67M from TA*, The Billings Gazette, July 14, 2004 (re-printed in multiple outlets). Copy supplied.

Lawsuit Delays Add $2 Million to Montana College Project, Community College Week, July 5, 2004. Copy supplied.

Heal Thyself, A Suit Alleges Negligence at UM's Curry Health Center, The Missoula Independent, Dec. 5, 2002. Copy supplied.

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

I have not served as a judge.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was

affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

15. **Public Office, Political Activities and Affiliations:**

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was an elected Montana Delegate to the 1992 Democratic National Convention in New York City.

I have not held any other offices in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

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

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

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

I have never served as a clerk to a judge.

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

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1977 – 1981
Moulton, Bellingham, Longo & Mather, P.C.
P.O. Box 2559
Billings, Montana 59103
Associate Attorney

1981 – 1996
Murphy, Robinson, Heckathorn & Phillips, P.C.
P.O. Box 759
Kalispell, Montana 59904
Partner and Shareholder

1996 – present
Christensen, Moore, Cockrell, Cummings & Axelberg, P.C.
P.O. Box 7370
Kalispell, Montana 59904
Partner and Shareholder, President

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

I have served as one of three arbitrators in the following two matters:

Monroe v. Anonymous (Decision March 2008). This arbitration involved 12 different cases filed against a Montana orthopedic surgeon. The first case was heard in arbitration and decided against the physician and the remaining 11 cases settled.

BNSF Railway Co. v. Central Montana Rail, Inc. (2008 – 2009). This arbitration involved a dispute between BNSF and the Central Montana Railway. The case was decided in favor of BNSF, by a 2-1 arbitrator's decision. I was one of the two arbitrators that decided in favor of BNSF.

I also serve as a settlement mediator in cases approximately 15-20 times per year. The majority of the cases I mediate are medical malpractice claims. All of the cases I mediate are confidential proceedings. The last ten cases I mediated are summarized as follows:

08/31/10: *The Estate of Willson v. Addison*, Montana Eighth Judicial District Court Cause No. BDV-09-004. This was a medical malpractice case brought by the husband for alleged forced terminal sedation which resulted in a lethal overdose to his wife who was terminally ill with breast cancer. This case did not settle after a five-hour mediation.

09/02/10: *Setzer and Galloway as Personal Representatives of the Estate of Setzer, Deceased Minor v. Karsh, et al.*, Montana First Judicial District Court Cause No. ADV-2-1-628. This was a medical negligence claim brought against a radiologist who was alleged to have misread a cranial CT scan which revealed a malignant intracranial tumor known as a medulloblastoma in a 19-month old girl. After two hours of telephonic mediation this case settled post mediation.

12/08/10: *Ussin-Hunter v. St. Vincent Healthcare, et al.*, Montana Thirteenth Judicial District Court Cause No. DV-09-0950. In this medical malpractice case, Mrs. Ussin-Hunter had undergone cardiovascular surgery at St. Vincent Healthcare which resulted in open compartment syndrome. This case was settled after a nine-hour mediation.

12/14/2010: *Baily v. Iverson, et al.*, Montana First Judicial District Court Cause No. CDV-2010-248. This case involved an open reduction and fixation (ORIF) of Baily's right ankle performed by Dr. Iverson. Mr. Baily eventually had to have a fusion of his ankle due to a 30-40 degree external rotation. This case was settled after an eight-hour mediation.

01/13/11: *Stokes as Personal Representative of the Estate of Carter, Deceased v. Ford Motor Co., et al.*, Montana Thirteenth Judicial District Court Cause No. DV-05-1236. This was a wrongful death case in which it was alleged that Mr. Carter was partially ejected from his vehicle during a crash due to its poor design. After a 5.5-hour mediation this case remained unsettled.

01/18/11: *Iron Horse Ranch, LLC v. U.S. Forest Service*, U.S. District Court, Montana, Missoula Division Case No. DV-09-140-M-DWM. This concerned a prescribed burn which resulted in property damage. This case was settled after a five-hour mediation.

01/20/11: *Estate of McAllister v. LaVeau, et al.*, Montana Thirteenth Judicial District Court Cause No. DV-10-1817. This was a medical malpractice case involving an alleged misinterpretation of a stress echocardiogram exam with motion wall abnormalities secondary to myocardial ischemia. This case was settled after a 13-hour mediation.

01/24/11: *Lauderbaugh v. Northwest Spine & Pain Center, et al.*, Montana Eleventh Judicial District Court Cause No. 09-1180A. This medical malpractice case was brought as a result of an alleged failure to diagnose a heart attack. The case was settled after a three-hour mediation.

01/26/11: *Martin v. Benefis Healthcare*, Montana Eighth Judicial District Court Cause No. CDV-04-421. This is a medical malpractice case concerning an alleged anoxic brain injury following resuscitation for respiratory depression. This case settled after a six-hour mediation.

03/10/11: *Engebretson v. Reynolds Excavating, Inc., et al.*, Montana Fourth Judicial District Court Cause No. DV-09-880. This was a premises liability claim resulting in injury to Mr. Engebretson when he fell into a 12-foot deep hole that had been excavated that day. This case was not settled after an eight-hour mediation.

b. Describe:

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

During the first three years of my legal career at Moulton, Bellingham, Longo & Mather, P.C. in Billings, Montana, my practice focused on natural resources law, representing coal mining and oil and gas companies in a large number of litigation and administrative matters, including permitting issues associated with two coal mines in eastern Montana. During my fourth year as an attorney at that firm, my practice began to transition from the practice area of natural resources to a more general insurance defense litigation practice. During the early years at Murphy, Robinson, Heckathorn & Phillips, P.C. in Kalispell, Montana, my practice focus was insurance defense litigation, representing defendants in civil litigation involving automobile accidents, products liability suits, construction disputes, ski area accidents, etc. Beginning in approximately 1990, the majority of my law practice involved the defense of medical malpractice cases against doctors, hospitals, nurses, nursing homes and other healthcare providers, which has been the focus of my practice to this date. I have also represented defendants in large class action lawsuits filed in Federal Court in Montana.

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

My typical clients since 1990 have been doctors, hospitals, nurses, nursing homes and other healthcare providers. Prior to that I represented defendants in civil litigation, and coal mining and oil and gas companies.

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

Since 1977, 95% of my practice has involved litigation. I appear frequently in court.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 25%
   3. other courts: 0%
   4. administrative agencies: 25%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 98%
   2. criminal proceedings: 2%

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

I have tried more than 40 jury and non-jury trials in state and federal courts in Montana. I have represented healthcare providers in excess of 200 matters before the Montana Medical Legal Panel, which is a confidential administrative hearing process that screens all medical malpractice claims. I have represented at least 15 physicians in confidential disciplinary proceedings before the Montana Board of Medical Examiners. I have been sole or chief counsel in all of these matters.

i. What percentage of these trials were:
   1. jury: 90%
   2. non-jury: 10%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) *McGreevey v. Montana Power Co.*, U. S. District Court, Montana, Butte Division, Cause No. CV-03-01-BU-SEH.

Dates of representation: 2001 – 2010

Presiding Judge: Hon. Sam E. Haddon

Capsule Summary: This was a class action suit brought by the former shareholders of the Montana Power Company alleging that the officers and directors of the company failed to obtain a shareholder vote in connection with the divestiture of the assets of the former Montana Power Company and the formation of Touch America, a telecom company, which went bankrupt. Also named as defendants in this lawsuit were the purchasers of

the generating, distribution, coal and oil and gas assets of the former Montana Power Company, and the company's financial (Goldman Sachs) and legal advisors (Milbank Tweed). This case was one of five separate cases arising out of the Touch America bankruptcy, all of which were settled and dismissed in 2010 for the sum of $126 million. I represented the former officers of the Montana Power Company.

Co-Counsel: Hon. Keith Strong, Missouri River Courthouse, 125 Central Avenue West, Suite 311, Great Falls, Montana 59404; Telephone: (406) 727-0028; Stephen D. Bell, Dorsey & Whitney, LLP, 370 Seventeenth Street, Suite 4700, Denver, Colorado 80202; Telephone: (303) 629-3405; James H. Goetz, Goetz Gallik & Baldwin, PC, P.O. Box 6580, Bozeman, Montana 59771; Telephone: (406) 587-0618; James E. Burns Jr., Orrick Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, California 94105; Telephone: (415) 773-5935.

Opposing Counsel: Milton Datsopoulos, Datsopoulos MacDonald & Lind, PC, 201 West Main Street, Suite 201, Missoula, Montana 59802; Telephone: (406) 728-0810; Wade J. Dahood, Knight Dahood McLean Everett & Dayton, 113 East Third Street, Anaconda, Montana 59711; Telephone: (406) 563-3424; Allan M. McGarvey and Roger M. Sullivan, McGarvey Heberling Sullivan & McGarvey PC, 745 South Main Street, Kalispell, Montana 59901; Telephone: (406) 752-5566; Sean Frampton, Morrison & Frampton PLLP, P.O. Box 1090, Whitefish, Montana 59937; Telephone: (406) 862-9600.

(2) *In Re: Touch America Holdings, Inc.*, Debtors, U.S. Bankruptcy Court for the District of Delaware, Chapter 11 Case No. 03-11915(KJC).

Dates of representation: 2003 – 2010

Presiding Judge: Hon Steven J. Carey, Bankruptcy Court, Delaware

Capsule Summary: This was an adversary proceeding initiated by the Touch America Bankruptcy Trustee as part of the litigation described above. In this adversary proceeding the Trustee alleged that the former officers and directors breached their fiduciary duties to the corporation in connection with the divestiture of the assets of the former Montana Power Company. This claim was also part of the settlement described above, in which I represented the former officers of the Montana Power Company.

Co-counsel: Joseph H. Huston, Jr., Stevens & Lee PC, 1105 North Market Street, 7th Floor, Wilmington, Delaware 19801; Telephone: (302) 425-3310; Stephen D. Bell, Dorsey & Whitney, LLP, 370 Seventeenth Street, Suite 4700, Denver, Colorado 80202; Telephone: (303) 629-3405.

Opposing counsel: Robert A. Julian, Winston & Strawn, LLP, 101 California Street, Suite 3900, San Francisco, California 94111; Telephone: (415) 591-1000; Robert F. James, Ugrin, Alexander, Zadick & Higgins, PC, # 2 Railroad Square, Suite B, P.O. Box 1746, Great Falls, Montana 59403; Telephone: (406) 771-0007.

(3) *In Re: Columbia Falls Aluminum Profit-Sharing Litig.*, U. S. District Court, Montana, Missoula Division, Cause Nos. CV-92-27-M-JDS, CV-92-41-M-JDS, and CV-92-142-M-JDS.

Dates of representation: 1994 – 1999

Presiding Judge: Hon Jack D. Shanstrom

Capsule summary: This was a class action lawsuit brought by the salaried and union employees of Columbia Falls Aluminum Company alleging that the two shareholders failed to pay profit sharing as promised. I represented the minority shareholder, Jerome T. Broussard, who owned 45% of the company. The case was settled and dismissed in 1999 for $100 million.

Co-counsel: Hon. Sam E. Haddon, Missouri River Courthouse, 125 Central Avenue West, Suite 311, Great Falls, Montana 59404; Telephone: (406) 727-8877; Harry Huge, Harry Huge Law Firm, 25 East Battery Street, Charleston, South Carolina 29401; Telephone: (843) 722-1628.

Opposing Counsel: Allan M. McGarvey and Roger M. Sullivan, McGarvey Heberling Sullivan & McGarvey PC, 745 South Main Street, Kalispell, Montana 59901; Telephone: (406) 752-5566; Joan Jonkel, Jonkel Law Offices, P.O. Box 8687, Missoula, Montana 59807; Telephone: (406) 721-1837.

(4) *Fardeen as PR of Estate of Sands, deceased v. Glacier Ear, Nose and Throat – Head and Neck Surgery*, Montana Eleventh Judicial District Court, Cause No. DV-07-439(C).

Dates of Representation: 2007 – 2010

Presiding Judge: Hon. Stewart E. Stadler

Capsule Summary: The plaintiff alleged that the deceased died of a pulmonary embolism following extensive neck surgery for cancer as a result of the negligent care of physicians employed by my client, Glacier Ear, Nose and Throat – Head and Neck Surgery. The patient died on the third post-operative day. He had been out of bed and ambulatory. An issue in the case was whether sequential compression devices had been improperly discontinued. The defendant physicians offered expert testimony from a forensic pathologist that the patient did not die from a pulmonary embolism. After five days of jury trial a verdict was rendered in favor of my client.

Co-counsel: Sean Goicoechea, Christensen Moore Cockrell Cummings & Axelberg PC, P.O. Box 7370, Kalispell, Montana 59904; Telephone: (406) 751-6000.

Opposing Counsel: Douglas A. Buxbaum and E. Craig Daue, Buxbaum Daue & Fitzpatrick PLLC, P.O. Box 8209, Missoula, Montana 59807; Telephone: (406) 327-8677.

(5) *Cunningham v. Sobba*, U.S. District Court, Montana, Missoula Division, Cause No. CV-03-83-M-DWM.

Dates of representation: 2002 – 2004

Presiding Judge: Hon. Donald W. Molloy

Capsule Summary: The plaintiff suffered a high-impact fall while skiing at Big Mountain resulting in a displaced clavicle fracture. The defendant, my client, treated the plaintiff for the fracture, following him conservatively for approximately 4 months before determining that plaintiff had a non-union of the clavicle fracture, which was producing shoulder instability and discomfort. Accordingly, the defendant performed surgery to reduce the clavicle fracture. Immediately following the surgery, the defendant noted that the patient had normal neurological function of his upper extremity. However, within 4 - 6 hours following the surgery, the patient's affected arm went numb. Initially, the patient suffered a near complete paralysis of his upper extremity. However, over the course of the next 10 to 12 months, the use and function of his arm was completely restored. This case proceeded to trial in October 2004. After only one hour of deliberations, the jury returned a unanimous verdict in favor of my client.

Co-Counsel: I had no co-counsel in this case.

Opposing Counsel: Peter Michael Meloy, Meloy Law Firm, P.O. Box 1241, Helena, Montana 59624, Telephone (406) 442-8670; Randy Kent Dix, Dix Hunt & McDonald, 310 East Broadway, Helena, Montana 59601; Telephone: (406) 443-4667.

(6) *Hampton v. Schimpff*, U.S. District Court, Montana, Missoula Division, Cause No. CV-98-41-M-DWM.

Dates of representation: 1997 – 1999

Presiding Judge: Hon. Donald W. Molloy

Capsule Summary: Plaintiff Hampton alleged that the defendants were negligent in failing to timely diagnose his wife's dural sinus thrombosis, which resulted in her death. The deceased presented to the Emergency Department of the local hospital with headache symptoms. She was examined at the time by the defendant physician, and carefully followed in the hospital. Her condition worsened and she was emergently transferred to a specialist at the Oregon Health Sciences University in Portland, Oregon, where aggressive anti-thrombolytic therapy was initiated. She ultimately died from the thrombosis in her brain. I represented defendant Dr. Schimpff, the local treating neurologist, who contended that he appropriately treated the deceased and transferred her

to a tertiary care facility in a timely manner. After a four-day trial, the jury returned a defense verdict.

Co-counsel: I had no co-counsel in this case.

Opposing Counsel: Douglas A. Buxbaum and E. Craig Daue, Buxbaum Daue & Fitzpatrick PLLC, P.O. Box 8209, Missoula, Montana 59807; Telephone: (406) 327-8677; Randy Kent Dix, Dix Hunt & McDonald, 310 East Broadway, Helena, Montana 59601; Telephone: (406) 443-4667.

(7) *Pula v. City of Chinook*, Montana Seventeenth Judicial District Court, Cause No. DV-98-17.

Dates of representation: 1997 – 1999

Presiding Judge: Hon. John McKeon

Capsule Summary: Plaintiff, who was an inmate in the Blaine County Jail, was allegedly raped by a Montana State Prison inmate who was being housed at the county jail as a result of his involvement in the Montana State Prison riot. Pula contended that the Department of Corrections was negligent in its placement of the perpetrator in the county jail, and its supervision of him. I represented the State of Montana, which received a defense verdict on the issue of causation after a six-day trial. This case was affirmed on appeal to the Montana Supreme Court (Case No. 99-315, reported at 40 P.3d 364 (Mont. 2002)).

Co-counsel: I had no co-counsel in this case.

Opposing Counsel: Robert M. Peterson, P.O. Box 1259, Lolo, Montana 59847; Telephone: (406) 493-1304; Hon. Daniel A. Boucher, Montana Twelfth Judicial District Court, 315 – 4th Street, Havre, Montana 59501; Telephone: (406) 265-5481.

(8) *Jacobsen. v. State of Montana Department of State Lands*, Montana Eleventh Judicial District Court, Cause No. 88-216.

Dates of representation: 1987 – 1989

Presiding Judge: Hon. Leroy McKinnon (deceased)

Capsule Summary: Plaintiffs, who were multiple landowners and insurance companies, sued the Montana Department of State Lands contending that it was negligent in failing to control and suppress the 12,000 acre Houghton Creek Fire between the cities of Kalispell and Libby, which caused the Plaintiffs to suffer property damages in excess of $1 million. The case was bifurcated for trial. I represented the State of Montana, which received a defense verdict on liability after a five-day jury trial. The jury verdict was

affirmed on appeal to the Montana Supreme Court (Case No. 88-216, reported at 769 P.2d 694 (Mont. 1989)).

Co-counsel: I had no co-counsel in this case.

Opposing Counsel: Marshall H. Murray Jr., 101 Somerset Drive, Kalispell, Montana 59901; Telephone: (406) 314-4844; Daniel W. Hileman, Kaufman Vidal & Hileman, P.O. Box 728, Kalispell, Montana 59903; Telephone: (406) 755-5700.

(9) *Austin v. BNSF and MRL*, U.S. District Court, Montana, Missoula Division, Cause No. CV-99-39-M-LBE.

Dates of representation: 1998 – 2001

Presiding Judge: Hon. Leif B. Ericksen

Capsule Summary: Plaintiff Austin alleged toxic exposure to chlorine following the derailment of a Montana Rail Link ("MRL") train in Alberton, Montana. Pursuant to a contract between MRL and Burlington Northern Santa Fe Railway ("BNSF"), it was contended that BNSF retained some control over the track where the derailment occurred. Plaintiff was one of approximately 100 individuals who contended they suffered toxic exposure to chlorine gas which was released from an MRL rail car damaged during the derailment. At the end of the first week of trial, my client BNSF settled that case, and approximately 100 other pending cases relating to the same derailment. At the end of the second week of trial, MRL obtained a defense verdict.

Co-counsel: My partner, Dale R. Cockrell, was co-counsel for BNSF. David B. Potter, Oppenheimer Wolff & Donnelly LLP, 45 South 7th Street, Suite 3300, Minneapolis, Minnesota 55402; Telephone: (612) 607-7412; and Randy J. Cox, Boone Karlberg PC, P.O. Box 9199, Missoula, Montana 59807; Telephone: (406) 543-6646, represented MRL.

Opposing Counsel: Alexander Blewett III, Hoyt & Blewett PLLC, P.O. Box 2807, Great Falls, Montana 59403; Telephone: (406) 761-1960; William Rossbach, Rossbach Hart PC, P.O. Box 8988, Missoula, Montana 59807; Telephone: (406) 543-5156; Mark S. Connell, Connell Law Firm, P.O. Box 9108, Missoula, Montana 59807; Telephone: (406) 327-1217.

(10) *In the Matter of the Rules of Professional Conduct and the Insurers Imposed Billing Rules and Procedures; Ugrin, Alexander, Zadick & Higgins PC and James, Gray, Bronson & Swanberg, PC, Petitioners*, Montana Supreme Court, Case No. 98-612, reported at 2 P.3d 806 (Mont. 2000).

Dates of representation: 1998 – 2000

Capsule Summary: This was an original proceeding before the Montana Supreme Court to determine the role of counsel in the tripartite relationship between counsel, insured and insurer, and to further define the responsibilities of insured counsel in billing and reporting to insurers. The Appellants in this proceeding were a select group of Montana insurance defense attorneys. The Appellees in the proceeding were multiple insurers providing insurance in Montana. Many of these insurers imposed on defense counsel written guidelines and third-party billing practices that allegedly interfered with the relationship between attorney and client. I represented The Doctors Company (a medical malpractice insurer). In its decision, the Montana Supreme Court held that: (1) an insured is the sole client of defense counsel appointed by the insurer, and thus the insurer is not a co-client of defense counsel; (2) the requirement of insurers that defense counsel obtain pre-approval before scheduling depositions, undertaking research, employing experts, preparing motions or undertaking other substantive work in the defense of the case violates the Rules of Professional Conduct by fundamentally interfering with defense counsels' exercise of their independent judgment and their duty to give undivided loyalty to insureds; and (3) disclosures to insurers' third-party billing auditors of detailed descriptions of professional services rendered by defense counsel required the contemporaneous, fully informed consent of insureds.

Co-Counsel: I had no co-counsel on behalf of TDC.

Opposing Counsel: Neil Ugrin, deceased; Robert F. James, Ugrin, Alexander, Zadick & Higgins PC, P.O. Box 1746, Great Falls, Montana 59403; Telephone: (406) 771-0007; Hon. Patricia Cotter, Montana Supreme Court, P.O. Box 203001, Helena, Montana 59620; Telephone: (406) 444-5570.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Other than the first three years of my practice, my focus has been litigation as described in response to questions 16 and 17 above.

From 1977 to 1981, I appeared multiple times before the Montana Oil and Gas Conservation Commission on behalf of oil and gas companies regarding permitting of oil and gas wells in eastern Montana. The issues involved depth of wells, well spacing and other regulatory matters.

Over the course of the last 20 years, I have represented at least 15 physicians in confidential disciplinary proceedings before the Montana Board of Medical Examiners. The issues involved in these proceedings ranged from quality of care provided to patients to competency to practice medicine.

I have represented healthcare providers in excess of 200 matters before the Montana Medical Legal Panel ("MMLP"), which is a confidential, non-binding, administrative hearing process that screens all medical malpractice claims. A claimant/patient cannot file suit in Montana against a healthcare provider without first presenting the claim to the MMLP. A separate 6-person panel is formed to review each claim, consisting of three attorneys and three healthcare providers. In order to initiate a claim, the patient files an application or complaint. The healthcare provider files an answer, and the claim is then set for hearing before the panel. Exhibits, including expert reports, are submitted before the hearing, and hearings usually take 3-6 hours. The claimant/patient and healthcare provider[s] normally provide sworn testimony. At the end of the hearing, the MMLP panel votes on two questions: (1) Is there substantial evidence of an act or omission constituting a breach of the standard of care; and, (2) if so, did this breach cause injury or damage to the claimant/patient.

I was a registered lobbyist in Montana in the late 1970s. I was registered on behalf of Westmoreland Coal Company, and I lobbied on behalf of this entity at the 1979 Montana Legislative Session, focusing on proposed legislation governing the permitting and regulation of surface coal mines.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

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

I have no deferred income arrangements as described by this question.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

If I am confirmed, the most likely conflicts of interest would relate to the ownership of stocks and bonds by me and my spouse. In addition, conflicts may be presented by matters in which I previously represented a party as well as matters in which my former law partners participate. Although remote, a potential conflict of interest could also be present due to my son's employment with SVB Capital in Palo Alto, California, or my daughter's employment as a special education teacher in Seattle, Washington. I would handle all matters involving actual or potential conflicts through the careful application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions.

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

I understand the Clerk of Court of the Montana District maintains a computer listing of all stocks and bonds owned by judges and their spouses, which is compared against the parties in all litigation filed in the district and assigned to a particular judge to identify conflicts of interest. I also understand that all judges prepare annual financial disclosure statements and are required to adhere to the Guidelines of the Code of Judicial Conduct. Furthermore, I would be required to vigilantly analyze all cases to determine potential conflicts of interest and to recuse myself in all instances in which a conflict exists or if necessary to avoid the appearance of any sort of impropriety.

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

From time to time I have represented indigent parties on a pro bono basis in dissolutions, custody disputes and landlord-tenant matters. I have provided pro bono representation to a subsidized elderly residential care facility, and handled adoptions for various placement agencies on a no-fee basis. I have also provided free representation to conservation organizations in litigation matters. In addition, I have been appointed multiple times by the Montana Commission on Practice (the Montana Supreme Court attorney disciplinary body) to investigate and prosecute disciplinary complaints against Montana attorneys, which I have performed on a pro bono basis. Finally, my current law firm contributes annually to the Montana Justice Foundation which supports entities providing free representation to the indigent (Montana Legal Services, etc.). I would estimate that over the years I have provided at least 50 hours a year in pro bono legal services to various individuals and entities.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Senator Max Baucus formed a committee of five Montana attorneys to recommend to him a suitable replacement for Hon. Donald W. Molloy following Judge Molloy's announcement in December 2010 of his intent to take senior status in August 2011. I understand that I was the sole name recommended to Senator Baucus by the committee. I interviewed with Senator Baucus on January 18, 2011, and expressed my interest in this position at that time. Since February 3, 2011, I have been in contact with pre-nomination officials at the Department of Justice. On March 9, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 4, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
CHRISTENSEN, DANA L.	DISTRICT COURT	05/04/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) DISTRICT COURT JUDGE	**5a. Report Type** (check appropriate type) ☑ Nomination, Date 5/4/2011 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2010 to 04/30/2011
7. Chambers or Office Address CHRISTENSEN, MOORE, COCKRELL, CUMMINGS & AXELBERG, P. O. BOX 7370 145 COMMONS LOOP, SUITE 200 KALISPELL, MONTANA 59904-0370	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. SHAREHOLDER	CHRISTENSEN, MOORE, COCKRELL, CUMMINGS & AXELBERG, P.C.
2. CHAIR, BOARD OF TRUSTEES (resigned 05/05/2011)	THE NATURE CONSERVANCY, MONTANA CHAPTER
3.	
4.	
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting	Date of Report
	CHRISTENSEN, DANA L.	05/04/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	CHRISTENSEN, MOORE, COCKRELL, CUMMINGS & AXELBERG, P.C.	$180,384.00
2.	2010	CHRISTENSEN, MOORE, COCKRELL, CUMMINGS & AXELBERG, P.C.	$165,378.00
3.	2011	CHRISTENSEN, MOORE, COCKRELL, CUMMINGS & AXELBERG, P.C.	$34,000.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2010	FLATHEAD VALLEY COMMUNITY COLLEGE
2.	2010	SCHOOL DISTRICT NO. 5
3.	2011	FLATHEAD VALLEY COMMUNITY COLLEGE
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting CHRISTENSEN, DANA L.	Date of Report 05/04/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
CHRISTENSEN, DANA L.	05/04/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Davidson Investment Advisors Retirement Plan (no control)	C	Dividend	O	T	Exempt				
2. BROKERAGE ACCOUNT									
3. --Dividend 15 Split Corp.	C	Interest	L	T	Exempt				
4. --ARC Resources Lt.	B	Dividend	K	T	Exempt				
5. --Brookfield Asset Mgmt.	A	Dividend	K	T	Exempt				
6. --Bank of Nova Scotia	B	Dividend	L	T	Exempt				
7. --BCE Inc. New	B	Dividend	K	T	Exempt				
8. --Bell Aliant Inc.	C	Dividend	K	T	Exempt				
9. --Canadian Apartment PPTYS	C	Dividend	L	T	Exempt				
10. --Cenovus Energy Inc.	A	Dividend	K	T	Exempt				
11. --Franco-Nevada Corp.	A	Dividend	K	T	Exempt				
12. --Husky Energy Inc.	A	Dividend	K	T	Exempt				
13. --Royal Bank of Canada	B	Dividend	L	T	Exempt				
14. --TransCanada Corp.	C	Dividend	L	T	Exempt				
15. --RBC Premium Money Mkt.	B	Interest	M	T	Exempt				
16. --United Corp. Ltd.	B	Dividend	L	T	Exempt				
17. LIFE INSURANCE									

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
CHRISTENSEN, DANA L.	05/04/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. -Prudential Variable Life Policy:									
19. ---Prudential Value Fund	B	Interest	N	T	Exempt				
20. ---Prudential Series Fund Global Portfolio	B	Interest	N	T	Exempt				
21. ---Janus Aspen Series Institutional Shares Fund	B	Interest	N	T	Exempt				
22. ---AST Pimco Total Return Bond Fund	B	Interest	N	T	Exempt				
23. ---AST Blackrock Global Strategies Fund	B	Interest	N	T	Exempt				
24. -Principal:Adjustable Life Policy	B	Interest	M	T	Exempt				
25. BANK ACCOUNTS									
26. -Glacier Bank Checking Accts		None	J	T	Exempt				
27. -Glacier Banking Savings Acct.	A	Interest	L	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting CHRISTENSEN, DANA L.	Date of Report 05/04/2011

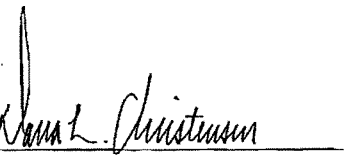
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting CHRISTENSEN, DANA L.	Date of Report 05/04/2011

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		162	908	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – primary residence		233	401
Real estate owned – see schedule	1	985	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		120	000				
Cash value-life insurance		89	328				
Other assets itemize:							
Retirement holdings – see schedule	1	610	199				
				Total liabilities		233	401
				Net Worth	3	734	034
Total Assets	3	967	435	Total liabilities and net worth	3	967	435
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Retirement Holdings	
Davidson Investment Advisors Retirement Plan (no control)	$792,947
Cash	1,036
Dividend 15 Split Corp – 5.25% PFD SHS	55,810
ARC Energy Trust	40,225
Brookfield Asset Management Inc., Class A	39,375
Bank of Nova Scotia	72,689
BCE Inc New	44,641
Bell Aliant Inc.	33,843
Canadian Apartment PPTYS REIT UTS	59,913
Cenovus Energy Inc.	38,104
Franco-Nevada Corporation	39,375
Husky Energy Inc Common	31,038
Royal Bank of Canada	62,569
TransCanada Corporation	85,176
RBC Premium Money Market Fund	138,614
United Corporations Ltd	74,844
Total Retirement Holdings	$1,610,199

Real Estate Owned	
Primary residence	$1,500,000
Secondary residence	135,000
Vacation home	350,000
Total Real Estate Owned	$1,985,000

AFFIDAVIT

I, Dana L. Christensen, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 3, 2011
(DATE)

Dana L. Christensen
(NAME)

CAROLINE L. MILLER
NOTARY PUBLIC for the
State of Montana
Residing at Kalispell, Montana
My Commission Expires
March 23, 2012

(NOTARY)

Senator WHITEHOUSE. Thank you, Mr. Christensen.
Judge Bencivengo, welcome.

STATEMENT OF CATHY ANN BENCIVENGO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Judge BENCIVENGO Thank you, Senator. I'd like to thank the Committee for the opportunity to be here today. I'd like to thank Senator Feinstein and her judicial selection committee for sponsoring my nomination, and I'd certainly like to thank the President for my nomination.

I have with me here today my husband, and I thank him for his unfailing support for our now going on 28 years of marriage. My children were unable to be here; they're both attending classes in college. But I would like to recognize them—I believe they're watching on the webcast: my daughter Dana, who is a senior at Colorado State, and my daughter Lauren, who is a freshman at Miami University of Ohio.

With me I do have here today some friends. One of my dearest and oldest friends, Tracy Horner Bird, who I've known since first grade, and her husband Maitland, her daughter Skye and her friend Ian Faulk, and a friend and former colleague from my old law firm, DLA, Kathryn Riley Grasso.

I'd like to thank all my friends and family who are, I hope, watching on the webcast, and particularly my colleagues back at the Southern District of California, my fellow Magistrate judges, and for all the support they've given me, and my wonderful staff, chambers, and my courtroom deputy who I know are watching. Thank you.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Cathy Ann Bencivengo
   Cathy Ann Palumbo

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

   United States District Judge for the Southern District of California

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   U.S. District Court – Southern District of California
   Edward J. Schwartz U.S. Courthouse
   940 Front Street, Room 1131
   San Diego, California 92101

   Residence: Poway, California

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

   1958; Teaneck, New Jersey

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1985 – 1988, University of Michigan Law School; J.D., *magna cum laude*, 1988

   1980 – 1981, Rutgers University Graduate School; M.A., 1981

   1976 – 1980, Rutgers University, Livingston College; B.A., 1980

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2005 – present
United States District Court
940 Front Street, Room 1131
San Diego, California 92101
United States Magistrate Judge

Summer 1987; 1988 – 2005
DLA Piper US, LLP
401 B Street, Suite 1700
San Diego, California 92101
Partner (1996 – 2005)
Associate (1988 – 1996)
Summer Associate (May – June 1987)
(Note: From 1987 to 1994, the firm was known as Gray, Cary, Ames & Frye. From 1994 to 2005, it was known as Gray, Cary, Ware & Freidenrich. In 2005 it became DLA Piper Rudnick Gray Cary LLP. It is now known as DLA Piper US, LLP.)

Summer 1999
University of San Diego School of Law
5998 Alcalá Park
San Diego, California 92110
Adjunct Professor

Summer 1987
Honigman Miller Schwartz & Cohn, LLP
2290 First National Building
Detroit, Michigan 48226
Summer Associate

Summer 1986
General Motors Corporation
3031 West Grand Boulevard
Detroit, Michigan 48232
Summer Associate, Legal Department

1984 – 1985
CECO Communications
30400 Van Dyke
Warren, Michigan 48093
Associate Multimedia Producer and Audio/Visual Coordinator

1981 – 1984
Johnson & Johnson
One J & J Plaza
New Brunswick, New Jersey 08903
Communications Specialist (1981 – 1983)
Part-Time Communications Consultant (1983 – 1984, working from home in Michigan)

Other Affiliations (uncompensated):

2009 – present
Association of Business Trial Lawyers of San Diego
PMB 386
1010 University Avenue, #113
San Diego, California 92103
Member, Board of Governors

2007 – 2010
Poway High School Music Boosters
P.O. Box 1376
Poway, California 92074
Director (2007 – 2008)
President (2008 – 2010)

2003 – 2007
San Diego Figure Skating Club
P.O. Box 500774
San Diego, California 92150
Director (2003 – 2005)
Vice-President (2006 – 2007)
President (2007 – 2008)

2004 – 2005
Susan G. Komen Breast Cancer Foundation, San Diego
4699 Murphy Canyon Road, Suite 102B
San Diego, California 92123
Director

2001 – 2005
San Diego County Bar Foundation
1333 Seventh Avenue
San Diego, California 92101
Director

1999 – 2000
San Diego Mediation Center
(currently known as the National Conflict Resolution Center)
625 Broadway, Suite 1221
San Diego, CA 92101
Director

1996 – 1998
San Diego County Bar Association
1333 Seventh Avenue
San Diego, California 92101
Director (1996 – 1998)
Treasurer (1997)
Vice President (1998)

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the United States Military. I did not register for selective service.

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

   Order of the Coif, University of Michigan Law School (1988)

   First Place – Campbell Moot Court Competition, University of Michigan Law School (1988)

   Fellowship to Eagleton Institute of Politics Graduate Program, Rutgers University Graduate School

   Undergraduate Associate to Eagleton Institute of Politics, Rutgers University

   Departmental Honors in Journalism from Livingston College, Rutgers University

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

   American Bar Association, Member

American Inns of Court, Louis M. Welsh Chapter
Barrister (1994 – 1996, 2004 – 2005)
Master (2006 – present)

Association of Business Trial Lawyers of San Diego
Member, Board of Governors (2009 – present)

California Bar Association, Member

California Women Lawyers, Member

Federal Bar Association, San Diego Chapter
Member, Advisory Board (2006 – present)

Federal Circuit Bar Association, Member

Federal Magistrate Judges Association
Member (2005 – present)
Ninth Circuit Director (2010 – present)

Lawyer's Club, Member

Ninth Circuit Judicial Conference
Lawyer Representative (Alternate), Southern District of California (2004)
Lawyer Representative, Southern District of California (2005)

Ninth Circuit Magistrate Judges Education Committee
Member (2008 – 2010)
Chair (2009, 2010)

San Diego County Bar Association
Co-Chair, Intellectual Property Section (1993, 1994)
Director (1996 – 1998)
Treasurer (1997)
Vice President (1998)
Member, Lawyer Referral and Information Services Committee (1999 – 2003)
Chair, Lawyer Referral and Information Services Committee (2001)

San Diego County Bar Foundation
Director (2001 – 2005)

San Diego Mediation Center
Director (1999 – 2000)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

California, 1988

There have been no lapses in membership.

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

Supreme Court of the United States, 2002
United States Court of Appeals for Ninth Circuit, 1996
United States Court of Appeals for Federal Circuit, 1996
United States District Court for Southern District of California, 1988
United States District Court for Central District of California, 1991
United States District Court for Northern District of California, 1992
United States District Court for Eastern District of California, 1993
California Supreme Court, 1988

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Girl Scouts of America, Adult Member (Approx. 2002 – 2003)

Parent-Teacher-Student Associations for Tierra Bonita Elementary School, Twin Peaks Middle School, Poway High School, Member (1996 – present)

Poway High School Music Boosters
Member (2006 – present)
Director (2007 – 2008)
President (2008 – 2010)

San Diego Figure Skating Club
Director (2003 – 2006)
Vice-President (2006 – 2007)
President (2007 – 2008)

Stone Ridge Country Club (1998 – 2002)

Susan G. Komen Breast Cancer Foundation, San Diego
Director (2004 – 2005)
Member, Grants Committee (2004 – 2007)
Chair, Grants Committee (2005)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Girl Scouts of America is and has always been an organization for girls. To my knowledge, the Girl Scouts does not discriminate, with respect to troop leadership, board membership or other volunteer assignments. Otherwise, I am not aware that any of the organizations I listed in my response to 11a discriminates or has ever discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

On March 2, 2010, I posted on a message board about a missing high school student. Copy supplied.

With Mike Cook, *Chelsea King Tribute*, Poway High School, 2010 (published at http://www.phsmb.com/attach/chelseaTribute.pdf). Copy supplied.

As President of the San Diego Figure Skating Club, I wrote a number of *From the President* messages in the E-Newsletters. The dates of my messages are listed below and copies are supplied:

May 2008
March 2008
January 2008
December 2007
November 1, 2007
October 2007
September 1, 2007
August 1, 2007

I recall co-authoring an article about intellectual property law when I was an associate at my former law firm in the early 1990s, however, I have been unable to obtain a copy.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

To the best of my recollection, I have not prepared any reports, memoranda or policy statements on behalf of any bar association, committee, conference, or organization of which I was or am a member.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On April 20, 2009, I spoke before the Poway Unified School District Board of Education about the proposed elimination or reduction in hours of classified staff positions. Meeting minutes supplied.

On April 18, 2009, I submitted a statement on behalf of the Poway High School Music Program, as the Booster President, to the Directors of the Poway Unified School District regarding funding for the instrumental music program. Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter.

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have not kept a comprehensive list of presentations I have made. The following list is compiled from my calendars and other sources and is my best effort to recreate my history of speaking engagements.

March 30, 2011: sponsored by Association of Business Trial Lawyers of San Diego, at Edward J. Schwartz United States Courthouse, panel on Deposition Practice and Experts. I have no notes, transcript or recording. The address of the ABTL is PMB 386, 1010 University Avenue, #113, San Diego, California 92103.

February 17, 2011: sponsored by American Inns of Court, Louis M. Welsh Chapter, at Latham & Watkins in San Diego, moderated a panel presentation on mock trials and focus groups as a litigation tool. I have no notes, transcript or recording. The Inn of Court does not have a physical address.

January 29, 2011: sponsored by the Thomas Jefferson School of Law, at the Law School, a lunch presentation to Introduction to Intellectual Property Law class on intellectual property litigation in San Diego. I have no notes, transcript or recording. The address of the law school is 1155 Island Avenue, San Diego, California 92101.

November 15, 2010: "Open Doors to Federal Court" Program, at the Federal Court, Courtroom E, presided over a mock criminal trial for middle school students. I have no notes, transcript or recording. The address of the federal courthouse is 940 Front Street, San Diego, California 92101.

October 22, 2010: sponsored by Thomas Jefferson School of Law, at the Law School, a Judicial Panel Presentation on "judge's pet peeves" to law students. I have no notes, transcript or recording, but Thomas Jefferson School of Law coverage is supplied. The address of the law school is 1155 Island Avenue, San Diego, California 92101.

October 15, 2010: sponsored by the Federal Bar Association, San Diego Chapter, at the Federal Court, Courtroom E, a presentation for federal court practitioners explaining the role of Magistrate Judges in the Southern District. I have no notes, transcript or recording. The FBA, San Diego Chapter, does not have a physical address.

September 16, 2010: Judith N. Keep Seminar, sponsored by the Federal Bar Association, San Diego Chapter, at the District Court Jury Lounge, a Magistrate Judges Panel Presentation on Managing Complex Litigation. I have no notes, transcript or recording. The FBA, San Diego Chapter, does not have a physical address.

August 16, 2010: Ninth Circuit Judicial Conference, introduced panelists for session entitled, "Individual Privacy: Challenges Grow as Technology Flourishes." I have no notes, transcript or recording. The Conference does not have a physical address.

June 8, 2010: sponsored by the Federal Bar Association, San Diego Chapter, at Mintz Levin Cohn Ferris in San Diego, a Bench and Bar Panel Presentation on managing patent litigation. I have no notes, transcript or recording, but FBA coverage is supplied. The FBA, San Diego Chapter, does not have a physical address.

April 1, 2010: sponsored by Poway High School Music Boosters, tribute to Chelsea King during the PUSD Band & Orchestra Festival. Video available at http://www.youtube.com/watch?v=uK4AiDw2RIw. A copy of my remarks was also supplied in response to 12(a).

March 24, 2010: "Open Doors to Federal Court" Program, at the Federal Court, Courtroom E, hosted a civics class for students modeled on the "Jeopardy" game. I have no notes, transcript or recording, but FBA coverage is supplied. The address of the federal courthouse is 940 Front Street, San Diego, California 92101.

March 5, 2010: sponsored by DLA Piper US, LLP, at DLA in San Diego, a luncheon presentation on women in leadership positions for young women lawyers in honor of Women's History Month. I have no notes, transcript or recording. The address of DLA Piper is 401 B Street, Suite 1700, San Diego, California 92101.

February 6, 2010: sponsored by the Thomas Jefferson School of Law, at the Law School, a lunch presentation to Introduction to Intellectual Property Law class on intellectual property litigation in San Diego. I have no notes, transcript or recording. The address of the law school is 1155 Island Avenue, San Diego, California 92101.

January 28, 2010: sponsored by the San Diego Intellectual Property Law Association, at the Del Mar Marriott, a Magistrate Judge Panel Presentation on Patent Case Management. I have no notes, transcript or recording. The Association has no physical address.

November 20, 2009: sponsored by Thomas Jefferson School of Law, at the Law School, a Judicial Panel Presentation on "judge's pet peeves" to law students. I have no notes, transcript or recording. The address of the law school is 1155 Island Avenue, San Diego, California 92101.

October 16, 2009: sponsored by the Federal Bar Association, San Diego Chapter, at the Federal Court, Courtroom E, a presentation for federal court practitioners

explaining the role of Magistrate Judges in Southern District. I have no notes, transcript or recording, but FBA coverage is supplied. The FBA, San Diego Chapter, does not have a physical address.

September 24, 2009: Judith N. Keep Seminar, sponsored by the Federal Bar Association, San Diego Chapter, in the District Court Jury Lounge, a Magistrate Judges Panel Presentation on Early Neutral Evaluation Conferences. I have no notes, transcript or recording. The FBA, San Diego Chapter, does not have a physical address.

September 17, 2009: sponsored by Women in E-Discovery, at Seltzer Caplan McMahon Vitek in San Diego, a Bench and Bar Panel Presentation on propounding and responding to electronic discovery requests under the Federal Rules. I have no notes, transcript or recording. The Women in E-Discovery San Diego Chapter does not have a physical address.

September 16, 2009: sponsored by American Inns of Court, Louis M. Welsh Chapter, at Latham & Watkins in San Diego, introduced and moderated a panel presentation on ex-parte communications with the court. I have no notes, transcript or recording. The Inn of Court does not have a physical address.

July 20, 2009: Ninth Circuit Judicial Conference, introduced panelists for a session entitled, "Can You Hear Me Now? Ethical Issues Relating to Ex Parte Judicial Communications." I have no notes, transcript or recording. The Conference does not have a physical address.

June 19, 2009: sponsored by the Association of Business Trial Lawyers, at Luce, Forward, Hamilton Scripps, LLP in San Diego, a Bench and Bar Panel Presentation on Managing E-Discovery Disputes in the Southern District. I have no notes, transcript or recording. The address of the ABTL is PMB 386, 1010 University Avenue, #113, San Diego, California 92103.

March 26, 2009: "Open Doors to Federal Court" Program, at the Federal Court, Courtroom E, moderated a student debate on First and Sixth Amendment Rights and Responsibilities. I have no notes, transcript or recording. The address of the federal courthouse is 940 Front Street, San Diego, California 92101.

March 13, 2009: sponsored by Thomas Jefferson School of Law, at the Federal Court in Courtroom 1, a presentation for law students explaining the role of Magistrate Judges in Southern District. I have no notes, transcript or recording. The address of the law school is 1155 Island Avenue, San Diego, California 92101.

February 26, 2009: sponsored by the San Diego Intellectual Property Law Association, at the La Jolla Marriott, a Magistrate Judge Panel Presentation on Electronic Discovery, Local Rules and Early Neutral Evaluation Conferences in

Patent Cases. I have no notes, transcript or recording. The Association has no physical address.

February 18, 2009: sponsored by the San Diego Inn of Court, at the San Diego Superior Court, presided over an Inn of Court workshop on presentation of closing arguments. I have no notes, transcript or recording. The address of the Inn of Court is c/o Norma Angelica Swan, 750 B Street, Suite 1250, San Diego, California 92101.

November 20, 2008: sponsored by the Federal Bar Association, San Diego Chapter, at the Federal Court, Courtroom E, a presentation for federal court practitioners explaining the role of Magistrate Judges in the Southern District. I have no notes, transcript or recording, but FBA coverage is supplied. The FBA, San Diego Chapter, does not have a physical address.

October 15, 2008: sponsored by the Federal Bar Association, San Diego Chapter, at the District Court Jury Lounge, a Magistrate Judges Panel Presentation on criminal practice and recommendations regarding guilty plea hearings. I have no notes, transcript or recording, but FBA coverage is supplied. The FBA, San Diego Chapter, does not have a physical address.

September 17, 2008: sponsored by American Inns of Court, Louis M. Welsh Chapter, at Latham & Watkins in San Diego, introduced and moderated a panel presentation on conflicts of interest resulting from multiple client representation. I have no notes, transcript or recording. The Inn of Court does not have a physical address.

June 9, 2008: sponsored by the Association of Business Trial Lawyers, at the Westin San Diego, a Magistrate Judges Panel Discussion on effective practice before the Magistrate Judges of the Southern District. I have no notes, transcript or recording. The address of the ABTL is PMB 386, 1010 University Avenue, #113, San Diego, California 92103.

May 29, 2008: sponsored by the San Diego Intellectual Property Law Association, at Del Mar Marriott, a Bench and Bar Panel Discussion on Patent Litigation in the Southern District. I have no notes, transcript or recording. The Association has no physical address.

May 7, 2008: Licensing Executives Society International Conference, sponsored by Women in Licensing Bay Area and DLA Piper US, LLP, at Sheraton Chicago Hotel and Towers in Chicago, a Bench and Bar Panel Presentation on Effective Leadership for Women in Intellectual Property Practice. I have no notes, transcript or recording. The address of DLA Piper is 401 B Street, Suite 1700, San Diego, California 92101.

April 14, 2008: sponsored by the San Diego County Bar Association Young/New Lawyers Division, at the W Hotel in San Diego, a brief talk on the importance of mentoring and finding a mentor at a reception for new lawyers. I have no notes, transcript or recording. The address of the SDCBA is 1333 Seventh Avenue, San Diego, California 92101.

March 25, 2008: sponsored by the San Diego County Bar Association Ethics Committee, at the San Diego County Bar Building, a Bench and Bar Panel Presentation on inadvertent disclosure of privileged information and the new Federal Rules of Civil Procedure. I have no notes, transcript or recording. The address of the SDCBA is 1333 Seventh Avenue, San Diego, California 92101.

February 4, 2008: sponsored by the San Diego County Bar Association, at the San Diego County Bar Building, a presentation to third year law students and recent graduates on successful balance in a legal career. I have no notes, transcript or recording. The address of the SDCBA is 1333 Seventh Avenue, San Diego, California 92101.

October 11, 2007: sponsored by Women in Licensing Bay Area, the Association of Corporate Counsel San Francisco Bay Area Chapter, and DLA Piper US, LLP, at Four Seasons Hotel in East Palo Alto, a Bench and Bar Panel Presentation on Effective Trial Practice and Leadership for Women in Intellectual Property Litigation. I have no notes, transcript or recording, but Bureau of National Affairs coverage is supplied. The address of DLA Piper is 401 B Street, Suite 1700, San Diego, California 92101.

September 27, 2007: Judith N. Keep Seminar, sponsored by the Federal Bar Association, San Diego Chapter, Marriott in San Diego, a Magistrate Judges Panel Presentation on Settlement Conferences. I have no notes, transcript or recording. The FBA, San Diego Chapter, does not have a physical address.

August 28, 2007: sponsored by the Federal Bar Association, San Diego Chapter, at the Federal Court, Courtroom E, a presentation for federal court practitioners explaining the role of Magistrate Judges in the Southern District. I have no notes, transcript or recording. The FBA, San Diego Chapter, does not have a physical address.

March 14, 2007: sponsored by the San Diego County Bar Association and three law schools, a presentation to third-year law students about legal careers. I have no notes, transcript or recording. The address of the SDCBA is 1333 Seventh Avenue, San Diego, California 92101.

March 12, 2007: at the Federal Court, Courtroom E, a presentation to local Boy Scout troop on the Federal Court system. I have no notes, transcript or recording. The address of the federal courthouse is 940 Front Street, San Diego, California 92101.

February 27, 2007: sponsored by West Legalworks, at Four Seasons Hotel in Beverly Hills, Los Angeles, a Bench and Bar Panel Presentation on E-Discovery and the new Federal Rules of Civil Procedure. I have no notes, transcript or recording. West Legalworks is part of Thomson West, which is headquartered at 610 Opperman Drive, Eagan, Minnesota 55123.

February 14, 2007: sponsored by the Association of Business Trial Lawyers of San Diego, brown bag lunch speaker. I spoke about my first year on the bench and practices in my courtroom. I have no notes, transcript or recording. The address of the ABTL is PMB 386, 1010 University Avenue, #113, San Diego, California 92103.

December 20, 2006: "Bridging the Gap" Seminar, sponsored by the San Diego County Bar Association, at San Diego County Bar Building, a presentation to newly admitted lawyers on practice in Federal Court. I have no notes, transcript or recording. The address of the SDCBA is 1333 Seventh Avenue, San Diego, California 92101.

September 29, 2006: Judith N. Keep Seminar, sponsored by the Federal Bar Association, San Diego Chapter, at San Diego County Bar Building, a Magistrate Judges Panel Presentation on the New E-Discovery Rules. I have no notes, transcript or recording, but FBA coverage is supplied. The FBA, San Diego Chapter, does not have a physical address.

August 10, 2006: sponsored by the Federal Bar Association, San Diego Chapter, at San Diego County Bar Building, a Magistrate Judge Panel Presentation on Effective Practices for Settlement Conferences. I have no notes, transcript or recording, but FBA coverage is supplied. The FBA, San Diego Chapter, does not have a physical address.

March 1, 2006: sponsored by the California Western School of Law, at the Law School, a Judicial Panel Presentation on the Southern District's Local Patent Rules. I have no notes, transcript or recording. The address of the law school is 225 Cedar Street, San Diego, California 92101.

October 21, 2004: sponsored by California Western School of Law, presentation to graduating law students on maintaining a healthy work/life balance when they start practicing. I have no notes, transcript or recording. The address of the law school is 225 Cedar Street, San Diego, California 92101.

April 24, 2004: sponsored by University of San Diego School of Law, panelist for a continuing legal education session on developments in intellectual property law. I addressed changes in the analysis of willful infringement allegations in patent cases. I have no notes, transcript or recording. The address of the law school is 5998 Alcala Park, San Diego, California 92110.

Since I joined the bench in December 2005, I have participated in a number of Naturalization Ceremonies. I spoke on the following dates: January 18, 2006 at the San Diego Convention Center; June 22, 2007 at San Diego's Golden Hall; February 18, 2009 at San Diego's Golden Hall; and November 17, 2010 at San Diego's Golden Hall. A copy of my speech is supplied.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Greg Moran, *Obama Nominates Judge for Federal Court*, San Diego Union-Tribune, May 11, 2011. Copy supplied.

Pat Broderick, *Judicial Spotlight; Part of the Solution*, Los Angeles Daily Journal, June 30, 2009 [quote re-printed in a May 13, 2011 article]. Copy supplied.

PUSD Board OKs Layoffs, Pay Cuts, Pomerado News, Apr. 22, 2009. Copy supplied.

Emerald Brigade Marches Off with Silver, Pomerado News, Dec. 30, 2008. Copy supplied.

Jason Krause, *E-Discovery Tips from the Bench*, Law Technology News, June 16, 2008. Copy supplied.

Rupa Singh, *Hotel San Diego: Historical Landmark Serves as Building Ground for New Courthouse Annex*, Federal Bar Association of San Diego Newsletter, Summer 2006. Copy supplied.

Carolyn M. Hacker, *Judicial Profile: U.S. Magistrate Judge Cathy Ann Bencivengo*, Federal Bar Association of San Diego Newsletter, Spring 2006. Copy supplied.

Morgan S. Adessa, *The Southern District of California Adopts Its Own Local Patent Rules*, Federal Bar Association of San Diego Newsletter, Spring 2006. Copy supplied.

IP 360 2006 Patent Litigation Survey, IP Law360, Feb. 7, 2006. Copy supplied.

Nancy L. Stagg, *Meet the New Federal Magistrate Judge: The Honorable Cathy Ann Bencivengo*, Association of Business Trial Lawyers of San Diego Report, Jan. 2006. Copy supplied.

Onell R. Soto, *Man on Probation in Attempt to Extort Dr. Seuss Estate*, San Diego Union-Tribune, Aug. 21, 2004. Copy supplied.

Renee Deger, *Fighting for Scraps*, The Recorder, Dec. 27, 2001. Copy supplied.

Neil Morgan, *'Cat in Hat' Seems About to Save Day for Justice*, San Diego Union-Tribune, July 13, 1997. Copy supplied.

Adam Entous, *U.S. Court Blocks 'Cat in the Hat' Parody on O.J.*, Reuters, Mar. 28, 1997. Copy supplied.

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

Judge Pro Tem for the San Diego Small Claims Court, appointed in approximately 1994 and served until mid-2005. The jurisdictional limit was $5000 or less. I volunteered approximately six times a year and heard and entered judgment on approximately 100 cases. They were all bench trials for civil matters, mainly landlord/tenant disputes, breach of contract matters and property damage claims. I issued no written opinions in any of these matters.

United States Magistrate Judge for the Southern District of California, appointed in December 2005, pursuant to Title 28 U.S.C. Section 636.

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

Two.

i. Of these, approximately what percent were:

jury trials:	50 %
bench trials:	50 %
civil proceedings:	50 %
criminal proceedings:	50 %

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

See attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

As a Magistrate Judge in the Southern District of California, I only preside over cases on the consent of the parties. During my five years on the bench I have received consents to my jurisdiction for the following civil matters:

1. *Mytee Products Inc. v. Harris Research, Inc.*, Case No. 06cv1854-CAB

A patent infringement case involving vacuum devices for extracting liquid from carpets. One of the opinions I issued in this case – denying plaintiff's motion for summary judgment of non-infringement – is published at 615 F. Supp. 2d 1163 (S.D. Cal. 2009) (additional opinions are supplied in response to Question 13d). This case was tried to a jury in October 2009, and the jury returned a verdict in favor of the defendant. An appeal is presently pending before the Court of Appeals for the Federal Circuit. Counsel for the plaintiff was Anthony Dain, Esq., of Procopio Cory Hargreaves & Savitch, 530 B Street, Suite 2100, San Diego, CA 92101, phone 619/238-1900. Counsel for the defendant was Shaun Peck, Esq., of Peck, Hadfield, Baxter & Moore, LLC, 399 North Main Street, Suite 300, Logan, UT 84321, phone 435/787-9700.

2. *Hartless v. Clorox Co.*, Case No. 06cv2705-CAB, and *Wachowski v. Clorox Co.*, Case No. 09cv0138-CAB

Companion class action cases alleging false and misleading advertising involving a consumer product. The cases settled and I presided over the certification of the class for settlement and the class settlement. The order approving the class certification and settlement is reported at *Hartless v. Clorox Co.*, 2011 WL 197542 (S.D. Cal. Jan. 20, 2011). Appeals filed by two objectors are presently pending before the Court of Appeals for the Ninth Circuit. Counsel for the plaintiff class was Timothy Gordon Blood, Esq., of Blood Hurst & O'Reardon LLP, 600 B Street, Suite 1550, San Diego, CA 92101, phone 619/338-1100. Counsel for defendant was Adam G. Levine, Esq., of O'Melveny and Myers, 400 South Hope Street, Los Angeles, CA 90071, phone 213/430-6000.

3. *Lange v. CIR Law Offices*, Case No. 09cv1485-CAB.

A claim brought under the Fair Debt Collection Act, in which the plaintiff alleged the defendant violated the act by unlawfully levying her bank account which contained Social Security funds to satisfy a judgment entered against plaintiff in a state court matter. The case was dismissed on defendant's motion for summary judgment. The order is reported at *Lange v. CIR Law Offices*, 2010 WL 2524089, (S.D. Cal. June 22, 2010). Counsel for plaintiff was Todd M. Friedman, Esq., Law Offices of Todd M. Friedman, P.C., 369 South Doheny Drive, Suite 415, Beverly Hills, CA 90211, phone 877/206-4741. Counsel for defendant was Mandie

Bullock, Esq., of CIR Law Offices LLP, 8665 Gibbs Drive, Suite 150, San Diego, CA 92123, phone 858/495-1817.

4. *Foster v. Verkouteren*, Case No. 08cv0554-CAB

A prisoner civil rights case in which the plaintiff alleged the defendant assaulted him. The case was dismissed on defendant's motion for summary judgment for failure to exhaust. The order is reported at *Foster v. Verkouteren*, 2009 WL 2485369 (S.D. Cal. Aug. 12, 2009). The order was affirmed by the Court of Appeals for the Ninth Circuit in an unpublished decision, Case No. 09-56396, 405 Fed. Appx. 102 (9th Cir. Nov. 23, 2010). Plaintiff was *pro se*. Counsel for the defendant was Terrence F. Sheehy, Esq., Office of the Attorney General, 110 West A Street, Suite 1100, San Diego, CA 92101, phone 619/645-2618.

5. *Janoe v. Raske*, Case No. 08cv1603-CAB

A prisoner civil rights case in which the plaintiff alleged a denial of access to the courts in violation of the Fourteenth Amendment. I granted defendant's motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The order is reported at *Janoe v. Raske*, 2009 WL 1615991 (S.D. Cal. June 08, 2009). Plaintiff was *pro se*. Counsel for the defendant was Stephen A. Aronis, Esq., Office of the Attorney General, 110 West A Street, Suite 1100, San Diego, CA 92101, phone 619/645-2138.

6. *Gallo v. Masco Corp.*, Case No. 08cv0604-CAB, and *Ibarra v. Builder Servs. Grp., Inc.*, Case No. 10cv0199-CAB

Related cases involving allegations of denial of overtime compensation and other wage and hour claims. I negotiated the settlement of these cases, and the parties subsequently consented to my jurisdiction to resolve the award of attorneys' fees to plaintiffs. I awarded fees in an order reported at 2011 WL 1627942 (S.D. Cal. Apr. 28, 2011). Counsel for the plaintiffs are John F. Hyland, Esq., of Rukin Hyland Doria & Tindall LLP, 100 Pine Street, Suite 725, San Francisco, CA 94111, phone 415/421-1800 and Linda J. Gulledge, Esq., of the Gulledge Law Group, 1190 South Victoria Avenue, Suite 208, Ventura, CA 93003, phone 805/642-1972. Counsel for the defendants is Arthur F. Silbergeld, Esq., of Bingham McCutchen LLP, 1620 26th Street, Fourth Floor, North Tower, Santa Monica, CA 90404, phone 650/907-1000.

7. *Hendon v. Ramsey*, Case No. 06cv1060-CAB

A prisoner civil rights case in which the plaintiff claimed he was involuntarily medicated in violation of the law. The case was scheduled for trial on March 21, 2011, but settled on February 14, 2011. I issued no substantive orders in this case. Plaintiff was *pro se*. Counsel for the defendant was John P. Walters, II,

Esq., Office of the Attorney General, 110 West A Street, Suite 1100, San Diego, CA 92101, phone 619/645-3033.

8. *Struble v. Fallbrook Union High School Dist.*, Case No. 07cv2328-LAB (CAB)

An appeal of an adminstrative law judge's ("ALJ") determination of whether the defendant provided the plaintiff's son with a "free and appropriate public education." The matter was referred by the District Judge for hearing and a report and recommendation regarding the parties' cross motions for reversal of the administrative decision. Defendant's counterclaim was dismissed with prejudice and plaintiff's claim was remanded for further determinations by the ALJ. Counsel for plaintiff was Ellen Jean Dowd, Esq., Law Offices of Ellen J. Dowd, 2658 Del Mar Heights Road, Suite 228, Del Mar, CA 92014, phone 858/342-8360. Counsel for defendant was Sharon A. Watt, Esq., of Filarsky and Watt LLP, 408 Bryant Circle, Suite C, Ojai, CA 93023, phone 805/640-2970. The R&R is reported at *Struble v. Fallbrook Union High School Dist.*, 2008 WL 8215426, S.D.Cal., August 29, 2008.

9. *Bal Seal Engineering Co. v. Huang*, Case No. 10cv0819-CAB

A patent infringement case involving springs used in latching and locking operations. A claim construction hearing was held on March 25, 2011 and the case is currently pending. Lead counsel for plaintiff is Tom H. Dao, Esq., of Klein, O'Neill & Singh LLP, 18200 Von Karman Avenue, Suite 725, Irvine, CA 92612, phone 949/955-1920. Lead counsel for defendants is Christopher D. Olszyk, Jr., Esq., of Pepper Hamilton LLP, 3000 Two Logan Square, 18th & Arch Street, Philadelphia, PA 19103, phone 215/981-4302.

10. *United States v. Nunez-Beltran*, Case No. 10cr0522-CAB

The defendant was charged with misdemeanor illegal entry. I held a bench trial on March 5, 2010, and found the defendant guilty. My decision was appealed and reviewed by District Judge Jeffrey Miller, who affirmed my judgment. An appeal of Judge Miller's order filed by defendant is pending in the Court of Appeals for the Ninth Circuit. Counsel for the United States was Sheila Nagaraj, Esq., U.S. Attorney's Office, Southern District of California, 880 Front Street, Room 6293, San Diego, CA 92101, phone 619/557-7733. Counsel for the defendant was Alysia D. Franklin, Federal Defenders of San Diego, Inc., 225 Broadway, Suite 900, San Diego, CA 92101, phone 619/234-8467.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Mytee Products Inc. v. Harris Research, Inc.*, Case No. 06cv1854-CAB, 615 F. Supp. 2d 1163 (S.D. Cal. 2009); Order Denying Plaintiff's Motion for Summary Judgment of Non-Infringement of the '577 and '892 Patents.

Counsel for the plaintiff was Anthony Dain, Esq., of Procopio Cory Hargreaves & Savitch, 530 B Street, Suite 2100, San Diego, CA 92101, phone 619/238-1900. Counsel for the defendant was Shaun Peck, Esq., of Peck, Hadfield, Baxter & Moore, LLC, 399 North Main Street, Suite 300, Logan, UT 84321, phone 435/787-9700.

2. *Mytee Products Inc. v. Harris Research, Inc.*, Case No. 06cv1854-CAB; Order Regarding the Parties' Cross Motions for Summary Judgment of Invalidity supplied.

Counsel for the plaintiff was Anthony Dain, Esq., of Procopio Cory Hargreaves & Savitch, 530 B Street, Suite 2100, San Diego, CA 92101, phone 619/238-1900. Counsel for the defendant was Shaun Peck, Esq., of Peck, Hadfield, Baxter & Moore, LLC, 399 North Main Street, Suite 300, Logan, UT 84321, phone 435/787-9700.

3. *Mytee Products Inc. v. Harris Research, Inc.*, Case No. 06cv1854-CAB; Order Denying Motions for Attorneys' Fees supplied.

Counsel for the plaintiff was Anthony Dain, Esq., of Procopio Cory Hargreaves & Savitch, 530 B Street, Suite 2100, San Diego, CA 92101, phone 619/238-1900. Counsel for the defendant was Shaun Peck, Esq., of Peck, Hadfield, Baxter & Moore, LLC, 399 North Main Street, Suite 300, Logan, UT 84321, phone 435/787-9700.

4. *Mytee Products Inc. v. Harris Research, Inc.*, Case No. 06cv1854-CAB; Order Re: Permanent Injunction supplied.

Counsel for the plaintiff was Anthony Dain, Esq., of Procopio Cory Hargreaves & Savitch, 530 B Street, Suite 2100, San Diego, CA 92101, phone 619/238-1900. Counsel for the defendant was Shaun Peck, Esq., of Peck, Hadfield, Baxter & Moore, LLC, 399 North Main Street, Suite 300, Logan, UT 84321, phone 435/787-9700.

5. *Hartless v. Clorox Co.*, Case No. 06cv2705-CAB, 2011 WL 197542 (S.D. Cal. Jan. 20, 2011)

Counsel for the plaintiff class was Timothy Gordon Blood, Esq., of Blood Hurst & O'Reardon LLP, 600 B Street, Suite 1550, San Diego, CA 92101, phone 619/338-1100. Counsel for defendant was Adam G. Levine, Esq., of O'Melveny and Myers, 400 South Hope Street, Los Angeles, CA 90071, phone 213/430-6000.

6. *Wi-Lan Inc. v. Research in Motion Corp.*, Case No. 10cv859-W (CAB), 2010 WL 2998850 (S.D. Cal. July 28, 2010)

Counsel for Wi-Lan was John C. Briody, Esq., of McKool Smith PC, One Bryant Park, 47th Floor, New York, NY 10036, phone 212/402-9438. Counsel for Qualcomm was David Henry Dolkas, Esq., of McDermott Will & Emery, 275 Middlefield Road, Suite 100, Menlo Park, CA 94025, phone 650/815-7415.

7. *Lange v. CIR Law Offices*, Case No. 09cv1485-CAB, 2010 WL 2524089 (S.D. Cal. June 22, 2010)

Counsel for plaintiff was Todd M. Friedman, Esq., Law Offices of Todd M. Friedman, P.C., 369 South Doheny Drive, Suite 415, Beverly Hills, CA 90211, phone 877/206-4741. Counsel for defendant was Mandie Bullock, Esq., of CIR Law Offices LLP, 8665 Gibbs Drive, Suite 150, San Diego, CA 92123, phone 858/495-1817.

8. *Ins. Co. of State of PA v. City of San Diego*, Case No. 02cv0693-BEN (CAB), 2008 WL 926558 (S.D. Cal. Apr. 4, 2008)

Counsel for plaintiff was Stephen V. Kovarik, Esq., of Lewis Brisbois Bisgaard & Smigh, 221 North Figueroa Street, Suite 1200, Los Angeles, CA 90012, phone 213/250-1800. Counsel for defendant were Kristine L. Wilkes, Esq., of Latham and Watkins, 600 West Broadway, Suite 700, San Diego, CA 92101, phone 619/236-1234 and Harvey Levine, Esq., of Levine & Miller, 550 West C Street, Suite 1810, San Diego, CA 92101, phone 619/231-9449.

9. *Struble v. Fallbrook Union High School Dist.*, Case No. 07cv2328-LAB (CAB), 2008 WL 8215426 (S.D. Cal. Aug. 29, 2008)

Counsel for plaintiff was Ellen Jean Dowd, Esq., Law Offices of Ellen J. Dowd, 2658 Del Mar Heights Road, Suite 228, Del Mar, CA 92014, phone 858/342-8360. Counsel for defendant was Sharon A. Watt, Esq., of Filarsky and Watt LLP, 408 Bryant Circle, Suite C, Ojai, CA 93023, phone 805/640-2970.

10. *Lanum v. Astrue*, Case No. 07cv1948-JM (CAB); Report and Recommendation Regarding Cross Motions for Summary Judgment supplied.

Counsel for plaintiff was Steven G. Rosales, Esq., Law Office of Lawrence D. Rohlfing, 12631 East Imperial Highway, Suite C115, Sante Fe Springs, CA 90670, phone 562/868-5886. Counsel for defendant was Thomas C. Stahl, Esq., U.S. Attorney's Office, Southern District of California, 880 Front Street, Room 6293, San Diego, CA 92101, phone 619/557-7140.

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

Williams v. Harrison, 2007 WL 1110910 (S.D. Cal. Mar. 28, 2007), *rev'd*, 368 Fed. Appx. 764 (9th Cir. 2010), *cert. denied*, 130 S. Ct. 3414, 177 L. Ed. 2d 327 (2010), 2010 WL 15293964 (June 14, 2010).

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

Renteria v. Williams, Case No. 05cv0516-JM (CAB).
Report and Recommendation Regarding Defendant's Motion for Summary Judgment, filed November 19, 2007, recommended dismissing plaintiff's Eighth Amendment claim of excessive force because plaintiff failed to establish more than de minimis injury and his retaliation claim for failure to exhaust. The District Judge adopted the recommendation on a *de novo* review. The order and recommendation are reported at *Renteria v. Williams*, 2008 WL 698463 (S.D. Cal. Mar. 14, 2008). The Ninth Circuit affirmed dismissal of the retaliation claim, but vacated and remanded the Eighth Amendment claim holding that the standard for an Eighth Amendment claim is whether the force is excessive, not the extent of the resulting injury, so summary judgment should not have been granted. Reported at *Renteria v. Williams*, 340 Fed. Appx. 386 (9th Cir. 2009).

Williams v. Harrison, Case No. 05cv2150-W (CAB).
Report and Recommendation to Deny Petitioner's Motion to Amend the Petition, filed January 31, 2007, recommending denial of petitioner's motion to amend his petition for writ of habeas corpus because he sought to add claims outside the statute of limitations. The District Judge adopted the recommendation on a *de novo* review. The order and recommendation are reported at *Williams v. Harrison*, 2007 WL 1110910 (S.D. Cal. Mar. 28, 2007). The Ninth Circuit reversed holding that petitioner's motion to recall the remittitur in state court may serve as a habeas petition and toll the statute of limitations and remanded for a determination as to whether the claims in petitioner's state motion to recall the remittitur should be treated as state habeas petitions. Reported at *Williams v. Harrison*, 368 Fed. Appx. 764 (9th Cir. 2010).

Hall v. Harrison, Case No. 05cv1261-W (CAB) .
Report and Recommendation Re Respondent's Motion to Dismiss the First Amended Petition for Writ of Habeas Corpus, filed January 26, 2007, recommending denial of respondent's motion to dismiss because petitioner presented colorable federal constitutional claims and exhausted his claims. The District Judge rejected the report in part, on a *de novo* review, finding the petitioner's claims did not raise a colorable federal issue and dismissed the First Amended Petition with prejudice. Reported at *Hall v. Harrison*, 2007 WL

1110918 (S.D. Cal. Mar. 29, 2007). A copy of my Report and Recommendation is supplied.

Stewart v. Tilton, Case No. 05cv1059-BTM (CAB).
Report and Recommendation Denying Petition for Writ of Habeas Corpus, filed February 28, 2008, recommending denial of the petition because it was untimely and because he failed to present a federal question, or show the state court denials were contrary to or an unreasonable application of federal laws and he did not make a truly persuasive demonstration he was actually innocent. Reported at *Stewart v. Tilton*, 2008 WL 2276158 (S.D. Cal. Feb. 28, 2008). The District Judge, on a *de novo* review, declined to adopt the recommendation and granted the petitioner's motion to amend. *Stewart v. Cate*, 2008 WL 2276209 (S.D. Cal. May 30, 2008).

United States v. Nunez-Beltran, Case No. 10cr0522-CAB.
I held a bench trial on March 5, 2010, and found the defendant guilty of misdemeanor illegal entry. My decision was appealed and reviewed *de novo* by District Judge Jeffrey Miller, who affirmed my judgment but found error in the admission of the defendant's birth certificate. 2010 WL 2985490 (S.D. Cal. July 26, 2010). An appeal of Judge Miller's order filed by defendant is pending in the Court of Appeals for the Ninth Circuit.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

My search for published opinions resulted in 176 issued opinions. This appears to be slightly more than 8% of my issued opinions. Since December 2005, the District Court's records reflect that I have issued over 160 Report and Recommendations and over 450 orders on non-dispositive motions for Habeas Corpus Petitions and in Prisoner Civil Rights cases; 11 Report and Recommendations and 18 orders on non-dispositive motions in Social Security Appeals; 20 Report and Recommendations on dispositive motions and over 610 orders on non-dispositive motions in other civil cases; and 85 orders on dispositive motions in civil consent cases. I have issued over 770 orders on non-dispositive motions in felony cases. The unpublished opinions are stored electronically in the District Court's records and can be searched by author, case names and number, and other parameters.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not issued any opinions that addressed any significant federal or state constitutional issues.

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

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I recuse from any matter in which I have a financial interest in accordance with the Code of Judicial Conduct. I also recuse if I have a relationship with counsel or a party such that it would be improper or create an appearance of impropriety for me to be a judge on the case. I do not take cases in which parties are represented by my former law firm or my former clerks and I have a short list of close friends and former clients on my recusal list. Our court has an automatic recusal system. A judge enters names of entities or individuals that will trigger a conflict hit. If that happens, the clerk's office either reassigns the case or sends a notice to the judge that there was a hit so the judge can determine if recusal is appropriate. It is my responsibility to update my list as needed.

There is no record of the cases that are automatically reassigned by the clerk's office resulting from a conflict hit at the time the case was filed.

I have recused sua sponte on the following cases because my former law firm or a personal friend was representing a party and I felt it was improper or would appear improper for me to be a judge on the case:

Hermanson v. Hunter, Case No. 07cv936-WQH (LSP)
Regional Water v. Bernal, Case No. 01cv270-BTM (BLM)
Smith v. Kraft Foods, Inc., Case No. 07cv2192-BEN (WMC)

Meyer v. Qualcomm Inc., Case No. 08cv655-WQH (LSP)
Oliver v. Bill Muncey Industries Inc., Case No. 08cv1940-WQH (NLS)
Lorenzo v. United States, Case No. 09cv1803-DMS (BGS)
SEC v. Khanna, Case No. 09cv1783-BEN (WVG)
SEC v. Khanna, Case No. 09cv1784-BEN (WVG)
Zeinali v. Raytheon Company, Case No. 09cv838-JLS (BLM)
Ivy Hotel San Diego v. Houston Cas. Co., Case No. 10cv2183-L (BGS)
Norris v. Berkowitz, Case No. 10cv2477-BEN (NLS)

I also recused sua sponte on the following cases:
Stewart v. California Dept. of Educ., Case No. 07cv971-MMA (WVG)
To v. Poway Unified Sch. Dist., Case No. 07cv1978-LAB (NLS)
At the time my children were students in the Poway Unified School District and I believed it could be perceived as a conflict of interest for me to be a judge on a matter in which their school district was a party.

In 2009, I inherited financial assets from my parent's estate. I had two matters pending before me from which I recused sua sponte due to a conflict that arose resulting from inherited stock (I sold the inherited stocks as soon as possible to avoid future conflicts):
Moutain v. Home Depot, Case No. 09cv1326-W (BGS)
Intel Corp. v. Procopio, Cory, Hargreaves & Savitch, Case No. 10cv264-JLS (BLM)

I also recused sua sponte from a case that involved disciplinary proceedings against a criminal defense attorney practicing in our District – *In Re: DeOlivas*, Case No. 08cv1575-BLM. I sanctioned the attorney and his conduct in my court was one of the instances that led to his disciplinary proceedings. When the case was assigned to me to supervise counsel's compliance with the disciplinary order, I did not feel it was proper and recused so one of my colleagues who had not had any similar instances with the attorney could supervise his compliance.

I have not had a litigant or party request directly to me that I recuse due to an asserted conflict of interest. I am aware of three cases in which a party requested by motion that I be recused from the case:

Luna v. Sears Life Ins. Co., Case No. 06cv2653-DMS (CAB). Counsel for plaintiff filed a motion with District Judge Dana Sabraw on February 7, 2007, requesting I be disqualified based on a perceived bias against plaintiff's case. Judge Sabraw denied the motion and I did not voluntarily recuse and I continued management of the litigation. I had no bias against Mr. Luna or his case. In light of the plaintiff's stated perception, however, I did refer the parties to another Magistrate Judge for settlement negotiations.

Klat v. Mitchell Repair Info. Co., Case No. 10cv0100-JM (CAB). Plaintiff Klat, a *pro se* litigant in an employment discrimination case, filed a motion with District Judge Jeffrey Miller on March 9, 2010, requesting Judge Miller and I both recuse from her matter based on a perceived bias against her case. Judge Miller denied the motion and I did not voluntarily recuse. I have no bias against Ms. Klat or her case.

Martinez v. Scribner, Case No. 06cv2613-JAH (CAB). Plaintiff Martinez, a *pro se* litigant in a prisoner civil rights action, filed a motion with District Judge John Houston on May 12, 2010, requesting the District Judge remove me as Magistrate Judge on the case because he believes I have issued orders that are biased and prejudicial against him. The request is pending before the District Judge, however, had plaintiff made the request directly to me, I would not have recused based on his dissatisfaction with the court's rulings. I have no bias or prejudice against Mr. Martinez.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have held no public offices.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not been a member or held an office in any political party or election committee. I have never held a position or played a role in a political campaign.

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

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

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

I did not serve as a clerk to a judge.

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

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1988 – 2005
DLA Piper US, LLP
401 B Street, Suite 1700
San Diego, California 92101
Partner (1996 – 2005)
Associate (1988 – 1996)
(Note: From 1987 to 1994, the firm was known as Gray, Cary, Ames & Frye. From 1994 to 2005, it was known as Gray, Cary, Ware & Freidenrich. In 2005 it became DLA Piper Rudnick Gray Cary LLP. It is now known as DLA Piper US, LLP.)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

I was a civil litigator. In the initial years of my practice, 1988 through 1992, approximately 50% of my practice was intellectual property litigation and 50% was insurance defense, business disputes and environmental tort litigation. From 1993 until I left practice my work was approximately 80% intellectual property litigation, mostly patent cases, and 20% breach of contract, trade secret and other business disputes. I was the National Co-Chair of Patent Litigation for DLA Piper US, LLP. As the firm's Patent Litigation Co-Chair, I managed a group of 70 patent litigators in six offices around the United States. In addition to my client work, I was responsible for the administration of the group, client intake, budgeting, marketing and recruiting.

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

During the initial years of my practice, I represented insureds of the Automobile Club of Southern California (AAA) in personal injury cases and local San Diego businesses in contract and intellectual property cases. I was a founding member of the law firm's patent litigation practice. From 1993 on my practice primarily involved representing both patent owners and accused infringers in patent cases involving a variety of technologies including computer hardware and software, semiconductor design and manufacturing, telecommunications devices, automotive parts, medical devices, immunology and consumer products. My clients ranged

from individuals and small startups to large international corporations. Starting in 1994 my copyright and trademark work was primarily for Dr. Seuss Enterprises, L.P.

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

All my practice has been in litigation. I appeared in court two to three times a month during my early years of practice (1988-1992), mostly for motion practice. During the middle period (1993-2000), in addition to four patent jury trials, I appeared in court one to two times a month. During the last period (2001-2005), I appeared in court 6 to 8 times a year as my administrative responsibilities increased.

i. Indicate the percentage of your practice in:

1. federal courts: 75%
2. state courts of record: 25%
3. other courts: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 100%
2. criminal proceedings: 0%

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

I tried eleven civil cases to verdict. Eight were jury trials. I was sole counsel for one of those cases and second chair, associate or co-counsel for seven of those cases. I tried three civil bench trials. I was sole counsel for each of those cases.

i. What percentage of these trials were:

1. jury: 73%
2. non-jury: 27%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I am admitted to the Supreme Court of the United States and was co-counsel on one amicus brief filed in *Eldred v. Ashcroft*, 537 U.S. 186 (2003), on behalf of Dr. Seuss Enterprises, L.P., et al. Copy supplied.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    a. the date of representation;

    b. the name of the court and the name of the judge or judges before whom the case was litigated; and

    c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Magliaro v. Olmstead*, San Diego Superior Court Case No. N39406, December 1989.

This was a property damage and emotional distress case resulting from defendant's excessive pesticide application at plaintiffs' residence. Representing the plaintiffs, I handled discovery, motion practice, witness preparation, was second chair at trial and prepared the respondent's brief on appeal. The case was tried in the Vista Branch of the San Diego Superior Court before the Hon. Don Martinson. The jury returned a verdict for the plaintiffs, which was affirmed on appeal. I worked on the case from approximately July 1989 through the appeal in 1991.

Co-counsel for plaintiffs was Douglas Barker, Esq., of Barker Olmstead & Barnier, APLC, 2341 Jefferson Street, Suite 200, San Diego, CA 92110, phone 619/682-4801. Counsel for defendant was Susan Grady, Esq., 7855 Ivanhoe Avenue, Suite 408, La Jolla, CA 92037, phone 858/454-0744.

2. *IRT v. Four Pi Systems Corp.*, Case No. 92cv1575-G, November 1993.

This was a fraud and misappropriation case with a counterclaim for patent infringement involving an apparatus for three-dimensional imaging of solder connections on circuit boards. Representing defendant/counterclaimant Four Pi Systems, I handled discovery, motion practice, demonstrative exhibit preparation, jury instructions and verdict form, witness preparation, was second chair at trial and prepared post-trial motions. Trial in the U.S. District Court for the Southern District of California before the Hon. Earl B. Gilliam resulted in a hung jury. Plaintiff filed for bankruptcy during post-trial motion practice and the case was eventually dismissed for failure to prosecute. I worked on the case from approximately August 1992 to January 1995.

Co-counsel was John Allcock, Esq., DLA Piper US, LLP, 401 B Street, Suite 1700, San Diego, CA 92101, phone 619/699-2828. Counsel for plaintiff was Robert P. Cummins, Esq., Cummins & Cronin LLC, 77 West Wacker Drive, Suite 4800, Chicago, IL 60601, phone 312/578-0500.

3. *Cabinet Vision v. Cabnetware*, 129 F.3d 595 (Fed. Cir. 1997); 230 F.3d 1382 (Fed. Cir. 2000).

This was a patent infringement case involving computer software for the design and manufacture of custom cabinetry. Representing plaintiff, I handled discovery, motion practice, demonstrative exhibit preparation, jury instructions and verdict form, witness preparation, was second chair at trial and prepared post-trial motions and appeals. The case was tried in the U.S. District Court for the Southern District of California before the Hon. William B. Enright, who set aside a verdict for the plaintiff. On appeal, the case was reversed and remanded. On remand, JMOL was entered for the defendant. This decision was reversed in part and affirmed in part on a second appeal. I worked on the case from approximately January 1994 to February 2000.

Co-counsel was John Allcock, Esq., DLA Piper US, LLP, 401 B Street, Suite 1700, San Diego, CA 92101, phone 619/699-2828. Trial counsel for defendant was Chris Gibson, Esq., of Boutin Jones, Inc., 555 Capitol Mall, Suite 1500, Sacramento, California 95814, phone 916/321-4444. Appellate counsel for defendant was John Sganga, Jr., Esq., Knobbe, Martens, Olson & Bear, LLP, 2040 Main Street, 14th Floor, Irvine, CA 92614, phone 949/760-0404.

4. *Dr. Seuss Enterprises L.P. v. Penguin Books USA, Inc.*, 924 F. Supp. 1559 (S.D. Cal. 1996), *aff'd*, 109 F.3d 1394 (9th Cir. 1997).

This was a copyright and trademark infringement case involving unauthorized use of the "Cat in the Hat" and other Dr. Seuss properties in a book about the O.J. Simpson trial. Representing plaintiff, I briefed the motion for injunction at the District Court level and co-wrote the respondent's brief on appeal. The case was heard in the U.S. District Court for the Southern District of California before the Hon. Napoleon A. Jones, Jr. The court entered a preliminary injunction for Dr. Seuss prohibiting publication of the infringing work. That decision was affirmed on appeal, after which defendant abandoned the publication of the infringing book. I worked on the case from approximately February 1996 to March 1997.

Co-counsel was Alex H. Rogers, Esq., formerly with Gray Cary, now at Qualcomm Incorporated, 5775 Morehouse Drive, San Diego, CA 92121, phone 858/651-5861. Counsel for defendant was Vincent Cox, Esq., of Leopold, Petrich & Smith PC, 2049 Century Park East, Suite 3110, Los Angeles, CA 90067, phone 310/277-3333.

5. *BioGenex Labs. v. Biotek Solutions Inc.*, 152 F.3d 947 (Fed. Cir. 1998).

This was a patent infringement case involving a process for enhancing immunostaining for antigen retrieval. Representing plaintiff, I handled discovery, motion practice, demonstrative exhibit preparation, jury instructions and verdict form, witness preparation, was second chair at trial and prepared post-trial motions and respondent's brief on appeal. The case was tried in the U.S. District Court for the Northern District of California, San Jose Division, before the Hon. Edward A. Infante. The jury returned a verdict for plaintiff finding willful infringement and the court awarded enhanced damages. The judgment was affirmed on appeal. I worked on the case from approximately November 1996 to April 1998.

Co-counsel was John Allcock, Esq., DLA Piper US, LLP, 401 B Street, Suite 1700, San Diego, CA 92101, phone 619/699-2828. Trial counsel for defendant was Michael K. Plimack, Esq., of Covington & Burling LLP, One Front Street, San Francisco, CA 94111, phone 415/591-7002.

6. *In re Burke, Inc: Personal Mobility Vehicle Patent Litig.*, MDL Docket No. 809 KMW, Civ. No. 89-2613, September 1998.

This was a patent infringement case involving personal mobility vehicles for the disabled and the elderly. Representing defendant Everest & Jennings, I associated in as co-counsel at the request of the client shortly before trial to assist at trial with the defense and primarily to manage the damages aspect of the case. The case was tried in the U.S. District Court for the Central District of California before the Hon. Kim Wardlaw, resulting in a hung jury and settlement post-trial. I worked on the case from approximately March 1998 to October 1998.

Co-counsel was John Kelly, Esq., and John Bauersfeld, Esq., of Kelly Bauersfeld Lowery & Kelley, LLP, 6320 Canoga Avenue, Suite 1650, Woodland Hills, CA 91367, phone 818/347-7900. Counsel for plaintiff was James H. Wallace, Esq., of Wiley Rein & Fielding, 1776 K Street Northwest, Washington, DC 20006, phone 202/429-7000.

7. *Cambrian Consultants v. Maxtor Corp.*, Case No. CV-01-04580 R, February 2002.

This was a patent infringement case involving emergency retract systems for hard disk drives. Representing defendant, I handled discovery, expert witness depositions, and motion practice. The case was heard in the U.S. District Court for the Central District of California, before the Hon. Manuel Real. The Court granted defendant's motion for summary judgment of unenforceability due to inequitable conduct. I worked on the case from approximately May 2001 to February 2002.

Co-counsel was William Boggs, Esq., DLA Piper US, LLP, 401 B Street, Suite 1700, San Diego, CA 92101, phone 619/699-2758. Trial counsel for plaintiff were Roderick Dorman, Esq., and Larry Hadley, Esq., of Hennigan, Bennett & Dorman, 601 South Figueroa Street, Suite 3300, Los Angeles, CA 90017, phone 213/694-1200.

8. *Dri Mark Prods., Inc., v. Nat'l Ink, Inc. and Dixon Ticonderoga*, 2002 WL 550968 (S.D.N.Y. 2002), *aff'd*, 2003 WL 1194271 (Fed. Cir. 2003).

This was a patent infringement case involving ink formulations for capillary action markers. Representing defendant National Ink, I was lead trial and appellate counsel. I managed discovery, prepared and argued claim construction and a summary judgment motion in the District Court, and prepared respondent's brief and presented argument on appeal. The case was heard in the U.S. District Court for Southern District of New York before the Hon. Harold Baer. The Court granted defendant's motion for summary judgment of non-infringement, which was affirmed on appeal. I worked on the case from approximately July 2001 to April 2002.

Counsel for co-defendant Dixon Ticonderoga was Dominick Conde, Esq., of Fitzpatrick, Cella, Harper & Scinto, 30 Rockefeller Plaza, New York, NY 10012, phone 212/218-2100. Counsel for plaintiff was Max Moskowitz, Esq., of Ostrolenk, Faber, Gerb & Soffen, LLP, 1180 Avenue of Americas, New York, NY 10036, phone 212/382-0700.

9. *Maxtor Corp. v. Magnetic Media Dev.*, Case No. CV-00-04153 GAF, March 2001.

This was a declaratory relief case for patent non-infringement involving magnetic media for hard disk drives. Representing plaintiff Maxtor, I managed discovery and prepared claim construction briefing. The case was filed in the U.S. District Court for the Central District of California before the Hon. Gary A. Feess, and settled at the claim construction hearing. I worked on the case from approximately May 2000 to March 2001.

Co-counsel was William Boggs, Esq., DLA Piper US, LLP, 401 B Street, Suite 1700, San Diego, California 92101, phone 619/699-2758. Trial counsel for defendant were Paul F. McCaul, Esq., 1334 Park View Avenue, Suite 100, Manhattan Beach, CA 90266, phone 310/546-8100 and Joseph Price, Esq., and Michael Moffat, Esq., of Price & Gess, 2100 South East Main Street, Suite 250, Irvine, CA 92614, phone 494/261-8433.

10. *Northern Telecom Ltd. v. Samsung Electronics Co.*, 215 F.3d 1281 (Fed. Cir. 2000).

This was a patent infringement case involving a method of plasma etching conductive materials for semiconductor wafer production. Representing defendant Samsung Electronics, I worked on discovery, prepared and argued the summary judgment motion, and prepared respondent's brief on appeal. The case was heard in the U.S. District Court for the Northern District of California before the Hon. Martin J. Jenkins. The Court granted defendant's motion for summary judgment of invalidity finding the inventor failed to disclose the best way to practice the patented invention in violation of the patent disclosure rules. That decision was reversed on appeal and the case settled after remand. I worked on the case from May 2000 to March 2001.

Co-counsel were David Monahan, Esq., and John Allcock, Esq., DLA Piper US, LLP, 401 B Street, Suite 1700, San Diego, CA 92101, phone 619/699-2828. Trial counsel for

plaintiff was Jack London, Esq., of Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94104, phone 415/268-7000.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

    As a litigator my most significant cases are listed in responses to Question 17, above. As a patent litigator, many of the matters I worked on did not proceed to trial. Throughout my litigation practice, much of the legal work I did enabled me to settle litigation for intellectual property clients such as Maxtor Corporation, Samsung Electronics Co., and Hewlett-Packard on favorable terms without proceeding to trial. I also provided assessments to partners in my former firm of key intellectual property assets being acquired by clients in business mergers and acquisitions.

    For Dr. Seuss Enterprises, L.P., in addition to copyright and trademark enforcement litigation, I assisted in coordinating with charitable and community organizations for the use of Dr. Seuss properties.

    I became my former law firm's intellectual property practice group assistant chair in approximately 2000 and gradually took over the administration of the group, including associate and lateral partner hiring and retention, client intake, budgeting, marketing and training. I was the National Co-Chair of the 70-person DLA Piper US LLP Patent Litigation Practice Group, a position rarely held by a woman attorney with no science or engineering degree, when I was appointed a U.S. Magistrate Judge for the Southern District of California.

    I have not performed any lobbying activities for any client or organization.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    Introduction to Intellectual Property Law, at University of San Diego School of Law, from June 7 through July 31, 1999.

    The course was an introduction to copyright, trademark and patent law. It covered the types of intellectual property protected by each statutory provision, application procedures, enforcement proceedings, affirmative defenses and damages. I do not have a copy of the syllabus.

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

    I have no anticipated receipts or other future benefits expected from previous business relationships of any nature.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I have no plans, commitments, or agreements to pursue outside employment during my service with the court.

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

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        The following entities are on my conflict list due to financial interest: ThermoFisher Scientific (my husband's employer), and JDS Uniphase (we own common stock shares). The following people are on my conflict list because they are personal friends and I have determined it would be an appearance of impropriety if they appeared before me: Assistant U.S. Attorney Cindy Cipriani; Randall E. Kay, Esq.; Nancy L. Stagg, Esq.; Michael Leggieri, Esq. (former law clerk); Olga May, Esq. (former law clerk). The following entities are on my conflict list because I have determined it may be an appearance of impropriety if they appeared before me: Dr. Seuss Enterprises, LP (former very significant

client); and DLA Piper US, LLP (my former law firm); Wilber & Associates (an Illinois firm in which my brother Joseph Palumbo is a principal).

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

I will continue to follow the federal recusal statutes and the Code of Conduct for United States Judges, just as I do in my current position. I will continue to recuse myself from cases I which I perceive there is any appearance of impropriety.

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

Prior to becoming a judge, my pro bono contribution was primarily through Bar Association committee work. I was a committee member and chair of the San Diego County Bar Association's Lawyer Referral Service ("LRIS"), and worked to expand the Bar Association's Modest Means Program to help provide access to legal services for those in San Diego who need legal counsel but are financially unable to bear the expense. Also as chair of LRIS, I instituted the founding of an annual grant from LRIS, to be administered by the San Diego County Bar Foundation, to provide financial support to such groups as the San Diego Volunteer Lawyers Program and the Women's Resource Fair. I also served as a Judge Pro Tem in the San Diego Small Claims Court to assist the Superior Court in meeting the needs of the San Diego community. I served on the San Diego County Bar Foundation raising funds for grants to organizations and programs that provide access to justice, such as Voices for Children, Volunteers in Parole and Casa Cornelia Law Center.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I was contacted in November 2010 by Senator Dianne Feinstein's Judicial Advisory Committee about the open District Judge position. On December 7, 2010, I met with David S. Casey, Jr., from the Senator's Committee, to discuss my interest in the position and again on December 24, 2010 to review my

application to Senator Feinstein's Committee. On December 28, 2010, I submitted my application and I was interviewed by the Senator's Committee, chaired by David J. Noonan, on January 25, 2011. On February 9, 2011, I received a call from Lane Dilg, Senator Feinstein's nominations counsel, informing me that the Senator recommended me to the President for appointment

Since February 11, 2011, I have been in contact with pre-nomination officials at the U.S. Department of Justice. On March 21, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 11, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2011

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Benevengo, Cathy A.	US District Court, Southern District of California	05/11/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
US District Judge	☑ Nomination, Date 05/11/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 05/08/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
U.S. Courthouse 940 Front Street San Diego, California 92101	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	President	Poway High School Music Boosters
2.	Member of Advisory Board	San Diego Chapter of Federal Bar Association
3.	Member of Board of Governors	San Diego Chapter of the Association of Business Trial Lawyers
4.	Director	Federal Magistrate Judges Association
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting Bentivengo, Cathy A.	Date of Report 05/11/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2010-11	Thermo Fisher Scientific - Salary & Commission
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Benelvengo, Cathy A.	Date of Report 05/11/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 9	Name of Person Reporting Benelvengo, Cathy A.	Date of Report 05/11/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. IRA #2 (Edward Jones)	E	Dividend	N	T	Exempt				
2. -- Franklin Growth Fund (Y)									
3. -- Franklin Mutual Beacon Fund (Y)									
4. -- Franklin Mutual Discovery Fund (Y)									
5. -- Franklin Small Mid Cap Growth (Y)									
6. -- Growth Fund of America (Y)									
7. -- Oppenheimer Develop Mkts (Y)									
8. -- Oppenheimer Select Value (Y)									
9. -- Edward Jones Cash Reserves									
10. -- Capital World Grw & Inc Fund									
11. -- Columbia Marsico Growth Fund									
12. -- Columbia Small Cap Value II									
13. --Dodge & Cox Income Fund									
14. -- Dodge & Cox Stock Fund									
15. -- Federated Kaufmann Small Cap									
16. -- Fundamental Investors Fund									
17. -- Hartford Cap Appreciation Fund									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 9	Name of Person Reporting Benelvengo, Cathy A.	Date of Report 05/11/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. -- Hotchkis & Wiley Mid Cap Val I									
19. -- JPMorgan Core Bond Fund Select									
20. -- Loomis Sayles Invt Grade Bd									
21. -- MFS Value Fund									
22. -- Munder Mid Cap Core Growth									
23. -- Mutual Golbal Discovery Fund									
24. -- Oppenheimer Intl Growth Fund									
25. -- Van Kempen Comstock Fund									
26. --JPM Fed Money Market Inst Cl									
27. 401K #2 (Thermo Fisher)	A	Dividend	N	T					
28. -- Dodge & Cox Stock									
29. -- T. Rowe Price Retirement 2040 Fund									
30. -- Thermo Fsher Scientific Inc.									
31. -- Western Asset CR PL Bond I									
32. Brokerage Acct. #1									
33. -- New World Growth Fund of America	A	Dividend	K	T					
34. -- U.S. Govt. Securities Fund	A	Dividend	K	T					

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

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting Bencivenga, Cathy A.	Date of Report 05/11/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Brokerage Acct. #2									
36. -- Fundamental Investors	A	Dividend	L	T					
37. -- New World Growth Fund of America	A	Dividend	K	T					
38. Palomar Pomerado Health Muni Bonds	A	Interest	K	U					
39. Money Market Charles Schwab	A	Interest	L	T					
40. Brokerage Acct. #4 (Schwab)									
41. --Columbia Seligman Comm & Info Fund	A	Dividend	J	T					
42. -- Matthews Asian Growth & Inc Fund	A	Dividend	J	T					
43. -- Munder Index 500 Fund	C	Dividend	K	T					
44. --Oakmark Equity Income Fund	A	Dividend	J	T					
45. -- Parnassus Equity Income	A	Dividend	J	T					
46. -- Permanent Portfolio	A	Dividend	J	T					
47. -- Reynolds Blue Chip	A	Dividend	K	T					
48. -- Yacktman Focused Fund	A	Dividend	K	T					
49. IRA #1	A	Dividend	J	T					
50. -- JDS Uniphase Corp. Common Stock									
51. -- Fidelity Intl Discovery Mutual Fund									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000

2. Value Codes (See Columns C1 and D3)
B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
R =Cost (Real Estate Only)
V =Other

C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
S =Assessment
W =Estimated

D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000

3 Value Method Codes (See Column C2)
Q =Appraisal
U =Book Value

T =Cash Market

E =$15,001 - $50,000

FINANCIAL DISCLOSURE REPORT Page 7 of 9	Name of Person Reporting Benelvengo, Cathy A.	Date of Report 05/11/2011

VII. INVESTMENTS and TRUSTS — *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
52. Union Bank of California (Y)	A	Interest							
53. IRA #3 (Schwab)	A	Dividend	K	T					
54. -- Deposit Account/Cash Reserves									
55. -- AIG Common Stock (Y)									
56. -- GE Common Stock (Y)									
57. -- Home Depot Common Stock (Y)									
58. -- IBM Common Stock (Y)									
59. -- J&J Common Stock (Y)									
60. -- Microsoft Common Stock (Y)									
61. -- Parnassus Equity Income									
62. Brokerage #3 (Wells Fargo)									
63. -- Intel Common Stock (Y)	A	Dividend							
64. -- Microsoft Common Stock (Y)	A	Dividend							
65. -- Munder Mutual Fund (Y)	A	Dividend							
66. -- Cash Reserves (Y)		None							
67.									
68.									

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

FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Benelvengo, Cathy A.	Date of Report 05/11/2011

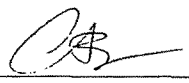
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Benelvengo, Cathy A.	Date of Report 05/11/2011

IX. CERTIFICATION.

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

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

Signature 

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		45	000	Notes payable to banks-secured			
U.S. Government securities – see schedule		9	333	Notes payable to banks-unsecured			
Listed securities – see schedule	1	216	074	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		287	329
Real estate owned – personal residence		900	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		37	000	Home equity line of credit		131	000
Cash value-life insurance		5	429				
Other assets itemize:							
				Total liabilities		418	329
				Net Worth	1	794	507
Total Assets	2	212	836	Total liabilities and net worth	2	212	836
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, co-maker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

U.S. Government Securities	
Series EE bonds	$2,650
FERS – G Fund	6,683
Total U.S. Government Securities	$9,333
Listed Securities	
Charles Schwab Money Market Funds	$96,640
Edward Jones Money Market Funds	25
JP Morgan Money Market Funds	1,747
American U.S. Gov't Securities Fund CL C-529	36,331
Capital World Growth & Income Fund CL F1	25,747
Columbia FDS Ser Tr Small Cap Value II Fund CL Z	14,183
Columbia FDS Ser Tr Marisco Growth Fund CL Z	31,532
Columbia Seligan Comm'ns & Information Fund	5,900
Dodge & Cox Stock Fund	181,436
Dodge & Cox Income Fund	28,054
Federated Kaufmann Small Cap Fund Class A	14,415
Fidelity Intl Discovery Mutual Fund	3,310
Fundamental Investors Fund CL A-529	24,409
Fundamental Investors Fund CL C-529	25,777
Fundamental Investors Inc CL F1	30,829
Hartford Cap Appreciation Fund CL I	29,567
Hotchkis & Wiley FDS Mid Cap Value Fund CL I	18,747
Invesco Van Kampen Comstock Fund Class Y	26,787
JDS Uniphase Corp Common Stock	43
JP Morgan TR II Core Bd FD Select CL	31,891
Loomis Sayles Investment Grade Bond Fund Class Y	12,564
Matthews Asian Growth & Income Fund	5,872
MFS Ser Tr I Value Fund CL I	30,140
Munder Index 500 FD CL A	30,342
Munder Mid Cap Core Growth Fund CL Y	18,860
Mutual Global Discovery Fund CL Z	38,114
New World Fund CL C-529	67,567
Oakmark Equity Income Fund	11,064
Oppenheimer International Growth Fund CL Y	40,554
Parnassus Equity Income	39,198
Permanent Portfolio	6,074
Reynolds Blue Chip	24,656
Thermo Fisher Scientific Inc. Stock	7,032
T.Rowe Price Retirement 2040 Fund	163,124
Western Asset CR PL Bond	53,661
Yacktman Focused Fund	23,102
Palomar Pomerado Health CA Municipal Bonds	16,780
Total Listed Securities	$1,216,074

AFFIDAVIT

I, Cathy Ann Bencivengo, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5/9/11
(DATE)

(NAME)

Brenda K. Seyler
(NOTARY)

BRENDA K. SEYLER
Commission # 1861726
Notary Public - California
San Diego County
My Comm. Expires Mar 23, 2013

Senator WHITEHOUSE. Thank you very much.
Judge Groh.

STATEMENT OF GINA MARIE GROH, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Judge. GROH. Thank you. Good afternoon, Senators. Thank you for inviting me here to answer your questions this afternoon. I'd like to thank the President for this nomination. I'd also like to thank Senator Rockefeller for recommending me to the Federal District Court, and thank Senator Manchin for heartily seconding that recommendation. Also, thank both of our Senators from West Virginia for their kind words here today.

I have some folks with me. As Senator Manchin mentioned, I have my husband Steve, who is a great support to me, and my high school sweetheart; my sons Stephen and Michael.

And I have some friends and colleagues here to offer support as well: my good friend Dr. Diana Noon, Magistrate Gail Boober, Ken Martin or Clarence Martin, who also served on that Merit Selection Committee that recommended me to then-Governor Manchin for appointment to the State bench, and Stephen Skinner.

Back home watching on webcast that my court reporter, law clerk and secretary set up in my courtroom, we have my little 84-year-old mother, Elizabeth Householder, my sister Linda Gildersly, my brother, who's also a Vietnam vet, is watching from his home State up in New Jersey today.

Thank you.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Gina Marie Groh
   (Former name: Gina Marie Householder)

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

   United States District Judge for the Northern District of West Virginia

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Berkeley County Judicial Center
   380 West South Street, Suite 4400
   Martinsburg, West Virginia 25401

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

   1964; Hagerstown, Maryland

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   July 2007, The National Judicial College, completed general jurisdiction course, received no degree

   1986 – 1989, West Virginia University College of Law; J.D., 1989

   1982 – 1986, Shepherd University; B.S. (*summa cum laude*), 1986

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2006 – Present
23rd Judicial Circuit
Berkeley County Judicial Center
380 West South Street, Suite 4400
Martinsburg, West Virginia 25401
Circuit Court Judge

2002 – 2006
Jefferson County Prosecuting Attorney's Office
P.O. Box 729
Charles Town, West Virginia 25414
Assistant Prosecuting Attorney

1998 – 2002
Berkeley County Prosecuting Attorney's Office
380 West South Street
Martinsburg, West Virginia 25401
Assistant Prosecuting Attorney

1995 – 1998
Semmes, Bowen and Semmes
25 South Charles Street, Suite 1400
Baltimore, Maryland 21201
and
Semmes, Bowen and Semmes
322 East Antietam Street
Hagerstown, Maryland 21740
Litigation Associate

1991 – 1995
Mell, Brownell & Baker (no longer in existence)
2031 Florida Avenue, NW
Washington, DC 20009
Litigation Associate

1989 – 1991
Steptoe & Johnson
1250 Edwin Miller Boulevard
Martinsburg, West Virginia 25401
Litigation Associate

Summer 1988
Steptoe & Johnson (at that time Avey & Steptoe)
1250 Edwin Miller Boulevard
Martinsburg, West Virginia 25401
Summer Intern

Summer 1987
Kuczynski & Kuczynski
55 Jonathan Street
Hagerstown, Maryland 21740
Summer Intern

1986
Washington County National Bank
Williamsport, Maryland
Teller

Other Affiliations (uncompensated):

2001 – 2002
Berkeley County West Virginia Bar Association
c/o Bowles, Rice, McDavid, Graff & Love
101 South Queen Street
Martinsburg, West Virginia 25401
Vice-President

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I was not required to register for selective service.

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

   Certificate of Appreciation, Partners in Prevention/Child Welfare League of America, 2008

   McMurran Scholar, Shepherd University, 1986

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

   Berkeley County West Virginia Bar Association
   Vice-President (2001 – 2002)

   District of Columbia Bar Association (approx. 1992 – 2006)

Maryland State Bar (approx. 1990 – 2006)

West Virginia Judicial Association Committee on Constitution and By-Laws (2007 – present)

West Virginia Judicial Association Committee on Membership (2007 – present)

West Virginia Judicial Hearing Board (2010 – present)

West Virginia Robes to School program (2007 – present)

West Virginia State Bar Association (1989 – 2006)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia, 1992
Maryland, 1990
West Virginia, 1989

There have been no lapses in membership.

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

United States District Court for the District of Columbia, 1994
United States District Court for the District of Maryland, 1990
United States District Court for the Northern District of West Virginia, 1990
United States District Court for the Southern District of West Virginia, 1989
District of Columbia Court of Appeals, 1992
Maryland Court of Appeals, 1990
Supreme Court of Appeals of West Virginia, 1989

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

All Star Karate, reached brown belt level (approx. 2003 – 2008)

American Legion Auxiliary Unit 0202 (approx. 1997 – present)

Berkeley County Organization of Democratic Women (2006 – present)

Chevy Chase Athletic Club (approx. 1991 – 1995)

Cress Creek Country Club (1996 – present)

Fountain Head Country Club (1998 – present)

Fraternal Order of Police (2009)

Friends of Shepherdstown Library (approx. 2007 – present)

Friends of the National Zoo (2006 – present)

Jefferson County Cotillion Club (2006 – present)

Jefferson County Organization of Democratic Women (2006 – 2008)

Jefferson County Historical Society (approx. 1998 – present)

Meals With Love Ministry (2005 – present)

National Geographic Society (1999 – present)

National Italian American Foundation (2006 – present)

National Rifle Association (1999 – present)

Order of Sons and Daughters of Italy, Dan Di Mucci Lodge No. 2465 (approx. 2006 – present)

Phi Delta Phi Legal Fraternity (1986 – 1989)

Shepherd University Alumni Board (2007 – present)

Shepherd University Alumni Board, Co-Chair of Nomination Committee (2010 – present)

Shepherd University Wellness Center (2011 – present)

Smithsonian Society (2006 – present)

Local Elementary/Middle School Advisory Board, Secretary (2007 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

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

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Press Release on filing candidacy papers and campaign handout, Jan. 2008. During my 2008 judicial campaign, I had a campaign website that was shut down after the election. I do not have copies of the materials posted on it. I remember that the site contained links to news articles about me. I believe it also contained information similar to the attached campaign handout.

Letter to Editor, Martinsburg Journal, Oct. 28, 2004. Copy supplied.

"Jury Selection: Intuition, Statistical Modeling and Non-Verbal Communication." I wrote this for The Honorable Gray Silver while we were in private practice together at Steptoe and Johnson, and it was distributed at an event sponsored by the Defense Trial Counsel of West Virginia. I have been unable to obtain a copy of this article.

"Shepherdstown Receives All-W.Va. City Status Thanks to Three Shepherd College Seniors," The Shepherd College Picket, May 2, 1986. Copy supplied.

"Karen Swaim: Definitely the Busiest Woman on Campus," The Shepherd College Picket, May 2, 1986. Copy supplied.

"Response Low to Scheduling Survey," The Shepherd College Picket, Mar. 28, 1986. Copy supplied.

"Students Gain Legislative Experience," The Shepherd College Picket, Feb. 28, 1986. Copy supplied.

"Lawmakers, Educators Debate BOR," The Shepherd College Picket, Feb. 14, 1986. Copy supplied.

"Lottery Sells 8.4 Million," The Shepherd College Picket, Jan. 31, 1986. Copy supplied.

"Shepherd Reacts to Shuttle Tragedy," The Shepherd College Picket, Jan. 31, 1986. Copy supplied.

"It Looked Like the Sun Had Fallen to Earth! – Sturges," The Shepherd College Picket, Jan. 31, 1986. Copy supplied.

"Calendar Change Moves Finals into Saturday," The Shepherd College Picket, Dec. 7, 1984. Copy supplied.

"Kontra Shows Motion Sculpture Display, Hagerstown Museum," The Shepherd College Picket, Nov. 9, 1984. Copy supplied.

"Shepherd Foundation Celebrates 20 Years," The Shepherd College Picket, Nov. 9, 1984. Copy supplied.

"Unique Program Coming Nov. 3," The Shepherd College Picket, Oct. 26, 1984. Copy supplied.

"PSA Motivates SC Election '84 Interest," The Shepherd College Picket, Oct. 12, 1984. Copy supplied.

"Alumni Offers Five $1,000 Scholarship to 'Rising Leaders,'" The Shepherd College Picket, Sept. 28, 1984. Copy supplied.

"Student Program," The Shepherd College Picket, Sept. 14, 1984. Copy supplied.

"Administration Says Parking 'Inconvenient,'" The Shepherd College Picket, Sept. 14, 1984. Copy supplied.

"SC Year in Review," The Shepherd College Picket, May 1984. Copy supplied.

"Carper Named Academic Dean," The Shepherd College Picket, May 1984. Copy supplied.

"Leber Wins National Contest and Journalism Fellowship," The Shepherd College Picket, Apr. 13, 1984. Copy supplied.

With Margaret Chadduck, "A Look at the Basketball Rams' Graduating Seniors," The Shepherd College Picket, Mar. 9, 1984. Copy supplied.

"SGA to Devise Snow Policy," The Shepherd College Picket, Feb. 25, 1984. Copy supplied.

"President Butcher Comments on Shepherd College Snow Policy," The Shepherd College Picket, Feb. 10, 1984. Copy supplied.

From 1984 to 1985, I was co-editor of The Picket, the Shepherd University Campus Newspaper.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On January 24, 2002, I appeared before the Berkeley County Commission on behalf of County Prosecuting Attorney Pamela Games-Neely to discuss a Juvenile Accountability Incentive Block Grant. Meeting minutes supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I am frequently called upon to speak extemporaneously before groups, for example during my election campaign in 2008 and when I visit school children or they visit me in my courtroom. The list of events below has been compiled after performing a thorough search of my personal records, public databases and the

Internet. I have attempted to create as complete a list as possible, but there may exist events in which I participated that I have been unable to recall or identify.

September 25, 2010: Morgan County Courthouse Dedication Speech, Berkeley Springs, West Virginia. Remarks supplied.

May 7, 2010: Introduction of Dr. Carolyn Peluso Atkins at Berkeley County Democratic Organization of Women Dinner, Holiday Inn, Martinsburg, West Virginia. Remarks supplied.

February 8, 2009: Martinsburg Elks Club Speech for Local Law Enforcement Appreciation Dinner. Remarks and press coverage supplied.

October 11, 2008: Sons of Italy Columbus Day Dinner Address. Remarks supplied.

October 9, 2008: Administered Oath of Office to Morgan County Magistrate Clerk Cynthia Stotlers. I gave brief remarks prior to administering the oath, but I have no notes, transcript or recording. The address of the Morgan County Magistrate Court is 111 Fairfax Street, Berkeley Springs, West Virginia 25411.

July 21, 2008: Presented attorney Margaret Gordon with Distinguished Service to the Court on Behalf of Children Award. I have no notes, transcript or recording, but press coverage is supplied. The address of the Morgan County Magistrate Court is 77 Fairfax Street, Berkeley Springs, West Virginia 25411.

April 25, 2008: Introduced officials at Governor Manchin's bill-signing ceremony for legislation to help vision-impaired residents, Berkeley County Judicial Center. I have no notes, transcript or recording. The address of the Berkeley County Judicial Center is 380 West South Street, Martinsburg, West Virginia 25401.

April 25, 2008: Remarks after being honored during the Partners in Prevention breakfast. I have no notes, transcript or recording, but press coverage is supplied. Partners in Prevention does not have a physical address.

March 25, 2008: Tribute to Dean John Fisher before Berkeley County West Virginia Bar Association Meeting at Martinsburg, West Virginia Holiday Inn. Remarks supplied.

March 12, 2008: Presentation to Eastern Panhandle Medical Society on West Virginia Cases in Medical Malpractice, Holiday Inn, Martinsburg, West Virginia. Remarks supplied.

October 27, 2007: Lecture at a West Virginia Employment Lawyers Association conference held at the Woods Resort in Berkeley County, West Virginia. Outline supplied.

October 5, 2007: Naturalization Ceremony, U.S. District Court for the Northern District of West Virginia, Martinsburg, West Virginia. Transcript supplied.

February 21, 2007: Investiture as Circuit Court Judge. Recording supplied.

2007: Power Point Presentation on Fourth Amendment issues for West Virginia Magistrates' Training Conference, Morgantown, West Virginia. Presentation slides supplied.

Sept. or Oct. 2003: Presentation on new offenses created by 2002 legislation for the Eastern Panhandle Criminal Defense Lawyers Association. I have no notes, transcript or recording. The contact for the EPCDL is Kevin Mills, 1800 West King Street, Martinsburg, West Virginia 25401.

May 17, 1986: Benediction at Shepherd University Commencement. Remarks supplied.

Since 2007, I have participated in the Robes to Schools program of the West Virginia Supreme Court. I read to local students and also discuss my role as a judge. I have no notes, transcripts or recordings of these events. The program is sponsored by the West Virginia Supreme Court, Capitol Complex, Building One, Charleston, West Virginia 25305 and was the inception of Justice Robin Davis.

Additionally, I have participated once or twice each year since 2007 in the Martinsburg City Police Department's Junior Police Academy, speaking to Berkeley County School children ages nine to fourteen. The police department provides applications to all guidance counselors in the area who help choose the children who will attend. A number of the junior police academy cadets have always been at risk children. In the program the students learn how federal and local government works. When the children visit my courthouse, myself, the elected prosecutor and a defense attorney discuss our roles and answer questions pertaining to them. I have no notes, transcripts or recordings of these events. The address of the Martinsburg City Police is 232 North Queen Street, Martinsburg, West Virginia.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Below in this response, I have listed all interviews I can recall. I have searched my records, public databases and the Internet to create as complete a list as possible, but there may exist other articles I have been unable to recall or identify.

Staff, "Judge Groh Recommended for Federal Bench," Herald Mail, Mar. 2, 2011. Copy supplied.

Debra Cornwell, "Mind Your Manners," Spirit of Jefferson, Feb. 23, 2011. Copy supplied.

Katherine Reasons-Pyles, "Above & Beyond the Call," West Virginia Lawyer, Jan. – Mar. 2011. Copy supplied.

"Moms Who Make it Happen; Gina Groh," Panhandle Magazine, May – June 2010. Copy supplied.

Erienne Green, "Democrat Hopes to Keep Her Position in the 23rd Circuit," The Journal, Nov. 3, 2008. Copy supplied.

Matthew Umstead, "Both Candidates in Eastern Panhandle's 23rd Judicial Circuit Race Appear to Have Violated State Campaign Rules," Herald Mail, Oct. 24, 2008. Copy supplied.

Morgan Messenger Candidate Questionnaire, Fall 2008. Copy supplied.

"Groh Files to Retain Circuit Judge's Seat," Morgan Messenger, Feb. 13, 2008. Copy supplied.

Two radio commercial scripts for my election campaign, 2008. Copy supplied.

Jennifer Spataro, "Gina M. Groh '86 Named Third Female Circuit Judge in the State," Shepherd University Alumni Magazine, Fall 2007. Copy supplied.

Matthew Umstead, "Groh to Take Over as W.Va. Circuit Judge," Herald Mail, Jan. 14, 2007. Copy supplied.

John O'Brien, "Groh's First Days as Judge May Be Nomadic," West Virginia Record, Dec. 29, 2006. Copy supplied.

"Groh Appointed to Judgeship," The Spirit of Thanksgiving, Dec. 21, 2006. Article available at http://news.google.com/newspapers?id=VVIkAAAAIBAJ&sjid=M_gFAAAAIBAJ&pg=987,3597016&dq=gina+groh&hl=en.

Matthew Umstead, "Assistant Prosecutor Named to Bench," Herald Mail, Dec. 16, 2006. Copy supplied.

Dave McMillion, "Hearing Continued for Man Accused in Slaying at Bar," Herald Mail, Dec. 9, 2006. Copy supplied.

Dave McMillion, "W.Va. Man Faces Prison in Heroin Overdose Case," Herald Mail, Jan. 5, 2006. Copy supplied.

Dave McMillion, "Charge Dropped in Fatal Overdose," Herald Mail, Nov. 15, 2005. Copy supplied.

Dave McMillion, "Jefferson County Murder Trial is Delayed," Herald Mail, Dec. 14, 2004. Copy supplied.

Matthew Umstead, "Caton Guilty of Sex Assault," The Journal, Dec. 10, 2004. Copy supplied.

Dave McMillion, "Hearing Postponed for Former Insurance Agent," Herald Mail, Oct. 5, 2004. Copy supplied.

Dave McMillion, "Man Sought in 2002 Beating in Charles Town," Herald Mail, Feb. 26, 2004. Copy supplied.

Dave McMillion, "Victim Testifies in Ex-Husband's Trial," Herald Mail, Jan. 14, 2004. Copy supplied.

Dave McMillion, "Man Pleads Guilty to Robbery," Herald Mail, Jan. 7, 2004. Copy supplied.

Dave McMillion, "Businessman is Sentenced for Role in Fish Kill Incident," Herald Mail, July 2, 2003. Copy supplied.

"Man Must $9,000 Fine for Dumping Chemicals in Jefferson County Stream," Associated Press, July 2, 2003. Copy supplied.

Bob Partlow, "Lawyer Accuses Prosecutor of Trying to Quiet Testimony," Herald Mail, Feb. 23, 2001. Copy supplied.

Andrew Schotz, "Berkeley Prosecutors Married to the Job," Herald Mail, Apr. 17, 2000. Copy supplied.

Bryn Mickle, "2nd Bomb Threat Arrest Made," Herald Mail, May 12, 1999. Copy supplied.

Dave McMillion, "Teen Confined to Home on Threat Charge," Herald Mail, May 11, 1999. Copy supplied.

Bryn Mickle, "West Virginia Man Found Guilty of Carjacking Attempt," Herald Mail, Dec. 8, 1998. Copy supplied.

Linda Jones, "Senior Officers Elected This Week," The Shepherd College Picket, approx. Fall 1985. Copy supplied.

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

I was appointed as a circuit judge in the 23rd Judicial Circuit of West Virginia in December 2006, after being recommended by a merit selection panel. The court is a court of general jurisdiction which handles a variety of civil and criminal matters in addition to juvenile, abuse and neglect proceedings, family court appeals and magistrate court appeals. I also handle grand jury in Morgan and Jefferson counties. In each county, the grand jury meets three times per year.

I was elected in November 2008 to the same position.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 93

i. Of these, approximately what percent were:

jury trials:	43%
bench trials:	57%
civil proceedings:	65%
criminal proceedings:	35%

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

Because I sit on a trial court of general jurisdiction, I do not issue formal published opinions, such as courts of appeal issue. Between 2007 and 2010 alone, I handled over approximately 3,400 cases in which I routinely issued orders. Without reviewing each and every case file, I cannot compile a list of every order that contained a detailed analysis of legal issues and findings of fact, such as would appear in an opinion order. Those orders are on file with the clerks of the individual counties.

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

1. State of West Virginia v. Payne, Morgan County Case Number 06-F-60. The defendant was charged with two counts of second degree sexual assault, one count of first degree sexual abuse and two counts of third

degree sexual abuse of a twelve-year-old girl. The defendant was convicted by a jury of all the charges, except for one count of third degree sexual abuse, and sentenced to prison.

Counsel:
Debra McLaughlin, Morgan County Prosecutor, 77 Fairfax Street, Suite 301, Berkeley Springs, WV 25411, (304)258-8621
B. Craig Manford, P.O. Box 3021, Martinsburg, WV 25402, (304)263-5698

2. State of West Virginia v. Weinschel, Morgan County Case Number 06-F-48. The defendant was charged with attempted murder, malicious assault and brandishing for stabbing another male with a screwdriver and cutting his throat with a knife. The defendant was convicted by a jury of second degree attempted murder, unlawful assault and brandishing and sentenced to prison.

   Counsel:
   Debra McLaughlin, Morgan County Prosecutor, 77 Fairfax Street, Suite 301, Berkeley Springs, WV 25411, (304)258-8621
   Eric Black, 1299 Valley Road, Suite 2, Berkeley Springs, WV 25411, (304)258-2931

3. State of West Virginia v. Simmons, Morgan County Case Number 07-F-20. The defendant was charged with first degree sexual assault and sexual abuse by a custodian for engaging in sexual contact and/or intercourse with a five-year-old girl. The defendant was convicted by a jury of first degree sexual assault and sexual abuse by a custodian and sentenced to prison.

   Counsel:
   Debra McLaughlin, Morgan County Prosecutor, 77 Fairfax Street, Suite 301, Berkeley Springs, WV 25411, (304)258-8621
   Paul Lane, defense counsel is deceased

4. State of West Virginia v. Kerns, Morgan County Case Number 07-F-56. The defendant was charged with murder and conspiracy. The State's evidence at trial included a conspiracy between Kerns and a couple of his cousins to murder the victim to cover up their prior criminal activity of which the victim had knowledge. Kerns and his cousins murdered the victim and burned his body in a campground fire pit. The victim was considered a missing person until several years later when a friend of Kerns reported that he had bragged about the murder. The defendant was convicted by a jury of first degree murder and conspiracy and sentenced to life in prison with no mercy.

Counsel:
Debra McLaughlin, Morgan County Prosecutor, 77 Fairfax Street, Suite 301, Berkeley Springs, WV 25411, (304)258-8621
Sherman Lambert, P.O. Box 3200, Shepherdstown, WV 25443, (304)263-3548

5. State of West Virginia v. Payne, Morgan County Case Number 07-F-69. The defendant, a co-defendant of Kerns in Morgan County Case Number 07-F-56, was charged with first degree murder and conspiracy. To cover up prior criminal activity, the defendant and several others murdered the victim and burned his body in a campground fire pit. The crime was never discovered until co-defendant Kerns' reported disclosure to a friend. A key witness in the State's case was a Smithsonian forensic anthropologist who was able to identify the body from bits of skeletal remains pieced together and matched to x-rays of prior injuries of the victim. The defendant was convicted by a jury of second degree murder and sentenced to prison.

   Counsel:
   Debra McLaughlin, Morgan County Prosecutor, 77 Fairfax Street, Suite 301, Berkeley Springs, WV 25411, (304)258-8621
   B. Craig Manford, P.O. Box 3021, Martinsburg, WV 25402, (304)263-5698

6. State of West Virginia v. Henson, Morgan County Case Number 07-F-52. The defendant was charged with malicious assault, attempted kidnapping and conspiracy for the beating of the victim at the victim's home and Henson's attempt to force the victim into a vehicle for transport. The defendant was convicted by a jury of malicious assault and conspiracy and sentenced to prison on both convictions. However, the malicious assault sentence was suspended for five years supervised probation.

   Counsel:
   Debra McLaughlin, Morgan County Prosecutor, 77 Fairfax Street, Suite 301, Berkeley Springs, WV 25411, (304)258-8621
   Paul Lane is deceased
   Christopher Prezioso, Luttrell and Prezioso, 206 West Burke Street, Martinsburg, WV 25401, (304)267-3050

7. State of West Virginia v. Potter, Morgan County Case Number 07-F-70. The defendant was charged, along with Henson in Morgan Case Number 07-F-52, with malicious assault, attempted kidnapping and conspiracy for the beating of the victim at the victim's home and Potter's attempt to force the victim into a vehicle for transport. The defendant was convicted by a jury of malicious assault and conspiracy, but found not guilty of attempted kidnapping. He was sentenced to prison.

Counsel:
Debra McLaughlin, Morgan County Prosecutor, 77 Fairfax Street, Suite 301, Berkeley Springs, WV 25411, (304)258-8621
B. Craig Manford, P.O. Box 3021, Martinsburg, WV 25402, (304)263-5698

8. State of West Virginia v. Price, Berkeley County Case Number 09-F-52, and State of West Virginia v. Hardesty, Berkeley County Case Number 09-F-49. These two defendants were tried together before a jury, having been charged in a single indictment. Their charges stemmed from their breaking and entering a local car wash and stealing coins and other property, some of which was caught on tape. Price was convicted of breaking and entering, petit larceny, destruction of property and conspiracy. Hardesty was convicted of breaking and entering, petit larceny and conspiracy, but acquitted of destruction of property. They were sentenced to prison.

   Counsel:
   Timothy Helman, Assistant Prosecuting Attorney for Berkeley County, 380 West South Street, Martinsburg, WV 25401, (304)264-1971
   B. Craid Manford, Counsel for Price, P.O. Box 3021, Martinsburg, WV 25402, (304)263-5698
   Nicholas Colvin, Counsel for Hardesty, 136 Ritter Drive, Martinsburg, WV 25401, (304)274-0471

9. State of West Virginia v. Sanchez, Berkeley County Case Number 09-F-55. The defendant was charged with child abuse causing serious bodily injury and child neglect creating substantial risk of bodily injury for fracturing the skull of his infant and not obtaining medical attention for the injury. The defendant was convicted by a jury of child abuse causing serious bodily injury and child neglect creating a substantial risk of serious bodily injury and sentenced to prison.

   Counsel:
   Gregory Jones, Assistant Prosecuting Attorney for Berkeley County, 380 West South Street, Martinsburg, WV 25401, (304)264-1971
   Robin Skinner Prinz, P.O. Box 782, Charles Town, WV 2541, (304)725-5325
   David Camilletti, 103 West Liberty Street, Charles Town, WV 25414, (304)725-0937

10. State of West Virginia v. Nicholson, Berkeley County Case Number 09-F-92. The defendant was convicted by a jury of fourteen counts of various sexual offenses against two female minors. His convictions included first,

second and third degree sexual assault, sexual abuse by a custodian and incest. Upon his conviction, the defendant was sentenced to prison.

Counsel:
Gregory Jones, Assistant Prosecuting Attorney for Berkeley County, 380 West South Street, Martinsburg, WV 25401, (304)264-1971
Nicholas Colvin, 136 Ritter Drive, Martinsburg, WV 25401, (304)274-0471

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. In the Interest of: Kelci P., Morgan County Case Numbers 08-JA-3,4 and 5. Opinion supplied.

Kimberley Crockett, P.O. Box 729, Charles Town, WV 25414, (304)728-3243
Tracy Weese, P.O. Box 3254, Shepherdstown, WV 25443, (304)264-0595
Charles Trump, 171 South Washington Street, Berkeley Springs, WV 25411, (304)258-1414

2. In the Interest of: George M., Morgan County Case Number 05-JA-10 and 06-JA-7. Opinion supplied.

Debra McLaughlin, Morgan County Prosecutor, 77 Fairfax Street, Suite 301, Berkeley Springs, WV 25411, (304)258-8621
Tracy Weese, P.O. Box 3254, Shepherdstown, WV 25443, (304)264-0595
Margaret Gordon, 380 West South Street, Martinsburg, WV 25401, (304)263-4100

3. U.S. Silica Co. v. ACE Fire Underwriters Ins. Co., Morgan County Case Number 06-C-2. Opinion supplied.

Clarence Martin, P.O. Box 1286, Martinsburg, WV 25401, (304)262-3213
Charles Printz, P.O. Drawer 1319, Martinsburg, WV 25401, (304)264-4222

4. Siebert v. Martinsburg Planning Commission, Berkeley County Case Number 09-AA-4. Opinion supplied.

Floyd Sayre, P.O. Drawer 1319, Martinsburg, WV 25401, (304)264-4226
Michael Scales, P.O. Box 6097, Martinsburg, WV 25402, (304)263-0000

5. Soward v. Parker, Berkeley County Case Number 07-C-1221. Opinion supplied.

Both parties were pro se.

6. Bowers, v. New Century Transp., Inc., Berkeley County Case Number 08-C-1047. Opinion supplied.

Susan Snowden, P.O. Box 1286, Martinsburg, WV 25401, (304)262-3220
Michael Scales, P.O. Box 6097, Martinsburg, WV 25402, (304)263-0000

7. Verizon West Virginia, Inc. v. State Tax Commissioner of West Virginia, Berkeley County Case Number 07-C-524. Opinion supplied.

Michael Caryl, P.O. Drawer 1319, Martinsburg, WV 25401, (304)264-4225
L. Wayne Williams, Office of the Attorney General, 1900 Kanawha Boulevard, East Charleston, WV 25305, (304)558-2522

8. Hilburn v. Lynch, Berkeley County Case Number 09-C-30. Opinion supplied.

William Powell, 310 West Burke Street, Martinsburg, WV 25401, (304)263-8800
Christine Vaglienti, P.O. Box 8128, Morgantown, WV 26506, (304)598-4199
James Peterson, 500 Tracy Way, Charleston, WV 25311, (304)345-5667
Sue Holvey, P.O. Box 100, Flatwoods, WV 26621, (304) 765-3540

9. State of West Virginia v. Askin, Berkeley County Case Number 09-M-3. Opinion supplied.

Christopher Quasebarth, Assistant Prosecuting Attorney for Berkeley County, 380 West South Street, Martinsburg, WV 25401, (304)264-1971
Defendant was pro se

10. Yoe, et al. v. BB&T, Berkeley County Case Number 10-C-986. Opinion supplied.

William L. Hallam, 25 South Charles Street, Suite 2115, Baltimore, MD 21201, (410)727-6600
Herbert Yonkers, pro se
Kenneth J. Barton, 1250 Edwin Miller Boulevard, Suite 300, Martinsburg, WV 25402, (304)263-6991
Michelle L. Bechtel, 1714 Mileground, Morgantown, WV 26505 (304)291-6300

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

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If

any of the opinions listed were not officially reported, provide copies of the opinions.

The West Virginia Supreme Court has reversed three of my decisions and reversed in part and affirmed in part one decision.

Board of Education of Monongalia County v. The Honorable Gina M. Groh, Case No. 073230, and The State of West Virginia ex rel. The West Virginia Secondary School Activities Commission v. The Honorable Gina M. Groh, (November 1, 2007). The Court granted a writ of prohibition prior to final hearing in a case where I had granted a preliminary injunction in favor of Martinsburg High School. The preliminary injunction prohibited the WVSSAC from enforcing its rulings requiring the high school to forfeit two football games until a final hearing could be held on the issue of whether or not the court should grant a permanent injunction. The order of the West Virginia Supreme Court is supplied.

Largent v. Zoning Board of Appeals for the Town of Paw Paw and the Town of Paw Paw, 222 W. Va. 789, 671 S.E.2d 794 (2008). The Supreme Court held that the town of Paw Paw's adoption of an open space ordinance prior to the adoption of its comprehensive plan rendered the ordinance invalid. A copy of my summary judgment order is supplied.

Wilson v. Wilson, 2010 WL 4723461 (W. Va. 2010). The Supreme Court reversed in part and affirmed in part my decision in a complicated divorce appeal involving marital property. A copy of my order, in which I adopted the proposed order of appellant's counsel, is supplied.

State of West Virginia v. Stanley M. Myers, No. 35672 (2011). The Supreme Court reversed my decision in this case of first impression. In 2003, the defendant pled guilty to three counts of first degree sexual abuse and one count of third degree sexual assault of a male child and was sentenced to prison. At the 2003 sentencing, another judge found the appellant to be a "sexual predator" in accordance with the plea agreement. There is a "sexually violent predator," but not a "sexual predator" designation in the West Virginia Sex Offender Registration Act. In 2009, the State discovered the defendant was not on the state police's sexually violent predator list. Because the Act does not contain a specified time period during which a proceeding must be initiated to examine whether an individual is a sexually violent predator, the State moved for me to initiate proceedings for the purpose of finding the defendant to be a sexually violent predator since I had taken over the other judge's caseload. In its decision, the Supreme Court interpreted the West Virginia Sex Offender Registration Act and held that the trial court erred in granting the prosecutor's motion to permit the State to proceed with a summary proceeding and in making the determination that the defendant was a sexually violent predator subsequent to his release from prison. Copies of my opinion and the Supreme Court's opinion are supplied.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a circuit court judge, I have issued countless orders, many of which are very basic and do not contain any detailed analysis of facts and law on significant issues. I estimate that I have issued orders containing detailed analysis of facts and the law in 30% of all cases I handled. I would have to review each court file to determine which cases had such orders issued in them.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I do not recall issuing any substantive orders containing significant opinions on federal or state constitutional issues.

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

I have not sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I am guided by the West Virginia Code of Judicial Conduct in determining whether to recuse myself. As a general rule, I evaluate the necessity of recusal based upon whether I have an actual conflict or whether my impartiality may reasonably be questioned. Factors I consider include whether I am related to or have a close personal

relationship with a party or attorney, my individual and family interests, my former prosecutions or clients, and any other factors that may be suggested from the subject matter involved in the case. My court does not have an automatic recusal system. However, upon a request by a party for recusal, according to our rules, the judge must forward the request along with a response to the Chief Justice of the West Virginia Supreme Court of Appeals for a decision.

The sole case in which a litigant has requested that I recuse myself is a pending civil matter in Berkeley County, styled Sims v. Rosedale Cemetery Company, et al., Case No. 03-C-506. In their first motion to recuse, the plaintiff class moved to recuse me on the basis that I was an assistant prosecutor when the underlying criminal case involving defendants who are not parties to this civil action was prosecuted. I did not recall working on the case or discussing it with the prosecutor who handled it. I confirmed with her that I did not and ran a check of the criminal file in the clerk's office to make sure I did not appear in it. According to our rules, I sent the motion and my response to the Chief Justice advising her that I did not appear or work on the criminal matter and plaintiffs' counsel knew of my employment history because he was my political opponent. This case which was filed in 2003 was finally scheduled for trial the first week in March 2011. Therefore, I perceived the motion to be a delay tactic. Thus, having no reason to recuse myself, I advised the Chief Justice I could continue to preside over the matter. On February 28, 2011, the Acting Chief Justice ordered that I remain in the case. Subsequently, plaintiffs' counsel filed a second motion with additional information which I interpreted as a motion to reconsider. While the rules do not provide for such a motion, I forwarded it to the Supreme Court out of an abundance of caution. On March 4, 2011, the Acting Chief ordered that I remain in the case.

Below are all of the matters to my recollection in which I recused myself sua sponte:

Green v. Hoke, Warden HCC, Berkeley County Case No. 10-C-467. In the defendant's first habeas corpus proceeding, I asked the defendant whether he wanted me to recuse myself because I handled a matter involving him while I was an assistant prosecuting attorney in Berkeley County. He chose to have me remain on the first habeas. Case No. 10-C-467 is the defendant's second habeas. Because I denied his first habeas, I asked the defendant to consider whether he would like for me to voluntarily recuse myself in the second one. Based upon his request, I recused myself voluntarily.

State v. Younkers, Morgan County Case No. 10-F-35. In this case, the victim's family opposed a plea agreement between the State and the defendant. A letter from an attorney stating the family wished to speak through him was included in the pre-plea investigation report prepared by the Court's probation officer. In that letter, the attorney alleged that the defendant's attorney might force the court to accept the plea because the attorney may have been helping me in my potential nomination to the federal bench. This allegation had no basis in fact. Nevertheless, because the family and attorney were not local and because it was not proper for me to comment on my nomination process, I simply recused myself to avoid the appearance of impropriety.

In the Interest of Haley M., Berkeley County Case No. 06-JA-57 and 58. The recusal in this case does not state a reason for my recusal. However, I believe I recused myself because I had prior knowledge of the personal life of the girlfriend of one of the parties because my sister is a friend of her mother.

State v. Myers, Berkeley County Case Nos. 95-F-44, 10-F-22, and 09-F-127. I recused myself because the defendant had just sued me in federal court.

New v. Poland, Berkeley County Case No. 09-C-228. I recused myself because my law clerk had discovered after the fact that the car sales person he had been test driving cars with was the plaintiff.

State v. Sensel, Berkeley County Case No. 10-F-34. I recused myself because I prosecuted the defendant.

Myers v. Owens, Berkeley County Case No. 10-C-2. I recused myself because the plaintiff is the head of security in the Berkeley County Judicial Center, frequently bailiffs for me and I thought he had discussed his problems with the defendants with me in the past.

State ex rel. Bowers, Berkeley County Case No. 03-C-10. I recused myself because I appeared on behalf of the State in the underlying criminal matter.

State v. Munday, Berkeley County Case No. 05-C-4 and 06-C-70. I recused myself because I had knowledge of the case from my employment as an assistant prosecutor.

State v. Catlett, Berkeley County Case No. 06-C-151 and 07-C-60. I recused myself because I had knowledge of the underlying case based upon my employment as an assistant prosecutor.

State v. Evy, Berkeley County Case No. 06-F-307. I recused myself because I prosecuted the defendant previously.

State v. Landon, Berkeley County Case No. 06-F-343. I recused myself because I formerly prosecuted the defendant.

Wadsworth v. Mays, Berkeley County Case No. 06-C-766. I recused myself because my legal assistant is a friend of the plaintiff.

Mulligan v. Faircloth, Berkeley County Case No. 06-C-319. I recused myself because the defendant campaigned for me.

State ex rel. Kilmer, Berkeley County Case No. 07-C-518. I recused myself because I had knowledge of the case based upon my former employment as a prosecutor.

McGill v. Jefferson Security Bank, Berkeley County Case No. 08-C-1194. I recused myself because a third-party defendant in this case is a probation officer for my court.

Timberwalk Property Owners Ass'n, Inc. v. McDermott and McDonough, Berkeley County Case No. 08-C-1359. I recused myself because I prosecuted one of the defendants.

Faircloth v. Berkeley Cnty. Pub. Serv. Water Dist., Berkeley County Case No. 09-C-826. I recused myself because the plaintiff campaigned for me and I consider him a friend.

Top Dollar Inv. v. Berkeley Cnty. Comm'n, Berkeley County Case No. 08-C-903. I recused myself because one of the parties was an active participant in my recent campaign.

Turner v. Micchelli, Berkeley County Case No. 08-C-AP-5. I recused myself because the petitioner is a court reporter for my circuit.

Jack v. Navy Fed. Credit Union, Berkeley County Case No. 09-C-392. I recused myself because one of the witnesses is a bailiff for the Court.

State v. Sala, Morgan County Case No. 10-M-1. I recused myself to avoid the appearance of impropriety because the defendant mistakenly believed there was some collusion between the Court, the prosecutor and his counsel.

Harris v. Sunset Water, Morgan County Case No. 10-C-25. I recused myself because I believed the owner of the defendant company had spoken about me favorably at political events during my campaign.

Beddow v. Warm Springs Pub. Serv. Dist., Morgan County Case No. 08-C-116. I recused myself because one of the plaintiffs is my cousin.

Green Tree Servicing, LLC v. McCarty, Morgan County Case Nos. 07-C-131, and 08-C-42. I recused myself because one of the defendants is an employee of the Morgan County Clerk's Office.

First Am. Title Ins. Co. v. Firriolo, Morgan County Case No. 05-C-94. I recused myself because the father of one of the defendants is a judge in a neighboring county and my assigned mentor.

Chiapella v. Firriolo, Morgan County Case No. 05-C-34. I recused myself because the father of one of the defendants is a judge in a neighboring county and my assigned mentor.

Firriolo v. Lefever, Morgan County Case No. 01-C-8. I recused myself because the father of one of the defendants is a judge in a neighboring county and my assigned mentor.

Rode v. Danley, Jefferson County Case No. 07-C-119 and 07-C-120. I recused myself because my father-in-law recently opposed the defendant in litigation.

Neush v. Danley, Jefferson County Case No. 07-C-160. I recused myself because my father-in-law recently opposed the defendant in litigation.

Neighborhood Welcome v. Keatley, Jefferson County Case No. 07-C-79. To avoid the appearance of judicial partiality, I recused myself when I became aware that the owner of the plaintiff company had children at my child's daycare and we began encountering each other on a daily basis at pick up and drop off.

Argyle Land Co. v. Mahar, Jefferson County Case No. 07-C-90. I recused myself because a fellow judge in my circuit was a party to this lawsuit.

Cardinal Building Sys., Inc. v. Rai Props., LLC, Jefferson County Case No. 07-C-96. I recused myself because the owner of the defendant company is a friend of mine.

Baker v. Delhaize Am. and Food Lion, Jefferson County Case No. 08-C-52. I recused myself because plaintiff's counsel was my current political opponent.

In the following Jefferson County cases, I recused myself pursuant to an administrative order entered when I first took the bench which directed the clerk's office not to assign any cases to me in which the Jefferson County Prosecuting Attorney's Office had made an appearance of record:

Boober v. Shenandoah Constr., Case No. 07-C-182
Orser v. Jefferson Cnty. Comm'n, Case No. 08-C-122
Riggs v. Waid, Case No. 08-C-31
Boober v. Shenandoah Constr., Case No. 07-C-186 and 07-C-182
S&S Group v. Jefferson Cnty. Comm'n, Case No. 07-C-80
Vance v. Dep't of Motor Vehicles, Case No. 08-C-2

I recused myself from the following Jefferson County Cases because I had prosecuted the defendant:

Shane v. French, Case No. 07-c-64
Winchester Med. Ctr. v. Barrow, Case No. 07-C-68
Winston v. Eastern Reg'l Jail, Case No. 07-C-83
Branch Banking v. Oaks, Case No. 07-C-137

I also recused myself from the following Jefferson County Cases because of my former employment with the Jefferson County Prosecutor's Office:

Aubrey v. Jefferson Cnty. Planning Comm'n, Case No. 07-C-63
Nagel v. Brooks, Case No. 07-C-94

Uzan v. Filly's Bar and Grill, Case No. 08-C-96
Bennett v. Divas, LLC, Case No. 08-C-1
Urciolo v. Citizens Commc'ns Co., Case No. 07-C-105
Regester v. Howard, Case No. 10-C-42

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 2000 my husband, Stephen V. Groh, Jr., ran for Jefferson County Magistrate. I was his campaign treasurer. It was a self-financed campaign, so I did not raise money. However, I did attend events to support his candidacy and prepared periodic campaign spending statements.

In 2008, I was a candidate for the position in which I am currently serving. I spoke at political events on my behalf and distributed campaign literature.

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

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

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

I did not serve as a clerk to a judge.

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

I never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1989 – 1991
Steptoe and Johnson
1250 Edwin Miller Boulevard
Martinsburg, West Virginia 25401
Litigation Associate

1991 – 1995
Mell, Brownell and Baker (no longer in existence)
2031 Florida Avenue, NW
Washington, D.C. 20009
Litigation Associate

1995 – 1998
Semmes, Bowen and Semmes
25 South Charles Street, Suite 1400
Baltimore, Maryland 21201
and
Semmes, Bowen and Semmes
322 East Antietam Street
Hagerstown, Maryland 21740
Litigation Associate

1998 – 2002
Berkeley County Prosecuting Attorney's Office
380 West South Street
Martinsburg, West Virginia
Assistant Prosecuting Attorney

2002 – 2006
Jefferson County Prosecuting Attorney's Office
110 North George Street
Charles Town, West Virginia
Assistant Prosecuting Attorney

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

I never served as a mediator or arbitrator.

b. Describe:

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

From 1989 to 1998, I handled primarily civil litigation. Most of my cases involved workers' compensation defense and personal injury defense. At Mell, Brownell and Baker I also represented the Resolution Trust Corporation on occasion. In addition, I handled criminal appointments for Steptoe and Johnson. The workers' compensation cases involved jury trials on appeals in Maryland and frequent appearances before the Maryland Workers' Compensation Commission and District of Columbia's Department of Employment Services' Hearing Examiners. From 1998 until my appointment to the bench, I devoted my practice to public service, prosecuting felony cases and the occasional misdemeanor. I also handled many abuse and neglect and juvenile cases while at the prosecutor's office in Berkeley County. In addition, while at the prosecutor's office in Jefferson County I handled many matters for the Jefferson County Commission.

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

In private practice, my clients were individuals and businesses. Primarily, I represented insurance companies and self-insured employers in civil liability actions and workers' compensation claims in Maryland and the District of Columbia. In Maryland, the initial workers' compensation hearings were administrative hearings tried before commissioners; however, the appeals were trials de novo in circuit court. In the District of Columbia the workers' compensation matters were administrative hearings at the Department of Employment Services. I did not handle any West Virginia workers' compensation. In public service as a prosecutor, I represented the State of West Virginia in primarily felony cases. However, I also prosecuted misdemeanors and handled forfeitures and abuse and neglect and juvenile proceedings. As an assistant prosecutor in Jefferson County, I also represented the county government in civil matters.

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

During the years 1991 to 1998, I handled more workers' compensation cases before administrative hearing examiners, as opposed to trial work in court. I appeared for workers' compensation hearings about three to four times per week. While in the prosecutors' offices, I appeared in court on a daily basis. I can only estimate the following because I was working as an associate at the law firms and an assistant at the prosecutors' offices, so I would not expect to be listed as counsel of record very often.

i. Indicate the percentage of your practice in:
   1. federal courts: 2%
   2. state courts of record: 65%
   3. other courts: 3%
   4. administrative agencies: 30%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

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

I probably tried about 500 cases to verdict before a jury, judge and administrative judge, such as in the workers' compensation cases. However, I can only estimate because I would not expect to be listed as counsel of record on many cases since I was an associate at the private firms and an assistant at the prosecutors' offices. In almost all of these cases, I was sole counsel at trial.

i. What percentage of these trials were:
   1. jury: 20%
   2. non-jury: 80%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never appeared before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. State v. Caton, Case No. 04-F-6 (Jefferson County Circuit Court) (Judge Thomas Steptoe)

I was sole counsel for the State in the trial that occurred December 7-9, 2004. The defendant kidnapped the victim in Berkeley County and transported her first to a location in Berkeley County and then to a location in Jefferson County, where he raped her. The defendant was also charged in Berkeley County around the same time for the rape of the victim in my case and two other separate victims. In my case, he was charged and convicted of two counts of sexual assault in the second degree.

Defendant's Counsel — William Dehaven, 313 Monroe Street, Martinsburg, WV 25401, (304) 263-8909.

2. State v. Dunlap, Case No. 03-F-6 (Jefferson County Circuit Court) (Judge Thomas Steptoe)

I served as co-counsel with Larry Crofford for the State in the trial that occurred from April 5-13, 2005. The defendant murdered a young mother by slitting her throat and then left her to die locked in her apartment with an infant and a toddler, one of which was her own child. The defendant was convicted of First Degree Murder and sentenced to life without mercy.

Co-Counsel — Larry Crofford, 110 North George Street, Charles Town, WV 25414, (304)728-3243.

Defendant's Counsel — B. Craig Manford, P.O. Box 3021, Martinsburg, WV 25402, (304) 263-5698.

3. State v. Marshall, Case No. 03-F-62 and 03-F-63 (Jefferson County Circuit Court) (Judge Thomas Steptoe)

I was sole counsel for the State in the trial that occurred from January 13-16, 2004. The defendant hid under his wife's porch until his children left for school, then entered her home with a shotgun in an attempt to murder her. He shot his wife in the leg as she escaped out of a kitchen window. Thereafter, he fled the scene, believing he had killed her. The defendant was convicted of domestic battery, attempted murder in the first degree and malicious assault.

Defendant's Counsel — James Kent, deceased.

4. State v. Gaskins, Case No. 02-F-36 (Jefferson County Circuit Court) (Judge Thomas Steptoe)

I was sole counsel for the State in the trial that occurred from November 13-14, 2002. The defendant was convicted of delivery of an imitation controlled substance and

delivery of a controlled substance, cocaine. The charges stemmed from a controlled buy which was captured on video tape.

Defendant's Counsel — Paul Lane, deceased.

5. State v. Fowler, Case No. 99-F-61 (Berkeley County Circuit Court) (Judge Christopher Wilkes)

I was sole counsel for the State in the trial that occurred on or about June 16, 1999. The defendant was convicted of sexual abuse in the first degree for engaging in sexual contact with a minor female.

Defendant's Counsel — B. Craig Manford, P.O. Box 3021, Martinsburg, WV 25402, (304) 263-5698.

6. State v. Ellerbe, Case No. 98-F-69 (Berkeley County Circuit Court) (Judge David Sanders)

I was sole counsel for the State in the trial that occurred on or about December 4, 1998. The defendant was the gunman in a robbery of a young male, committed by several individuals at an apartment complex. During the course of the robbery, the defendant attempted to force the victim at gunpoint into a vehicle for transport. The defendant was convicted of aggravated robbery, attempted kidnapping and wanton endangerment with a firearm.

Defendant's Counsel — Robert C. Stone, Jr., 529 West King Street, Martinsburg, WV 25401, (304) 267-7168.

7. State v. Slaton, Case No. 99-F-216 (Berkeley County Circuit Court) (Judge David Sanders)

I served as co-counsel with Hassan Rasheed for the State in the trial that occurred on or about December 20, 2000. The defendant was convicted of sexual assault in the first degree for forcing a five-year-old male to perform oral sex on him.

Co-counsel — Hassan Rasheed, 110 North George Street, Charles Town, WV 25414, (304)728-3243.

Defendant's Counsel — Thomas Stanley, 313 Monroe Street, Martinsburg, WV 25401, (304) 263-8909
Thomas Delaney, 202 West Liberty Street, Charles Town, WV 25414, (304) 728-7811.

8. State v. McCraine, Case No. 99-F-68 (Berkeley County Circuit Court) (Judge David Sanders)

I was sole counsel for the State in the trial that occurred on or about November 3, 2000. The defendant was convicted of third offense driving under the influence and driving while revoked for DUI. The case was reversed and remanded. See State v. McCraine, 214 W. Va.188, 588 S.E.2d 177 (2003).

Defendant's Counsel — Robert C. Stone, Jr., 529 West King Street, Martinsburg, WV 25401, (304) 267-7168.

9. State v. Hendrickson, Case No. 00-F-58 (Berkeley County Circuit Court) (Judge David Sanders)

I was sole counsel for the State in the trial that occurred on or about October 20, 2000. The defendant was convicted of unlawful assault and domestic battery for wounding his brother-in-law with a .22 caliber rifle.

Defendant's Counsel — Robert C. Stone, Jr., 529 West King Street, Martinsburg, WV 25401, (304) 267-7168.

10. Shroades v. Food Lion, Berkeley County Case No. 96-C-582 (Berkeley County Circuit Court) (Judge Thomas Steptoe);

Although my most significant litigated matters are the numerous felony trials I handled, I did handle this civil case. The plaintiff sued Food Lion for a back injury he alleged he sustained when a shopping cart hit him in the back. I tried the case in 1999, and the jury rendered a verdict for the plaintiff. I appealed the matter on behalf of Food Lion, and the case was reversed and remanded by the West Virginia Supreme Court of Appeals on February 2, 2000, see 207 W. Va. 195, 530 S.E.2d 456 (2000). The case finally resolved with a settlement.

Plaintiff's Counsel — Michael Santa Barbara, 518 West Stephen Street, Martinsburg, WV 25401, (304) 264-0000.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In civil practice, I tried many cases as sole counsel before juries and administrative judges. In the cases that did not go to trial, I obtained settlements for my clients.

As an assistant prosecuting attorney, my felony work included not only being sole counsel at jury trials, but also preparation for and presentation to the grand jury. In my felony cases, I often met with the investigating officers, experts, our victims' advocates and victims to prepare for trial. I also responded to habeas corpus petitions. If the cases did not go to trial, I negotiated plea agreements. I have also handled many abuse and neglect and juvenile matters. I also advised officers who had questions about whether their evidence supported certain criminal charges and their investigations, reviewed and analyzed documents and directed officers on whether further follow-up or investigation needed to be performed to prepare a case for trial. I balanced protecting the community's interest, the victims' rights and the defendants' rights throughout the process from the criminal investigation through trial or plea agreement. Ultimately, within my prosecutorial discretion, I made determinations, based upon the evidence and the law, on whether or not to prosecute individuals charged with offenses.

I never performed any lobbying.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

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

None, other than that I anticipate receiving money from two West Virginia state pension programs, PERS and Judicial Retirement, for my public service from 1998 to the present.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

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

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My husband is an assistant prosecuting attorney in Jefferson County, West Virginia. I would recuse myself from any case in which he was counsel of record in the same or a closely related matter. I would also recuse myself from any criminal matter if I had previously prosecuted the defendant. I am unaware of any other circumstances that would raise potential conflict of interest. I would resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges and all applicable policies and procedures of the United States Courts.

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

       I would resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, and all applicable policies and procedures of the United States Courts. I would recuse myself in any matter in which my spouse or I hold a financial interest or in which I have a sufficiently close connection with counsel or parties based upon a business or social relationship. If it is a close call, I would err on the side of recusal so as not to raise the appearance of impropriety.

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

    As an associate for Steptoe and Johnson, I was assigned court appointed criminal defense cases in state and federal courts in West Virginia. In public service as a prosecutor, I was precluded from pro bono work. As a judge, I have the same restrictions, however, I participate in the Robes to Schools program of the West Virginia Supreme Court and participate each year in the Martinsburg City Police Department's Junior Police Academy. Many of the children I speak to in these programs come from lower income homes.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is not a selection commission in my jurisdiction to recommend candidates for nomination to the federal courts.

In approximately the summer of 2009, I sent letters to Senator Jay Rockefeller, Senator Robert Byrd and then-Governor Joe Manchin advising them of my interest in a recommendation for any openings in the U.S. District Court for the Northern District if one became available. In February 2011, I received a call from an assistant to Rochelle Goodwin, Senator Rockefeller's state director. The assistant advised that the senator's office was scheduling meetings with people who had expressed such an interest in the opening in the Northern District. On February 9, 2011, Ms. Goodwin interviewed me in the senator's Charleston, West Virginia office. On February 23, 2011, Senator Rockefeller interviewed me in his Washington, D.C. office. On March 1, 2011, Senator Rockefeller called to offer the recommendation to me. Since March 3, 2011, I have been in contact with pre-nomination officials at the Department of Justice. On April 4, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 19, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Groh, Gina M.	U.S. District Court, Northern District of West Virginia	05/19/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Court Judge	☑ Nomination, Date 5/19/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☑ Amended Report	01/01/2010 to 05/19/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Judicial Center 380 West South Street Suite 4400 Martinsburg, WV 25401	Reviewing Officer_____ Date_____	

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

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Groh, Gina M.	Date of Report 05/19/2011

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2009	W.V. Supreme Court-Salary as Circuit Judge	$116,000.00
2. 2010	W.V. Supreme Court-Salary as Circuit Judge	$116,000.00
3. 2011-	W.V. Supreme Court-Salary as Circuit Judge	$43,602.00
4.		

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

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

DATE	SOURCE AND TYPE
1. 2010	Jefferson County, WV-Salary as prosecutor
2. 2010	City of Harpers Ferry, WV-payments as part-time city prosecutor
3. 2011	Jefferson County, WV-Salary as prosecutor
4. 2011	City of Harpers Ferry, WV-payment as part-time city prosecutor

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Groh, Glen M.	Date of Report 05/19/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Trustcorp America	Mortgage Rental Property #1	L
2.	Disney Visa Card	Credit Card	J
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Groh, Gina M.	05/19/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (If private transaction)
1. Susquehanna Bank Cash Accounts	B	Interest	M	T					
2. Nationwide Money Markety Prm (457(b))	A	Int./Div.	M	T					
3. MFS WV Muni Bond Fund	B	Int./Div.	K	T					
4. Exxon Mobile	A	Int./Div.	K	T					
5. PNC Financial Group Stock	A	Int./Div.	K	T					
6. M&T Bank Stock	A	Int./Div.	K	T					
7. Honeywell Int'l Inc	A	Int./Div.	J	T					
8. Federal Really Inv. Trust	A	Int./Div.	J	T					
9. Invesco Charter Fund	A	Int./Div.	J	T					
10. MFS Growth Fund	A	Int./Div.	J	T					
11. Corning	A	Int./Div.	J	T					
12. RBC US Gov't Money Market Fund	A	Interest	J	T					
13. Borg Warner	A	Int./Div.	J	T					
14. Pfizer	A	Int./Div.	J	T					
15. DWS International Fund	A	Int./Div.	J	T					
16. Williams Companies	A	Int./Div.	J	T					
17. American Funds Europacific Growth Fund	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 5 of 8	Name of Person Reporting Grob, Gina M.	Date of Report 05/19/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
18. Hewlett Packard	A	Int./Div.	J	T					
19. American Fund Growth Fund of Amer.	A	Int./Div.	J	T					
20. SunTrust Bank Stock	A	Int./Div.	J	T					
21. BMS Tech	A	Int./Div.	J	T					
22. Hartford Dividend & Growth Fund	A	Int./Div.	J	T					
23. Hartford Capital Appreciation Fund	A	Int./Div.	J	T					
24. Comcast New Class A	A	Int./Div.	J	T					
25. Fulton Financial Stock	A	Int./Div.	J	T					
26. Ford	A	Int./Div.	J	T					
27. Hartford Small Co. Fund	A	Int./Div.	J	T					
28. Hanger Orthopedic Group	A	Int./Div.	J	T					
29. Hartford Global Growth Fund	A	Int./Div.	J	T					
30. Bank of America Stock	A	Int./Div.	J	T					
31. First Energy	A	Int./Div.	J	T					
32. Saratoga Tech and Communication	A	Int./Div.	J	T					
33. Wells Fargo Stock	A	Int./Div.	J	T					
34. Citigroup Stock	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F=$50,001 - $100,000	B =$1,001 - $2,500 G=$100,001 - $1,000,000	C=$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D=$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C3)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 6 of 8	Name of Person Reporting Groh, Glun M.	Date of Report 05/19/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. Disney	A	Int./Div.	J	T					
36. Travelers	A	Int./Div.	J	T					
37. Nortell Networks	A	Int./Div.	J	T					
38. Motors Liquidation Corp.	A	Int./Div.	J	T					
39. Centra Bank Stock	A	Int./Div.	K	W					
40. Washinton County Sportsman	A	Int./Div.	K	W					
41. Hagerstown Table Corp.	A	Int./Div.	J	U					
42. Vinco Development Corp.	A	Int./Div.	J	U					
43. MONY Whole Life	A	Int./Div.	K	T					
44. Rental House #1, Charles Town, WV (assessed 7/1/2010)	D	Rent	M	S					
45. Rental House #2 Socastee, SC 25% interest	C	Rent	K	W					
46. Standing Timber at personal residence (assessed 7/1/10)		None	J	S					
47. Spouse's Income from testimentary trust (no control)	P	Int./Div.							
48. WV Judicial Retirement System (no control)		None	L	T					
49. WV Public Employee Retirement System (no control)		None	K	T					

1. Income Gain Codes: (See Columns B1 and D1)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessed W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Groh, Glun M.	Date of Report 05/19/2011

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

Part VIII 40. line My spouse owns a 1/30 share in corporation which owns timberland in Washington County, Maryland. Value is an estimate based upon known past sales.
Part VII lines 41 & 42. My spouse owns shares in two closely held family corporations which conduct business in Maryland and West Virginia. Value is an estimate based on book value as no recent sales are known.
Part VII line 46. The timber referenced is standing timber located on a portion of the parcel of land at my primary residence. The Timber is part of a managed timber program and has a value assessed annually by the state tax assessor. No income will be realized until timber is harvested in the future.
Part VII line 47. My spouse is a discretionary income beneficiary of a testimentary trust established in 1984. My children are part of a class of contingent remainderman of the trust. The trust was not established by myself, my spouse nor either of our children and none of us serve as a trustee for the trust. It is a "spendthrift" trust with an independent corporate financial trustee in charge of all investment decisions. We exercise no control over the investments owned by the trust. My spouse receives income from the trust at the sole discretion of the corporate trustee. Other than periodic communications regarding distributions and information needed to complete income tax forms, the only specific information received about the trust is in yearly K-1 form received. We do not know the trust's gross value.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Groh, Glun M.	Date of Report 05/19/2011

IX. CERTIFICATION.

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

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

Signature Glun M. Groh

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		135	379	Notes payable to banks-secured (auto)		28	404
U.S. Government securities–Series EE bonds		19	000	Notes payable to banks-unsecured		29	492
Listed securities – see schedule		365	619	Notes payable to relatives			
Unlisted securities – see schedule		94	500	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		5	500
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		213	945
Real estate owned – see schedule		736	510	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		137	400				
Cash value-life insurance		22	462				
Other assets itemize:							
West Virginia Judicial Retirement System		55	634				
West Virginia PERS		39	938	Total liabilities		270	877
Estimated value of timber on property		8	500	Net Worth	1	344	105
Total Assets	1	614	982	Total liabilities and net worth	1	614	982
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Nationwide Money Market Prem.	$124,139
MFS WV Tax-Free Bond Fund	34,603
Exxon Mobile	21,389
PNC Financial Group	21,213
M&T Bank	16,362
Honeywell Intl Inc.	14,509
Federal Realty Inv. Trust	12,830
Invesco Charter Fund	11,251
MFS Growth Fund	9,588
RBC -US Gov't Money Fund	9,026
Pfizer	8,456
Corning	8,112
Borg Warner	7,341
DWS International Fund	7,292
American Funds Europacific Growth Fund	5,661
Williams Companies	5,410
EMS Tech	4,800
American Funds Growth Fund of America	4,732
Hewlett Packard	4,651
SunTrust Bank	3,707
Fulton Financial	3,682
Hartford Dividend & Growth Fund	3,634
Hartford Capital Appreciation	3,570
Comcast New Class A	3,453
Ford	2,919
Hartford Small Company Fund Class A	2,790
Hanger Orthopedic Group	2,572
Hartford Global Growth Fund Class A	2,275
First Energy	1,913
Bank of America	1,666
Saratoga Tech and Communication	975
Wells Fargo	776
Citigroup	174
Disney	82
Travelers	63
Nortell Networks	2
Motors Liquidation Corp.	1
Total Listed Securities	$365,619

Unlisted Securities	
Centra Bank	$42,000
Washington County Sportsman	30,000
Hagerstown Table Corp.	15,000
Vinco Development Corp.	7,500
Total Real Estate Owned	$94,500

Real Estate Owned	
Personal residence	$511,010
Time-share property	32,000
Rental property #1	148,500
Rental property #2 (25% interest)	45,000
Total Real Estate Owned	$736,510

Real Estate Mortgages Payable	
Personal residence	$128,437
Rental property #1	85,508
Total Real Estate Mortgages Payable	$213,945

AFFIDAVIT

I, Gina M. Gish, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 17, 2011
(DATE)

Gina M. Gish
(NAME)

OFFICIAL SEAL
Notary Public, State of West Virginia
TRACY P. HERRON-RICE
28 Noel Drive
Martinsburg, WV 25401
My commission expires September 18, 2013

Tracy P. Herron Rice
(NOTARY)

Senator WHITEHOUSE. Thank you very much, Judge Groh.

Finally, Ms. Brodie.

STATEMENT OF MARGO BRODIE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Ms. BRODIE. Thank you, Senator Whitehouse. Thank you to the Committee, also to Senator Schumer for his kind words today, and also for recommending me to the President. Thank you to the President for nominating me for this position.

I have with me today my mother Nina Brodie, my brother Euan Brown, my cousin Jan Edwards, my aunt and uncle Barbara and Charles Brodie, and several friends and colleagues, both here in DC and who are watching on the webcast from New York. Also, friends who are watching from Antigua and from Nigeria. Thank you.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Margo Kitsy Brodie
   Margo Kitsy Williams (1966 – 1986). Williams was my father's surname.

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

   United States District Judge for the Eastern District of New York

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   271 Cadman Plaza East
   Brooklyn, New York 11201

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

   1966; St. John's, Antigua

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1988 – 1991, University of Pennsylvania Law School; J.D., 1991

   1983 –1985, 1986 –1988, St. Francis College; B.A. (*magna cum laude*), 1988

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   1999 – Present
   United States Attorney's Office for the Eastern District of New York
   271 Cadman Plaza East
   Brooklyn, New York 11201
   Deputy Chief of the Criminal Division (2010 – Present)

Counselor to the Criminal Division (2009 – 2010)
Chief of General Crimes (2007 – 2009)
Deputy Chief of General Crimes (2006 – 2007)
Advisor to Prosecuting Agencies in Nigeria (2005 – 2006)
Assistant United States Attorney (1999 – 2006)

2009 – Present
Brooklyn Law School
250 Joralemon Street
Brooklyn, New York 11201
Adjunct Instructor of Legal Writing

1994 – 1999
Carter, Ledyard & Milburn
2 Wall Street
New York, New York 10005
Litigation Associate

1991 – 1994
New York City Law Department
Real Estate Litigation Division
100 Church Street
New York, New York 10007
Assistant Corporation Counsel

January or February 1993
Stephen, Dunn & Associates
1728 Abbot Kinney Boulevard
Venice, California 90291
Telemarketer (performed work for New York theatre group, whose name I do not recall)

Summer 1991
Law Office of Richard Kurtz, Esq.
No known address
Legal Assistant/Legal Secretary

January 1989 – August 1989; September 1990 – May 1991
University of Pennsylvania Law School
3400 Chestnut Street
Philadelphia, Pennsylvania 19104
Research Assistant to Professor Regina Austin

August 1989 – May 1990; August 1990 – May 1991
Hill College House
University of Pennsylvania
3333 Walnut Street
Philadelphia, Pennsylvania 19104
Graduate Fellow

Summer 1990
Seward & Kissel
One Battery Park Plaza
New York, New York 10004
Summer Associate

1990
University of Pennsylvania School of Law
3400 Chestnut Street
Philadelphia, Pennsylvania 19104
Research Assistant to Professor Lani Guinier

Other Affiliations (Uncompensated):

1996 – 2002; 2008 – 2009
Association of Black Women Attorneys
255 West 36th Street, Suite 800
New York, New York 10018
President (2006 – 2008)
Vice President (1999 – 2002)
Board Member (1996 – 1999; 2008 – 2009)

1996 – 2002
Van Park Housing Corporation
679 Vanderbilt Avenue
Brooklyn, New York 11238
Treasurer

1994 – approx. 2004
Practicing Attorneys for Law Students, Inc.
42 West 44th Street
New York, New York 10036
Board of Directors/Executive Board

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for selective service.

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

United States Attorney's Office for the Eastern District of New York Award for Excellence in Criminal Litigation in *United States v. Nicoletti et al.* (2009)

United States Attorney's Office for the Eastern District of New York Award for Excellence in Management (2008)

National Agency for the Prohibition of Traffic In Persons & Other Related Offences Award for contributions in fighting human trafficking in Nigeria (2006)

Council of Legal Education Award for contribution to the development of legal education in Nigeria (2006)

Research Fellowship from the seminar on Afro-American Intellectual History of the Program for Assessing and Revitalizing the Social Services, University of Pennsylvania (1989)

Black Graduate and Professional Students Association of the University of Pennsylvania Sadie T. M. Alexander Award for outstanding leadership and services (1990 – 1991)

Phi Alpha Theta Honor Society, St. Francis College

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

American Bar Association
Association of Black Women Attorneys
    President (2006 – 2008)
    Vice President (1999 – 2002)
    Board Member (1996 – 1999; 2008 – 2009)
Eastern District Association
    Board of the Eastern District Association Steering Committee (2011 – present)
Metropolitan Black Bar Association
National Bar Association
National Black Prosecutors Association
New York City Bar Association
    Council on Criminal Justice Committee (2009 – Present)
    Criminal Law Committee (2002 – 2005)
    Environmental Law Committee (1995 – 1998)
New York County Lawyers' Association

New York State Bar Association
Practicing Attorneys for Law Students, Inc.
Board of Directors/Executive Board (1994 – approx. 2004)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New Jersey, 1991
New York, 1992

After I was admitted to the New Jersey State bar, I failed to pay the annual attorney registration fee required to keep my admission current. As a result, I was removed from the roll of attorneys in New Jersey. I was reinstated after I paid the past due fees. I never practiced law in New Jersey.

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

Supreme Court of the United States, 1998
United States Court of Appeals for the Second Circuit, 2005
United States District Court for the Eastern District of New York, 1992
United States District Court for the Southern District of New York, 1992

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Van Park Housing Corporation
Treasurer (1996 – 2002)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion

or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, the Van Park Housing Corporation does not discriminate and did not formerly discriminate on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

In June 2011, as part of the 35th anniversary Gala celebration of the Association of Black Women Attorneys, I wrote a message stating what ABWA has meant to me throughout my career, which was published in a journal. A copy of that message is supplied.

In 2007, as part of the 30th anniversary Gala celebration of the Association of Black Women Attorneys, I prepared remarks as the president of the organization, which were published in a journal. A copy of those remarks, which were entitled the "President's Message," is supplied.

In 2006 and 2007, as president of the Association of Black Women Attorneys, I wrote fundraising letters for the organization. Copies supplied.

In 2007, I co-authored a document entitled, "ABWA: 2002 and Forward," which was published in the 30th Anniversary Gala journal. Copy supplied.

While employed at Carter, Ledyard & Milburn, I co-authored an article on the then-new lead paint regulations. This article, *New Lead Regulations to Take Effect This Fall*, was published in the Real Estate Weekly on April 17, 1996. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I do not recall preparing or contributing to any such reports, memoranda or policy statements.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I do not recall issuing or providing any such testimony, official statements, or other communications.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have attempted to compile as complete a list as possible of speeches and other remarks I have given over the years by referencing my personal calendars and performing Internet and public database searches. I may, however, have given other presentations and participated in other panels that I have been unable to recall or identify.

On May 23-27, 2011, I led a five-day trafficking training program in Nigeria for prosecutors and other law enforcement officials. This training program was sponsored by the United States Department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training and the United States Department of Justice, International Criminal Investigative Training Assistance Program. I was assisted by a Nigerian judge, two prosecutors and two retired police officers. I presented on topics related to the investigation and prosecution of trafficking cases, including an international overview of human trafficking, building strong cases for prosecution, trial preparation and prosecution, investigating trafficking crimes involving the use of computers, use of electronic evidence in trafficking cases, and the use of video conferencing for unavailable witnesses. Copies of my PowerPoint presentations are supplied.

On April 12-14, 2011, I presented three days of trafficking training in Zanzibar. This training program was sponsored by the United States Department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training and the United States Embassy in Tanzania. I was assisted by another prosecutor and a representative from the International Organization of Migration. I presented on topics related to the investigation and prosecution of trafficking cases including an international overview of human trafficking, identifying victims of human trafficking, building strong cases for prosecution, and trial preparation in trafficking cases. Copies of my PowerPoint presentations are supplied.

On March 2, 2011, I was one of four panel members who participated in a discussion entitled "Everything You Wanted to Know About Becoming an Assistant United States Attorney." The program was sponsored by the New York City Bar Committee on Minorities in the Court. My notes are supplied.

On February 26, 2011, I participated in a panel discussion at the Brooklyn Law School Black Law Students Association Seventh Annual Power Professionals Conference. I spoke about resume writing and interviewing, including what information students should include on their resume, how to prepare for interviews, and how to effectively communicate during an interview. I have no notes, transcript, or recording. Brooklyn Law School is located at 250 Joralemon Street, Brooklyn, New York 11201.

On January 7, 2011, I participated in a negotiation training program at Benjamin M. Cardozo School of Law. Together with two other panel members, I provided constructive criticism regarding the performance of three groups of students after they attempted to negotiate the terms of a performance contract. I have no notes, transcript, or recording. The Law School is located at 55 Fifth Avenue, New York, New York 10003.

On December 8, 2010, I and a colleague presented a lecture on the topic of human trafficking at a United Nations conference on Combating Corruption through International Investigations. The conference was held at the United Nations headquarters in New York City. I have no notes, transcript, or recording. The address of the United Nations is 3 United Nations Plaza, New York, New York 10017.

On November 11, 2010, I spoke to a class at John Jay College of Criminal Justice on the topic of evidence. I used the example of a specific stalking case to explain and demonstrate the nature of circumstantial evidence. I have no notes, transcript, or recording. The College is located at 899 Tenth Avenue, New York, New York 10019.

On November 16-18, 2010, I was a panel member at a human trafficking training program in Nassau, the Bahamas, sponsored by the U.S. Department of Homeland Security. The three-day program provided training to prosecutors, law enforcement, and others in the Bahamas. I lectured on the prosecution and trial of a human trafficking case. A copy of my PowerPoint presentation is supplied.

On November 6, 2010, I gave the opening remarks at the Fourth Annual Visions for Tomorrow Workshop, which was sponsored by the organization What About The Children, Inc. The all-day workshop was intended to give middle-school students a glimpse into their future by introducing them to members of the community from different walks of life. I have no notes, transcript, or recording.

The address of the organization is 249 Thomas Boyland Street, Suite 3-K, Brooklyn, New York 11233.

On October 7, 2010, I was one of five panel members participating in a program entitled "Careers in Criminal Law for Students of Color," sponsored by the Practicing Attorneys for Law Students, Inc. I discussed, among other topics, the nature of my job, my daily activities, and the benefits of working for the government. I have no notes, transcript, or recording. The organization is located at 42 West 44th Street New York, New York 10036.

On September 19-21, 2010, I was a panel member at a human trafficking training program in Amman, Jordan, sponsored by the U.S. Department of Homeland Security. The three-day program provided training to prosecutors, law enforcement, and the National Jordanian Police. I lectured on the prosecution and trial of a human trafficking case. A copy of my PowerPoint presentation is supplied.

On September 9, 2010, I was one of a three-member panel presenting on human trafficking at the SAS 6th Annual Terrorism, Financing and Money Laundering Program in Cary, North Carolina. A copy of my PowerPoint presentation is supplied.

On August 2-4, 2010, I presented a three-day trafficking training in Swaziland. This training program was sponsored by the United States Department of State. I covered a broad range of topics related to the investigation and prosecution of trafficking cases including an international overview of human trafficking, identifying victims of human trafficking, handling victims of human trafficking, interviewing techniques for victims of human trafficking, investigating trafficking cases, gathering evidence, and trial preparation in trafficking cases. Copies of my PowerPoint presentations and press coverage are supplied.

On July 26-28, 2010, I presented a three-day trafficking training in Lesotho. This program was sponsored by the United States Department of State. I covered a broad range of topics related to the investigation and prosecution of trafficking cases including an international overview of human trafficking, identifying victims of human trafficking, handling victims of human trafficking, working with non-governmental organizations, interviewing techniques for victims of human trafficking, investigating trafficking cases, gathering evidence, and trial preparation in trafficking cases. I also commented on Lesotho's draft trafficking legislation. Copies of my PowerPoint presentations and press coverage are supplied.

On November 19, 2009, I spoke to a class at John Jay College of Criminal Justice on cross-examination. I used the example of *United States v. Tin Yat Chin* to explain and demonstrate the various ways in which witnesses can be impeached

during cross examination. I have no notes, transcript, or recording. The College is located at 899 Tenth Avenue, New York, New York 10019.

On November 7, 2009, I moderated the Third Annual Visions for Tomorrow Workshop, which was sponsored by the organization What About The Children, Inc. The all-day workshop was intended to give middle-school students a glimpse into their future by introducing them to members of the community from different walks of life. I have no notes, transcript, or recording. The address of the organization is 249 Thomas Boyland Street, Suite 3-K, Brooklyn, New York 11233.

On October 16-17, 2009, I was a panelist for a continuing legal education symposium on Federal Sentencing Practice for state court practitioners, sponsored by the Federal Criminal Practice Institute. I discussed the application of the sentencing guidelines with several state court practitioners who were interested in practicing in federal court. Video supplied.

On June 17-19, 2009, I participated in a three-day Africa Regional Anti-Corruption Seminar in Tanzania, which was co-sponsored by the Office of Overseas Prosecutorial Development, Assistance and Training and the State Department. I presented on several topics including a joint presentation with Daniel Claman on case management and data mining, and a joint presentation with Peter Ainsworth on the Effective Use of Informants and Cooperating Defendants. PowerPoint presentation on case management supplied. I have no notes, transcript or recording of the other presentations.

On March 24, 2009, I participated on a panel entitled "Career Opportunities in Government," sponsored by the Practicing Attorneys for Law Students, Inc. and the New York City Bar Committee on Law Student Perspectives. A copy of the questions posed with my responsive notes is supplied.

On March 9-12, 2009, I instructed new Assistant United States Attorneys on trial advocacy at the Justice Department's National Advocacy Center in South Carolina. I have no notes, transcript, or recording.

On February 18, 2009, I was a panel member at a Black History Month program sponsored by the then-Attorney General Andrew Cuomo and the Metropolitan Black Bar Association and entitled, "The Role of the African-American Prosecutor." We discussed various criminal law topics, including whether interrogations by police should be videotaped and audiotaped, and answered questions from the audience. I have no notes, transcript, or recording. The Attorney General's Harlem Office is located at 275 Madison Avenue, 14th Floor, New York, New York 10016.

On September 16-18, 2008, I was a panel member at a conference on Financial Crimes, Intellectual Property and Gangs for Trinidadian law enforcement

officials, sponsored by the United States Embassy in Trinidad and the United States Department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training ("OPDAT"). I spoke about the various investigative techniques used in the United States to investigate and prosecute financial and gang-related crimes. I have no notes, transcript, or recording. OPDAT is located at 1331 F Street, NW, Washington, DC 20530.

On May 17, 2008, I delivered a short, introductory speech at the Association of Black Women Attorneys' 15th Annual Ruth Whitehead Whaley luncheon. A copy of my remarks is supplied.

On November 17, 2007, I participated in an all-day workshop for middle school students titled Visions for Tomorrow, which was sponsored by the organization What About The Children, Inc. The workshop was intended to give the students a glimpse into their future by introducing them to members of the community from different walks of life. I explained what I did for a living, my educational background, my prior work experience, and answered questions from the students and some of their parents. A copy of my notes is supplied.

On October 30, 2007, at my installation as president of the Association of Black Women Attorneys, I gave a speech describing what the organization did during the past year and what I planned to do for the upcoming year. Notes supplied.

On October 4-6, 2007, I was a panelist for a continuing legal education symposium on Federal Sentencing Practice for state court practitioners, sponsored by the Federal Criminal Practice Institute. I discussed the application of the sentencing guidelines with several state court practitioners who were interested in practicing in federal court. I have no notes, transcript, or recording. The program was held at the New York County Lawyers' Association which is located at 14 Vesey Street, New York, New York 10007.

On May 5-9, 2007, I spoke at the FBI National Academy Associates Africa/Middle East Conference, which was held in Ghana. I gave an overview of the United States' justice system. Several law enforcement officials from Africa and the Middle East attended the conference. I have no notes, transcript, or recording. The FBI NAA is located at FBI Academy, Quantico, Virginia 22135.

On March 24, 2007, I gave a speech at the 30th anniversary Gala celebration of the Association of Black Women Attorneys. A copy of my remarks is supplied.

On February 24, 2007, I spoke on a panel at a conference sponsored by the Brooklyn Law School Black Law Students Association. The panel was on working in government. I discussed, among other topics, my career path and the rewards and challenges of working for the government. Notes supplied.

On October 26, 2006, I gave remarks upon being installed as the president of the Association of Black Women Attorneys. Copy of my remarks supplied.

March 2006, I lectured at four different campuses of the Nigerian Law School on conducting direct and cross examinations of witnesses. I have no notes, transcript, or recording.

From May 2005 through March 2006, I was the Department of Justice's legal advisor to Nigeria. As such, I organized and participated in several training programs for prosecutors and law enforcement officers from various agencies. These training programs included sessions on evidence, public corruption, human trafficking, trial advocacy, and plea negotiations. I also conducted smaller training programs for prosecutors on topics such as how to effectively conduct opening statements, direct examinations and cross examinations. I have no notes, transcript, or recording. The address of the Department of Justice is 950 Pennsylvania Avenue NW, Washington, DC 20530.

On July 14, 2004, I was a panel member for a program entitled, "What It's (Really) Like to Practice Law in NYC as a Woman," sponsored by the New York Women's Bar Association and the committees of the New York City Bar on Sex and Law and Law Student Perspectives. We discussed various topics including the importance of a career plan, how to find a mentor, the purpose of networking, whether discrimination still exists, and balancing your professional life and personal life. Notes supplied.

From June 29 to June 30, 2004, I was a panel member at a conference titled, "Transnational Judicial Assistance for Nigerian Law Enforcement Officials," which was sponsored by the United States Embassy in Nigeria and the United States Department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training. I presented an overview of the United States' justice system based on a PowerPoint presentation prepared by the Justice Department. I did not prepare the presentation and have no other notes, transcript or recording. The address of the Department of Justice is 950 Pennsylvania Avenue NW, Washington, DC 20530.

I have also participated in the training of Assistant United States Attorneys ("AUSAs") within the United States Attorney's Office for the Eastern District of New York since I became a supervisor. Such training included one-on-one training sessions with new AUSAs, more formal training of groups of AUSAs on topics such as discovery obligations and conducting proffers, and participation in a yearly trial advocacy training program, most recently held in January 2011. Copies of two of the PowerPoint presentations that I prepared and presented in 2010 are supplied. I have no notes, transcripts or recordings from any of the other previous presentations. The address of the U.S. Attorney's Office is 271 Cadman Plaza East, Brooklyn, New York 11201.

In approximately 1994 or 1995, I participated in a panel at the New York City Bar Association on transitioning from the government sector to the private sector. I have no notes, transcript, or recording. The Association is located at 42 West 44th Street New York, New York 10036.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Roxanne Patel, "First-Year Law Class Has Most Minorities Ever," The Daily Pennsylvanian, Oct. 1, 1990. Copy supplied.

Other than the article listed above, I have no recollection of giving any other interviews and have been unable to identify any others through searches of my personal files, the Internet and public databases.

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

I have never held judicial office.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never been a judge.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or

appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held a public office. I have never had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held an office or position with a political party, election committee, or political campaign.

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

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

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

I never served as a law clerk.

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

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1991 – 1994
New York City Law Department
Real Estate Litigation Department
100 Church Street
New York, New York 10007
Assistant Corporation Counsel

1994 – 1999
Carter, Ledyard & Milburn
2 Wall Street
New York, New York 10005
Litigation Associate

1999 – Present
United States Attorney's Office Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
Assistant United States Attorney (1999 – 2006)
Advisor to Prosecuting Agencies in Nigeria (2005 – 2006)
Deputy Chief of General Crimes (2006 – 2007)
Chief of General Crimes (2007 – 2009)
Counselor to the Criminal Division (2009 – 2010)
Deputy Chief of the Criminal Division (2010 – Present)

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

I have never served as mediator or an arbitrator.

b. Describe:

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

As an Assistant Corporation Counsel for the City of New York, from September 1991 to approximately August 1994, I defended city agencies and officials in state and federal court litigation challenging the exercise of their discretionary power in the management of municipal affairs. I personally handled all aspects of litigation such as drafting pleadings, motion practice and discovery in cases involving contracts, environmental issues, constitutional law, public bidding law, mortgage foreclosure, *in rem* tax foreclosure and tort claims.

While employed at Carter, Ledyard & Milburn, from September 1994 to June 1999, I represented both plaintiffs and defendants in various types of civil litigation. I drafted and answered complaints in a number of general commercial cases in city, state and federal courts; participated in all phases of discovery, including witness interviews and preparation; conducted and defended depositions; engaged in motion practice, including related court appearances; negotiated and arbitrated settlement agreements; and participated in bench trials.

As an Assistant United States Attorney, beginning in July 1999 and continuing to the present, I represent the United States in investigations and prosecutions from the grand jury phase through trial and appeal, in a broad range of areas. I have prosecuted cases involving, among others,

tax fraud, public corruption, money laundering, RICO, murder-in-aid of racketeering, narcotics trafficking, gun trafficking and human trafficking.

In addition, between July 2006 and October 2009, I supervised new AUSAs in the General Crimes Section, first as a Deputy Chief and later as the Chief. During that time I supervised on average 25 AUSAs and 3 Deputy Chiefs at any one time. My responsibilities included reviewing charging and plea decisions, motions and briefs, and training prosecutors in a range of areas, including narcotics and firearms trafficking, violent crimes, financial crimes, public corruption, immigration offenses and child pornography offenses. I provided trial advocacy training and reviewed courtroom presentations of new AUSAs. I also accompanied the new AUSAs to court to assist them during various types of hearings.

From May 2005 to March 2006, I was a legal advisor to the Independent Corrupt Practices and Other Related Offences Commission (ICPC) in Nigeria, which is an anti-public corruption commission. I advised the prosecutors on all aspects of prosecution, including trial strategy, and I accompanied the prosecutors to court, although I did not officially take part in the court proceedings. I also provided training to several prosecutors and investigators from the ICPC, the Economic and Financial Crimes Commission and the National Agency for the Prohibition of Traffic in Persons and Other Related Matters Commission.

In October 2009, I became the Counselor to the Criminal Division of the United States Attorney's Office. I spearheaded review of policy and procedural issues of importance to the Criminal Division; led special projects within the Division and in coordination with the United States Department of Justice and other agencies; facilitated and coordinated the Office's training programs; identified and developed strategic initiatives; updated and coordinated the Division's policies and procedures; and acted as the Office's principal liaison with United States Department of Justice headquarters on evolving topics such as discovery.

In my current position as Deputy Chief of the Criminal Division, I supervise over 100 Criminal Division AUSAs in the areas of public corruption, civil rights, terrorism, organized crime, gang violence, narcotics trafficking, and business and securities fraud; advise the United States Attorney and Criminal Division Chief regarding legal policy and management issues; devise and implement the Office's criminal discovery policies; and oversee various training programs.

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

From 1991 to 1994, as an Assistant Corporation Counsel for the City of New York, I represented the City of New York in a range of matters challenging the exercise of the City's discretionary power in the management of its municipal affairs. I handled cases involving contracts, public bidding law, mortgage foreclosure, *in rem* tax foreclosure and tort claims.

From 1994 to 1999, while employed at Carter, Ledyard & Milburn, I practiced in the area of general commercial litigation for various corporate clients.

Since 1999, I have represented the United States as a federal prosecutor, specializing in federal criminal law at both the trial and appellate levels.

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

Approximately 90% of my legal experience has been in litigation. While employed as an Assistant Corporation Counsel from 1991 to 1994 and as an Assistant United States Attorney from 1999 to 2005, I frequently appeared in court on numerous cases. In the interim, as an associate at Carter, Ledyard & Milburn, I did not appear in court as frequently. From May 2005 to April 2006, I was a legal advisor in Nigeria where I traveled to court with the prosecutors on their matters but did not appear on any matter. From May 2006 to the present, I occasionally appear in court on some of my own cases, but the majority of my court appearances are in my capacity as a supervisor to the new Assistant United States Attorneys.

i. Indicate the percentage of your practice in:
   1. federal courts: 60%
   2. state courts of record: 35%
   3. other courts: 5%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 40%
   2. criminal proceedings: 60%

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

I have tried nine cases to verdict (ten trials because one case was tried to verdict twice); three as sole counsel; three as chief counsel; two as co-counsel and one as

associate counsel. In addition, I second-chaired several trials in which I actively counseled and assisted new AUSAs who were trying the cases.

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

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

These cases are listed in reverse chronological order.

1. *United States v. Robinson*, 09-CR-794 (JG); Eastern District of New York; The Honorable John Gleeson; 2010 – Present.

The defendant was convicted after trial of sex trafficking a minor. I was the lead counsel and tried the case with a junior Assistant United States Attorney. Trial preparation involved the painstaking review of dozens of hours of prison conversations between the defendant and the minor victim, who identified herself as the defendant's "girlfriend," to identify conversations establishing that the defendant was, in fact, the victim's pimp and that he directed her prostitution activities. The defense was that the victim worked voluntarily as a prostitute and not for the defendant and that the victim gave money to the defendant only because he was her boyfriend and not because he was her pimp. I examined the victim at trial, which required questioning her to elicit useful information, limit and neutralize harmful testimony and reveal the victim's bias for the defendant. I also gave the summation and rebuttal jury addresses, during which I used the prison conversations and the victim's testimony to convince the jury that the victim was lying to

protect the defendant. The defendant was convicted and sentenced to 15 years' imprisonment, 5 years above the mandatory minimum sentence. The case is currently on appeal.

Co-counsel:

Assistant United States Attorney Sylvia Shweder
271 Cadman Plaza East
Brooklyn, New York 11201
(718) 254-6092

Defense counsel:

Curtis Farber Esq.
350 Broadway, 10th Floor
New York, New York 10013
(212) 334-4466

2. *United States v. Nicoletti*, 09-CR-002 (CBA); Eastern District of New York; The Honorable Carol Bagley Amon; 2008 – 2009.

The defendants pleaded guilty to civil rights violations for the election night assault of three individuals in Staten Island, New York, in retaliation for Barack Obama's election as President of the United States. The investigation of this case involved two months of proffering witnesses and participants to determine the facts and to determine whether federal charges could properly be brought against the defendants.

Co-counsel:

Assistant United States Attorney Pamela Chen
271 Cadman Plaza East
Brooklyn, New York 11201
(718) 254-7575

Defense Counsel:

For Nicoletti:
Robert LaRusso, Esq.
300 Old Country Road, Suite 341
Mineola, New York 11501
(516) 248-3520

For Contreras:
Greggory Cooper, Esq.
20 Vesey Street, Suite 400
New York, New York 10007
(212) 608-4828

For Carranza:
Allen Lashley, Esq.
16 Court Street
Brooklyn, New York 11241
(718) 875-1128

3. *United States v. Tyler*, 01-CR-922 (JBW); Eastern District of New York; The Honorable Jack B. Weinstein; 2000 – 2007.

This case, along with the following three cases, are all related cases. They involve the investigation and prosecution of a violent gang from Brooklyn that operated in New York and Baltimore. Several of the gang members pleaded guilty and four went to trial before the Honorable Jack B. Weinstein. A fifth gang member was a fugitive at the time of the trial before Judge Weinstein but was eventually arrested and tried separately before the Honorable Nina Gershon.

I investigated and indicted this case, charging the defendants with RICO, RICO conspiracy, murder in aid of racketeering, conspiracy to commit murder in aid of racketeering and the unlawful use of firearms. This was originally a firearms trafficking case that I was able to develop into a RICO prosecution. Two of the defendants pleaded guilty and cooperated with the government. I was one of three Assistant United States Attorneys who tried this case as co-counsel. The other two Assistant United States Attorneys were Kelly Currie and Marshall Miller. We litigated several pre-trial motions, including motions by the defendants to sever the trial of some of the co-defendants, and to obtain a bill of particulars, exculpatory and impeachment material of government witnesses, the identity of unindicted co-conspirators and the production of informants and witness lists in advance of trial. We also litigated the introduction of uncharged conduct pursuant to Rule 404(b) of the Federal Rules of Evidence.

I conducted the direct examination of several of the government's witnesses and the cross-examination of a defense witness. In addition, I delivered one of the jury addresses. After a four-week jury trial, the four defendants were convicted on several counts of the indictment. Three of the four defendants were sentenced to life and one was sentenced to ten years. I was co-counsel for the appeal and partially argued the appeal before the Second Circuit Court of Appeals. The convictions were affirmed on appeal, but the cases were remanded for resentencing in accordance with *United States v. Booker*, 534 U.S. 220 (2005). On remand, the three life sentences were reduced to 30 years.

Co-counsel:

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Assistant United States Attorney Marshall Miller
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Defense counsel:

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For McMillan:
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(212) 349-0230

For Foster:
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New York, New York 10007
(212) 693-1000

4. *United States v. Lefkowitz*, 01-CR-886 (RR); Eastern District of New York; The Honorable Rena Raggi; 2000 – 2003.

The defendant aided and abetted a murder and was involved in the distribution of cocaine with a number of individuals, including those charged in *United States v. Tyler et al.* (discussed above) and *United States v. Stokes* (discussed below). The defendant pleaded guilty and cooperated against the trial defendants in *United States v. Tyler*.

Defense counsel:

Michael S. Washor, Esq.
233 Broadway, Suite 1800
New York, New York 10279
(212) 697-5900

5. *United States v. Stokes*, 01-CR-1095 (JBW); Eastern District of New York; The Honorable Jack B. Weinstein; 2001 – 2003.

The defendant aided and abetted a murder and was involved in the distribution of cocaine and crack cocaine with a number of individuals, including those charged in *United States v. Tyler* and *United States v. Lefkowitz* (discussed above). The defendant pleaded guilty and cooperated against the trial defendants in *United States v. Tyler*.

Defense counsel:

Thomas White, Esq.
Legal Aid Office
49 Thomas Street
New York, New York 10013
(212) 298-5110

6. *United States v. Lugo*, 01-CR-922 (NG); Eastern District of New York; The Honorable Nina Gershon; 2001 – 2007.

The defendant was convicted after a jury trial of murder in aid of racketeering, conspiracy to commit murder in aid of racketeering and the unlawful use of firearms in relation to the murder and murder conspiracy. This defendant was indicted with the defendants in *United States v. Tyler* (discussed above), but was a fugitive at the time of the trial in *Tyler*. Pre-trial litigation included a motion to suppress the out-of-court identification of the defendant by two of the government's witnesses, which resulted in a hearing before Magistrate Judge Cheryl Pollak at which I presented the government's evidence. In addition, during trial, outside the presence of the jury, the court conducted a hearing pursuant to *Massiah v. United States*, 377 U.S. 201 (1964), at which I presented the government's evidence. At trial, I conducted the direct examination of several of the government's witnesses and delivered two of the jury addresses. The trial lasted approximately two weeks. Post trial litigation included responding to the defendant's motions for a judgment of acquittal and a new trial.

Co-counsel:

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Defense counsel:

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156 Fifth Avenue, Suite 600
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(212) 243-1100

7. *United States v. Chin*, 01-CR-1407 (FB), *aff'd*, 476 F.3d 144 (2d Cir. 2007); Eastern District of New York, The Honorable Frederic Block and the Second Circuit Court of Appeals; 2002 – 2007.

The defendant, a former immigration inspector, was charged with impersonating an officer of the Immigration and Naturalization Service and with tax evasion. The defendant orchestrated two elaborate schemes to defraud several Chinese victims of over a million dollars. The defendant was convicted at a second trial before the Honorable Frederic Block after the Second Circuit reversed the earlier conviction before the Honorable Nina Gershon. I conducted several direct and cross examinations of witnesses, including the cross of two expert witnesses, and delivered two jury addresses. Both trials lasted approximately two to three weeks. I was the lead counsel during both trials.

Co-counsel:

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Defense counsel:

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8. *United States v. Donovan*, 05-CR-442 (JG); *United States v. Stewart*, 05-CR-442 (JG); *United States v. Wildrick*, 05-CR-442 (JG); *United States v. Torres*, 05-CR-442 (JG); *United States v. Bongiorno*, 05-CR-442 (JG); *United States v. Ferramosca*, 05-CR-442 (JG); *United States v. Taranow*, 05-CR-438 (JG); *United States v. Robles*, 05-CR-681 (JG); *United States v. Bovich*, 05-CR-682 (JG); *United States v. Luca*, 05-CR-683 (JG); *United States v. Zerella*, 05-CR-684 (JG); *United States v. Spinello*, 05-CR-685 (JG); *United States v. Nuziale*, 05-CR-686 (JG); *United States v. Dellaporte*, 05-CR-794 (JG). All prosecuted in the Eastern District of New York; The Honorable John Gleeson; 2003 – 2008 (except 2005 – 2006 while I worked in Nigeria).

The defendants were 12 New York City school custodian engineers and two vendors who were arrested for embezzling, stealing and misapplying funds from the New York City Department of Education. The defendants pleaded guilty to the charges. Sentencing issues were litigated as to some of the defendants. I investigated and obtained arrest warrants for the defendants based on two detailed complaints. During the time I worked in Nigeria as an advisor, the cases were reassigned to Assistant United States Attorneys Debra Newman and Steven Breslow. They negotiated the plea agreements with the defendants. Upon my return to the United States in 2006, I was reassigned to the case for the defendants' sentencing.

Co-Counsel:

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For Nuziale:
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For Dellaporte:
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9. *United States v. Giraldo*, 01-CR-038 (CPS); Eastern District of New York; The Honorable Charles P. Sifton; 2000 – 2003.

A Title III wiretap investigation in Philadelphia and New York and a related investigation in Colombia, South America, revealed that the defendants were importing large quantities of heroin from Colombia and distributing it in New York and Philadelphia. I prosecuted the New York defendants. The defendants were charged with conspiracy to distribute heroin. Some of the defendants were also charged with money laundering. The defendants all pleaded guilty.

Defense counsel:

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For M. Marin:
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For H. Giraldo:
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Hurwitz Stampur & Roth
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For L. Marin:
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(no longer practicing)

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For Cuartas:
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10. *United States v. Gregorio*, 04-CR-421 (RJD); *United States v. Liquori*, 04-CR-377 (RJD); *United States v. Taylor*, 04-CR-279 (RJD); *United States v. Culotta*, 04-CR-431 (RJD); *United States v. Culotta*, 04-CR-277, (RJD); *United States v. Liquori*, 04-CR-376 (RJD); *United States v. Dehart*, 03-CR-1306 (RJD); *United States v. Borrazzo*, 04-CR-299 (RJD); *United States v. Aranyos*, 04-CR-402 (RJD); *United States v. Greco*, 04-CR-298 (RJD); *United States v. Culotta*, 04-

CR-278 (RJD); *United States v. Krzyzak*, 04-CR-178 (RJD); *United States v. Ferdinando*, 04-CR-289 (RJD). The cases were all prosecuted in the Eastern District of New York; The Honorable Raymond Dearie; 2002 – 2005.

The defendants were 13 plumbing contractors who were arrested on bribery charges after warrants were obtained based on evidence set forth in a 64-page complaint. The defendants paid a Department of Buildings inspector to approve plumbing work performed at various locations in New York City, without inspection, and to expedite approvals. I investigated and prosecuted this case, resulting in the guilty pleas to bribery charges of 11 of the defendants. During the time I was working in Nigeria in 2005 to 2006, the cases against the remaining two defendants were assigned to former Assistant United States Attorney Michael Ramos, who oversaw the defendants' guilty pleas to tax charges.

Defense counsel:

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For Taylor:
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For P. Culotta:
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For J. Culotta:
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For Liquori, Jr.:
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For Borrazzo:
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For Aranyos:
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For Greco:
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For S. Culotta:
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For Krzyzak:
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(212) 732-4343

For Ferdinando:
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(212) 953-2300

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

One of the most significant legal activities I engaged in was my work in Nigeria on behalf of the United States Department of Justice ("DOJ"). I was selected to work as an intermittent legal advisor in Nigeria for six months, but my position was extended to ten months. I performed many duties on behalf of DOJ including the training of over 100 prosecutors and investigators in various areas of the law, with the assistance of other prosecutors and federal agents. Some of the areas in which I provided training included public corruption, trial advocacy, evidence and plea bargaining. I also advised the prosecutors on all aspects of prosecution, including trial strategy.

I worked with government officials in Lesotho on their proposed human trafficking bill and provided training to various government officials in Lesotho and Swaziland on how to investigate and prosecute human trafficking crimes. While these matters did not involve litigation, I found them to be significant in view of the worldwide human trafficking problem.

Further, in my former role as Chief of the General Crimes unit, I was responsible for training all of the new Assistant United States Attorneys in the office. Being entrusted with the training and development of new AUSAs was, to my mind, one of the most important responsibilities in the Office because it formed the foundation upon which the Office's work was (and continues to be) built for years and generations of prosecutors to come. To develop the skills of the Office's new prosecutors, while also instilling in them the sense of integrity, justice and fair play essential to their roles as representatives of the United States, is critical to the mission of the Office and the U.S. Department of Justice.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Fundamentals of Law Practice I and II
Brooklyn Law School
August 2010 to the present

Research, writing, and negotiations skills.
Syllabus supplied.

Legal Research and Writing
Brooklyn Law School
August 2009 to April 2010
Research and writing skills.
Syllabus supplied.

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

    I am not aware of any such income or benefits.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I am currently teaching at Brooklyn Law School and would hope to continue doing so. I have no additional plan, commitment or agreement with respect to outside employment during any service with the court.

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

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

All criminal matters that are currently pending in the United States Attorney's Office for the Eastern District of New York would present a conflict of interest. I would require that Assistant United States Attorneys submit a letter indicating whether any criminal matter assigned to me was pending in the office during the time I supervised the Criminal Division. If the matter was pending during my tenure, I would recuse myself from that matter. I would follow the guidance of the recusal statutes and the Code of Conduct for United States Judges and recuse myself where appropriate to avoid even an appearance of conflict.

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

I would follow the guidance of the recusal statutes and the Code of Conduct for United States Judges and recuse myself where appropriate to avoid even an appearance of conflict.

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

While employed in the private sector at Carter, Ledyard & Milburn, I participated in several *pro bono* projects to assist individuals who would not otherwise have access to representation. In one case, I represented a Somali national who was denied political asylum and was scheduled to be deported. I conducted a trial before the immigration judge and was able to demonstrate that if the applicant was returned to Somalia, he would have been persecuted. The applicant was granted political asylum and subsequently obtained a permanent alien card. I spent a substantial amount of hours debriefing the client, conducting research, and preparing for trial.

In another *pro bono* case, *Rodriguez v. Clinton Housing and Development Company, Inc.*, 241 A.D.2d 339, 660 N.Y.S. 2d 16 (1st Dept. 1997), I represented a non-profit corporate landlord, its officers, directors and managing agent in a contract dispute with an attorney who leased space in the building. The non-profit landlord provided affordable housing for the needy. This matter was heavily litigated in state court, including depositions, and was appealed to the appellate division. I devoted a substantial amount of time to this matter.

In 1994 and 1995, I worked on a *pro bono* civil case with several other attorneys. The suit was brought in the Southern District of New York against Jean-Bosco Barayagwiza on behalf of five Rwandans whose families were massacred in Rwanda. I wrote a section of the complaint that was filed against Barayagwiza. In 1996, we obtained a default judgment for $105 million on behalf of the plaintiffs. Several years later, in 2003, Barayagwiza was convicted of genocide and crimes against humanity by the international criminal tribunal in Tanzania, and was sentenced to 27 years in prison for his role in

inciting Hutus to slaughter Tutsis in Rwanda. (I had no involvement with the criminal prosecution.)

As an Assistant United States Attorney I once sought permission to perform pro bono work but my request was denied.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I submitted a completed questionnaire to New York Senator Charles E. Schumer's judicial selection committee, which recommends candidates for nominations to the federal courts, to the Senator in March 2009. I was interviewed by that committee on May 14, 2009. I was interviewed by Senator Schumer on October 1, 2010.

Since March 2011, I have been in contact with pre-nomination officials at the United States Department of Justice. On April 19, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 7, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Brodie, Margo K.	United States District Court, Eastern District of New York	06/07/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Judge	**5a. Report Type** (check appropriate type) ☑ Nomination, Date 06/07/2011 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2010 to 06/06/2011
7. Chambers or Office Address 271 Cadman Plaza East Brooklyn, New York 11201	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Committee Member	Council on Criminal Justice Committee, New York City Bar Association
2.	Member	Eastern District Association Steering Committee
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting	Date of Report
	Brodie, Margo K.	06/07/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	Brooklyn Law School -- teaching (gross) August 2009 to December 2009	$2,175.00
2.	2010	Brooklyn Law School -- teaching (gross)	$5,912.50
3.	2011	Brooklyn Law School -- teaching (gross) January 2011 to April 2011	$3,812.50
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Brodie, Margo K.	Date of Report 06/07/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Maspeth Federal Savings and Loan	Mortgage on Rental Property #1, Brooklyn, New York	O
2.	Bank of America	Mortgage on Rental Property #2, Brooklyn, New York	O
3.	Wells Fargo Home Mortgage	Mortgage on Rental Property #3, Brooklyn, New York	O
4.	Citibank Mastercard	Credit Card	K
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Brodie, Margo K.	06/07/2011

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Rental Property #1, Brooklyn, New York	F	Rent	P1	V					
2. Rental Property #2, Brooklyn, New York	F	Rent	P1	V					
3. Rental Property #3, Brooklyn, New York	D	Rent	O	V					
4. Northwest Insurance Whole Life Policy	D	Interest	J	T					
5. Citibank -- Bank Accounts		None	J	T					
6. Antigua Commercial Bank -- Bank Account		None	J	T					
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Brodie, Margo K.	Date of Report 06/07/2011

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

In response to question II Agreements, please note that while I have no formal agreement with Brooklyn Law School, I have been an adjunct professor at the law school beginning with the 2009/2010 school year. I anticipate teaching in the Fall of 2011 and will seek permission to do so from the Chief Judge of the Circuit if I am confirmed for the position of United States District Judge.

The values of Rental Property #1, Rental Property #2, and Rental Property #3, question VII Investments and Trust, were obtained from real estate brokers who work in the particular neighborhoods where the properties are located.

I listed the Antigua Commercial Bank in response to question VII Investments and Trusts because there is a savings account at the bank in my name and my mother's name. This account was opened by my mother and is used by her. I do not deposit any money into this account. However, because my name is on the account, I listed it on this form.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Brodie, Margo K.	Date of Report 06/07/2011

IX. CERTIFICATION.

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

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

Signature Margo K. Brodie

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		10	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		74	952
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	2	052	406
Real estate owned – see schedule	3	695	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000				
Cash value-life insurance		11	242				
Other assets itemize:							
Time Share		9	000				
Thrift Savings Plans		281	636				
				Total liabilities	2	127	358
				Net Worth	1	909	520
Total Assets	4	036	878	Total liabilities and net worth	4	036	878
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$745,000
Rental property #1	1,600,000
Rental property #2	1,350,000
Total Real Estate Owned	$3,695,000

Real Estate Mortgages Payable	
Personal residence	$560,245
Rental property #1	632,855
Rental property #2	859,306
Total Real Estate Mortgages Payable	$ 2,052,406

AFFIDAVIT

I, MARGO KITSY BRODIE, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 6, 2011
(DATE)

Margo Kitsy Brodie
(NAME)

Linda Thornton
(NOTARY)

LINDA THORNTON
Notary Public, State of New York
No. 01TH6074799
Qualified in Kings County
Commission Expires May 20, 2014

Senator WHITEHOUSE. I have the privilege now of turning to our Ranking Member, Senator Grassley, if you have any questions.

Senator GRASSLEY. I have one question for each and will probably submit some questions for answer in writing.

Mr. Christiansen, according to your Senate questionnaire, nearly all of your litigation experience has involved civil matters with a focus on defending medical malpractice cases. Given your expertise in health care litigation, I'm interested in your view on one aspect of health care. It's not so much to get your opinion of what you might do as a judge, but from your practice.

What impact would caps on damages have in our health care costs?

Mr. CHRISTIANSEN. Thank you, Senator Grassley. In Montana we have implemented over the years a number of things that would probably fairly be described as reform in the area of medical malpractice litigation. For instance, we have a $250,000 general damage cap in Montana. It's been on the books for a considerable period of time, since the mid-80s, I believe. We have a screening panel in Montana that requires parties, before they can file a lawsuit against a health care provider, to present a claim. It's nonbinding, it's confidential.

We also have a number of other statutes we've implemented in this area. Obviously I think it's important that the rights of parties to present their claims and to have access to the courts is essential. We haven't found that any of the things that we've done in Montana have severely limited those rights, and it's been my belief that all of these things have facilitated resolution, quite frankly, of claims against health care providers, particularly the medical/legal panel proceeding. I would estimate that probably 60, 70 percent of claims against health care providers get resolved as a result of that process.

Senator GRASSLEY. So it sounds to me like your conclusion is that the caps on damages would impact positively health care costs?

Mr. CHRISTIANSEN. Senator, I think I probably need to be careful in terms of how I respond to the issue of caps. Obviously I've lived with them. I will tell you that the constitutionality of that statute has never been addressed by the Montana Supreme Court and is an issue that very well could end up, if I am confirmed and sworn in, in my court, so I probably need to be careful and stay between the ditches on that one.

Senator GRASSLEY. And if I call you Kathy instead of trying to pronounce your last name, would you forgive me?

Judge BENCIVENGO. That's fine. It's Bencivengo.

Senator GRASSLEY. In your Senate questionnaire you listed cases in which you were sometimes reversed in whole or in part by reviewing courts. Would you care to comment on those reversals and share with the Committee—in fact, the second part of this question is the most important one. Share with the Committee what you learned from those experiences.

Judge BENCIVENGO. Yes, Senator. Thank you for the question. I believe that most of the cases involved reports and recommendations that I made to District judges where generally parties are then given an opportunity to file further paper and make further

argument, and consequently the modifications and reversals may result from a better record in front of the District judge on review of the report and recommendations. There certainly were instances where there might have been either a change or a misinterpretation of the law on my end, and therefore the lesson always for me is to be as diligent as I can in interpretation and application of the law.

Senator GRASSLEY. Judge Groh, I'm going to ask you a question from one of your cases, but it doesn't involve just your case. But it's kind of to get your feeling about sentencing guidelines/recommendations that you might be asking the Federal court. They're voluntary, but how you might respond to them.

As a West Virginia Circuit Court judge you presided over a case involving an eighth grade female teacher sending sexually explicit messages to, and engaging in, inappropriate conduct with a 14-year-old male student. According to press accounts, the prosecutor and the defendant reached a plea agreement in which the teacher agreed to plead guilty to one count of sexual abuse by a person in trust, and in return the prosecutor would seek that she serve 10 years probation and no more than 4 months jail sentence in lieu of a 10- to 20-year prison sentence.

Did you have any concerns about this plea agreement given the seriousness of the conduct at hand? More importantly, at sentencing, you sentenced the teacher to only 3 months in jail instead of the 4 months permitted in the plea agreement. What factors led you to that decision?

Judge GROH. Thank you for that question, Senator. While going into the sentencing phase of that proceeding I wondered myself if the plea should be accepted, but a number of components go into sentencing an individual in State court, and also in Federal court as well. I learned more about the defendant as an individual.

I considered the position of the victim or the victim's mother, the position of the investigating officer, the position of the State, the defendant's criminal history, which really she didn't have any criminal history to my recollection, and the specifics of the crime or offense in and of itself that she was pleading to. That's how I reached my conclusion, as I do in every case, on what the appropriate sentence is.

Now, bringing it forward, if I were so fortunate to be serving on the Federal bench, I know that we have the guideline—or would have the guidelines there and the guidelines are no longer mandatory. However, I would give deference to the guidelines. I believe it's important to have uniformity in sentencing. That's also another issue I look at, not between defendants if they're involved in different offenses in State court, but if the defendants—or for my court a co-defendant—they also have to make sure that there's no disparity in sentencing.

Senator GRASSLEY. You answered my follow-up question, so I'll move on to Ms. Brodie.

Just one question for you. I might have some in writing for all of the judges. From May of 2005 to March of 2006, you served as a legal advisor to the Independent Core Practices and Other Related Offices Commission in Nigeria. In this role I understand you advised and trained over 100 prosecutors and investigators on all

aspects of prosecution. So I'd like to have you comment on how this experience will affect you as a Federal judge, when confirmed.

Ms. BRODIE. Well, thank you for that question, Senator Grassley. I think I've learned quite a few things from working overseas, and particularly in that detail in Nigeria. It has made me realize and recognize that we are very blessed here in the United States to have a very functional judicial system, which is something that most countries don't have. It has taught me the appreciation of knowing that the system that we have here in the United States can be recognized, relied on by the litigants who appear in court.

In Nigeria, part of the problem with the judicial system—the criminal justice system as a whole, in fact, which is something they're working on—is the fact that when matters are brought before the court they could take years to be concluded, because on every single matter that a judge rules on it can be appealed all the way to the Supreme Court. That delays all the proceedings. It's especially bad for criminal proceedings where defendants are either incarcerated or not, but could spend years before a matter can be resolved simply because of the way in which the system is set up for that matter.

So it does make me appreciate the fact that it's important that matters be litigated promptly, and if I were lucky enough to be confirmed to the position for which I've been nominated, one of the things that I would make sure that I do is to make decisions very quickly so that litigants, whether they be civil or criminal, who appear before the court, can know what the outcome is, and I will do so fairly and impartially. Thank you, Senator.

Senator GRASSLEY. I would say for all of you, just to caution. Even though your nominations appear to be non-controversial, sometimes for things unrelated to your qualifications or anything personal or ideological, nominees are held up because questions aren't answered fully. So I would encourage you all, if you have questions from the two of us or any of the 18 members of the Committee, I hope you will understand that we don't usually move ahead until all are satisfactorily answered.

Mr. CHRISTIANSEN. Thank you.

Judge BENCIVENGO. Thank you, Senator.

Judge GROH. Thank you.

Senator WHITEHOUSE. Let me ask each of you one final question before we adjourn the hearing. Who would you seek to emulate as a U.S. District judge? Somebody from history, or fiction, or from your personal experience in the law. Who would you think the model would be for your service as a judge, and why? Mr. Christiansen?

Mr. CHRISTIANSEN. Senator, that's a wonderful question. I was inspired to become a lawyer at a very early age by a practitioner in Missoula, Montana named Sherm Lawn. He's now deceased. The Kiwanis Club in Missoula had a program where you could spend a day shadowing someone in a profession, and I shadowed Sherm Lawn. He was a wonderful old-school trial lawyer. He had the finest ethics, he was collegial, and my parents, who unfortunately are now both deceased, would probably recall that I came home in about the 7th or 8th grade and said, I've decided this is what I want to do, I want to be a lawyer. So that person—he also gave

me my first job while I was in law school. He meant a lot to me and he inspired me.

Senator WHITEHOUSE. Judge Bencivengo.

Judge BENCIVENGO. Thank you, Senator. I wouldn't have to look far for examples of judges I would want to emulate. My District Court, I believe, has one of the best benches in the country. If I were to choose one of those judges, the position I'm being considered for, the judge who went senior and made that position available, Jeffrey Miller, I think, is an exemplary person to look to for judicial demeanor for his ability to make everyone in his courtroom feel comfortable, and yet still sustain the formality and the importance of the judiciary, his respect amongst the bar, and jurors who appear in front of him. I think he is just an extraordinary example of a fine judicial person and someone I would certainly wish to emulate. Thank you.

Senator WHITEHOUSE. Judge Groh.

Judge GROH. The person who I wish to emulate, and would if I were so fortunate to find myself on the Federal bench, is Judge Irene Berger. Judge Berger was a Circuit Court when I became a Circuit Court judge. She was one of two, and Senator Manchin added me as the third. Judge Berger was confirmed toward the end of 2009 as a Federal judge. She serves in the Southern District of our State.

The very first time I met her at my initial judicial conference, she gave me all her numbers and she held my hand, figuratively, and she has been doing that ever since, even throughout this process through the DOJ vetting and all the questionnaires, and phases and hoops that we've been going through. Our careers parallel. She was a former prosecutor, as was I, before she became a Circuit judge. She progressed and now is in what she tells me is the best job she's ever had on the Federal bench. She is well-respected. She's kind and compassionate, yet has control of her courtroom. She's even-tempered, smart, and hardworking, well-respected, as I said, among the bar. I was honored for the Supreme Court to replace her with me on our Judicial Ethics Hearing Board when she was elevated to the Federal bench. Thank you.

Senator WHITEHOUSE. Thank you.

Ms. Brodie.

Ms. BRODIE. Thank you, Senator Whitehouse. Well, I can't decide on one judge because there are so many judges in the Eastern District of New York who I would love to emulate. There are many of them who I believe possess the right qualities that make for a wonderful judge. They're extremely decisive, they are smart, they have the right temperament.

I love my job, and the reason I do is because it's a great job when you have to go to the courtroom of these judges every day and know that it's going to be a wonderful experience, regardless of whether or not the outcome, the ruling is what you want it to be. The experience is going to be enjoyable. That is what I hope to do, if I become confirmed to this position, to emulate all of those judges who have all of the fine qualities that I believe are important in a District Court judge.

Senator WHITEHOUSE. Good.

Well, I wish you all well. I know that this process can be a bit of an ordeal as you go through repeated blockades of paperwork, but you're through all that now and you've had the happiest possible thing happen, which is to have the Ranking Member of the party other than the President who appointed you deem your nominations uncontroversial.

[Laughter.]

Senator WHITEHOUSE. So I wish you well as you proceed through the Committee, and as we take up your nominations on the floor and in your service to our country to what I hope are long and productive lives on the bench.

The hearing will remain open for an additional week if anybody wishes to add anything to the record, but we are, today, adjourned.

[Whereupon, at 3:44 p.m. the meeting was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Cathy Ann Bencivengo
Nominee to be United States District Judge for the Southern District of California
To the Written Questions of Senator Chuck Grassley

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe there are many attributes a judge must possess, including intellectual capacity, energy and enthusiasm, decisiveness and patience. Fairness and impartiality in the finding of facts and application of law are the most important judicial attributes to preserve and protect the integrity of the legal system. I believe I possess these attributes.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: I believe an appropriate judicial temperament is one of civility and respect for everyone in the courtroom, patience, consideration and humility. A judge by word and deed should uphold the dignity of the court and instill confidence in all those appearing in court that they will be treated with fairness and impartiality. I believe I meet this standard.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: I would first look to the text of the relevant statute, regulation or provision at issue and any legislative history if available for guidance. I would also consider rulings in Supreme Court or Circuit Court cases on analogous issues. I would finally consider district court and state court decisions on analogous issues for persuasive authority. Using those sources, I would consider the case narrowly on the facts before me.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: I would adhere to the precedent of the Supreme Court or the Circuit Court regardless of my personal beliefs. It is never appropriate for the District Judge to substitute his or her own judgment for binding precedent.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court should only declare a statute enacted by Congress unconstitutional if Congress has exceeded its constitutional authority or enacted a statute in contravention of a constitutional provision. In making that determination, a federal court must apply any relevant precedent in its evaluation.

7. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload? Please describe actions you have taken as a sitting U.S. Magistrate Judge.**

Response: The U.S. District Court for the Southern District of California has a large criminal and civil caseload, including many complex civil matters. The Court has instituted a number of case management tools to assist in the efficient resolution of matters, including early and regular settlement conferences and local rules for patent cases. The District utilizes Magistrate Judges to provide for the efficient management of discovery to keep cases moving toward resolution. As a Magistrate Judge, it has been my practice to fully review party submissions, be prepared for argument and promptly issue orders. If confirmed as a District Judge, I would continue those practices and work cooperatively with the Magistrate Judges to manage my civil and criminal docket efficiently.

8. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket? Please describe actions you have taken as a sitting U.S. Magistrate Judge.**

Response: Parties have the right to fair and efficient resolution of their matters. Judges set the pace for litigation. Clear and reasonable scheduling orders provide guidance and set the expectations for the conduct of the litigation and the prompt resolution of motions encourages early resolution and avoids unnecessary expense. As a Magistrate Judge, when appropriate I

resolve disputes informally, convene regular status conferences to minimize discovery delays, and issue orders promptly. If confirmed as a District Judge, I will continue those practices as well as the case management techniques discussed above.

9. Please describe with particularity the process by which these questions were answered.

Response: I received and carefully reviewed all the questions. I personally prepared my responses and forwarded them to the Department of Justice for submission to the Senate Judiciary Committee.

10. Do these answers reflect true and personal views?

Response: Yes.

Responses of Cathy Ann Bencivengo
Nominee to be United States District Judge for the Southern District of California
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: I would characterize my judicial philosophy as impartiality and efficiency. Parties are entitled to a fair and full opportunity to be heard, an impartial and faithful application of the law to the facts of the case and a prompt resolution of the matter. In our constitutional system, the role of a District Judge is to apply law in accordance with precedent to the facts and issues presented.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: Equal justice under the law is a cornerstone of our legal system. During my service as a Magistrate Judge, I believe I have demonstrated my commitment to treat all litigants with respect and dignity without regard to their political beliefs, economic status, or role in the case. I am patient and courteous and provide a forum in which all litigants receive fair treatment and consideration. If I am confirmed as a District Judge, I will continue that commitment

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: Judges are obligated to adhere to and apply precedential opinions of the court's controlling Circuit Court and the Supreme Court. The doctrine of *stare decisis* is not optional nor does it vary depending on the court.

Responses of Margo Kitsy Brodie
Nominee to be United States District Judge for the Eastern District of New York
to the Written Questions of Senator Chuck Grassley

1. **As I mentioned at your hearing, you have had some experience with a foreign judicial system. I am interested on your comparative views of our Constitutional system and the role of judges.**

   a. **What, in your view, is the primary characteristic of our federal court system?**

      Response: In my view, the primary characteristic of our federal court system is its ability to decide cases fairly and expeditiously in pursuit of the rule of law. This stands in contrast to countries like Nigeria, which, though it may also have judges who perform a limited role within a tripartite system of government, are still trying to achieve the same level of even-handedness and efficiency.

   b. **How would you best describe your judicial philosophy?**

      Response: My judicial philosophy is that a district court judge plays a very narrow, albeit important, role in our federal court system. That role is to decide the case or controversy before the court, based on the facts before the court and the decisions of the United States Supreme Court and the Court of Appeals for the circuit in which the court sits. If confirmed, I would endeavor to fulfill that role.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe the most important attributes of a judge are even-handedness, even-temperament and the ability to decide every case before the court impartially and expeditiously. I believe I possess these attributes.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should be fair, impartial, open-minded, even-handed, patient, modest and respectful of the parties and all who come in contact with the court. I believe I possess these qualities.

4. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes. If confirmed, I would follow the precedents of the United States Supreme Court and the United States Court of Appeals for the Second Circuit, regardless of my personal views.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed and faced with a case of first impression, I would generally start with the text of the statute or other relevant legal provision. I would look at decisions of the United States Supreme Court and the United States Court of Appeals for the Second Circuit on similar statutes or areas of law and, if necessary, consider decisions from other Courts of Appeal or District Courts.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: If confirmed, I would always follow the decisions of the United States Supreme Court and the United States Court of Appeals for the Second Circuit regardless of my personal views.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: I believe that it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional if Congress exceeds its powers under the Constitution or enacts a law inconsistent with a provision of the Constitution. If confirmed, I would apply the precedents of the United States Supreme Court and the United States Court of Appeals for the Second Circuit to evaluate whether Congress had done so.

8. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I would manage my caseload by publishing and enforcing clear rules with deadlines for pretrial discovery and motion practice. With the assistance of the magistrate judges, I would ensure that discovery deadlines are adhered to, and encourage early settlement discussions. In addition, I would rule expeditiously on matters before the court since I strongly believe that justice delayed is indeed justice denied.

9. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. I do believe that judges have a responsibility to ensure that all matters are heard, considered and decided quickly and impartially, and that all litigants are treated fairly and with respect. As discussed in response to question 8 above, if confirmed, I would strive to decide cases fairly and expeditiously.

10. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on Wednesday, September 14, 2011. I drafted responses to the questions the following day. I discussed my responses with an official from the Department of Justice, after which I finalized my responses. I then forwarded my responses to the Department of Justice for submission to the Senate Judiciary Committee.

11. Do these answers reflect your true and personal views?

Response: Yes

Responses of Margo Kitsy Brodie
Nominee to be United States District Judge for the Eastern District of New York
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy is that a district court judge plays a very narrow, albeit important, role in our federal court system. That role is to decide the case or controversy before the court, based on the facts before the court and the decisions of the United States Supreme Court and the Court of Appeals for the circuit in which the court sits. If confirmed, I would endeavor to fulfill that role.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: I firmly believe that everyone is entitled to equal justice under the law, without regard to political belief, economic status and social status. Throughout my legal career I have demonstrated my commitment to this principle and, in particular, have done so over the past 12 years as a federal prosecutor. If confirmed, I will continue to practice this principle by ensuring the fair, equal and courteous treatment of the parties and all who come in contact with the court.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: In my opinion, all judges are bound by the doctrine of *stare decisis*. District court judges are bound by the decisions of the United States Supreme Court and the Court of Appeals for the circuit in which they sit.

Responses of Dana L. Christensen
Nominee to be United States District Judge for the District of Montana
to the Written Questions of Senator Chuck Grassley

1. **According to your questionnaire, your practice has been limited almost exclusively to civil litigation.**

   a. **Please explain your experience in criminal law cases and trials?**

   Response: Between the years 1977 and 1981 I was appointed by U.S. District Court Judge James F. Battin to represent indigent Native American defendants from the Northern Cheyenne and Crow reservations in at least five different criminal matters pending in U.S. District Court. One of those cases proceeded to jury trial in 1978 [United States v. Springfield] where I received a directed verdict of acquittal of my client following the government's case in chief. All of the other cases were concluded through dismissals or plea agreements. I have also handled two criminal matters in state district court. One of those cases was tried to a verdict where my criminal defendant client was acquitted by the jury, and in the other one my criminal defendant client entered an Alford Plea.

   b. **What will you do to prepare yourself in this area? What assurances can you provide both the Committee and future litigants that your judgment on criminal matters will be informed, sound, and fair?**

   Response: There are significant resources that will be available to prepare me to handle the criminal docket, including training and education programs offered by the Federal Judicial Center, written publications and materials, and consultation with fellow federal judges within the Montana District. You have my assurance that I will do everything possible immediately upon assuming my duties to become proficient in this aspect of the docket so that my judgment on criminal matters will be informed, sound, and fair. I also believe my 35 years of real trial experience will aid me in this regard.

2. **You have been an active participant in conservation matters. Given this background, will you recuse yourself in cases that may provide, at least the appearance, of a conflict? For instance, would you recuse yourself in cases involving land use, ranching, logging, and wilderness recreation?**

Response: I will recuse myself in all cases that present a conflict or the appearance of a conflict. In making this determination, I will consult with the Code of Judicial Conduct, publications and guidelines of the Administrative Office of the United States Courts, and fellow judges.

My participation in conservation matters relates to my experience as a member of the Board of Trustees of the Montana Chapter of The Nature Conservancy [2003-2011], and pro bono work that I performed for the Flathead Land Trust in a single litigation

matter in 2009. I have never represented The Nature Conservancy in any legal matters, and I immediately resigned from the Board of Trustees of that organization on May 5, 2011, the day following my nomination by President Obama.

In any event, I would recuse myself from any matters involving The Nature Conservancy or the Flathead Land Trust that present a conflict or the appearance of a conflict.

a. If not, please explain why not?

Response: Please see above response.

b. What, if any, assurances can you provide the committee that you can approach these issues with an open-mind and render a fair judgment?

Response: Fairness and impartiality are the hallmark of a good judge. It is my belief that all litigants are entitled to be treated fairly. I can assure you that I will adhere to the highest ethical standards as a judge, and that I will recuse myself in all cases that present a conflict or the appearance of a conflict.

3. **Can you pledge to the Committee that you will treat all litigants who appear before you in a fair and non-partisan fashion?**

Response: Yes.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: There are many important attributes of a judge, including fairness, impartiality, common sense, diligence, a strong work ethic, experience, intellectual curiosity and decisiveness. I believe one of the most important attributes of a judge is humility, not just personal humility, but judicial humility which manifests itself in deciding only the narrow issue that is before the court, and by deferring to the legislative and executive branches of the government. I believe I possess these attributes.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should at all times be respectful to the parties and their attorneys, and everyone the judge comes in contact with on a daily basis, including jurors, witnesses, court personnel, law enforcement, probation and parole officers, and fellow judges. A judge should also maintain an open mind, and not decide matters until he or she has a complete record and has given the parties and their attorneys an opportunity to be fully heard. All parties, regardless of their station in life, are entitled to fairness and impartiality, respect, and an expeditious ruling on the matter before the court. I

have always adhered to these standards as a practicing attorney, and you have my assurance that I will continue to do so if I am confirmed by the Senate and sworn-in as a judge.

6. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In a matter of first impression, I would look first to the plain meaning of any statute I was called upon to interpret. If the statute was ambiguous, I would look to the purpose of the statute, and available legislative history. I would look for analogous law within the Court of Appeals for the Ninth Circuit or the United States Supreme Court for guidance in deciding the case. Finally, I would consider cases from other Circuit or District Courts that might have dealt with the same issue. I would exercise restraint and prudence in deciding cases of first impression.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: I would apply the decision of the Supreme Court or the Court of Appeals irrespective of whether I personally agree with that decision.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court should declare a statute enacted by Congress unconstitutional only where it clearly violates the United States Constitution or where Congress has clearly exceeded its constitutional boundaries. When analyzing a constitutional challenge to a statute enacted by Congress, a federal judge should apply United States Supreme Court precedent.

10. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: I intend to manage my caseload by adhering to the local Montana Federal Court practice of convening an early, substantive and meaningful preliminary pretrial conference pursuant to Rules 16 and 26 of the Federal Rules of Civil Procedure, establishing clear deadlines, and through regular status conferences with the parties and counsel. I also believe that management of the caseload is facilitated by providing the parties and their counsel with an expeditious trial setting at the time of the preliminary pretrial conference.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, judges must play a role in controlling the pace and conduct of litigation. In addition to the steps outlined in response to question No. 10 above, I would endeavor to identify and anticipate problems that may arise, and take the initiative in addressing any problems or issues through status conferences with the parties and their counsel. In my 35 years of trial experience in Montana I have found that the vast majority of attorneys who practice in this state in federal court are well versed in the importance of deadlines, and prosecute and defend their cases in an appropriate and workmanlike manner. Nevertheless, the court can and should intervene when necessary.

12. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on September 14, 2011. I drafted my answers and asked the U.S. Department of Justice to submit them on my behalf.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Dana L. Christensen
Nominee to be United States District Judge for the District of Montana
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy is that a judge has an absolute responsibility to adhere to the rule of law and follow judicial precedent, irrespective of one's personal beliefs. A judge should also possess personal humility, and exercise judicial humility in deciding only the narrow issue that is before the court, and by deferring to the legislative and executive branches of the government.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: I assure you that all litigants, regardless of their station in life, will be treated fairly and impartially in my court if I am confirmed by the United States Senate and sworn-in as a judge. A judge must approach all cases with an open mind, with respect to the parties and their counsel, and to not decide matters until he or she has a complete record, and given the parties and their attorneys a full and complete opportunity to be heard.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: I believe it is the solemn duty of a judge to apply the law as it has been set forth in the United States Constitution, in statutes or in legal precedents, and to be bound by the doctrine of stare decisis. This duty and commitment does not vary depending on the court.

Responses of Gina M. Groh
Nominee to be United States District Judge for the Northern District of West Virginia
to the Written Questions of Senator Charles Grassley

1. **At your hearing, you said that if confirmed you would give deference to the Sentencing Guidelines, and you appeared to recognize that sentencing disparity for similarly situated defendants is problematic. Under what circumstances would you be inclined to depart from the Guidelines?**

   Response: If confirmed, I would consider a departure as provided in the Sentencing Guidelines and as indicated by applicable Supreme Court and Fourth Circuit precedent.

2. **I understand the State of West Virginia does not have the death penalty. As a federal district court judge, however, you may have to preside over a death penalty case. Do you have any doubts about your ability to uphold and enforce the federal death penalty statute?**

   Response: I have no doubts about my ability to uphold and enforce the federal death penalty statute.

3. **Do you believe that the death penalty is an acceptable form of punishment?**

   Response: The federal death penalty is an appropriate form of punishment under the circumstances prescribed by the Supreme Court and I would enforce it when applicable.

4. **In *Roper v. Simmons*, the Supreme Court relied on foreign law in holding that the execution of minors violated the Eighth Amendment. Do you think it is proper to look to foreign law to determine the meaning of the Eighth Amendment to the United States Constitution?**

   Response: I believe the U.S. Constitution, including the Eighth Amendment, should not be interpreted through foreign law. I would not look to foreign law to determine the meaning of the Constitution, except as directed by the Supreme Court.

5. **In a campaign advertisement, you said: "as one of only three female circuit judges in our state, I bring a unique perspective and energy to the bench."**

   a. **In your personal view, how does or should the gender of a judge affect the decision making process?**

      Response: The gender of a judge should not affect her decision making process. My statement in the campaign literature was based on the fact that as a young, professional woman effectively balancing my career and family, I possessed the stamina, diligence and organizational skills necessary to manage a busy docket.

b. If a judge permits his or her own personal experiences to influence decisions, do you believe the judge is living up to the responsibility to remain fair and neutral?

Response: No. A judge must not allow her personal opinions or experiences to influence her decisions. Rather, her decisions should be based solely on the facts in evidence and the application of legal precedent.

c. During her confirmation hearings, Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor? Please explain.

Response: Yes, I agree that judges should apply the law to facts, not their feelings. This is the impartiality standard required of judges and that is the standard that I have followed as a state court judge.

6. Do you believe it is ever appropriate for a Judge to consult foreign law, when determining the meaning of the United States Constitution?

Response: No. I do not believe judges should ever consult foreign law when determining the meaning of the United States Constitution, except as directed by the Supreme Court.

7. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is fairness. A judge must treat all parties equally with regard to the amount of respect given to them and in the decisions she renders. A judge must attentively and carefully consider all of the evidence and arguments with an open mind and, thereafter, impartially decide a case solely upon the application of legal precedent to the facts. This is what I currently do as a state court judge.

8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge must be even-tempered, courteous, patient and humble. She must treat all individuals respectfully and require that they treat each other the same. She must also conduct herself in a manner befitting the judiciary inside and outside of the courtroom. Most importantly, a judge must not be guided by passion, but rather, must be guided by the law. My temperament as a state court judge demonstrates that I strive to conduct myself according to my view of the appropriate judicial temperament.

9. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully

and giving them full force and effect, even if you personally disagree with such precedents?

Response: I am fully committed to following the precedents of higher courts faithfully, giving them full force and effect, regardless of my personal views. A judge cannot be guided in her legal decisions by passion, personal opinion or any opinion that is contrary to legal precedent.

10. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In cases of first impression, I would first look to the plain and ordinary meaning of the statute or Constitution. If necessary, I would research the legislative history of a statute. I would also look to prior rulings of the U.S. Supreme Court and the Fourth Circuit Court of Appeals in cases that had similar fact patterns or issues. If there were none, I would research if there were rulings from other federal courts in similar cases to obtain some guidance.

11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would apply the legal precedent established in the decision, regardless of my personal opinions.

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: If Congress exceeded its authority under the Constitution, it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional.

13. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, my staff and I would first meet with the judge handling the docket and the clerk of court and review the court's calendar and case management system so I understood the status of the docket. Thereafter, I would continue to review the case management system on a regular basis to make sure nothing was overlooked and the cases were moving forward according to applicable timelines and as expeditiously as possible. In addition, I would set firm, yet reasonable deadlines and render timely decisions. I would also encourage mediation where cost effective. Finally, I would prepare for court ahead of time by reviewing the electronic case files and pending motions and by researching anticipated legal issues so that I could make the most effective use of in-court time.

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe judges have a role in controlling the pace and conduct of litigation through effective case management and docket control. Therefore, I would follow the case management strategy outlined in the preceding question number thirteen. I believe that a judge's role in controlling the pace and conduct of litigation is to ensure that all matters reach final disposition as soon as practicable, in order for the parties to achieve finality in the most time efficient and cost effective manner.

15. Please describe with particularity the process by which these questions were answered.

Response: I carefully reviewed the questions submitted. After reflection, I answered them and forwarded my written responses to the Department of Justice for review and submission to the Senate Judiciary Committee.

16. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Gina M. Groh
Nominee to be United States District Judge for the Northern District of West Virginia
To the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy is that a judge must be fair, even tempered, courteous and respectful to all parties and require that all parties treat each other and the court with the same respect and courtesy. A judge must also render timely decisions and work hard to keep her docket up to date and to keep herself apprised of current law. The role of a judge in our constitutional system is not to be a judicial activist or interject her personal views into her decisions. A judge must listen attentively to all of the evidence in a case with an open mind and render a fair and impartial decision based solely on the facts and applicable legal precedent.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: As a state court judge for nearly five years and a prosecutor before that, I earned a reputation for treating all litigants who come into the courtroom fairly and equally, regardless of their political beliefs, economic status, race, ethnicity or status as a defendant or plaintiff. I have never decided a case for or against a party or attorney as individuals, but decide every case solely upon the facts and the applicable law. If confirmed, I will continue to be ever mindful of my oath to uphold the law and will continue to treat everyone who comes before me fairly.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: Judges must follow legal precedent. The commitment to stare decisis should not vary depending on the court. All courts are bound to follow legal precedent for the sake of uniformity and to ensure that decisions are guided by the law, instead of by an individual judge's personal opinion as to what the law or outcome should be in a case.

Responses of Evan J. Wallach
Nominee to be United States Circuit Judge for the Federal Circuit
to the Written Questions of Senator Chuck Grassley

1. **At your hearing, I asked you about the Federal Circuit's 1999 decision in *Lachance v. White*, where it held that a whistleblower had to present "irrefragable proof" that wrongdoing actually occurred in order to prove the claim. You indicated that, as you understand it, the "irrefragable proof" standard is "very high" and essentially means that the whistleblower must present evidence that "cannot be refuted." I indicated that I would like you to provide more robust written answers regarding this issue. Please review the statute and case authority, and provide answers to these questions.**

   a. **What is your understanding of the "irrefragable proof" standard?**

      Response: I examined *Lachance* and cases upon which it relies, as well as several other cases. The CAFC relied in *Lachance* on *Alaska Airlines v. Johnson*. *Johnson* was one of a line of federal contracting cases that discussed the evidence needed to rebut a presumption that public officers perform their duties correctly, fairly, and in good faith. Based on reading those cases, I understand "irrefragable proof" to mean "clear and convincing evidence" as articulated in *Am-Pro Protective Agency v. U.S.* where the CAFC clarified what it characterized as "some confusion" about the use of the phrase "irrefragable proof."

   b. **What evidence must the whistleblower present in order to meet the standard?**

      Response: My understanding is that the whistleblower must present clear and convincing evidence, a standard which is more than a preponderance of the evidence, but less than "beyond a reasonable doubt." *See, Am-Pro Protective Agency v. U.S.*

   c. **Based on your review, do you believe *Lachance* is consistent with the text and intent of the statute? (Please answer this question independently of whether you believe *stare decisis* would compel you to apply the standard.)**

      Response: *Lachance* applies certain presumptions to performance by public officers of their duties and holds that rebuttal of those presumptions requires "irrefragable evidence." The existence of those presumptions is based on the case authority discussed above. The word "irrefragable" is not found in the statute. I think it would be inappropriate for me to make any more specific comment in case the issue arises in front of me.

2. **At your hearing, I asked about your experience in the areas listed below. Though you provided an answer, it was brief (given the time constraints of the hearing). Please take this opportunity to identify what experience you have with these issues.**

a. Patent law.

Response: I sat by designation as a district judge in Nevada in a two week jury trial in a patent infringement. The jury found that the plaintiff had infringed on the defendant's patents related to a system of networked gaming devices and awarded $1.5 million in damages.

b. Trademark law.

Response: As counsel for Nevada media entities, including newspapers and outdoor advertisers, and for Nevada hotel/casinos, I dealt with a number of trademark issues, such as use of similar casino names, over my time in practice.

c. Government contracts.

Response: As Brigade JAG for Nevada's Battle Born Brigade, I reviewed and occasionally participated in the negotiation of contracts. I also studied government contracting in the JAG Advanced Course.

d. Claims against the government.

Response: I represented a government owned contractor operated entity as one of numerous defendants in a radiation cancer case. The defense was based on sophisticated analysis of government contractor liability. I also represented military personnel before administrative boards and, where necessary, challenged those findings on appeal.

3. In *PS Chez Sidney, LLC v. U.S. Intern. Trade Com'n*, 30 C.I.T. 858 (2006), you held the Byrd Amendment to the Continued Dumping and Subsidy Offset Act (CDSOA) of 2000 violated the First Amendment, and therefore struck it down as unconstitutional. The Byrd Amendment requires an affected domestic producer to indicate they support the anti-dumping petition in order to be eligible to receive offset distributions under the CDSOA.

The Federal Circuit, in a 2 to 1 decision, essentially overruled your decision in an appeal from a similar case, holding that the Byrd Amendment neither violated the First Amendment nor the Equal Protection clause.[1] The Federal Circuit held the Amendment regulated commercial speech, which subjected it to a lower level of scrutiny. Do you agree with the Federal Circuit's decision in *SFK USA, Inc. v. U.S. Customs and Border Protection*? Please explain why or why not?

[1] *See SFK USA, Inc. v. U.S. Customs and Border Protection*, 556 F.3d 1337 (2009)

Response: Given that *PS Chez Sidney* is still before me in the CIT, and on appeal to the CAFC, I believe it would be inappropriate for me to comment on any issues related to the case.

4. **Your academic writings have focused on the Law of War. You have argued that waterboarding constitutes torture; that procedures initially afforded detainees in military tribunals violated the Geneva Conventions; and that the Bush Administration erred in determining Al Qaeda and Taliban detainees were not protected by the Geneva Conventions. The Federal Circuit has a limited jurisdiction, and if confirmed, it is unlikely that you will decide cases on these issues. Nevertheless, when you authored these writings, you were serving as a federal judge. Do you think your writings were an appropriate action for a sitting federal judge?**

   Response: I considered Canon 4 before and while writing any articles, and on occasion consulted the Code of Conduct Committee, Committee Counsel, and counsel at the Administrative Office of the U.S. Courts. I did my best to present material fairly and dispassionately, and I thought the articles contributed to the law, the legal system and the administration of justice.

5. **In 1992, prior to your appointment to the bench, you authored an opinion piece entitled, *President's Much Ballyhooed Foreign-Policy Prowess and Illusion*. In the article, you questioned President George H.W. Bush's foreign affairs credentials, including the role he played in the fall of the Soviet Union and his execution of the Iraq War. You wrote, the "factual history of any event or policy, the truth or falsity of any statement, seems to have no bearing on what the Republicans are willing to say." Again, these issues are unlikely to arise in your court, if confirmed. And I recognize you authored this article prior to your appointment to the federal bench. Nonetheless, this statement appears to be rather partisan for a judge.**

   a. **Do you think this statement demonstrates appropriate judicial temperament? Do you still stand by it?**

      Response: If I had said it as a judge, the statement would not demonstrate appropriate judicial temperament. I wrote it as the lawyer for the Nevada Democratic Party at the request of a local newspaper which had a politically conservative editorial page and wanted an argument from the Democratic side. I would not write a statement like that as a judge, and I would not stand by it today.

   b. **Can you appreciate that some may view this statement as evidence that you have pre-judged the credibility of an entire class of potential litigants? Can you provide any examples from your judicial record that demonstrate this is not the case?**

Response: If anyone thought I ever prejudged any group in any fashion I would deeply regret it. I believe my entire judicial record demonstrates my commitment to judicial neutrality and actual and apparent fairness. I take very seriously my oath to do equal justice, and I strive to let all sides have a complete opportunity to convince me of the merits of their case. One of my goals in any case is to decide cases in a way such that the parties feel, win or lose, that they got a fair shake.

c. Can you pledge to the Committee that you will treat all litigants who appear before you in a fair and non-partisan fashion?

Response: Yes

6. What is the most important attribute of a judge, and do you possess it?

Response: Commitment to fundamental rule of law principles, including predictability, uniformity, transparency, neutrality and stare decisis. I believe I do possess that commitment, and I have argued to foreign judges that they should adopt it.

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: The important elements of judicial temperament are that a judge should be neutral to all litigants, appreciate the serious nature of their claims and how important they are to the parties, work to understand the parties' positions and the authorities underlying them, be able to act as an efficient case manager while still giving a full opportunity to develop and try a case, and be able to limit and control the tension inherent in any courtroom where attorneys and their clients passionately believe in their cause. On an appellate bench a judge should also be able to work collegially and efficiently with other judges while articulating what that judge believes is the correct result as a matter of law. I believe I meet that standard.

8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes

9. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In a case of first impression I would give the parties a full opportunity to brief the matter and, where appropriate, I would encourage the filing of amicus briefs. Once fully briefed, I would examine all authorities cited by the parties, as well as statutory law on point. If I felt legislative or agency intent was clear, and no Constitutional or legal issues were raised, I would attempt to apply the law as intended. If a statute or regulation was unclear or was not at issue, I would review analogous case law in the Supreme Court and the Federal Circuit, followed, when necessary, by consideration of other case precedent.

10. What would you do if you believed the Supreme Court had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I am bound by Supreme Court precedent and will continue to be so.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

A federal court should declare unconstitutional a statute that violates the clear provisions of the U.S. Constitution, where the statute cannot be interpreted to apply, or is not applied, in a constitutional manner.

12. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider, in making this decision?

Response: I would uphold all Federal Circuit precedent unless the precedent is overruled by the Supreme Court or by the Federal Circuit *en banc*.

a. Do you believe the Federal Circuit should revisit its holding in *Lachance*?

Response: Given that the question of whether to grant a rehearing of Lachance en banc might come before me for a vote if I was on the CAFC, and I believe I would have to disqualify myself if I had expressed a previous opinion as to the outcome of such a vote, it would be inappropriate for me to comment on that issue.

13. Please describe with particularity the process by which these questions were answered.

Response: I thought about each question, drafted notes of each area where I should do further research, read *Lachance v. White*, and cases which cited it, and then prepared these answers in draft. I reviewed my draft answers with attorneys from the Office of Legal Policy of the Department of Justice, and then submitted them.

14. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Evan J. Wallach
Nominee to be United States Circuit Judge for the Federal Circuit
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: I would characterize my judicial philosophy as devotion to rule of law. I see the role of the judge in our constitutional system as one of a principled, neutral, interpreter of law as articulated by the Constitution and the Congress.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: The assurance I can give is that I take the oath of office very seriously, and have devoted myself to fair treatment of all litigants appearing before me over my sixteen years on the bench.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: The stare decisis doctrine is of core importance to rule of law, and I believe all judges should bind themselves to it subject only to principled reconsideration. The only variance by court is that binding law may change based upon a ruling by a superior court, or that the law itself may change, necessitating the principled reconsideration I mentioned above.

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VIA EMAIL AND FIRST CLASS MAIL

May 12, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Cathy Ann Bencivengo
To the United States District Court
for the Southern District of California

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Cathy Ann Bencivengo who has been nominated for a position on the United States District Court for the Southern District of California. As a result of our investigation, the Committee is of the unanimous opinion that Judge Bencivengo is "Well Qualified" for the position.

A copy of this letter has been provided to Cathy Ann Bencivengo.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Cathy Ann Bencivengo
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on May 12, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
Hon. Jon Kyl
Hon. Lindsey O. Graham
Hon. John Cornyn
Hon. Mike Lee
Hon. Tom Coburn

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FIRST CIRCUIT
Lisa G. Arrowood
28 State Street
Boston, MA 02109

SECOND CIRCUIT
Beth L. Kaufman
60 East 42nd Street
New York, NY 10165-0023

THIRD CIRCUIT
Robert C. Heim
Cira Center
2929 Arch Street
Philadelphia, PA 19104-2808

FOURTH CIRCUIT
E. Fitzgerald Parnell, III
Suite 2300
301 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
David W. Clark
Suite 400
One Jackson Place
188 East Capitol Street
Jackson, MS 39201

SIXTH CIRCUIT
W. Anthony Jenkins
Suite 4000
500 Woodward Avenue
Detroit, MI 48226

SEVENTH CIRCUIT
Stephan Landsman
25 East Jackson Boulevard
Chicago, IL 60604

EIGHTH CIRCUIT
David L. Brown
8th Floor
Fleming Building
218 Sixth Avenue
Des Moines, IA 50309-4013

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
601 South Grand Avenue
Los Angeles, CA 90071

Alan Van Sloun
Suite 700
810 Richards Street
Honolulu, HI 96813-4728

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Paul T. Moxley
11th Floor
111 East Broadway
Salt Lake City, UT 84111-5225

ELEVENTH CIRCUIT
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Suite 1201
9155 South Dadeland Boulevard
Miami, FL 33156-2739

D.C. CIRCUIT
Carolyn H. Williams
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Washington, DC 20005-5901

FEDERAL CIRCUIT
Joseph M. Potenza
Suite 1200
1100 13th Street, N.W.
Washington, DC 20005-4056

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STAFF COUNSEL
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Standing Committee on the Federal Judiciary
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VIA EMAIL AND FIRST CLASS MAIL

June 13, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Margo Brodie
To the United States District Court
for the Eastern District of New York

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Margo Brodie who has been nominated for a position on the United States District Court for the Eastern District of New York. As a result of our investigation, a majority of the Committee is of the opinion that Ms. Brodie is "Qualified". A minority of the Committee is of the opinion that Ms. Brodie is "Well Qualified" for the position.

A copy of this letter has been provided to Margo Brodie.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Margo Brodie
The Honorable Robert F. Bauer
Michael Zubrensky, Esq.(via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on June 13, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon. Charles E. Grassley, Ranking Member
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Hon. Tom Coburn

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Suite 1208
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Miami, FL 33156-2739

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VIA EMAIL AND FIRST CLASS MAIL

May 6, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Dana Lewis Christensen
To the United States District Court
for the District of Montana

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Dana Lewis Christensen who has been nominated for a position on the United States District Court for the District of Montana. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Christensen is "Well Qualified" for the position.

A copy of this letter has been provided to Dana Lewis Christensen.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Dana Lewis Christensen
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on May 6, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
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Hon. Lindsey O. Graham
Hon. John Cornyn
Hon. Mike Lee
Hon. Tom Coburn

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SECOND CIRCUIT
Beth L. Kaufman
641 East 42nd Street
New York, NY 10165-0023

THIRD CIRCUIT
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500 South Grand Avenue
Los Angeles, CA 90071

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Suite 700
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13th Floor
111 East Broadway
Salt Lake City, UT 84111-2225

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Ramón A. Abadin
Suite 1208
9155 South Dadeland Boulevard
Miami, FL 33156-2739

D.C. CIRCUIT
Carolyn H. Williams
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Washington, DC 20005-5901

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1100 13th Street, N.W.
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AMERICAN BAR ASSOCIATION

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VIA EMAIL AND FIRST CLASS MAIL

May 20, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Gina Marie Groh
To the United States District Court
for the Northern District of West Virginia

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Gina Marie Groh who has been nominated for a position on the United States District Court for the Northern District of West Virginia. As a result of our investigation, the Committee is of the unanimous opinion that Judge Groh is "Qualified" for the position.

A copy of this letter has been provided to Gina Marie Groh.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Gina Marie Groh
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on May 20, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
Hon. Jon Kyl
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Hon. Tom Coburn

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9155 South Dadeland Boulevard
Miami, FL 33156-2719

D.C. CIRCUIT
Carolyn H. Williams
725 12th Street, N.W.
Washington, DC 20005-5901

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Joseph M. Potenza
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VIA EMAIL AND FIRST CLASS MAIL

July 29, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Evan Wallach
To the United States Court of Appeals
for the Federal Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Evan Wallach who has been nominated for a position on the United States Court of Appeals for the Federal Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Judge Wallach is "Well Qualified" for the position.

A copy of this letter has been provided to Evan Wallach.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Evan Wallach
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 29, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
Hon. Jon Kyl
Hon. Lindsey O. Graham
Hon. John Cornyn
Hon. Mike Lee
Hon. Tom Coburn

Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary

On the Nominations of:

Judge Evan Jonathan Wallach, to be United States Circuit Judge for the Federal Circuit
Cathy Ann Bencivengo, to be United States District Judge for the Southern District of California
Margo Kitsy Brodie, to be United States District Judge for the Eastern District of New York
Dana L. Christensen, to be United States District Judge for the District of Montana
Gina Marie Groh, to be United States District Judge for the Northern District of West Virginia

September 7, 2011

Mr. Chairman,

I join you in welcoming the nominees who are here today with their families and friends.

This week, we confirmed another nominee to the federal judiciary. We have now confirmed 34 nominees this Congress. We have taken positive action, in one way or another, on 78% of the judicial nominees submitted during this Congress. So we continue to move forward, as I indicated I would do, on consensus nominees.

On today's agenda are four District Court nominations, and a United States Circuit Judge for the Federal Circuit.

The Federal Circuit is unique among the Courts of Appeals. It is not geographical based but has nationwide subject matter jurisdiction in designated areas. In addition to international trade, the Court hears cases on patents, trademarks, government contracts, certain money claims against the United States government, veterans' benefits, and public safety officers' benefits claims.

Of particular interest to me, the U.S. Court of Appeals for the Federal Circuit has exclusive jurisdiction over cases related to federal personnel matters. That includes exclusive jurisdiction over appeals from the Merit Systems Protection Board (MSPB) which hears whistleblower cases under the whistleblower protection act.

Mr. Chairman, I will not take the time here to repeat the full biographical information on our nominees, but again, I welcome them, congratulate them on their nominations, and look forward to their testimony.

Thank you, Mr. Chairman, for your courtesy. I will insert the balance of my statement into the record.

Evan Jonathan Wallach is nominated to be United States Circuit Judge for the Federal Circuit. Since 1995, he has served as a Judge on the U.S. Court of International Trade. From 1976 to 1995, he was an associate, then partner, with Lionel Sawyer & Collins. Judge Wallach has also served as an Adjunct Law Professor at Brooklyn Law School, the New York Law School, George Mason University Law School, and was a visiting professor at the University of Muenster. He has a distinguished military career, with duty in the United States Army as well as the Nevada Army National Guard. He served on active duty in Vietnam and during the Persian Gulf War. Judge Wallach is a graduate of the University of

Arizona, the University of California Boalt Hall (Berkley) School of Law, and received an L.L. B. from the University of Cambridge Law School.

Judge Cathy Ann Bencivengo is the President's nominee for the United States District Court for the Southern District of California. She presently serves on that court as a United States Magistrate Judge, having been appointed in 2005. From 1988 to 2005 she was an associate, then partner, with DLA Piper. She also served as an adjunct professor at the University of San Diego School of Law. She is a1988 graduate of the University of Michigan Law School, and received both a Bachelor's degree and Master's degree from Rutgers University.

Margo Kitsy Brodie is nominated to be United States District Judge for the Eastern District of New York. Ms. Brodie, a native of Antigua, earned a B.A. from St. Francis College in 1988, and her J.D. from the University of Pennsylvania School of Law in 1991. She began her legal career as an

Assistant Corporation Counsel for the City of New York in 1991. In 1994, Ms. Brodie became an Associate with Carter, Ledyard & Milburn. Since 1999, Ms. Brodie has served as an Assistant United States Attorney with the Eastern District Court of New York. Her current position is Deputy Chief of the Criminal Division. From May 2005 to March 2006, Ms. Brodie served as a legal advisor to the Independent Corrupt Practices and Other Related Offices Commission (ICPC) in Nigeria. In this role, she advised and trained over 100 prosecutors and investigators in all aspects of prosecution.

Dana L. Christensen, of Montana, is the President's nominee to be United States District Judge for the District of Montana. Mr. Christensen earned his B.A. from Stanford University in 1973, and his J.D. from the University of Montana School of Law in 1976. From 1977 to 1981 he was an associate at Moulton, Bellingham, Longo & Mather, P.C., where he practiced natural resources law and general insurance defense litigation. From 1981 to 1996 he was a shareholder at Murphy, Robinson, Heckathorn & Phillips, P.C. At Murphy,

he represented defendants in civil litigation suits. In 1996, he founded his own firm, Christensen, Moore, Cockrell, Cummings & Axelberg, P.C. His practice now focuses on medical malpractice cases, representing healthcare providers.

Gina Marie Groh is nominated to be United States District Judge for the Northern District of West Virginia. She presently serves as a Circuit Court Judge for the 23rd Judicial Circuit in West Virginia. She was appointed to this position in December 2006 by then-Governor Manchin, and reelected in November 2008. Prior to her service as a state court judge, Judge Groh served as an Assistant Prosecuting Attorney in both Jefferson County (2002-2006) and Berkeley County (1998-2002.) Between 1989 and 1998 she was an associate in private practice. Judge Groh graduated *summa cum laude* with a B.A. from Shepherd University in 1986, and received her J.D. from West Virginia University College of Law in 1989.

NEW YORK
CITY BAR

COMMITTEE ON THE JUDICIARY

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July 13, 2011

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

We are pleased to inform you that the Committee on the Judiciary of the New York City Bar has found Margo Brodie, Esq., APPROVED for appointment to the United States District Court for the Eastern District of New York.

Very truly yours,

Elizabeth Donoghue
Chair

Statement of Senator John D. Rockefeller IV
Hearing before the Senate Committee on the Judiciary
On the Nomination of Gina Marie Groh
To be United States District Judge for the Northern District of West Virginia
September 7, 2011

Senator Whitehouse and distinguished members of the Judiciary Committee, it is an honor to be able to speak today on behalf of Judge Gina Marie Groh to serve as a U.S. District Judge for the Northern District of West Virginia.

This is a very important nomination for the people of West Virginia and the residents of the Eastern Panhandle in particular. It is also deeply personal to me.

This seat has been vacant since the passing of my dear friend, Judge W. Craig Broadwater, in 2006. Consequently, the Eastern Panhandle of West Virginia has been without a federal judge for the past five years.

Since Judge Broadwater's untimely death, the other judges in the district have stepped up and shown tremendous effort to handle the caseload, but after such a long vacancy, it is time for this position to be filled. Justice requires that our federal bench be fully staffed with the most highly-qualified individuals – and Judge Groh is absolutely the right person for the job.

She is a supremely talented lawyer, a meticulous student of the law, a proven leader in her community, and although a native of Maryland, she is a West Virginian through and through.

But most importantly, she is unrelenting in her commitment and dedication to upholding the principles of fairness and justice that are the foundation of our judicial system. This is something that we must demand of all judicial nominees. Some people like to talk about these principles, but Judge Groh lives them every day. That is why I was so very proud to recommend her to President Obama for this position.

One of her most impressive qualities is her willingness to stand up for those who are most in need of legal help. After spending nine years honing essential trial skills as a litigation associate at several firms in West Virginia, Washington, D.C., and Maryland, Judge Groh returned to West Virginia to protect the public as an assistant prosecutor in Berkeley and Jefferson Counties.

There, she prosecuted some of the toughest cases imaginable – murder, kidnapping, robbery, and sexual assault – and defended the rights of people who have been victimized by these terrible crimes.

And like Judge Broadwater before her, Judge Groh will bring a wealth of judicial experience to the federal bench. In 2006, she was appointed to fill a newly-created state trial court position by my colleague, then-Governor Manchin.

With a reputation for having a great judicial temperament, being well-prepared for cases, and treating all litigants with fairness and respect, she earned the confidence of the people of West Virginia and was elected to serve a full term in Berkeley, Jefferson, and Morgan Counties.

If confirmed, Judge Groh will be ready for the job on day one. She knows how to run a courtroom efficiently and effectively, she knows what it is like to have to make tough decisions and issue weighty opinions, and she has a clear and strong record of using her legal skills for the betterment of her fellow citizens.

There is no question that President Obama made the right decision when he nominated her – and it is my hope that the Senate will move forward quickly to confirm this supremely qualified nominee.

In closing, I would like to congratulate Judge Groh on her nomination and thank the Judiciary Committee and its staff for all of your hard work in helping to fulfill the Senate's important Constitutional duty to provide Advice and Consent to judicial nominees. I know that it requires a tremendous amount of work, and I want to let you know that I deeply appreciate your efforts.

NOMINATION OF ADALBERTO JOSE JORDAN, OF FLORIDA, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT; JOHN M. GERRARD, OF NEBRASKA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA; MARY ELIZABETH PHILLIPS, OF MISSOURI, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI; THOMAS OWEN RICE, OF WASHINGTON, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON; AND DAVID NUFFER, OF UTAH, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF UTAH

TUESDAY, SEPTEMBER 20, 2011

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

The Committee met, pursuant to notice, at 2:32 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Amy Klobuchar, presiding.

Present: Senators Klobuchar, Hatch, and Lee.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. I am pleased to call this nominations hearing of the Senate Committee on the Judiciary to order. Our Ranking Member today is Senator Hatch, and I know we have several members here to speak, to introduce. We have five judicial nominees today, so I would like to call upon my colleagues to introduce the nominees from their home State. We will start with Senator Nelson of Nebraska.

PRESENTATION OF JOHN M. GERRARD, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA, BY HON. BEN NELSON, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator NELSON of Nebraska. Thank you, Madam Chair. It is truly my honor to join with my colleague, Senator Johanns, and introduce Nebraska's Supreme Court Justice John Gerrard, who has

been nominated by the President for the U.S. District Court for Nebraska.

I have known John and Nancy Gerrard and their family for nearly 20 years. I saw in him the experience, intellect, and temperament needed to serve on the Nebraska Supreme Court bench. So as Governor, I appointed John Gerrard to the Nebraska Supreme Court in 1995. The people of Nebraska have approved of his service and voted to retain Judge Gerrard on our State's highest court three times.

He has consistently received top ratings by the Nebraska Bar Association in its biennial judicial evaluations. In 2006, Judge Gerrard received the Distinguished Judge for Improvement of the Judicial System Award for leading initiatives promoting racial and ethnic fairness under the law. In 2008, Judge Gerrard received the Legal Pioneer Award for utilizing technology to improve Nebraska citizens' understanding and participation in our courts.

On the Nebraska Supreme Court, Judge Gerrard has authored more than 400 opinions. Other opinions written by Judge Gerrard have helped refine protocol for how many different types of cases are handled, including evidence requirements in homicide cases, how expert testimony is received, and clarifying duty analysis in negligence cases.

Prior to his service on the Nebraska Supreme Court, Judge Gerrard was senior partner in the law firm of Gerrard, Stratton & Ptak in Norfolk, where he was in private practice for 14 years. He also served as the Battle Creek city attorney, as counsel to Northeast Community College, Norfolk Public Schools, and other northeast Nebraska school districts.

I thank the members of the Senate, Madam Chair, Ranking Member Hatch, and Senator Lee, for considering this extremely well qualified nominee for the Federal bench. It is my hope the Committee will report out Judge Gerrard's nomination soon and that the full Senate will have the opportunity to swiftly approve this good man.

Senator KLOBUCHAR. Very good.

Now Senator Johanns from Nebraska.

PRESENTATION OF JOHN M. GERRARD, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA, BY HON. MIKE JOHANNS, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator JOHANNS. Madam Chair, thank you very much. It is an honor for me to appear before this Committee. Let me, if I might, start this afternoon by saying thank you to my colleague from Nebraska, Senator Ben Nelson, and I definitely want to associate myself with the comments that he has just made.

As we all know, Senator Nelson and I occupy different sides of the aisle, but I will tell you we both agree that the exceptional record and the experience of Judge Gerrard makes him an excellent candidate for the Federal Bench.

Madam Chair, this is exactly as a nomination should occur. Before the nomination was even announced, Senator Nelson called me and he said, "Here is what I am thinking about. I am thinking about Judge Gerrard for this U.S. district court position. Would you

take the time to sit down and visit with him?" So I did. So before any nomination was talked about publicly, I had an opportunity to go to the judge's Supreme Court office, and we talked.

Of course, I have known him also for many, many years. I have always been impressed with his temperament, his background, his judicial philosophy, his record, and I could not more enthusiastically support this nomination. In fact, I was saying to my colleague as we were preparing to come into the hearing room, if I were king for a day, this is the kind of person I would nominate to the U.S. district court. So I appreciate being a part of this process.

Judge Gerrard embodies integrity, judicial restraint, thoughtful fairness. He is a class act in every way, and he is absolutely the right person for this job.

During his 16 years on the Nebraska Supreme Court, he has conducted himself in every way with great distinction. And every time his colleagues in the legal profession had an opportunity to rate him, they gave him the highest ratings.

So I am very pleased to be here today. It is my hope that the Committee will agree with our assessment, vote him to the floor, and I want to assure the Chair and the Ranking Member I will do everything I possibly can to try to bring his nomination to a vote. It is critical that we fill this district court position.

Thank you.

Senator KLOBUCHAR. Thank you very much.

Senator McCaskill of Missouri.

PRESENTATION OF MARY ELIZABETH PHILLIPS, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI, BY HON. CLAIRE MCCASKILL, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator MCCASKILL. Thank you, Madam Chairwoman. I am honored today to be here to introduce Beth Phillips as a nominee for the Western District Court of Missouri. I had the pleasure of hiring Beth Phillips as a young assistant prosecutor many years ago, back in the 1990s, and I have watched her career, as has the rest of the bench and bar in Missouri, with a great deal of pride.

When I used to be in the courtroom—and I know I probably can get some "me, too's" on this from the members of this Committee—nothing was more frustrating than having a judge presiding over a trial that it was fairly clear they had never been in a trial. And those people who do work in a courtroom know how great it is to have someone on the bench that understands exactly what it is like to be at the bar and to be arguing for your case and all of the challenges and frustrations that go with that.

This is a woman who has tried over 40 cases in the courtroom; 90 percent of those were jury trials. She has tried those cases both as a prosecutor and as a civil litigant. She was appointed to be the U.S. Attorney for the Western District 2 years ago and was unanimously confirmed by the Senate 2 years ago. And since that time, she has overseen a staff of 126 employees, including 67 lawyers, in the Western District of Missouri as the U.S. Attorney.

You know, whenever you have been involved in trying to help someone in their career, many times you get calls from—and I have got a lot of former friends and colleagues that practice law in the

Kansas City area, and I will be honest with you. There have been times that I have gotten calls about this person or that person that were not always positive, like, you know, "That person you hired is an idiot," or, "I am really irritated at that person." And it is unbelievable to me the way that this woman's leadership has been greeted by both the judiciary and the litigants in the greater Kansas City area and in the Western District of Missouri.

She is an undergraduate from the University of Chicago and a master's from the University of Chicago, and then she got some sense and came home and got her law degree in Missouri. She is a native Missourian, and I do not know how many generations of her family have been in Missouri, but she was born in a very small town in rural Missouri. And so when we went to the swearing-in as U.S. Attorney, I think half of her hometown was there. It was a moment of great pride for this very small community that she had reached this zenith.

I think she is ready to take this lifetime appointment for so many reasons. It will be a two-judge family. Her husband is here with her today, Brent Powell, who was appointed to the State bench by my colleague's son, Governor Matt Blunt, when he was Governor. And I do not get into politics at these things. I do not think you should. But I think it tells you the kind of people these are that I am pushing for the appointment of Beth Phillips as a Federal judge when the man who defeated me for Governor appointed her husband as a State judge. I think that is the kind of bipartisanship we all long for in this body and certainly that we hope to get on the Federal judiciary. And I think that she will call balls and strikes. She will let people try their cases. She will not impose her judgment in terms of any bias she has on any matter of policy into the courtroom, and she will be the kind of Federal judge that will make us proud as the U.S. Senate and will do justice to our great Constitution and the system of checks and balances that it embraces.

I would ask for favorable consideration from the Committee today for her appointment. Thank you, Madam Chairman.

Senator KLOBUCHAR. Thank you very much, Senator McCaskill, and that is a lot of good information for us to have. We enjoyed that.

Now we will turn from the Midwest to Florida. I think Senator Rubio was here first, and—you want Senator Nelson? Very nice. Senator Nelson, oh, my goodness, Senator Nelson will go first, and we are pleased to have both of you here on behalf of the Florida nominee.

PRESENTATION OF ADALBERTO JOSE JORDAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. BILL NELSON, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator NELSON of Florida. Well, this reminds me who is the senior Senator and who is the junior Senator. When Bob Graham was my senior Senator, he always expected me to serve him coffee.

[Laughter.]

Senator RUBIO. I will be right back.

[Laughter.]

Senator NELSON of Florida. Well, the two of us are here unanimous because this is an excellent appointee by the President, and we urge upon the Committee for quick confirmation for the Eleventh Circuit Court of Appeals.

Madam Chairman, Judge Jordan will end up being the first Cuban American to sit on the court of appeals. That is significant in itself, but when you look at his life, all the way from being magna cum laude, the fact that he was a walk-on at the University of Miami baseball team and made the team, the fact that he was an Assistant U.S. Attorney and served with distinction there and then was picked by President Clinton to be a Federal district judge, so he has been a judge now for well over a decade. And among all of his peers have had nothing but glowing comments once the President made his decision.

And so this is a great day, and I want to just shorten my comments so that my colleague—and you are very kind—can say something about the historical significance of judge Jordan's nomination.

Senator KLOBUCHAR. Very good. Thank you.

Senator Rubio.

PRESENTATION OF ADALBERTO JOSE JORDAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. MARCO RUBIO, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator RUBIO. Thank you, and I will also be brief because I think his experience and his resume will speak for itself. I just want to echo a few things.

First of all, obviously as a community we are very proud of Judge Jordan's nomination and look forward to his appointment.

I would add a couple things. He is, as I am, a law school graduate from the University of Miami. He is a double Hurricane, I should say, because also his bachelor's degree was from there. He has been serving for 12 years on the bench in the U.S. District Court for the Southern District of Florida. At the time of his appointment, he was only 37 years old. He remains very active in our community. He is involved in teaching both at the University of Miami School of Law and at a newer place that is really growing rapidly, the Florida National University College of Law as well.

I think his knowledge of the law is demonstrated further in part by his work as the chief of the Appellate Division in the Office of the U.S. Attorney for the Southern District of Florida, which is a very active district in his time there practicing as an attorney. He spent time as a clerk at the U.S. Supreme Court for Justice Sandra Day O'Connor, and he has served as a clerk to Judge Thomas Clark of the Eleventh Circuit Court of Appeals. So I am obviously honored and proud to be here introducing him to the Committee, and I look forward to your full consideration of his nomination.

Thank you.

Senator KLOBUCHAR. Thank you very much. Thank you both for coming, and we look forward to hearing from your nominee.

Now we turn to the State of Utah with my colleague here, Senator Hatch, for an introduction.

PRESENTATION OF DAVID NUFFER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF UTAH, BY HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Madam Chairman. We are very happy, and I was very pleased to sit here with you and I am honored to be with you on this panel today.

I am very pleased to introduce to the Committee Chief U.S. Magistrate Judge David Nuffer, and I want to congratulate President Obama for choosing him as the nominee to the U.S. District Court in Utah.

After receiving his undergraduate and law degrees from Brigham Young University, Judge Nuffer spent 24 years in private legal practice. He has served for 16 years as the U.S. magistrate judge, half of those years part-time and half full-time. He has been the chief U.S. magistrate judge for the District of Utah since 2009, and as a lawyer, he practiced both in the criminal prosecution area and criminal defense, and he has tried more than 150 cases to verdict, which is more than most people who come before this body.

I am not surprised that the American Bar Association unanimously gave him its highest well-qualified rating. In fact, I would have been upset if they had not.

Judge Nuffer is widely known in Utah's legal community, and he is just as widely respected. I have talked to numerous lawyers in Utah, lawyers that I have tremendous respect for, and to a person, they all believe that he will be one of the great judges in this country.

He has not only practiced law, but he has served the law as well as both a commissioner and as president of the Utah State Bar. He has served on various committees and task forces of the Utah Supreme Court and is Chairman of the Utah Judicial Conduct Commission. And for more than a decade, Judge Nuffer has been an adjunct professor at his law school alma mater.

But his service to the law extends beyond our borders. Judge Nuffer has lectured to judges, lawyers, and law students in countries as far afield as Brazil, Egypt, and Ukraine, and serves on the board of the Leavitt Institute for International Development.

As my colleagues know, I chair the Senate Republican High-Tech Task Force and have for many years been involved in efforts to reform the patent system. I therefore took particular notice of Judge Nuffer's love of technology and the promise that it holds for the legal system. In one of his many articles and blog postings, he wrote, "Technology is a leveler that puts us all in touch, reduces the distance from the courthouse, and leverages our abilities." I cannot agree more.

When he is confirmed, as I know he will be, Judge Nuffer will help make the law and the court system more accessible to all of our citizens. This well-rounded picture of dedication, service, and excellence has really impressed me, as it has, I am sure, many others in Utah and around the country.

As I usually do when we have a judicial vacancy, I talk to lawyers and leaders in the legal community of both parties throughout Utah, and in Judge Nuffer's case, the response was strong and unanimous, and we are very proud of you and we are looking for-

ward to you serving a nice long time on the Federal bench. And we are very happy to have your lovely wife with you as well.

Senator KLOBUCHAR. Very good.

Senator Lee.

PRESENTATION OF DAVID NUFFER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF UTAH, BY HON. MIKE LEE, A U.S. SENATOR FROM THE STATE OF UTAH

Senator LEE. Thank you, Madam Chair. It is my pleasure to say a few words to support the nomination of Magistrate Judge Nuffer. I will be brief. I will also be personal. I am one of those lawyers who has appeared in front of him, and I have found him to be a judge who is unusually well informed, well prepared, and exercises exceptionally good judgment. And I commend President Obama for his excellent choice in this nomination.

As Senator Hatch noted, over the course of his career Judge Nuffer has worked tirelessly and with distinction to serve the bar and the bench in Utah and beyond. For example, he has served as president of the Utah State Bar Association, as a member of the Utah District Court's Civil Procedure Rules Committee, the Utah District Court Arbitration and Mediation Panel, and the National U.S. Court IT Advisory Committee.

Judge Nuffer has also written or presented extensively on a variety of legal and law-related issues, especially those involving the use of technology by litigants and in the courts.

The many attorneys and judges that have read his publications and attended his lectures and other seminars have benefited greatly from his expertise. Judge Nuffer has also served as an adjunct professor at BYU's law school for the past decade, where he helped to prepare the next generation of attorneys.

Finally, let me add that Judge Nuffer is well known and highly regarded throughout the Utah bench and bar. His knowledge, his temperament, his expertise, including those 16 years that he served first as a part-time magistrate judge and then as a full-time magistrate judge, are among the many qualities for which he is rightly admired. I am pleased enthusiastically to recommend him to my fellow colleagues on this Committee, and I ask for your full consideration of this outstanding nominee.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Lee.

There is one other nominee that I am going to introduce: Thomas Rice. He has been nominated to the United States District Court for the Eastern District of Washington. Mr. Rice has spent his entire legal career working for the United States Department of Justice, where he started as an Honors Program trial attorney in 1986 and now serves as the first Assistant United States Attorney in the Eastern District of Washington. A Washington native, we welcome you, Mr. Rice, and we thank you for being here. I picked out the right person. He looked like he was a U.S. Attorney, so that was pretty good.

[Laughter.]

Senator KLOBUCHAR. I mean, that is not a generalization. I just picked you out.

We do know that Senator Murray from Mr. Rice's home State has submitted a statement that will be entered for the record.

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

Senator KLOBUCHAR. I would now like to turn to Senator Hatch for any additional remarks he would like to make.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, I might mention that Senator Murray is in that super committee, so that is just dominating all their time, so I hope folks will realize that and realize why she is not here today.

We are just really happy to have all of you here. The Federal judiciary is absolutely critical to this country. It is the third branch of Government. It is a co-equal branch of Government. Many feel maybe it is more than co-equal in some respects. I had extensive experience before the Federal courts, both in Pennsylvania and in Utah, and all I can say is that I never met a Federal judge that I did not like. And that includes Willis Ritter out in Utah, who is quite a curmudgeon, and we got along very well.

I will never forget one time a fellow cut down one of our—families, pioneer families had always cut down Christmas trees on Federal property, and so they just thought it was a matter that they could easily do. And one day this fellow, one of the successors, cut down a Christmas tree, and he was indicted for destroying Federal property. And he appeared before Judge Ritter for sentencing. I was there. And Judge Ritter sentenced him to 8 years in the Federal penitentiary. That made everybody aghast. Fortunately, there were other judges there who later commuted the sentence.

[Laughter.]

Senator HATCH. But I caution you judges and judges-to-be that it is really important that our Federal bench has always set the highest standards.

Now, Judge Ritter was one of the brightest people I have ever met. He was a law professor and a very great student of the law. But he occasionally had those aberrations that were very interesting.

One other time—in fact, it was the same time. A fellow showed up with this—an attorney was with this woman, and he said, "What did you do?" And she said, "I stole a Federal bond and cashed it." This is right after he sentenced this fellow to 8 years. He said, "Well, what did you do with the money?" And she says, "I gave it to my attorney for legal fees."

[Laughter.]

Senator HATCH. And Ritter then said, "Well, you overpaid him." And he gave her 6 months' probation. So it shows the difference between—all I can say is that I do not expect any of you judges-to-be or judges to do that type of work on the bench. Our Federal bench in this country is really very, very great and highly qualified, and we are just happy to have all of you here.

I might add that I think we are doing a good job on this Committee keeping this administration's judges moving as fast as we can, and we should do even better, as far as I am concerned.

So we are grateful to all of you for being willing to serve. We know there are advantages and disadvantages, but without the Federal judiciary, this country cannot survive in its current form. So we are very proud of all of you and very pleased to have you here.

Senator KLOBUCHAR. Well, that was very nice, Senator Hatch, and I know that now all the nominees can expect a question about what sentence they thought the guy that took the Christmas tree should get.

[Laughter.]

Senator KLOBUCHAR. That was just his little tip to all of you.

Senator HATCH. It just shows how tough we are there in Utah.

Senator KLOBUCHAR. We will start with Judge Jordan, if he wants to come up. Do you say "JOR-din" or "Jor-DAN"? No, really, tell me. Tell me. "JOR-din," good. It sounded like your Florida Senators had a little bit of an accent, but they always have an accent anyway.

We are going to swear you in first. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge JORDAN. I do.

Senator KLOBUCHAR. Very good. Would you like to introduce family members or friends that are here with you, Judge Jordan?

STATEMENT OF ADALBERTO JOSE JORDAN, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

Judge JORDAN. I would. Thank you very much.

Senator Klobuchar, Senator Hatch, Senator Lee, I am honored to be here. I am also deeply grateful to the President for nominating me, and I would like to thank the Committee for scheduling the hearing and Senators Nelson and Rubio for their kind words and support.

I do not have any remarks, but I would like to recognize family members and friends. My wife, Esther, and our daughters, Diana and Elizabeth, are here; as are my brother George and one of our nephews, Carlos.

Several family members could not make it, but they are watching through the Committee's webcast in Miami and elsewhere: my mother, Elena; my mother-in-law, Flor; my sister-in-law, Connie; my brother-in-law, Domingo, and his girlfriend, Grace; and our nephews, George, Matthew, and Dominic; our nieces, Emma and Amanda; and my step-brother and step-sisters and their families.

Some of our chamber staff have flown here for the hearing. The rest are watching back home. Also here are a number of former clerks and friends. I am very fortunate for their friendship and for their support. Thank you.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Adalberto José Jordán

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

   United States Circuit Judge for the Eleventh Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Wilkie Ferguson United States Courthouse
   400 North Miami Avenue
   Room 10-1
   Miami, Florida 33128

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

   1961; Havana, Cuba

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1984 – 1987, University of Miami School of Law; J.D. (*summa cum laude*), 1987

   1980 – 1984, University of Miami; B.A. (*magna cum laude*), 1984

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1999 – present
United States District Court for the Southern District of Florida
Wilkie Ferguson United States Courthouse
400 North Miami Avenue
Room 10-1
Miami, Florida 33128
United States District Judge

2007 – present
Florida International University College of Law
University Park Campus – Rafael Diaz-Balart Hall
11200 S.W. Eighth Street
Miami, Florida 33199
Adjunct Professor

1990 – present
University of Miami School of Law
1311 Miller Drive
Coral Gables, Florida 33146
Adjunct Professor

1994 – 1999
United States Attorney's Office
Southern District of Florida
99 N.E. Fourth Street
Miami, Florida 33132
Assistant United States Attorney (1994 – 1999)
Deputy Chief, Appellate Division (1996 – 1998)
Chief, Appellate Division (1998 – 1999)
Special Counsel to U.S. Attorney on Legal Policy (1997 – 1999)

1986 – 1987; 1989 – 1994
Steel Hector & Davis LLP (now Squire Sanders & Dempsey)
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
Non-equity Partner (1994)
Associate (1989 – 1993)
Summer Associate and Law Clerk (1986 – 1987)

1988 – 1989
Associate Justice Sandra Day O'Connor
United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543
Judicial Law Clerk

1987 – 1988
Judge Thomas A. Clark (deceased)
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303
Judicial Law Clerk

Summer 1986
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
Summer Associate

1985 – 1986
Greenberg Traurig LLP
333 S.E. Second Avenue
Miami, Florida 33131
Law Clerk

Summer 1985
Professor Mary Coombs
University of Miami School of Law
1311 Miller Drive
Coral Gables, Florida 33146
Research Assistant

Summer 1985
Judge Daniel Hurley (now a Senior United States District Judge in the Southern District of Florida)
Florida 4th District Court of Appeal
1525 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33402
Legal Intern

1982 – 1985
Sunbank (now SunTrust Bank)
1300 Ponce De Leon Boulevard
Coral Gables, Florida 33134 (branch no longer exists at that address)
Teller

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have registered for selective service.

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

Outstanding Service Award, Southern District of Florida Bankruptcy Bar Association (2010)
Lawyer of the Americas Award, University of Miami School of Law and Inter-American Law Review (2008)
Legal Excellence Award, Florida International University College of Law (2008)
Alan R. Schwartz Judicial Excellence Award, Miami-Dade County Bar Association (2007)
Community Service Award, Greater Miami Jewish Federation Attorney's Division (2006)
500 Leading Judges in America, Law Dragon Magazine (2006)
Community Service Award, Hispanic Law Students Association, University of Miami School of Law (2004)
Distinguished Jurist Award, Benjamin Cardozo School of Law Moot Court Society (2003)
Public Service Award, Cuban-American Bar Association (2000)
Volunteer Service Award for Pro Bono Work, United States Department of Justice (1998)
Pro Bono Award, "Put Something Back Program" of the Florida Eleventh Judicial Circuit and the Miami-Dade County Bar Association (1993, 1996)
Iron Arrow Honor Society, University of Miami (1986)
Annual Honors Award, Politics and Public Affairs Department, University of Miami (1984)

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

American Bar Association
    Standing Committee on Federal Judicial Improvements (2010 – present)
Florida Bar
Judicial Conference of the United States
    Advisory Committee on Bankruptcy Rules (2010 – present)
Miami-Dade County Bar Association
    Judicial Campaign Practices Commission (1992 – 1999)
New York University School of Law
    Root Tilden/D'Agostino Scholarship Selection Panel (2007)
Peter T. Fay American Inn of Court
University of Miami School of Law
    Visiting Committee (2008 – present)

United States District Court, Southern District of Florida
Chair, Advisory Rules Committee (2010 – present)
Chair, Magistrate Judges Committee (2010 – present)
Volunteer Lawyers Project, United States District Court, Southern District of Florida
Court Liaison and Member of Advisory Group (2000 – 2010)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Florida, 1987

There have been no lapses in membership.

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

Supreme Court of the United States, 1992
United States Court of Appeals for the Sixth Circuit, 1992
United States Court of Appeals for the Eleventh Circuit, 1989
United States District Court for the Middle District of Florida, 1990
United States District Court for the Southern District of Florida, 1990

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Florida Athletic Coaches Association (2009 – 2010)
Investment Club (with friends and colleagues at Steel Hector & Davis in Miami, Florida) (1990 – 1993)
Iron Arrow Honor Society, University of Miami (1986 – present)
National Soccer Coaches Association of America (2009 – present)
St. Brendan High School, Girls' Varsity Soccer Coach (volunteer) (2007 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Before I was inducted in 1986, the University of Miami's Iron Arrow Honor Society limited membership to men. Iron Arrow has admitted women since 1985. Other than that, to the best of my knowledge, none of the organizations listed above currently discriminates or previously discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Selected Comments on 1986 Immigration Reform, 41 U. Miami L. Rev. 997 (1987) (eds. Adalberto Jordán and Steve Naturman). Mr. Naturman and I, as the co-editors, participated in drafting the Foreword, which is supplied.

Adalberto Jordán, "Imagery, Humor, and the Judicial Opinion," 41 U. Miami L. Rev. 693 (1987). Copy supplied.

Glenn Gerena & Adalberto Jordán, "*United States v. Doe* and its Progeny: A Re-evaluation of the Fifth Amendment's Application to Custodians of Corporate Records," 40 U. Miami L. Rev. 793 (1986). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I was a member of the Miami-Dade County Bar Association's Judicial Campaign Practices Commission from 1992 to 1999. The Commission issued advisory opinions concerning complaints made by candidates for judicial office in Miami-Dade County, Florida. As a member of the Commission, I wrote advisory opinions in several matters. *See Dubitsky v. Levenson* (Sept. 21, 1992); *Capua v.*

Weiner (Aug. 3, 1993); *Fallon v. Ballman* (Aug. 24, 1994); *Glazer v. Adderly* (Aug. 27, 1998); *Vasquez v. Harnage* (Sept. 2, 1998). I have been unable to obtain copies of these opinions, but press coverage of one of the decisions is supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On July 13, 1999, I testified before the United States Senate Judiciary Committee as a nominee to be United States District Judge for the Southern District of Florida. Transcript supplied.

On September 14, 1990, I appeared before the Florida Supreme Court's Racial and Ethnic Bias Study Commission (at the invitation of the Commission's Chair, Frank Scruggs) in Orlando, Florida, and discussed legal developments in the area of affirmative action. I have been unable to obtain a transcript of my statements.

In 1989 and 1990, Steel Hector & Davis – where I was an associate – joined together with accounting firm KPMG Peat Marwick and other consultants, including TEM Associates, to conduct discrimination studies for state and local government entities following the Supreme Court's decision in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (holding that state and local affirmative action programs are subject to strict scrutiny). I worked on the legal aspects of the studies with Frank Scruggs and Samuel Dubbin, who were partners at Steel Hector & Davis. My task was to take the data assembled by other team members and analyze it to see if the affirmative action program at issue would be constitutional under *Croson* and its progeny. We ended up conducting studies for the Florida Department of Transportation and other state departments and agencies, the City of Miami, and the West Coast Regional Water Supply Authority. I have been unable to obtain copies of the studies.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The list which follows represents my best efforts, through searches of my records, calendars, and Internet databases, to identify speeches and remarks I have given. There may be, however, other speeches or remarks that I have been unable to

recall or identify. Generally, when I engage in public speaking, I do so without outlines or prepared remarks.

July 19, 2011: Speaker, Federal Bar Association, South Florida Chapter, Federal Courthouse, Luncheon with Magistrate Judge John O'Sullivan and 20 attorneys (discussion of issues relating to practice in the Southern District of Florida). I have no notes, transcript or recording. The current president of the Federal Bar Association, South Florida Chapter, is Brett Barfield, Esq., 701 Brickell Avenue, Suite 3000, Miami, FL 33131.

June 24, 2011: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Orlando, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 23, 2011: Participant, Florida Bar, Federal Judicial Roundtable (Orlando, Florida) (roundtable discussion with judges and attorneys on ethical and social media issues related to federal court practice). I have no notes, transcript or recording, but press coverage is supplied. The judicial roundtable was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

May 13, 2011: Federal Bar Association, Lunch Guest Speaker (Miami, Florida) (five-minute summary/report of recent Eleventh Circuit Judicial Conference in Orlando). I have no notes, transcript or recording. The lunch was sponsored by the Federal Bar Association, South Florida Chapter, whose current president is Brett Barfield, Esq., 701 Brickell Avenue, Suite 3000, Miami, FL 33131.

May 6, 2011: Guest Speaker, St. Thomas the Apostle Elementary School (remarks to fifth and sixth grade students about the role of a judge and the federal judicial system, followed by a question and answer session). I have no notes, transcript or recording. The address of the school is 7303 S.W. 64th Street, South Miami, FL 33143.

April 15, 2011: Panelist, Judicial Perspectives on International Human Rights Litigation, Federal Judicial Center/Duke Law School (Durham, North Carolina) (panel discussion on matters related to federal international human rights litigation – my remarks were about my rulings in *Kpadeh v. Emmanuel*, 261 F.R.D. 687 (S.D. Fla. 2009), and *Mamani v. Berzain*, 636 F. Supp. 2d 1326 (S.D. Fla. 2009)). I have no notes, transcript or recording. The seminar was sponsored by the Federal Judicial Center, One Columbus Circle, N.E., Washington, DC 20002.

March 31, 2011: Guest Speaker, University of Miami School of Law, Appellate Clinic Seminar (remarks about appellate practice in the Eleventh Circuit). I have

no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

February 25, 2011: Panelist, Florida Bar International Law Section, Perspectives on Arbitration and the Judiciary (Miami, Florida) (panel discussion on roles of arbitrators and judges). I have no notes, transcript or recording. The panel was sponsored by a number of legal associations, including the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

January 19, 2011: Miami-Dade County Bar Association, Young Lawyers Section, Lunch with the Judges (lunch with young attorneys). I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

December 10, 2010: Panelist, Federal Criminal Practice for Assistant U.S. Attorneys and Assistant Federal Public Defenders in the Southern District of Florida (panel discussion with other district judges for federal prosecutors and federal public defenders regarding federal criminal practice). I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 99 N.E. Fourth Street, Miami, FL 33132, and the address of the Federal Public Defender's Office is 150 West Flagler Street, Miami, FL 33130.

November 12, 2010: Panelist, Revisiting the Place of International Law in Domestic Law, American Society of International Law (Miami, Florida) (panel discussion about international law issues in federal litigation). I have no notes, transcript, or recording. The panel was held at the University of Miami's Alumni Center, 6200 San Amaro Drive, Coral Gables, FL 33146.

October 29, 2010: Introduced U.S. Attorney Wifredo Ferrer before a luncheon hosted by the Palm Beach County Chapter of the Federal Bar Association. I have no notes, transcript or recording. The current president of the Chapter is Kerry S. Barron, Esq., 500 South Australian Avenue, Room 400, West Palm Beach, FL 33401.

October 20, 2010: Guest Speaker, University of Miami School of Law, Appellate Clinic Seminar (remarks about appellate practice in the Eleventh Circuit). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

October 11, 2010: Guest Speaker, Florida International University College of Law (question and answer session on issues related to federal court practice). I have no notes, transcript or recording. The address of the law school is 11200 S.W. Eighth Street, Miami, FL 33199.

October 5, 2010: Panelist, Federal Judicial Center, National Workshop for Pro Se Law Clerks, Pro Bono Programs Panel (Chicago, Illinois) (panel discussion on

federal court pro bono programs). I have no notes, transcript or recording. The workshop was sponsored by the Federal Judicial Center, One Columbus Circle, N.E., Washington, DC 20002.

October 1, 2010: Panelist, Miami-Dade County Bar Association/Daily Business Review, Ethics and Professionalism Panel (Miami, Florida) (panel discussion on ethics and professionalism). I have no notes, transcript or recording. The seminar was sponsored by the Miami-Dade County Bar Association, 123 N.W. First Avenue, Suite 214, Miami, FL 33128, and the Daily Business Review, 1 S.E. Third Avenue, Suite 900, Miami, FL 33131.

August 24, 2010: Panelist, University of Miami School of Law, Judicial Clerkship Panel (panel discussion about judicial clerkships). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

July 16, 2010: Remarks, Swearing-in Ceremony for U.S. Attorney Wifredo Ferrer (personal remarks about Mr. Ferrer). I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 99 N.E. Fourth Street, Miami, FL 33132.

June 25, 2010: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Boca Raton, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 25, 2010: Panelist, Florida Bar Ethics Committee, Judicial Roundtable Masters Seminar (Boca Raton, Florida) (roundtable discussion with attorneys on ethical issues related to federal court practice). Video supplied (my panel's presentation begins at Track 7 on Disc 1 and continues onto Disc 2).

June 24, 2010: Participant, Florida Bar, Federal Judicial Roundtable (Boca Raton, Florida) (roundtable discussion with attorneys on issues related to federal court practice). I have no notes, transcript or recording. The judicial roundtable was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

May 21, 2010: Panelist, Miami-Dade County Bar Association/Daily Business Review, A View from the State and Federal Bench (Miami, Florida) (panel discussion about assorted legal issues). I have no notes, transcript or recording. The seminar was sponsored by the Miami-Dade County Bar Association, 123 N.W. First Avenue, Suite 214, Miami, FL 33128, and the Daily Business Review, 1 S.E. Third Avenue, Suite 900, Miami, FL 33131.

May 13, 2010: Panelist, Broward County Federal Bar Association, Volunteer Lawyers Project (Ft. Lauderdale, Florida) (panel discussion about pro bono

opportunities available through court's volunteer lawyers project). I have no notes, transcript or recording. The event was sponsored by the Federal Bar Association, Broward County Chapter, whose current president is Paul O. Lopez, Esq., 110 S.E. Sixth Street, 15th Floor, Fort Lauderdale, FL 33301.

May 5, 2010: Guest Speaker, Southwest Senior High School Special Education Program (Miami, Florida) (remarks and explanation/demonstration of courtroom for high school special education students). I have no notes, transcript or recording. The event was arranged by Southwest Senior High School, 8855 S.W. 50th Terrace, Miami, FL 33165.

April 30, 2010: Panelist, Southern District of Florida Bench & Bar Conference, Legal Writing Panel (panel discussion on legal writing). I have no notes, transcript or recording. The conference was sponsored by the United States District Court, Southern District of Florida, 400 North Miami Avenue, Miami, FL 33128.

April 16, 2010: Guest Speaker, St. Thomas University Law School (remarks about the importance of good legal writing followed by question and answer session). I have no notes, transcript or recording. The address of the law school is 16401 N.W. 37th Avenue, Miami Gardens, FL 33054.

March 22, 2010: Guest Speaker, Peter T. Fay Inn of Court (Miami, Florida). I have no notes, transcript or recording. The event was sponsored by the Peter T. Fay American Inn of Court at St. Thomas University Law School, 16401 N.W. 37th Avenue, Miami Gardens, FL 33054.

March 16, 2010: Guest Speaker, Federal Bar Association, Remarks Introducing Justice Sandra Day O'Connor. I have no notes, transcript or recording. The reception was hosted by the Federal Bar Association, South Florida Chapter, whose current president is Brett Barfield, Esq., 701 Brickell Avenue, Suite 3000, Miami, FL 33131.

February 26, 2010: Guest Speaker, Miami Catholic Lawyers' Guild, Legal and Personal Integrity in Federal Court, Gesu Catholic Church (remarks about ethical issues in federal practice). I have no notes, transcript or recording. The event was sponsored by the Miami Catholic Lawyers Guild, whose current president is William R. Trueba, Jr., Esq., Two Datran Center, Suite 1209, 9130 South Dadeland Boulevard, Miami, FL 33156.

November 4, 2009: Panelist, Federal Bar Association, Judicial Perspectives (Miami, Florida). I have no notes, transcript or recording. The event was sponsored by the Federal Bar Association, South Florida Chapter, whose current president is Brett Barfield, Esq., 701 Brickell Avenue, Suite 3000, Miami, FL 33131.

November 3, 2009: Panelist, Developments in Habeas Corpus, Federal Judicial Center Workshop for Judges of the Eleventh Circuit (discussion of current legal issues and recent judicial decisions in federal habeas corpus practice). Outline prepared by co-panelist Professor Leon Friedman of Hofstra University School of Law supplied. Audio recording supplied.

October 9, 2009: Guest Speaker, Federal Court Reporters Annual Convention (Key West, Florida) (remarks about appellate decisions concerning court reporter transcriptions). I have no notes, transcript or recording. The convention was sponsored by the United States Court Reporters Association, 8430 Gross Point Road, Suite 115, Skokie, IL 60077.

September 30, 2009: Panelist, Florida Historical Museum, Hispanic Heritage Celebration, Legal Perspectives (panel discussion about Hispanics in the legal community in South Florida). I have no notes, transcript or recording. The panel was sponsored by the Florida 11th Judicial Circuit Historical Society, 101 West Flagler Street, Miami, FL 33130.

August 19, 2009: Panelist, University of Miami School of Law, Judicial Clerkship Panel (panel discussion on judicial clerkships). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

August 12, 2009: Panelist, Florida International University College of Law, Professionalism/Bench and Bar Expectations (panel on legal ethics and professionalism). I have no notes, transcript or recording. The address of the law school is 11200 S.W. Eighth Street, Miami, FL 33199.

June 26, 2009: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Orlando, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 24, 2009: Panelist, A View from the Bench: U.S. District Court Judge Views on Effective Theories/Defenses, *Daubert* and Evidentiary Approaches, and Deciding Cases Early, American Conference Institute Forum on Aviation Litigation (Boston, Massachusetts). I have no notes, transcript or recording. The address of the ACI is 41 West 25th Street, New York, NY 10010.

June 3, 2009: Panelist, United States District Court, Federal Court Observer Program (panel discussion about federal court practice). I have no notes, transcript or recording. The address of the court is 400 North Miami Avenue, Miami, FL 33128.

May 19, 2009: Panelist/Judge, U.S. Department of Justice, Basic Criminal Trial Advocacy Seminar, National Advocacy Center (judging mock trials with young DOJ attorneys and participating in judicial panel discussions). I have no notes, transcript or recording. The address of the NAC is 1620 Pendleton Street, Columbia, SC 29201.

March 31, 2009: Panelist, University of Miami School of Law (panel discussion on judicial clerkships). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

March 20, 2009: Guest Speaker, St. Thomas University Law School (remarks about the importance of good legal writing followed by question and answer session). I have no notes, transcript or recording. The address of the law school is 16401 N.W. 37th Avenue, Miami Gardens, FL 33054.

March 7, 2009: Panelist, Hispanic National Bar Association Mid-Year Conference, "Diversity & Access to Justice" Panel and "Judicial Hot Seat" Panel (Coral Gables, Florida) (panel discussions on diversity in the justice system, access to justice, and current legal issues). I have no notes, transcript or recording. The conference was sponsored by the Hispanic National Bar Association, 1900 L Street N.W., Suite 700, Washington, DC 20036.

February 26, 2009: Panelist, University of Miami School of Law, Perspectives on Evidence (panel discussion on evidentiary issues). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

February 18, 2009: Miami-Dade County Bar Association, Lunch with the Judges (lunch with attorneys). I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

January 16, 2009: Speaker, Florida Bar Federal Practice Committee, Professionalism & Ethics (Miami, Florida) (remarks on legal ethics). I have no notes, transcript or recording. The event was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

November 21, 2008: Panelist, Southern District of Florida Bench & Bar Conference, Bankruptcy Panel, (Hollywood, Florida) (panel discussion on bankruptcy appeals). I have no notes, transcript or recording. The Conference was sponsored by the United States District Court, Southern District of Florida, 400 North Miami Avenue, Miami, FL 33128.

October 22, 2008: Speaker, Miami-Dade County Bar Association, Discovery & Professionalism (remarks about discovery and legal ethics). I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

June 20, 2008: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Boca Raton, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399

June 19, 2008: Participant, Florida Bar, Federal Judicial Roundtable (Boca Raton, Florida) (roundtable discussion with attorneys on issues related to federal court practice). I have no notes, transcript or recording, but Florida Bar news on the event is supplied. The judicial roundtable was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 13, 2008: Speaker, Hunton & Williams Competition/Antitrust Conference, Judicial Perspectives on Litigation (Palm Beach, Florida) (question and answer session about federal practice). I have no notes, transcript or recording. The event was sponsored by Hunton & Williams, 1111 Brickell Avenue, Miami, FL 33131.

May 30, 2008: Commencement Speaker, St. Brendan High School, 2950 S.W. 87th Avenue, Miami, FL 33165. Video supplied.

April 22, 2008: Acceptance Remarks, Legal Excellence Award, Florida International University College of Law (Miami, Florida) (remarks concerning acceptance of award). I have no notes, transcript or recording. The address of the law school is 11200 S.W. Eighth Street, Miami, FL 33199.

April 22, 2008: Speaker, Miami-Dade County Bar Association, Ethics & Professionalism (remarks on legal ethics). I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

March 28, 2008: Acceptance Remarks, Lawyer of the Americas Award, University of Miami Inter-American Law Review (Miami, Florida) (remarks concerning acceptance of award). I have no notes, transcript or recording. The award was presented by the University of Miami School of Law and the Inter-American Law Review, 1311 Miller Drive, Coral Gables, FL 33146.

March 25, 2008: Panelist, University of Miami School of Law, Judicial Clerkship Panel (panel discussion on federal judicial clerkships). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

March 19, 2008: Guest Speaker, Peter T. Fay Inn of Court (Miami, Florida) (question and answer session about current issues in the Southern District of

Florida). I have no notes, transcript or recording. The event was sponsored by the Peter T. Fay American Inn of Court at St. Thomas University Law School, 16401 N.W. 37th Avenue, Miami Gardens, FL 33054.

March 6, 2008: Panelist, American Bar Association White Collar Crime Institute, Judicial Panel on Sentencing Issues (Miami, Florida) (panel discussion on sentencing issues in federal white collar cases). I have no notes, transcript or recording. The event was sponsored by the ABA, 321 North Clark Street, Chicago, IL 60654.

January 30, 2008: Panelist, University of Miami School of Law, Career Opportunities Panel (panel discussion about legal careers). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

November 28, 2007: Panelist, U.S. Secret Service, Intellectual Property Crimes Conference (panel discussion on sentencing issues in intellectual property cases). I have no notes, transcript or recording. The address of the U.S. Secret Service is 10350 N.W. 112th Avenue, Miami, FL 33172.

November 15, 2007: Panelist, University of Miami School of Law, Judicial Panel on Evidence (panel discussion on evidentiary issues). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

June 29, 2007: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Orlando, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 28, 2007: Participant, Florida Bar, Federal Judicial Roundtable (Orlando, Florida) (roundtable discussion with attorneys on issues related to federal court practice). I have no notes, transcript or recording. The judicial roundtable was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 15, 2007: Speaker, Florida Bar/Florida Supreme Court Commission on Capital Cases, Judicial Views on Preparation of Federal AEDPA Habeas Filings (Orlando, Florida) (discussion of federal habeas corpus filings under AEDPA). I have no notes, transcript or recording. The seminar was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399, in conjunction with the Florida Supreme Court.

May 18, 2007: Commencement Speaker, Florida International University College of Law, 11200 S.W. Eighth Street, Miami, FL 33199. Video recording supplied.

May 16, 2007: Acceptance Remarks, Alan R. Schwartz Judicial Excellence Award, Miami-Dade County Bar Association. I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

April 19, 2007: Panelist, International Litigation & Arbitration Conference, Judicial Perspectives Panel (Miami, Florida) (panel on judicial perspectives on arbitration). I have no notes, transcript or recording. The conference was sponsored by a number of legal associations, including the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

April 17, 2007: Panelist, University of Miami School of Law, Judicial Clerkship Panel (panel discussion on federal judicial clerkships). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

April 13, 2007: Panelist, University of Miami School of Law, Criminal Justice Ethics Panel (panel discussion about ethics in criminal practice). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

March 29, 2007: Speaker, Florida Bar, Federal Court Ethics (Miami, Florida) (remarks about ethics in federal court practice). I have no notes, transcript or recording. The seminar was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32397.

March 8, 2007: Panelist, Bankruptcy Bar Association, Appellate Practice Panel (Miami, Florida) (panel discussion on bankruptcy appeals). I have no notes, transcript or recording. The event was sponsored by the Bankruptcy Bar Association, whose current president is James Moon, Esq., Meland Rusin & Budwick, P.A., 200 South Biscayne Boulevard, Suite 3000, Miami, FL 33131.

February 23, 2007: Panelist, Miami-Dade County Bar Association, Panel on Judicial Perspectives on Arbitration (panel discussion on issues related to arbitration). I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

February 8, 2007: Panelist, American Bar Association Leadership Academy Presentation, "So You Want to be a Judge?" (Miami, Florida) (panel concerning judicial careers). I have no notes, transcript or recording. The event was sponsored by the ABA, 321 North Clark Street, Chicago, IL 60654.

January 26, 2007: Guest Speaker, Miami-Dade County Bar Association, Federal Courts Committee. I do not recall the nature of my remarks. I have no notes,

transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

October 10, 2006: Lunch Speaker, Federal Bar Association (Miami, Florida). I do not recall the nature of my remarks. I have no notes, transcript or recording. The event was sponsored by the Federal Bar Association, South Florida Chapter, whose current president is Brett Barfield, Esq., 701 Brickell Avenue, Suite 300, Miami, FL 33131.

September 18, 2006: Guest Speaker, Florida International University College of Law, Ethics for Incoming Students (remarks about ethics in the legal profession). I have no notes, transcript or recording. The address of the law school is 11200 S.W. Eighth Street, Miami, FL 33199.

August 8, 2006: Panelist, Bankruptcy Bar Association, Appellate Practice Panel (Miami, Florida) (panel discussion on bankruptcy appeals). I have no notes, transcript or recording. The event was sponsored by the Bankruptcy Bar Association, whose current president is James Moon, Esq., Meland Rusin & Budwick, P.A., 200 South Biscayne Boulevard, #3000, Miami, FL 33131.

June 23, 2006: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Boca Raton, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

April 26, 2006: Acceptance Remarks, Greater Miami Jewish Federation, Community Service Award (Miami, Florida) (remarks concerning acceptance of award). I have no notes, transcript or recording. The award was presented by the Greater Miami Jewish Federation, 4200 Biscayne Boulevard, Miami, FL 33137.

March 8, 2006: Lunch Speaker, Federal Bar Association (Miami, Florida). I have no notes, transcript or recording. I do not recall the nature of my remarks. The event was sponsored by the Federal Bar Association, South Florida Chapter, whose current president is Brett Barfield, Esq., President, 701 Brickell Avenue, Suite 300, Miami, FL 33131

June 24, 2005: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Orlando, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 23, 2005: Participant, Florida Bar, Federal Judicial Roundtable (Orlando, Florida) (roundtable discussion with attorneys on issues related to federal court practice). I have no notes, transcript or recording. The judicial roundtable was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

May 6, 2005: Speaker, Carlton Fields, Program (question and answer session with young litigation associates). I have no notes, transcript or recording. The address of Carlton Fields is 100 S.E. Second Street, Miami, FL 33130.

April 28, 2005: Guest Speaker, St. Thomas University Law School. I do not recall the nature of my remarks. I have no notes, transcript or recording. The address of the law school is 16401 N.W. 37th Avenue, Miami Gardens, FL 33054.

April 19, 2005: Panelist, National Association of Legal Career Professionals, Judicial Clerkship Panel, Hyatt Regency Hotel (panel discussion on federal judicial clerkships). I have no notes, transcript or recording. The event was sponsored by the NALP, 1025 Connecticut Avenue N.W., Suite 1110, Washington, DC 20036.

April 8, 2005: Panelist, University of Miami School of Law, Criminal Justice Ethics Panel (panel on ethical issues in criminal practice). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

March 10, 2005: Speaker, Florida Bar, Ethics and Professionalism of Practicing in Federal Court. I have no notes, transcript or recording. The event was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

March 4, 2005: Speaker, United States District Court, Volunteer Lawyers Project Seminar (remarks about pro bono representation of indigent litigants through court's volunteer lawyers project). I have no notes, transcript or recording. The address of the court is 400 North Miami Avenue, Miami, FL 33128.

February 17, 2005: Panelist, St. Thomas University Law School, Judicial Clerkship Panel (panel discussion on federal judicial clerkships). I have no notes, transcript or recording. The address of the law school is 16401 N.W. 37th Avenue, Miami Gardens, FL 33054.

February 9, 2005: Participant, Miami-Dade County Bar Association, Lunch with the Judges (lunch with attorneys). I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

January 20, 2005: Guest Speaker, Florida Bar, Business Law Section (Miami, Florida). I do not recall the nature of my remarks. I have no notes, transcript or

recording. The event was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

November 30, 2004: Guest Speaker, St. Thomas University Law School. I do not recall the nature of my remarks. I have no notes, transcript or recording. The address of the law school is 16401 N.W. 37th Avenue, Miami Gardens, FL 33054.

November 10, 2004: Lunch Speaker, Federal Bar Association (Miami, Florida). I do not recall the nature of my remarks. I have no notes, transcript or recording. The event was sponsored by the Federal Bar Association, South Florida Chapter, whose current president is Brett Barfield, Esq., 701 Brickell Avenue, Suite 3000, Miami, FL 33131.

October 20, 2004: Guest Speaker, U.S. Attorney's Office, Hispanic Heritage Lunch. I do not recall the nature of my remarks. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 99 N.E. Fourth Street, Miami, FL 33132.

September 20, 2004: Guest Speaker, St. Agatha Elementary School. I do not recall the nature of my remarks. I have no notes, transcript or recording. The address of the school is 1111 S.W. 107th Avenue, Miami, FL 33174.

June 25, 2004: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Boca Raton, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 24, 2004: Participant, Florida Bar, Federal Judicial Roundtable (Boca Raton, Florida) (roundtable discussion with attorneys on issues related to federal court practice). I have no notes, transcript or recording. The judicial roundtable was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

May 27, 2004: Guest Speaker, St. Brendan High School. I do not recall the nature of my remarks. I have no notes, transcript or recording. The address of the school is 2950 S.W. 87th Avenue, Miami, FL 33165.

May 12, 2004: Guest Speaker, Miami Senior High School (remarks on *Brown v. Bd. of Education*). I have no notes, transcript or recording. The address of the school is 2450 S.W. First Street, Miami, FL 33135.

March 25, 2004: Panelist, University of Miami School of Law, Judicial Clerkship Panel (panel discussion on federal judicial clerkships). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, Florida 33146.

March 25, 2004: Guest Speaker, Miami-Dade County Bar Association, Federal Court Committee. I do not recall the nature of my remarks. I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

March 24, 2004: Guest Speaker, University of Miami School of Law, Criminal Procedure Class (remarks about federal criminal procedure). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, Florida 33146.

March 18, 2004: Panelist, U.S. Secret Service, Panel on Judicial Perspective on Electronic Crimes (panel discussion of judicial views on electronic crime prosecutions). I have no notes, transcript or recording. The address of the U.S. Secret Service is 10350 N.W. 112th Avenue, Miami, FL 33172.

March 18, 2004: Guest Speaker, Bankruptcy Bar Association (Miami, Florida). I do not recall the nature of my remarks. I have no notes, transcript or recording. The event was sponsored by the Bankruptcy Bar Association, whose current president is James Moon, Esq., Meland Rusin & Budwick, P.A., 200 South Biscayne Boulevard, #3000, Miami, FL 33131.

March 10, 2004: Guest Speaker, St. Agatha Elementary School. I do not recall the nature of my remarks. I have no notes, transcript or recording. The address of the school is 1111 S.W. 107th Avenue, Miami, FL 33174.

February 20, 2004: Panelist, U.S. Department of Justice, View from the Bench on Evidence, National Advocacy Center (panel discussion on evidentiary issues in federal criminal practice). I have no notes, transcript or recording. The address of the NAC is 1620 Pendleton Street, Columbia, SC 29201.

February 17, 2004: Guest Speaker, Miami-Dade College/Kendall Campus, Constitutional Law Class (question and answer session concerning the federal courts and constitutional law). I have no notes, transcript or recording. The address of the college is 11011 S.W. 104th Street, Miami, FL 33176.

November 25, 2003: Panelist, University of Miami School of Law, Judicial Panel on Evidence (panel discussion on evidentiary issues). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

November 13, 2003: Speaker, Florida Bar, Speaker, Ethics & Professionalism in Federal Court (Miami, Florida) (discussion of ethical issues in federal court practice). I have no notes, transcript or recording. The seminar was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

October 27, 2003: Acceptance Remarks, Distinguished Jurist Award, Cardozo Law School. I have no notes, transcript or recording. The address of the law school is 55 Fifth Avenue, New York, NY 10003.

July 23, 2003: Lunch Speaker, Miami-Dade County Defense Bar Association (Miami, Florida). I do not recall the nature of my remarks. I have no notes, transcript or recording. The website for the Miami-Dade County Defense Bar Association, www.dcdba.com, does not list a current address.

July 16, 2003: Participant, Miami-Dade County Bar Association, Young Lawyers Judicial Outreach Lunch (lunch with young attorneys). I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Suite 214, Miami, FL 33128.

June 27, 2003: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Orlando, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

May 5, 2003: Guest Speaker, Miami Senior High School (remarks during Law Week). I have no notes, transcript or recording. The address of the school is 2450 S.W. First Street, Miami, FL 33135.

May 2, 2003: Panelist, ALI/ABA, Life & Health Insurance Litigation Panel (Washington, DC) (panel discussion about judicial perspectives on ERISA cases). I have no notes, transcript or recording. The seminar was sponsored by the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104.

April 16, 2003: Panelist, University of Miami School of Law, Judicial Clerkship Panel (panel discussion about federal judicial clerkships). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

January 16, 2003: Panelist, Wilkie Ferguson, Jr. Bar Association, Federal Judicial Roundtable, Miami-Dade College/Wolfson Campus. I have no notes, transcript or recording. The judicial roundtable was sponsored by the Wilkie Ferguson, Jr. Bar Association, P.O. Box 15487, Miami, FL 33101.

October 10, 2002: Guest Speaker, U.S. Attorney's Office, Hispanic Heritage Lunch, American Legion Banquet Hall. I do not recall the nature of my remarks. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 99 N.E. Fourth Street, Miami, FL 33132.

September 27, 2002: Panelist, Florida Bar, Winning Commercial Cases (Miami, Florida) (discussion about choosing the proper forum, investigation of a case, motion practice, handling depositions, document discovery, interrogatories and requests for admission, general discovery strategy, effective trial techniques and damages and appeals). I have no notes, transcript or recording. The event was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 21, 2002: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Boca Raton, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

June 21, 2002: Participant, Florida Bar, Federal Judicial Roundtable (Boca Raton, Florida) (roundtable discussion with attorneys on issues related to federal court practice). I have no notes, transcript or recording. The judicial roundtable was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

April 26, 2002: Panelist, University of Miami School of Law, Criminal Justice Ethics Panel (panel discussion about ethics in criminal practice). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

March 7, 2002: Guest Speaker, Bankruptcy Bar Association (Miami, Florida). I do not recall the nature of my remarks. I have no notes, transcript or recording. The event was sponsored by the Bankruptcy Bar Association, whose current president is James Moon, Esq., Meland Russin & Budwick, P.A., 200 South Biscayne Boulevard, #3000, Miami, FL 33131.

January 10, 2002: Guest Speaker, Florida Bar Bankruptcy/UCC Committee (Miami, Florida). I do not recall the nature of my remarks. I have no notes, transcript or recording. The event was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

January 3, 2002: Panelist, ALI/ABA, Trademark & Unfair Competition Seminar (Orlando, Florida) (panel discussion on trademark & unfair competition litigation in federal court). I have no notes, transcript or recording. The seminar was sponsored by the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104.

December 13, 2001: Lunch Speaker, Federal Bar Association (Miami, Florida). I do not recall the nature of my remarks. I have no notes, transcript or recording. The event was sponsored by the Federal Bar Association, South Florida Chapter, whose current president is Brett Barfield, Esq., Holland & Knight, 701 Brickell Avenue, Miami, FL 33131.

July 30, 2001: Panelist, United States District Court, Pretrial Services Judicial Roundtable (Marco Island, Florida). I have no notes, transcript or recording. The judicial roundtable was sponsored by Pretrial Services, United States District Court, Southern District of Florida, 400 North Miami Avenue, Miami, FL 33128.

June 22, 2001: Panelist, Florida Bar, Media Law Conference/First Amendment Panel (Orlando, Florida) (panel discussion with attorneys, law professors, and judges concerning the Supreme Court's recent decisions involving the First Amendment or media law). I have no notes, transcript or recording. The panel was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

April 6, 2001: Guest Speaker, University of Miami School of Law, Hispanic Law Students Association. I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

March 27, 2001: Guest Speaker, Nova Southeastern University, Business Law Class (general remarks about federal court practice). I have no notes, transcript or recording. The address of the university is 3301 College Avenue, Davie, FL 33314.

September 20, 2000: Guest Speaker, University of Miami School of Law, Criminal Law Society. I do not recall the nature of my remarks. I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

July 13, 2000: Instructor/Judge, U.S. Department of Justice, Appellate Seminar, National Advocacy Center (judging moot court arguments and providing instruction to young prosecutors concerning appellate practice). I have no notes, transcript or recording. The address of the NAC is 1620 Pendleton Street, Columbia, SC 29201.

June 22, 2000: Participant, Florida Bar, Federal Judicial Roundtable (Boca Raton, Florida) (roundtable discussions with attorneys on issues related to federal court practice). I have no notes, transcript or recording. The judicial roundtable was sponsored by the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

May 17, 2000: Guest Speaker, Carver Middle School (remarks about legal careers during career week). I have no notes, transcript or recording. The address of the school is 4901 Lincoln Drive, Coral Gables, FL 33133.

May 2, 2000: Lunch with the Judges, Dade County Bar Association (lunch with young attorneys). I have no notes, transcript or recording. The address of the bar association is 123 N.W. First Avenue, Miami, FL 33128.

April 18, 2000: Guest Speaker, St. Brendan High School (remarks about legal careers during career week). I have no notes, transcript or recording. The address of the school is 2950 S.W. 87th Avenue, Miami, FL 33165.

March 3, 2000: Panelist, University of Miami School of Law, Panel on Legal Careers (question and answer session with law students about clerkships and other legal careers). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

February 18, 2000: Speaker, Broward County Federal Bar Association, Federal Court Tips, (Ft. Lauderdale, Florida) (remarks about practice in federal court). I have no notes, transcript or recording. The current president of the Federal Bar Association, Broward County Chapter, is Paul O. Lopez, Esq., 110 S.E. Sixth Street, Floor 15, Fort Lauderdale, FL 33301.

December 12, 1999: Commencement Speaker, University of Miami School of Law (commencement address concerning ethics in the practice of law). I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

November 16, 1999: Investiture Remarks, United States District Court, Southern District of Florida (Miami, Florida) (remarks at my investiture). Video recording supplied.

November 5, 1999: Seminar Speaker, Expert Testimony in Business Litigation, Wyndham Hotel (remarks about expert testimony from a judicial perspective). I have no notes, transcript or recording. I am uncertain as to which organization sponsored this seminar, but I believe it was the Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399.

October 8, 1998: I appeared (along with other attorneys) on a public access cable call-in program called "You Be the Judge." The program, which was sponsored by the Florida Association of Criminal Defense Lawyers and was broadcast by WLRN, concerned the Fourth Amendment. I appeared in place of John Schlesinger, Special Counsel for Public Affairs at the U.S. Attorney's Office, who was unable to attend. I spoke in my personal capacity as a federal prosecutor, and not on behalf of the U.S. Attorney's Office. I have no notes, transcript or recording. The address of FACDL is P.O. Box 1528, Tallahassee, FL 32302.

February 26, 1994: I and other attorneys spoke to students at the University of Miami School of Law about issues concerning capital punishment. I have no notes, transcript or recording. The address of the law school is 1311 Miller Drive, Coral Gables, FL 33146.

September 12, 1990: I spoke to the Rotary Club in Homestead, Florida, on behalf of Talbot "Sandy" D'Alemberte (one of the partners I worked for at Steel Hector

& Davis), who was scheduled to speak but was unavailable. I do not recall the subject of my remarks, and I have no notes, transcript or recording. The address of the Rotary Club is P.O. Box 901215, Homestead, FL 33090.

I have presided at several moot court appellate arguments and mock trials at the University of Miami School of Law and the Florida International University College of Law. I do not have the dates for these events. I also do not have any notes, transcripts, or recordings.

In addition to the matters listed above, while I was at Steel Hector & Davis and at the U.S. Attorney's Office I spoke at various schools in the Miami area, sometimes during career week, concerning the judicial system and aspects of the legal profession. These schools include South Dade Senior High School, Norland Senior High School, St. Brendan High School, Coral Gables Senior High School, Miami Senior High School, Belen Jesuit High School, W.R. Thomas Middle School, Drew Middle School, Annunciation Elementary School, and St. Agatha Elementary School. I do not have the dates for these events, and I have no notes, transcripts or recordings.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Responses to a Florida Bar questionnaire about courtroom practices (2005, updated July 26, 2007, and Nov. 23, 2010). Copies supplied.

Walter Villa, "'Rivalry' Match Sparked by Well Wishes," Miami Herald (Nov. 12, 2010). Copy supplied.

Press release, "Miami Law Launches Postgraduate Fellowship Program," University of Miami (Oct. 14, 2010) [quote re-printed in multiple outlets]. Copy supplied.

Molly Jeanne Alarcon, "Arc of Justice: The Representation of Women and Minorities in the American Judiciary," Woodrow Wilson School of Public and International Affairs (Apr. 7, 2010). Copy supplied.

Jan Pudlow, "Francisco R. Angones, the First Cuban-born President of the Florida Bar," The Florida Bar Journal (July 1, 2007). Copy supplied.

Marlene A. Fernandez, "The Honorable Adalberto Jordan," CABA Briefs (Winter 2006). Copy supplied.

Rene D. Harrod, "Judicial Profile: Hon. Adalberto Jordan, U.S. District Court for the Southern District of Florida," The Federal Lawyer (Sept. 2005). Copy supplied.

Mary Hladky, "Steel-ed for Success," Miami Daily Business Review (Sept. 17, 1999). Copy supplied.

Mary Jacoby, "South Florida Federal Judge Approved," St. Petersburg Times (Sept. 9, 1999). Copy supplied.

Larry Lebowitz, "No Trading of Testimony for Leniency, Judge Says," Sun-Sentinel (Aug. 5, 1998). Copy supplied.

Larry Lebowitz, "Plea Deals Handed a Setback; Testimony Blocked in Two Drug Cases," Sun-Sentinel (July 24, 1998). Copy supplied.

Eric Alan Barton, "Brother Denies Patient Assaulted, Killed Toddler," Fort Pierce News (May 15, 1998). Copy supplied.

Ronnie Greene, "$80,000 is Key to Fraud Trial of Ex-Official / Checks from Lobbyist Hidden, Prosecutors Say," Miami Herald (Feb. 1, 1993). Copy supplied.

Ronnie Greene, "Ex-Port Official Seeks Dismissal of Tax Charges," Miami Herald (Nov. 20, 1992). Copy supplied.

Teresa Lane, "Judge Allowing St. Lucie Jail Suit to Continue," Palm Beach Post (July 28, 1991). Copy supplied.

Tina Montalvo, "UM Student to Clerk for High Court," Miami Herald (May 22, 1987). Copy supplied.

In May of 1987, I was interviewed by the local Telemundo or Univision television station in Miami about my upcoming clerkship with Justice O'Connor. A portion of that interview was aired during a newscast, but I have been unable to obtain a recording.

In 1997, 1998, and 1999 I sometimes stood in as the spokesperson for the U.S. Attorney's Office when the spokesperson was ill, on vacation, or otherwise unavailable. In that capacity, I spoke to the media on a number of matters. I have done my best to locate any statements or interviews that exist in electronic databases, and those I have found are listed above.

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

I have served as a United States District Judge in the Southern District of Florida since October of 1999. I was nominated to that position by President William Clinton and confirmed by the Senate. The jurisdiction of a federal district judge is general in nature, and extends to all federal criminal cases and all civil cases in which there is federal subject-matter jurisdiction (i.e., federal question cases and diversity cases).

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

According to statistics compiled by the clerk of our court, I have tried 197 cases to verdict or judgment. This number does not include other contested evidentiary proceedings (e.g., suppression hearings, sentencing hearings, preliminary injunction hearings).

i. Of these, approximately what percent were:

jury trials:	74%
bench trials:	26%
civil proceedings:	49%
criminal proceedings:	51%

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

Please see attached list.

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

(1) *United States v. Orlansky et al.*, Case No. 03-20951-Cr-Jordan.

In this criminal case, the government charged eight defendants with wire fraud, bank fraud, conspiracy to commit wire fraud and bank fraud, and money laundering offenses related to a $160 million bank fraud scheme arising out of a factoring business and joint venture. The case was long and complex: it lasted over four years, involved a heavy motion practice, presented difficult issues relating to the competency and insanity defense of one of the lead defendants, and generated over 1,300 docket entries. *See, e.g.*, Order Granting Motions to Exclude Mental Health Experts [D.E. 625] (Feb. 24, 2006) (copy supplied). At the time of trial, this was the largest alleged bank fraud scheme in South Florida history. The trial for the four defendants who did not enter guilty pleas – including the two lead defendants – lasted over four months, making it the longest trial I have presided over. The jury convicted all four defendants on at least some of the charges, and I sentenced the two lead

defendants to 20 years in prison. The Eleventh Circuit affirmed on all issues raised in a lengthy but unpublished opinion. *See United States v. Puerto*, 2010 WL 3191765 (11th Cir. 2010).

Government Counsel:

Matthew Menchel, Esq., Kobre & Kim LLP, 2 South Biscayne Boulevard, 35th Floor, Miami, Florida 33131 (305-967-6108)

Caroline Heck Miller, Esq., Assistant U.S. Attorney, U.S. Attorney's Office, 99 N.E. Fourth Street, Miami, Florida 33132 (305-961-9432)

Defense Counsel:

Edward Shohat, Esq., Bierman Shohat & Lowey, 800 Brickell Avenue, Miami, Florida 33131 (305-358-7000)

Bruce Lehr, Esq., 1401 Brickell Avenue, Suite 910, Miami, Florida 33131 (305-377-1777)

Michael Rosen, Esq., 2937 S.W. 27th Avenue, Suite 101, Miami, Florida 33133 (305-446-6116)

Michael Zelman, Esq., 1950 West Flagler Street, Suite 407, Miami, Florida (305-358-1600)

(2) *United States v. Greenpeace, Inc.*, Case No. 03-20577-Cr-Jordan.

The government filed misdemeanor criminal charges against Greenpeace arising out of the boarding by Greenpeace members of a vessel carrying Brazilian mahogany into the Port of Miami. The case – apparently a rare prosecution of an advocacy organization – was based on 18 U.S.C. § 2279, a misdemeanor statute from the 1800s which prohibits the boarding of a vessel "about to arrive at the place of her destination . . . and before she has been completely moored." The case involved a number of difficult issues, including the interpretation and application of § 2279 to the conduct of the Greenpeace members who boarded the vessel, the availability of a jury trial for Greenpeace, and the use of a justification defense. In a pretrial order, I denied Greenpeace's motion to dismiss but concluded, as a matter of discretion, that Greenpeace should be tried by a jury. *See United States v. Greenpeace, Inc.*, 314 F. Supp. 2d 1252 (S.D. Fla. 2004).

At the close of the government's case, I granted a Rule 29 judgment of acquittal in Greenpeace's favor. I concluded that no reasonable jury could find that the Greenpeace members had violated § 2279 because the vessel was so far away from the Port of Miami at the time of the boarding. I warned Greenpeace, however, that

the statute could be enforced in the future if the organization engaged in similar activities close to the place where was a ship was to arrive.

Government Counsel:

Thomas Watts-Fitzgerald, Esq., Assistant U.S. Attorney, 99 N.E. Fourth Street, Miami, Florida 33132 (305-961-9413)

Defense Counsel:

Jane Moscowitz, Esq., 1111 Brickell Avenue, Miami, Florida 33131 (305-279-8300)

(3) *United States v. Frank*, Case No. 04-20778-Cr-Jordan.

The defendant in this case was charged with numerous criminal offenses related to his engaging in sex with minor girls in Cambodia. The case involved novel issues, including the applicability of the United States Constitution to certain interrogations and searches conducted by Cambodian law enforcement officials, and the constitutionality of 18 U.S.C. § 2423(c), which prohibits an American citizen or permanent resident from traveling in interstate commerce and engaging in a commercial sex act with a person under the age of 18. Following an evidentiary hearing, I denied the defendant's motion to suppress and held that § 2423(c) was constitutionally enacted by Congress pursuant to the Necessary and Proper Clause in order to implement a United Nations treaty that the Senate had previously ratified. *See United States v. Frank*, 486 F. Supp. 2d 1353 (S.D. Fla. 2007). The defendant was convicted after a three-week trial, which was apparently only the second child sex tourism trial in the country. On appeal, the Eleventh Circuit affirmed on all grounds in a published opinion. *See United States v. Frank*, 599 F.3d 1221 (11th Cir. 2010).

Government Counsel:

Wendy Waldron, Esq., U.S. Department of Justice, 1400 New York Avenue, N.W., Suite 1600, Washington, D.C. 20005 (202-305-2121)

Defense Counsel:

Jeffrey Feiler, Esq., 7685 S.W. 104th Street, Suite 200, Miami, Florida 33156 (305-670-7700)

(4) *Kpadeh et al. v. Emmanuel*, Case No. 09-20050-Civ-Jordan.

In this action, a number of Liberian citizens filed suit against Charles McArthur Emmanuel (aka Charles Taylor, Jr. and "Chuckie" Taylor) under the Alien Tort Statute, 28 U.S.C. § 1350, the Torture Victim Protection Act, 28 U.S.C. § 1350 Note,

Florida law, and Liberian law. The plaintiffs alleged that during a civil war in Liberia they were victims of the Liberian Anti-Terrorism Unit, which was commanded by Mr. Emmanuel, and were subjected on Mr. Emmanuel's orders to savage beatings, rapes, mutilations, and unspeakable other atrocities. Mr. Emmanuel (who had been convicted on related federal criminal charges) defaulted on liability, but chose to represent himself at a bench trial on damages following the denial of class certification. *See Kpadeh v. Emmanuel*, 261 F.R.D. 687 (S.D. Fla. 2009). At the end of the bench trial – at which the plaintiffs credibly testified about what they were subjected to by Mr. Emmanuel and the ATU – I awarded the plaintiffs a total of $22 million in compensatory damages (for physical pain, mental suffering, and medical expenses) and punitive damages. Order supplied.

Plaintiffs' Counsel:

Troy Elder, Esq., Florida International University College of Law, 11200 S.W. Eighth Street, RDB 1010, University Park, Miami, Florida 33199 (305-348-7215)

Piper Hendricks, Esq., World Organization for Human Rights, 2029 P Street, N.W., Suite 202, Washington, D.C. 20036 (202-296-5702)

Pro Se Defendant:

Charles McArthur Emmanuel, Reg. No. 76556-004, U.S.P. Marion, P.O. Box 1000, Marion, Illinois 62959 (no phone number)

(5) *United States v. Lauer et al.*, Case No. 08-20071-Cr-Jordan.

This complex case involved highly publicized criminal charges of wire fraud and conspiracy to commit mail fraud, wire fraud, and securities fraud brought against the manager of the Lancer hedge funds and others. The government alleged that this was one of the largest hedge fund fraud schemes in the history of the United States and that investors lost over $200 million. It took about three years of proceedings to get the case ready for trial, and I issued numerous orders denying the defendants' motions to dismiss the charges. *See, e.g.*, Supplemental Order on Motions to Dismiss [D.E. 975] (March 7, 2011) (copy supplied). Two defendants pled guilty, and one defendant was convicted on some charges after a separate seven-week trial in 2010. The manager and another officer of Lancer proceeded to trial in 2011. At the end of that trial, which lasted eight weeks, the jury acquitted these two defendants on all counts.

Government Counsel:

Harry Schimkat, Esq., Assistant U.S. Attorney, 99 N.E. Fourth Street, Miami, Florida 33132 (305-961-9128)

Jack Patrick, Esq., U.S. Dept. of Justice, Bond Building, 10th & Constitution Avenue, N.W., Washington, D.C. 20530 (202-514-9482)

Defense Counsel:

Michael Caruso, Esq., Deputy Chief Assistant Federal Public Defender, 150 West Flagler Street, Miami, Florida 33130 (305-530-7000 ext. 135)

Hector Flores, Esq., 169 East Flagler Street, Suite 1200, Miami, Florida 33131 (305-374-3998)

(6) *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*, Case No. 98-2300-Civ-Jordan.

This case involved an equal protection challenge by white-owned firms to sections of Miami-Dade County's Minority and Women Business Enterprise program, which set participation goals (achievable through set-asides, subcontractor goals, bid preferences, and/or selection factors) for architectural and engineering contracts. By the time the case went to trial, the Eleventh Circuit had already held that the County's MWBE program was unconstitutional as applied to certain sectors of construction contracts, *see Engineering Contractors Ass'n v. Metropolitan Dade County*, 122 F.3d 895 (11th Cir. 1997), and the County manager had told the County commissioners that according to an internal study the County had reached parity in the areas of architecture and engineering for black, Hispanic, and women-owned firms. The County manager had also recommended that the MWBE program be replaced with a Community Small Business Enterprise program, and provided the County commissioners with another memorandum recommending that no further MWBE measures be used for architectural and engineering contracts because there was parity. The County commissioners continued to vote to apply MWBE measures to architectural and engineering contracts that came before them for approval, and did not request a formal disparity study until the lawsuit had been ongoing for 18 months.

After a bench trial, I ruled that the MWBE program was unconstitutional as applied to architectural and engineering contracts, and permanently enjoined the use of MWBE measures to such contracts because the County's disparity study was seriously flawed, there was insufficient evidence of disparity to withstand strict scrutiny (as to race and ethnicity) and/or intermediate scrutiny (as to gender), and the program was not properly tailored under the respective standards. I also concluded that the County commissioners had absolute legislative immunity for voting on and enacting the MWBE program, and that they could assert (but were not entitled to) qualified immunity as to their votes to apply MWBE measures to individual contracts. I did not award the plaintiff any compensatory damages because I concluded that such damages were not adequately proven, and chose not to award any punitive damages. I warned the commissioners, however, that if they continued to apply MWBE measures to other types of contracts – there was another pending case challenging the MWBE program as applied to security services – without any evidentiary basis,

punitive damages would be a virtual certainty. *See Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*, 333 F. Supp. 2d 1305 (S.D. Fla. 2004). The County did not appeal.

Plaintiff's Counsel:

Herbert Schlanger, Esq., 230 Peachtree Street N.W., Atlanta, Georgia 30303 (404-588-1981)

Defendants' Counsel:

Robert Cuevas, Esq., Miami-Dade County Attorney, 111 N.W. First Street, Miami, Florida 33128 (305-375-5151)

(7) *Martinez et al. v. Bush*, Case No. 02-20244-Civ-Jordan (three-judge court) & *Maurer v. Florida*, Case No. 02-10028-Civ-Jordan (three-judge court).

These consolidated cases involved a number of challenges – e.g., under the United States Constitution, the Voting Rights Act, and Title VI of the Civil Rights Act – to the Florida legislature's 2002 redistricting plan following the 2000 census. I sat as a member of a three-judge district court with Eleventh Circuit Judge Gerard B. Tjoflat and United States District Judge Robert Hinkle. Our court held a two-week trial in Miami in 2002, and also convened hearings in Jacksonville and Tallahassee. In a 75-page per curiam opinion, the court rejected all of the plaintiffs' and intervenors' claims, though it concluded that the Florida legislature had intended to draw congressional districts in such a way as to favor Republicans. *See Martinez v. Bush*, 234 F. Supp. 2d 1275 (S.D. Fla. 2002) (per curiam). Judge Hinkle and I wrote concurring opinions on the political gerrymandering issue. My concurring opinion, *see id.* at 1352 (Jordan, J., concurring), which suggested to the Supreme Court that it address political gerrymandering again to clear up the confusion that existed in the lower courts, was cited by the Supreme Court in *Vieth v. Jubelirer*, 514 U.S. 267, 283 (2004). As noted in *Martinez*, there were a number of related redistricting lawsuits that were assigned to me, and some of them involved interesting issues of federal procedure. *See, e.g., Brown v. Florida*, 208 F. Supp. 2d 1344 (S.D. Fla. 2002) (removal of case by Florida secretary of state pursuant to 28 U.S.C. § 1443(2)).

Plaintiffs' and Intervenors' Counsel:

Jeremy Bash, Esq., O'Melveny & Myers, 1625 Eye Street, N.W., Washington, D.C. 20005 (202-383-5300)

Norman Powell, Esq., 17100 N.E. 19th Avenue, North Miami Beach, Florida 33162 (786-279-1600)

Thomasina Williams, Esq., Williams & Associates, 80 S.W. Eighth Street, Suite 2805, Brickell Bay Centre, Miami, Florida 33130 (305-751-8411) (last known contact information)

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Defendants' Counsel:

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James Scott, Esq., Tripp Scott, 110 S.E. Sixth Street, 15th Floor, Fort Lauderdale, Florida 33302 (954-525-7500)

Christopher Carver, Esq., Akerman Senterfitt, 1 S.E. Third Street, 25th Floor, Miami, Florida 33131 (305-982-5572)

(8) *Cave v. McDonough*, Case No. 05-14137-Civ-Jordan.

This was the first capital case I was assigned. The petitioner in this habeas corpus proceeding was sentenced to death in Florida for his involvement in the 1982 murder of a kidnapping victim. He sought to vacate his death sentence on a number of grounds, including that his counsel had rendered ineffective assistance of counsel (a) due to his misunderstanding of Florida law, (b) by not presenting certain mental health and addiction evidence, (c) in failing to perpetuate or preserve a exculpatory statement made by a co-defendant on the eve of his execution, (d) when he failed to object to an allegedly improper line of questioning, and (e) in seeking to establish a certain mitigating factor. Because the petitioner's sentence had been overturned two times, and there had been three sentencing hearings, the case required review of about 30 years' worth of transcripts, legal memoranda, and court proceedings.

I ultimately denied relief on all grounds. I concluded, under the applicable AEDPA standard, that the Florida Supreme Court had not acted unreasonably in concluding that counsel's misunderstanding of Florida law did not cause the petitioner prejudice, that counsel had not rendered deficient performance by not putting on certain mental health and addiction evidence, that the petitioner was not prejudiced due to the failure to perpetuate or preserve the co-defendant's exculpatory statement, and that counsel had not been ineffective in trying to establish a certain mitigating factor. I also ruled that, although counsel had rendered deficient performance in failing to object to certain questions by the prosecutor under Florida law, the Florida Supreme Court's conclusion that the petitioner was not prejudiced by that error was not unreasonable. I issued a certificate of appealability so that the petitioner could seek review in the Eleventh Circuit. Following oral argument, the Eleventh Circuit affirmed the denial of habeas corpus relief in a published opinion. *See Cave v. McDonough*, 2009 U.S. Dist. Lexis 130889 (S.D. Fla. 2009), *aff'd*, 638 F.3d 739 (11th Cir. 2011).

Petitioner's Counsel:

Mary Catherine Bonner, Esq., 207 S.W. 12th Court, Ft. Lauderdale, Florida 33315 (954-523-6225)

Respondent's Counsel:

Debra Rescigno, Esq., Attorney General's Office, 501 South Flagler Drive, West Palm Beach, Florida 33401 (561-659-5455)

(9) *Caracciolo v. McDonough*, Case No. 97-1139-Civ-Jordan.

This habeas corpus case arose out of the highly publicized murder of a Miami millionaire in 1986. The petitioner in this case – the alleged shooter in a contract killing ordered by the victim's wife – had pled no contest to second-degree murder charges in 1991 and had been sentenced to 40 years' imprisonment. A number of the habeas claims that the petitioner asserted were procedurally barred, but the petitioner argued that he could overcome the procedural bar by demonstrating actual innocence under cases like *Schlup v. Delo*, 513 U.S. 298 (1995). I therefore held an evidentiary hearing on the issue of actual innocence, which – given the no contest plea – essentially required a mini-trial on most of the issues relating to the murder. Over 20 witnesses testified, and numerous exhibits, including the transcript of the wife's separate trial, were introduced. After the hearing, I issued an order examining all of the evidence and concluding that the petitioner could not show that he was actually innocent so as to overcome the procedural bar on some of the claims. *See Caracciolo v. McDonough*, 456 F. Supp. 2d 1240 (S.D. Fla. 2006).

Petitioner's Counsel:

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Respondent's Counsel:

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John Kastrenakes, Florida Circuit Judge, 15th Judicial Circuit, 205 North Dixie Highway, West Palm Beach, Florida 33401 (561-659-4772)

Consuelo Maingot, Esq., Attorney General's Office, 6891 S.W. 17th Street, Plantation, Florida 33317 (954-791-8858)

(10) *Florida Transportation, Inc. v. Miami-Dade County*, Case No. 05-22637-Civ-Jordan.

In this case, brought pursuant to 42 U.S.C. § 1983, a stevedoring company challenged, on Dormant Commerce Clause grounds, a Miami-Dade County ordinance requiring special permits for stevedores at the Port of Miami. Ruling on motions for summary judgment, I concluded that Miami-Dade County had violated the Dormant Commerce Clause by applying the ordinance so that entrenched stevedores with permits had their renewal applications rubber-stamped for approval without having to compete for scarce slots at the Port. *See Florida Transportation, Inc. v. Miami-Dade County*, 757 F. Supp. 2d 1260 (S.D. Fla. 2010). In my view, the County's application of the ordinance insulated the existing stevedores from any new competition. Following the summary judgment order, I presided over a jury trial on damages. The jury awarded the stevedoring company several million dollars in damages, and I upheld that jury award against post-trial challenges. The County filed a notice of appeal, and the case is currently pending in the Eleventh Circuit.

Plaintiff's Counsel:

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Mark Journey, Esq., Brinkley Morgan, Sun Sentinel Building, 19th Floor, 200 East Las Olas Boulevard, Ft. Lauderdale, Florida 33301 (954-522-2200)

Defendant's Counsel:

Stephen Bass, Esq., Bernard Pastor, Esq., Miami-Dade County Attorney's Office, 111 N.W. First Street, Miami, Florida 33128 (305-375-5224)

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

In chronological order, the 10 most significant opinions I have written are as follows.

(1) *Dow Jones & Co. v. Kaye*, 90 F. Supp. 2d 1330 (S.D. Fla. 2000), *appeal dismissed as moot and preliminary injunction vacated*, 256 F.3d 1251 (11th Cir. 2001)

Plaintiff's Counsel:

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David Bradlow, Esq., Tribune Company, 220 East 42nd Street, New York, New York 10017 (212-210-2893)

Defendant's Counsel:

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Intervenors' Counsel:

Stanley Rosenblatt, Esq., and Susan Rosenblatt, Esq., 201 South Biscayne Boulevard, Suite 1318, Miami, Florida 33131 (305-374-6131)

(2) *United States v. Ozuna*, 129 F. Supp. 2d 1345 (S.D. Fla. 2001), *aff'd*, 48 F. App'x 739 (11th Cir. 2002)

Government Counsel:

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Defendant's Counsel:

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Migna Sanchez Llorens, Florida Circuit Judge, 11th Judicial Circuit, 1351 N.W. 12th Street, Suite 751, Miami, Florida 33125 (305-548-5734)

(3) *Hernandez v. City of Miami*, 302 F. Supp. 2d 1373 (S.D. Fla. 2004)

Plaintiff's Counsel:

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Defendant's Counsel:

Jose De Jesus Arrojo, Esq., 1350 N.W. 12th Avenue, Miami, Florida 33136 (305-547-0100)

Warren Bittner, Esq., City of Miami Attorney's Office, 444 S.W. Second Avenue, Suite 945, Miami, Florida 33130 (305-416-1800)

Ronald Cohen, Esq., 8100 Oak Lane, Suite 403, Miami Lakes, Florida 33016 (305-823-1212)

(4) *United States v. Greenpeace, Inc.*, 314 F. Supp. 2d 1373 (S.D. Fla. 2004)

Government Counsel:

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Defense Counsel:

Jane Moscowitz, Esq., 1111 Brickell Avenue, Miami, Florida 33131 (305-279-8300)

(5) *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*, 333 F. Supp. 2d 1305 (S.D. Fla. 2004)

Plaintiff's Counsel:

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Defendants' Counsel:

Robert Cuevas, Esq., Miami-Dade County Attorney, 111 N.W. First Street, Miami, Florida 33128 (305-375-5151)

(6) *Caracciolo v. McDonough*, 456 F. Supp. 2d 1240 (S.D. Fla. 2006).

Petitioner's Counsel:

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Respondent's Counsel:

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John Kastrenakes, Florida Circuit Judge, 15th Judicial Circuit, 205 North Dixie Highway, West Palm Beach, Florida 33401 (561-659-4772)

Consuelo Maingot, Esq., Attorney General's Office, 6891 S.W. 17th Street, Plantation, Florida 33317 (954-791-8858)

(7) *Stadium Books & Video, Inc. v. Miami-Dade County*, 2006 WL 2374740 (S.D. Fla. 2006), *aff'd*, 253 F. App'x 840 (11th Cir. 2007)

Plaintiff's Counsel:

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Defendant's Counsel:

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Susan Torres, Esq., Assistant U.S. Attorney, 99 N.E. Fourth Street, Miami, Florida 33132 (205-961-9331)

(8) *United States v. Frank*, 486 F. Supp. 2d 1353 (S.D. Fla. 2007), *aff'd*, 599 F.3d 1221 (11th Cir. 2010).

Government Counsel:

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Defense Counsel:

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(9) *Cave v. McDonough*, 2009 U.S. Dist. Lexis 130889 (S.D. Fla. 2009), *aff'd*, 638 F.3d 739 (11th Cir. 2011)

Petitioner's Counsel:

Mary Catherine Bonner, Esq., 207 S.W. 12th Court, Ft. Lauderdale, Florida 33315 (954-523-6225)

Respondent's Counsel:

Debra Rescigno, Esq., Attorney General's Office, 501 South Flagler Drive, West Palm Beach, Florida 33401 (561-659-5455)

(10) *Florida Transportation Service, Inc. v. Miami-Dade County*, 757 F. Supp. 2d 1260 (S.D. Fla. 2010)

Plaintiff's Counsel:

Jeffrey Crockett, Esq., Coffey Burlington, 2699 South Bayshore Drive, Penthouse, Miami, Florida 33133 (305-858-2900)

Mark Journey, Esq., Brinkley Morgan, Sun Sentinel Building, 19th Floor, 200 East Las Olas Boulevard, Ft. Lauderdale, Florida 33301 (954-522-2200)

Defendant's Counsel:

Stephen Bass, Esq., and Bernard Pastor, Esq., Miami-Dade County Attorney's Office, 111 N.W. First Street, Miami, Florida 33128 (305-375-5224)

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

To the best of my knowledge, the Supreme Court has granted certiorari in only one of my cases. In *United States v. Garcia-Rodriguez*, Case No. 01-993-Cr-Jordan, the defendants were convicted of money laundering and structuring offenses, and I sentenced them under the then-mandatory sentencing guidelines. On appeal, the Eleventh Circuit affirmed in a table decision. *See United States v. Garcia-Rodriguez*, 97 F. App'x 904 (11th Cir. 2004) (table). The Supreme Court granted certiorari, vacated the Eleventh Circuit's decision, and remanded for reconsideration in light of *Booker v. United States*, 543 U.S. 220 (2005), which had held (in an opinion issued after the sentencing hearing) that the sentencing guidelines were to be applied in an advisory fashion. *See Garcia-Rodriguez v. United States*, 543 U.S. 1122 (2005). On

remand, the Eleventh Circuit again affirmed, explaining that the defendants had not asserted on appeal that it was error to apply the guidelines as mandatory. *See United States v. Garcia-Rodriguez*, Case No. 03-10348 (11th Cir. Apr. 19, 2005).

A list of cases in which certiorari was sought and denied follows. This list may not be complete, as parties are not required to file certiorari petitions in our court docket, and our court does not always receive notification that the Supreme Court has denied certiorari.

Bacon v. Florida, Case No. 09-21559-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 09-21559-Civ (S.D. Fla.) [D.E. 31]

Schery v. United States, Case No. 09-22993-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 09-22993-Civ [D.E. 21]

United States v. Orlansky, Case No. 03-20951-Cr (S.D. Fla.), *cert. denied*, 131 S. Ct. 805 (2010)

Lafavors v. Fla. Dep't of Corr., Case No. 09-21129-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 09-21129-Civ [D.E. 15]

United States v. Ethingor, Case No. 07-20599-Cr (S.D. Fla.), *petition for cert. filed*, Oct. 19, 2010

United States v. Lewis, Case No. 08-20087-Cr (S.D. Fla.), *cert. denied*, 131 S. Ct. 282 (2010)

Manning v. Florida, Case No. 08-21601-Civ (S.D. Fla.), *cert. denied*, 131 S. Ct. 295 (2010)

United States v. Frank, Case No. 04-20778-Cr (S.D. Fla.), *cert. denied*, 131 S. Ct. 186 (2010)

United States v. Sanchez-Santana, Case No. 08-20322-Cr (S.D. Fla.), *cert. denied*, 131 S. Ct. 222 (2010)

United States v. Hernandez, Case No. 00-805-Cr (S.D. Fla.), *cert. denied*, 130 S. Ct. 1309 (2010)

Nunez v. Fla. Dep't of Corr., Case No. 07-61584-Civ (S.D. Fla.), *cert. denied sub nom. Nunez v. McNeil*, 130 S. Ct. 2348 (2010)

United States v. Lewis, Case No. 07-20567-Cr (S.D. Fla.), *cert. denied*, 130 S. Ct. 378 (2009)

Serrano v. United States, Case No. 08-20491-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 08-20491-Civ [D.E. 43]

Trainor v. United States, Case No. 06-60428-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 06-60428-Civ [D.E. 64]

United States v. Schery, Case No. 95-481-Cr (S.D. Fla.), *cert. denied*, 130 S. Ct. 336 (2009)

Sands v. Dep't of Homeland Sec., Case No. 08-21371-Civ (S.D. Fla.), *cert. denied*, 130 S. Ct. 64 (2009)

Dixon v. Miami-Dade Cnty., Case No. 05-22120-Civ (S.D. Fla.), *cert. denied*, 130 S. Ct. 152 (2009)

United States v. Gomez, Case No. 06-20592-Cr (S.D. Fla.), *cert. denied sub nom. Aviles v. United States*, 129 S. Ct. 1658 (2009), and *Bachiller v. United States*, 129 S. Ct. 1926

United States v. Puche, Case No. 00-933-Cr (S.D. Fla.), *cert. denied as explained in* Case No. 00-933-Cr [D.E. 1100]

Navarro v. Broney Auto. Repairs, Inc., Case No. 07-21014-Civ (S.D. Fla.), *cert. denied*, 129 S. Ct. 507 (2008)

Guerra v. Sec'y for Dep't of Corr., Case No. 06-22022-Civ (S.D. Fla.), *cert. denied*, 129 S. Ct. 726 (2008)

Sears v. Secy' for Dep't of Corr., Case No. 05-20011-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 05-20011-Civ [D.E. 48]

United States v. Aviles, Case No. 04-20059-Cr (S.D. Fla.), *cert. denied*, 129 S. Ct. 297 (2008)

United States v. Brandreth, Case No. 02-20831-Cr (S.D. Fla.), *cert. denied*, 128 S. Ct. 941 (2008)

Persichilli v. Comm'r of Soc. Sec. Admin., Case No. 05-61124-Civ (S.D. Fla.), *cert. denied*, 128 S. Ct. 1308 (2008)

Birotte v. Sec'y for Dep't of Corr., Case No. 05-60223-Civ (S.D. Fla.), *cert. denied*, 552 U.S. 1108 (2008)

Awala v. Clement, Case No. 07-22447-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 07-22447-Civ [D.E. 12]

United States v. Cineus, Case No. 05-60050-Cr (S.D. Fla.), *cert. denied*, 550 U.S. 976 (2007)

United States v. Evans, Case No. 02-20451-Cr (S.D. Fla.), *cert. denied*, 552 U.S. 810 (2007)

Townsend v. City of Miami, Case No. 03-21072-Civ (S.D. Fla.), *cert. denied sub. nom Sparado v. Boone*, 552 U.S. 822 (2007)

United States v. Martinez-Zapata, Case No. 05-20768-Cr (S.D. Fla.), *cert. denied*, 549 U.S. 1298 (2007)

Lans v. Stuckey, Case No. 04-22173-Civ (S.D. Fla.), *cert. denied*, 550 U.S. 936 (2007)

United States v. Serrano, Case No. 04-20306-Cr (S.D. Fla.), *cert. denied*, 549 U.S. 1237 (2007)

Baxter v. Washington, Case No. 05-23167-Civ (S.D. Fla.), *cert. denied*, 549 U.S. 1144 (2007)

Laurent v. Herkert, Case No. 04-22471-Civ (S.D. Fla.), *cert. denied*, 551 U.S. 1114 (2007)

United States v. Brickell Orthopedic, Case No. 03-21059-Civ (S.D. Fla.), *cert. denied sub. nom United States v. Metsch & Metsch, P.A.*, 549 U.S. 976 (2006)

United States v. Roa, Case No. 91-870-Cr (S.D. Fla.), *cert. denied*, 547 U.S. 1091 (2006)

United States v. Munoz, Case No. 01-1029-Cr (S.D. Fla.), *cert. denied*, 547 U.S. 1149 (2006)

Henry v. United States, Case No. 05-21656-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 05-21656-Civ [D.E. 17]

Richardson v. United States, Case No. 04-22748-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 04-22748-Civ [D.E. 40]

United States v. Giorango, Case No. 02-20645-Cr (S.D. Fla.), *cert. denied*, 546 U.S. 1090 (2006)

United States v. Tai-Ourane, Case No. 03-20809-Cr (S.D. Fla.), *cert. denied*, 546 U.S. 989 (2005)

United States v. Garcia-Rodriguez, Case No. 01-993-Cr (S.D. Fla.), *cert. denied*, 546 U.S. 971 (2005)

United States v. Soler, Case No. 00-1018-Cr (S.D. Fla.), *cert. denied*, 546 U.S. 934 (2005)

United States v. Jean-Baptiste, Case No. 02-22057-Civ (S.D. Fla.), *cert. denied*, 546 U.S. 852 (2005)

Myers v. Staten, Case No. 00- 3869-Civ (S.D. Fla.), *cert. denied*, 543 U.S. 1162 (2005)

Kingsland v. City of Miami, Case No. 99-3393-Civ (S.D. Fla.), *cert. denied*, 543 U.S. 919 (2004)

Cigna Prop. & Cas. v. Ruiz, Case No. 02-21655-Civ (S.D. Fla.), *cert. denied*, 541 U.S. 937 (2004)

Jackson v. Sec'y for Dep't of Corr., Case No. 00-1541-Civ (S.D. Fla.), *cert. denied*, 543 U.S. 961 (2004)

McGriff v. Fla. Dep't of Corr., Case No. 96-3247-Civ (S.D. Fla.), *cert. denied*, 540 U.S. 1118 (2004)

United States v. Jackson, Case No. 00-345-Cr (S.D. Fla.), *cert. denied*, 540 U.S. 975 (2003)

Errico v. Gulf Corr., Case No. 99-6295-Civ (S.D. Fla.), *cert. denied*, 540 U.S. 879 (2003)

Limonte v. Fla. Dep't of Corr., Case No. 99-534-Civ (S.D. Fla.), *cert. denied*, 538 U.S. 1037 (2003)

United States v. Taramona, Case No. 00-380-Cr (S.D. Fla.), *cert. denied*, 537 U.S. 1235 (2003)

United States v. London-Rodas, Case No. 00-1037-Cr (S.D. Fla.), *cert. denied*, 537 U.S. 916 (2002)

Tinker v. Moore, Case No. 99-405-Civ (S.D. Fla.), *cert. denied*, 534 U.S. 1144 (2002)

United States v. Venegas, Case No. 00-218-Cr (S.D. Fla.), *cert. denied*, 534 U.S. 937 (2001)

United States v. Leon, Case No. 00-95-Cr (S.D. Fla.), *cert. denied*, 534 U.S. 858 (2001)

United States v. Gaines, Case No. 99-928-Cr (S.D. Fla.), *cert. denied*, 534 U.S. 906 (2001)

Core v. Sec'y for Dep't of Corr., Case No. 98-8593-Civ (S.D. Fla.), *cert. denied*, 534 U.S. 916 (2001)

Townsend v. Miami Herald Publ'g, Case No. 98-1485-Civ (S.D. Fla.), *cert. denied*, 532 U.S. 922 (2001)

Hall v. Sec'y of Dep't of Corr., Case No. 00-7531-Civ (S.D. Fla.), *cert. denied as explained in* Case No. 00-7531-Civ [D.E. 47]

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

Delancy v. Moore, Case No. 99-1185-Civ-Jordan, Order Dismissing Petition as Time-Barred [D.E. 28] (copy supplied), *rev'd and remanded*, 246 F.3d 1328 (11th Cir. 2001). I dismissed the habeas corpus petition as untimely based on then-existing Eleventh Circuit precedent such as *Weekly v. Moore*, 204 F.3d 1083 (11th Cir. 2000). By the time the Eleventh Circuit considered the appeal, the Supreme Court had issued an opinion, *Artuz v. Bennett*, 531 U.S. 4 (2000), which altered cases like *Weekly*. The Eleventh Circuit, noting the change in governing law, reversed the dismissal and remanded for further proceedings in light of *Artuz*.

Dow Jones & Co., Inc. v. Kaye, 90 F. Supp. 2d 1397 (S.D. Fla. 2000), *appeal dismissed for lack of jurisdiction and preliminary injunction vacated as moot*, 256 F.3d 1251 (11th Cir. 2001). In an action brought pursuant to 42 U.S.C. § 1983, I ruled that a state court gag order in tobacco liability litigation was unconstitutional under the First Amendment, and enjoined enforcement of the order. On appeal, the Eleventh Circuit ruled that the state judge's appeal and the media's challenge to the gag order were moot because the state tobacco trial had ended, and the judge no longer had jurisdiction to enforce the gag order.

King v. Attorney General, Case No. 00-4216-Civ-Jordan, Order Dismissing Habeas Corpus Petition for Lack of Jurisdiction [D.E. 8] (copy supplied), *vacated and remanded*, 31 F. App'x 930 (11th Cir. 2002) (copy supplied). In this habeas corpus case I concluded that, given the language of some federal immigration provisions, there was no jurisdiction to review certain decisions made by the Attorney General. The Eleventh Circuit did not say that I was wrong, but vacated and remanded so that I could consider the effect of two Supreme Court cases that had been decided after I issued my ruling.

Gray v. ODS Technologies, Case No. 99-2808-Civ-Jordan, Order Granting Defendant's Motion for Summary Judgment and Dismissing Case for Lack of Subject-Matter Jurisdiction [D.E.. 215] (copy supplied), *vacated with instructions to enter judgment on the merits in favor of defendant*, 77 F. App'x 507 (11th Cir. 2003) (copy supplied). In this case I ruled that a certain executive incentive plan was not a "top-hat" plan under ERISA and dismissed the action for lack of subject-matter jurisdiction. The Eleventh Circuit held that I "correctly concluded that ODS [the defendant] was entitled to summary judgment, and that the plan was not covered by ERISA." But it concluded that, instead of dismissing the action, I should have entered judgment on the merits in favor of the defendant. It therefore vacated the dismissal and remanded for entry of judgment on the merits in favor of the defendant.

United States v. Pepper's Steel & Alloys, Inc., 348 F.3d 964 (11th Cir. 2003) (District Court Case No. 85-0571-Civ-Jordan). Interpreting a Florida statute, I ruled that an insured could not obtain an award of attorney's fees for trying to enforce a settlement with the insurer. I cannot find a copy of my order because the case is so old and because the order was issued at a time when the court did not have an electronic docketing system. The Eleventh Circuit – noting the uncertainty in Florida law – certified the question to the Florida Supreme Court, which later ruled that fees could be recovered by the insured under the statute. The Eleventh Circuit, based on the Florida Supreme Court's ruling, vacated my order and remanded for further proceedings.

Bonadonna v. Serrano, Case No. 99-2201-Civ-Jordan, Order Granting Summary Judgment [D.E. 53] (copy supplied), *aff'd in part and vacated in part*, 82 F. App'x 219 (11th Cir. 2003) (copy supplied). The plaintiff, a federal inmate, filed a lawsuit against a private doctor and several federal correctional employees alleging deliberate indifference to his medical needs in violation of the Eighth Amendment. I dismissed the claim against the doctor, and granted summary judgment in favor of the other defendants, agreeing with the magistrate judge that no deliberate indifference had been pled or shown. On appeal, the Eleventh Circuit affirmed in part and vacated in part. It ruled that I had properly dismissed the claim against the doctor, and that I had correctly granted summary judgment on the Eighth Amendment claim in favor of the other defendants. It also ruled, however, that I had erred in not allowing the plaintiff to amend the complaint to add, under a third-party beneficiary contract theory, the hospital where the doctor was employed. My order was therefore vacated in part and the case was remanded so that the plaintiff could file an amended complaint.

United States v. Orihuela, 320 F.3d 1302 (11th Cir. 2003) (District Court Case No. 01-794-Cr-Jordan). In this criminal appeal brought by the government, the Eleventh Circuit ruled that I had erred in interpreting a guideline provision, USSG § 2L1.2(b)(1)(A). Noting that the issue was one of first impression, the Eleventh Circuit concluded – contrary to my interpretation – that a telephone facilitation offense was a "drug trafficking offense" within the meaning of the guideline provision. It therefore vacated the sentence and remanded for resentencing. If I recall correctly, the defendant was not resentenced because he had been deported.

Sibley v. Cohen Lando, Case No. 03-21728-Civ-Jordan, Order on Motions to Dismiss and for Sanctions [D.E. 51] (copy supplied), *aff'd in part, rev'd in part, and remanded*, 92 F. App'x 782 (11th Cir. 2004) (table) (copy supplied). This case involved state law tort claims brought by a state court litigant against the state judge who had presided over his marital dissolution proceeding. The plaintiff alleged that the judge had improperly issued a writ of bodily attachment against him without ruling on a pending motion for disqualification. I ruled that there was no subject-matter jurisdiction under the *Rooker-Feldman* doctrine and that abstention was otherwise appropriate, but denied the judge's motion to restrict future filings by the plaintiff. The Eleventh Circuit concluded that *Rooker-Feldman* did not apply because the writ of bodily attachment was not a final order, and that abstention was not appropriate because the plaintiff was seeking damages. The Eleventh Circuit also ruled that I had correctly denied the judge's motion to restrict future filings.

Elan Corp. v. Andrx Pharmaceuticals, Inc., 272 F. Supp. 2d 1325 (S.D. Fla. 2002), *rev'd*, 366 F.3d 1336 (Fed. Cir. 2004). Following a bench trial in this patent infringement case, I found that the plaintiff's patent was invalid under the on-sale bar of 35 U.S.C. § 102(b) because the plaintiff had offered to sell the patented invention more than one year prior to filing its patent application. The Federal Circuit reversed. It concluded that I had incorrectly characterized a letter from the plaintiff to another company as a commercial offer to sell.

Kingsland v. City of Miami, 2003 WL 24829644 (S.D. Fla. 2003), *aff'd in part and rev'd in part*, 382 F.3d 1220 (11th Cir. 2004). In this action under 42 U.S.C. § 1983 for false arrest and malicious prosecution, I ruled that the police officers who were sued had probable cause to arrest the plaintiff and were entitled to qualified immunity. On appeal, the Eleventh Circuit affirmed as to the malicious prosecution claim, but reversed as to the false arrest claim, finding that there were factual issues as to whether there was probable cause to arrest, and concluding that the officers were not entitled to qualified immunity on that claim.

United States v. McGriff, 140 F. App'x 121 (11th Cir. 2005) (District Court Case No. 04-60044-Cr-Jordan). I sentenced the defendant at a time when the federal sentencing guidelines were mandatory. By the time the Eleventh Circuit heard the defendant's appeal, the Supreme Court had ruled that the guidelines were advisory. The Eleventh Circuit therefore vacated the sentence and remanded for resentencing.

United States v. Bollea, 144 F. App'x 69 (11th Cir. 2005) (District Court Case No. 04-20021-Cr-Jordan). I sentenced the defendant at a time when the federal sentencing guidelines were mandatory. By the time the Eleventh Circuit heard the defendant's appeal, the Supreme Court had ruled that the guidelines were advisory. The Eleventh Circuit therefore vacated the sentence and remanded for resentencing.

United States v. Vargas-Vasquez, 148 F. App'x 836 (11th Cir. 2005) (District Court Case No. 04-20282-Cr-Jordan). I sentenced the defendant at a time when the federal

sentencing guidelines were mandatory. By the time the Eleventh Circuit heard the defendant's appeal, the Supreme Court had ruled that the guidelines were advisory. The Eleventh Circuit therefore vacated the sentence and remanded for resentencing.

United States v. Joseph, 148 F. App'x 914 (11th Cir. 2005) (District Court Case No. 02-20851-Cr-Jordan). I sentenced the defendant at a time when the federal sentencing guidelines were mandatory. By the time the Eleventh Circuit heard the defendant's appeal, the Supreme Court had ruled that the guidelines were advisory. The Eleventh Circuit therefore vacated the sentence and remanded for resentencing.

United States v. Alvarez, 164 F. App'x 893 (11th Cir. 2006) (District Court Case No. 03-20641-Cr-Jordan). I sentenced the defendant at a time when the federal sentencing guidelines were mandatory. By the time the Eleventh Circuit heard the defendant's appeal, the Supreme Court had ruled that the guidelines were advisory. The Eleventh Circuit therefore vacated the sentence and remanded for resentencing.

Association for Disabled Americans v. Florida International University, 178 F. Supp. 2d 1291 (S.D. Fla. 2001), *rev'd*, 405 F.3d 954 (11th Cir. 2005). This was an action for injunctive relief against a state university for alleged violations of Title II of the ADA. I ruled, based on *Bd. of Trustees v. Garrett*, 531 U.S. 356 (2001) (holding that the Eleventh Amendment bars claim for money damages against a state under Title I of the ADA), that the Eleventh Amendment barred a claim for injunctive relief against a state university with respect to educational benefits under Title II. After I issued my ruling, the Supreme Court held in *Tennessee v. Lane*, 541 U.S. 509 (2004), that Congress could properly abrogate the states' Eleventh Amendment immunity through Title II in the context of the right to access to the courts. Based largely on the Supreme Court's intervening decision in *Lane*, the Eleventh Circuit reversed my ruling and remanded for further proceedings.

Sweet Pea Marine Ltd. v. APJ Marine, Inc., 2003 WL 25731087 (S.D. Fla. 2003), *aff'd in part and rev'd in part*, 411 F.3d 1242 (11th Cir. 2005). This litigation involved disputes under admiralty law and state law arising from the refurbishing and retrofitting of a multi-million dollar pleasure yacht. After a joint jury/bench trial, I concluded that diversity jurisdiction existed, upheld the jury's verdict on the state law claims in favor of the yacht's owner, and ruled in favor of the vendor (agreeing with the jury's advisory verdict) on the admiralty claims against the yacht's owner and the yacht itself. On appeal, the Eleventh Circuit affirmed my ruling as to jurisdiction (and therefore the judgment in favor of the owner), but set aside my ruling on the admiralty claims, finding that the vendor had presented insufficient evidence that its charges were reasonable. The case was remanded so that judgment on the admiralty claims could be entered in favor of the owner and the yacht.

Andrx Pharmaceuticals v. Elan Corp., Case No. 00-3481-Civ-Jordan, Order Granting Motion for Judgment on the Pleadings [D.E. 73] (copy supplied), *aff'd in part, rev'd in part, and remanded*, 421 F.3d 1227 (11th Cir. 2005). In this antitrust case arising out of a patent dispute, I granted the defendant's motion for judgment on the

pleadings with respect to claims under the federal and state antitrust laws. I concluded that the defendant's prior lawsuit was not a sham litigation for antitrust purposes, and that the defendant's settlement of a patent dispute with a third party – which involved cross-licenses – did not violate the antitrust laws. I also ruled that the plaintiff, because of undue delay, would not be allowed to file a second amended complaint. The Eleventh Circuit, addressing the plaintiff's appeal, affirmed in part, reversed in part, and remanded. First, it affirmed my ruling that the prior lawsuit was not a sham litigation for antitrust purposes. Second, it held that I had erred in granting judgment on the pleadings with respect to the patent settlement claim because the settlement agreement, coupled with the third party's agreement not to market, stated a claim under the federal antitrust laws. Third, it affirmed my denial of the plaintiff's motion for leave to amend.

Hernandez v. United States, Case No. 05-21381-Civ-Jordan, Final Judgment Denying Motion to Vacate [D.E. 11] (copy supplied), *vacated*, 212 F. App'x 832 (11th Cir. 2006). The movant in this case sought to set aside his conviction and sentence on a number of grounds, including a claim that his counsel had incorrectly advised him that he could not appeal due to an appeal waiver in his plea agreement. I denied the motion to vacate, agreeing with the magistrate judge on this claim that the movant had been properly advised about the scope of the appeal waiver at his change of plea hearing. The Eleventh Circuit, however, construed the movant's papers to also include a claim that counsel had not filed a notice of appeal when requested to do so, and held that this claim should not have been denied without an evidentiary hearing. It remanded as to that claim for an evidentiary hearing.

Watts v. Florida International University, 2005 WL 3730879 (S.D. Fla. 2005), *aff'd in part and rev'd in part*, 495 F.3d 1289 (11th Cir. 2007). This case, brought pursuant to 42 U.S.C. § 1983, involved the termination of a master's student from a practicum position. The student alleged that he was terminated from the practicum because of his religious beliefs and freedom of expression, and that the termination led to his dismissal from a seminar and prevented him from earning a master's degree. The student asserted a number of federal constitutional claims and 12 state law claims against the university, the university's board of trustees, the president of the university, several university instructors, the Florida board of regents, and the psychiatric facility where he was completing the practicum. I granted the defendants' motions to dismiss the federal claims, and declined to exercise supplemental jurisdiction over the state law claims. The Eleventh Circuit affirmed my dismissal of the student's free speech and due process claims. A majority of the panel, however, concluded that I should not have dismissed the student's free exercise of religion claim and that I had used the wrong standard in addressing that claim. Judge Tjoflat, dissenting in part, would have affirmed my dismissal of that claim as well because he believed the student had not adequately pled the sincerity of his religious belief. The majority remanded the case for further proceedings on that claim, and for consideration of the supplemental state law claims.

Pintado v. Miami-Dade Housing Agency, Case No. 04-22856-Civ-Jordan, Order Granting Defendant's Motion for Summary Judgment [D.E. 83] (copy supplied), *vacated*, 501 F.3d 1241 (11th Cir. 2007). The plaintiff in this case brought federal and state claims against a local housing agency in state court, and the agency removed the case to federal court. After removal, the plaintiff amended his complaint by dropping the federal claim, and I granted summary judgment in favor of the agency on the state claim. On appeal, the Eleventh Circuit, raising the issue on its own, held that the plaintiff, by voluntarily amending his complaint after removal, had eliminated any subject-matter jurisdiction: there was no longer a federal claim, and there was no diversity for the remaining state claim. The Eleventh Circuit distinguished the scenario where a federal court dismisses a federal claim after removal, and then addresses the remaining state claim through supplemental jurisdiction. It explained that here the amended complaint nullified the prior complaint and had to be assessed on its own.

United States v. Aviles, 518 F.3d 1228 (11th Cir. 2008) (District Court Case No. 04-20059-Cr-Jordan). Following a lengthy criminal trial, various defendants were convicted for their roles in a complex healthcare fraud scheme involving Medicare and private insurance companies. The defendants appealed their convictions and the government cross-appealed one of my sentencing rulings. The Eleventh Circuit affirmed on the issues raised by the defendants, but agreed with the government that I had erred in not using an ex post facto analysis to determine which guidelines applied to two of the defendants. It vacated the sentences of those two defendants and remanded for resentencing.

Hadley v. Gutierrez, Case No. 03-23170-Civ-Jordan, Order on Motion for Summary Judgment [D.E. 127] (copy supplied), *aff'd in part and rev'd in part*, 526 F.3d 1324 (11th Cir. 2008). In this action under 42 U.S.C. § 1983 for excessive force and conspiracy against two police officers, I denied the officers' motion for summary judgment, concluding that they were not entitled to qualified immunity. The officers filed an interlocutory appeal, and the Eleventh Circuit affirmed in part and reversed in part. As to one officer who had allegedly punched the plaintiff, the Eleventh Circuit ruled that I had correctly denied qualified immunity on the excessive force claim. But as to the other officer, the Eleventh Circuit ruled that he was entitled to summary judgment because he could not have anticipated or stopped the other officer's actions. The Eleventh Circuit also ruled that I had erred in not granting summary judgment in favor of the officers on the conspiracy claim.

Canal Ins. Co. v. SP Transport, Inc., Case No. 04-20031-Civ-Jordan, Order Denying Motion for Attorney's Fees and Costs [D.E. 187] (copy supplied), *rev'd*, 272 F. App'x 825 (11th Cir. 2008). This case, arising under Florida law, involved an interpretation of Fla. Stat. § 627.428(1). The question presented was whether, under the statute, a partial settlement by an insurer constituted a confession of judgment, thereby permitting an award of attorney's fees. There was no case on point in Florida, and I read the Florida precedent as not treating the partial settlement as a

confession of judgment. The Eleventh Circuit read that same precedent differently, and reversed my decision.

Orenshteyn v. Citrix Systems, Inc., 265 F. Supp. 2d 1323 (S.D. Fla. 2003) & 558 F. Supp. 2d 1251 (S.D. Fla. 2008), *aff'd in part and rev'd in part*, 341 F. App'x 621 (Fed. Cir. 2009). I ruled in this patent infringement suit that there had been no infringement of the plaintiff's patent. I also imposed sanctions on the plaintiff and his counsel. The Federal Circuit affirmed my merits ruling "of all claims and all products," except for one of the infringement claims related to the defendant's metraframe product. As to that one claim, the Federal Circuit held that there were genuine issues of fact with respect to infringement. With respect to the sanctions order, the Federal Circuit ruled that, based on an intervening Eleventh Circuit case on Rule 11, *see In re Walker*, 532 F.3d 1304 (11th Cir. 2008) (Rule 11 motion must be filed prior to final judgment so that the 21-day safe harbor provision can be effective), the defendant's motion – which was filed after final judgment – did not give the plaintiff the benefit of the 21-day safe harbor. It also ruled that the prosecution of the lawsuit by the plaintiff and his counsel was not frivolous within the meaning of 28 U.S.C. § 1927. The sanctions therefore constituted an abuse of discretion, and were vacated.

United States v. Calvo, Case No. 08-20961-Cr-Jordan, *vacated*, Eleventh Circuit Case No. 09-11820-A (11th Cir. 2009) (copy supplied). The defendant was convicted of aggravated identity theft, *see* 18 U.S.C. § 1029A, pursuant to then-existing Eleventh Circuit precedent, *see United States v. Hurtado*, 508 F.3d 603 (11th Cir. 2007), which did not require the government to prove that the defendant knew that the means of identification stolen or possessed belonged to an actual person. While the defendant's appeal was pending, the Supreme Court ruled that such proof was in fact required in a prosecution under § 1029A. *See Flores-Figueroa v. United States*, 129 S. Ct. 1886 (2009). Based on *Flores-Figueroa* and the government's concession that summary reversal was warranted, the Eleventh Circuit vacated the conviction and ordered the defendant's immediate release from custody.

Lee v. Attorney General, Case No. 07-22582-Civ-Jordan, Order Dismissing Successive Motion to Vacate [D.E. 5] (copy supplied), *vacated*, 382 F. App'x 820 (11th Cir. 2010). I dismissed the movant's motion to vacate as successive because the movant had already filed an unsuccessful motion to vacate and had not obtained Eleventh Circuit approval to file another motion to vacate. The Eleventh Circuit vacated the dismissal, ruling that with respect to the movant's prior motion to vacate in 1998, the presiding judge (another judge) had not given the movant the required warnings before construing his pro se pleading as a motion to vacate. Due to the lack of proper notice in 1998, the first motion did not qualify as a motion to vacate, and the second motion filed before me was not successive. The case was remanded for further proceedings.

Fazile v. EMC Mortgage Corp., Case No. 09-21636-Civ-Jordan, Order Dismissing Complaint [D.E. 26] (copy supplied), *aff'd in part and rev'd in part*, 382 F. App'x

833 (11th Cir. 2010). In this action by a borrower against her mortgage company, I dismissed the borrower's federal claims under RESPA, 12 U.S.C. § 2604(c), and TILA, 15 U.S.C. § 1601 et seq. On appeal, the Eleventh Circuit affirmed in all respects, with the exception of a single claim under TILA. As to that single claim (which alleged that the mortgage company had not timely rescinded the mortgage transaction), the Eleventh Circuit concluded that it was not time-barred and could be pursued.

Bank of America v. FDIC, Case No. 09-22384-Civ-Jordan, Order Granting and Extending Preliminary Injunction [D.E. 36] (copy supplied), *vacated*, 604 F.3d 1239 (11th Cir. 2010). This case involved allegations that a failed bank had committed civil theft with respect to funds belonging to Bank of America. After I issued a temporary restraining order against the failed bank, the FDIC took over the bank as receiver and sought to dissolve the restraining order pursuant to certain jurisdiction-stripping provisions in the U.S. Code. *See, e.g.*, 12 U.S.C. § 1821(j). Relying on a number of district court decisions, I ruled that § 1821(j) did not preclude injunctive relief under the circumstances because the FDIC stood in the shoes of the failed bank (which had committed civil theft) and because the failed bank had never owned the disputed funds (and held them only as a custodian). I therefore enjoined the FDIC from disposing of the disputed funds. The FDIC appealed, and the Eleventh Circuit vacated the injunction, concluding that § 1821(j) did not permit injunctive relief against the FDIC in its capacity as receiver.

Penzer v. Transportation Ins. Co., 509 F. Supp. 2d 1278 (S.D. Fla. 2007), *rev'd*, 605 F.3d 1112 (11th Cir. 2010). The question presented in this case was whether, under Florida law, a commercial liability insurance policy for "advertising injury" (i.e., "injury arising out of . . . oral or written publication that violates a person's right to privacy") provided coverage for violation of a law prohibiting unsolicited fax advertisements. The Florida courts had not addressed this question, and the decisions in other federal and state courts were split. I thought that the decisions concluding that there was no coverage were more persuasive and ruled accordingly. On appeal, the Eleventh Circuit certified the question to the Florida Supreme Court, which concluded that there was coverage under the policy language. Based on the Florida Supreme Court's decision, the Eleventh Circuit reversed my order and remanded for further proceedings.

United States v. Vera Rojas, Case No. 10-20236-Cr-Jordan, *rev'd and remanded for resentencing*, 2011 WL 262359 (11th Cir. July 6, 2011). In this criminal case, I ruled, based on the general savings statute (1 U.S.C. § 109) and certain prior decisions, that the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010), was not retroactive as to individuals who had committed offenses before the Act became effective. On appeal, the Eleventh Circuit reversed and held that the Act applied to individuals who were sentenced after its effective date, even if their conduct took place before that date. The mandate in this case has not yet issued, and as a result the decision is not yet final.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

According to statistics compiled by our clerk of court, I have presided over 5,700 cases (over 4,600 civil cases and over 1,100 criminal cases) as a district judge, and have issued thousands of orders in those cases. The great majority of those orders are unpublished, but may be found in the court's electronic docketing system (with the possible exception of cases originating in the 1980s or earlier).

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Fla. Transp. Serv. v. Miami-Dade Cnty., 757 F. Supp. 2d 1260, 2010 WL 4484094 (S.D. Fla. 2010)

United States v. Steinger, 626 F. Supp. 2d 1231 (S.D. Fla. 2009)

Seiber v. Havana Harry's II, Inc., 604 F. Supp. 2d 1361 (S.D. Fla. 2009)

Biggs v. McNeil, 2008 WL 5054342 (S.D. Fla. 2008)

Cave v. McDonough, 2009 U.S. Dist. Lexis 130889 (S.D. Fla. 2009), *aff'd*, 638 F.3d 739 (11th Cir. 2011)

United States v. Olmedo, 552 F. Supp. 2d 1347 (S.D. Fla. 2008)

United States. v. Frank, 486 F. Supp. 2d 1353 (S.D. Fla. 2007), *aff'd*, 599 F.3d 1221 (11th Cir. 2010)

Sloss Industries, Inc. v. Eurisol, 488 F.3d 922 (11th Cir. 2007)

Faculty Senate of Fla. Int'l Univ. v. Winn, 477 F. Supp. 2d 1198 (S.D. Fla. 2007)

Stadium Book & Video, Inc. v. Miami-Dade Cnty., 2006 WL 2374740 (S.D. Fla. 2006), *aff'd*, 253 F. App'x 840 (11th Cir. 2007)

Watts v. Fla. Int'l Univ., 2005 WL 3730879 (S.D. Fla. 2005), *aff'd in part, rev'd in part*, 495 F.3d 1289 (11th Cir. 2007)

United States v. Ramirez, Case No. 93-392, Order Granting Motion to Dismiss Indictment [D.E. 516] (May 6, 2004) (dismissing indictment on Sixth Amendment speedy trial grounds) (copy supplied)

Hershell Gill Consulting Eng'rs, Inc. v. Miami-Dade Cnty., 333 F. Supp. 2d 1305 (S.D. Fla. 2004)

United States v. Greenpeace, Inc., 314 F. Supp. 2d 1252 (S.D. Fla. 2004)

Hernandez v. City of Miami, 302 F. Supp. 2d 1373 (S.D. Fla. 2004)

Martinez v. Bush, 234 F. Supp. 2d 1275, 1352 (S.D. Fla. 2002) (three-judge court) (Jordan, J., concurring)

Ass'n for Disabled Ams. v. Fla. Int'l Univ., 178 F. Supp. 2d 1291 (S.D. Fla. 2001), *rev'd*, 405 F.3d 954 (11th Cir. 2005)

Owens v. City of Fort Lauderdale, 174 F. Supp. 2d 1282 (S.D. Fla. 2001)

Owens v. City of Fort Lauderdale, 174 F. Supp. 2d 1298 (S.D. Fla. 2001)

Card v. Miami-Dade Cnty., 147 F. Supp. 2d 1334 (S.D. Fla. 2001)

United States v. Ozuna, 129 F. Supp. 2d 1345 (S.D. Fla. 2001), *aff'd*, 48 F. App'x 739 (11th Cir. 2002)

Williams v. Florida, 109 F. Supp. 2d 1372 (S.D. Fla. 2000), *aff'd*, 273 F.3d 1114 (11th Cir. 2001)

Kruger v. Jenne, 164 F. Supp. 2d 1330 (S.D. Fla. 2000)

Dow Jones & Co. v. Kaye, 90 F. Supp. 2d 1347 (S.D. Fla. 2000), *vacated*, 256 F.3d 1251 (11th Cir. 2001)

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

Hollis v. Florida State University, 259 F.3d 1295 (11th Cir. 2001) (Jordan, J.) (majority opinion addressing venue following removal)

La Grasta v. First Union Securities, Inc., 358 F.3d 840 (11th Cir. 2004) (Jordan, J.) (majority opinion concerning dismissal of securities fraud case on statute of limitations grounds)

Gares v. Allstate Ins. Co., 365 F.3d 990 (11th Cir. 2004) (Jordan, J.) (majority opinion analyzing question about uninsured motorist coverage under Florida law)

Peat, Inc. v. Vanguard Research, Inc., 378 F.3d 1154 (11th Cir. 2004) (Jordan, J.) (majority opinion addressing introduction of summary exhibits under Federal Rule of Evidence 1006)

In re Crow, 394 F.3d 918 (11th Cir. 2004) (Jordan, J.) (per curiam opinion addressing Eleventh Amendment immunity issues in bankruptcy setting)

Scott v. Taylor, 405 F.3d 1251, 1257 (11th Cir. 2005) (Jordan, J., concurring) (concurring opinion criticizing prior Eleventh Circuit precedent for addressing legislative immunity before insuring that plaintiff has Article III standing)

Alim v. Gonzalez, 446 F.3d 1239 (11th Cir. 2006) (Jordan, J.) (majority opinion concerning issues raised in petition for review from decision of Board of Immigration Appeals)

Williams v. Bd. of Regents of University System of Georgia, 477 F.3d 1282, 1304 (11th Cir. 2007) (Jordan, J., concurring) (concurring opinion agreeing that female plaintiff's sexual harassment claims against a university – based on alleged sexual assault and rape by fellow students – survived a motion to dismiss)

In re Poe, 477 F.3d 1317 (11th Cir. 2007) (Jordan, J.) (majority opinion interpreting Alabama's redemption statute in context of bankruptcy case)

Cmty. State Bank v. Strong, 485 F.3d 597, 613 (11th Cir. 2007) (Marcus, J., joined by Jordan, J., concurring), *remanded to panel for reconsideration in light of recent Supreme Court decision*, 565 F.3d 1305 (11th Cir. 2009) (*en banc*)

Sloss Industries Corp. v. Eurisol, 488 F.3d 922 (11th Cir. 2007) (Jordan, J.) (majority opinion addressing exercise of personal jurisdiction over French company in breach of contract action, and company's motions to set aside a default judgment)

Burton v. Hillsborough Cnty., 181 F. App'x 829 (11th Cir. 2006) [Jordan, J.] (per curiam opinion in FLSA case)

United States v. Green, 177 F. App'x 934 (11th Cir. 2006) [Jordan, J.] (per curiam opinion reversing sentence in narcotics case under *Booker*)

United States v. Garza, 236 F. App'x 468 (11th Cir. 2006) [Jordan, J.] (per curiam opinion addressing various issues in narcotics case)

United States v. Terrell, 141 F. App'x 849 (11th Cir. 2005) [Jordan, J.] (per curiam opinion addressing motion to vacate under 28 U.S.C. § 2255)

Carl v. Finger, 88 F. App'x 381 (11th Cir. 2003) [Jordan, J.] (unpublished table decision) (per curiam opinion addressing various issues in breach of warranty case under Georgia law)

United States v. Tolley, 85 F. App'x 725 (11th Cir. 2003) [Jordan, J.] (unpublished table decision) (per curiam opinion reversing sentence in money laundering case)

United States v. Williams, 268 F.3d 1066 (11th Cir. 2001) [Jordan, J.] (unpublished table decision) (per curiam opinion affirming sentence in narcotics case)

Baldwin v. Blue Cross/Blue Shield of Ala., 480 F.3d 1287 (11th Cir. 2007) (Carnes, J.)

United States v. Street, 472 F.3d 1298 (11th Cir. 2006) (Carnes, J.)

United States v. Thompson, 473 F.3d 1137 (11th Cir. 2006) (Carnes, J.)

United States v. Skanska USA Bldg., 209 F. App'x 880 (11th Cir. 2006) (per curiam)

Elend v. Basham, 471 F.3d 1199 (11th Cir. 2006) (Marcus, J.)

Mitchell-Proffitt Co. v. Eagle, Case No. 05-17036 (11th Cir. 2006) (per curiam) [remanded]

Mitchell v. Hillsborough Cnty., 468 F.3d 1276 (11th Cir. 2006) (Tjoflat, J.)

Clemons v. Ala. Dep't of Human Res., 201 F. App'x 715 (11th Cir. 2006) (per curiam)

Thompson v. Smith, 173 F. App'x 729 (11th Cir. 2006) (Kravitch, J.)

United States v. Monsivais-Ortiz, 154 F. App'x 758 (11th Cir. 2005) (per curiam)

United States v. Bailey, 147 F. App'x 154 (11th Cir. 2005) (per curiam)

Mesadieu v. Llorca, 153 F. App'x 669 (11th Cir. 2005) (per curiam)

United States v. Leal, Case No. 04-13812 (11th Cir. 2005) (per curiam) [appeal dismissed]

Mims v. Cagle Foods JV, LLC, 148 F. App'x 762 (11th Cir. 2005) (per curiam)

Konikov v. Orange Cnty., 410 F.3d 1317 (11th Cir. 2005) (per curiam)

Nelson v. Fulton Cnty., 129 F. App'x 598 (11th Cir. 2005) (unpublished table decision)

In re Thomas, 394 F.3d 918 (11th Cir. 2004) (per curiam)

Washington v. Tillman, 127 F. App'x 470 (11th Cir. 2004) (unpublished table decision)

Hulsey v. Pride Rests., LLC, 367 F.3d 1238 (11th Cir. 2004) (Carnes, J.)

Boone v. Health Strategies, Inc., 97 F. App'x 905 (11th Cir. 2004) (unpublished table decision)

Britton v. Health Strategies, Inc., 97 F. App'x 905 (11th Cir. 2004) (unpublished table decision)

Ingram v. Health Strategies, Inc., 97 F. App'x 905 (11th Cir. 2004) (unpublished table decision)

Matthews v. Health Strategies, Inc., 97 F. App'x 905 (11th Cir. 2004) (unpublished table decision)

Butcher v. United States, 368 F.3d 1290 (11th Cir. 2004) (Carnes, J.)

Washington v. Rampulla, 88 F. App'x 390 (11th Cir. 2003) (unpublished table decision)

Cast Steel Prods. v. Admiral Ins., 348 F.3d 1298 (11th Cir. 2003) (Fay, J.)

City of Jacksonville v. Dep't of the Navy, 348 F.3d 1307 (11th Cir. 2003) (Fay, J.)

Sherwood v. Crosby, 87 F. App'x 712 (11th Cir. 2003) (unpublished table decision)

E.S. v. Sch. Bd. of Lee Cnty., 87 F .App'x 711 (11th Cir. 2003) (unpublished table decision)

Huang Gang Wei v. INS, Case No. 02-12458 (11th Cir. 2003) (unpublished table decision) [appeal dismissed as moot]

Roberts v. Sutton, 90 F. App'x 381 (11th Cir. 2003) (unpublished table decision)

United States v. Holloway, Case No. 00-15408 (11th Cir. 2003) (unpublished table decision)

United States v. Watson, 90 F. App'x (11th Cir. 2003) (unpublished table decision)

Rodriguez v. Farrell, 280 F.3d 1341 (11th Cir. 2002) (Edmondson, J.)

Gillan v. Noram Inv., 263 F.3d 168 (11th Cir. 2001) (unpublished table decision)

Gilchrist Timber Co. v. ITT Rayonier, 268 F.3d 1065 (11th Cir. 2001) (unpublished table decision)

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system

by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The judges on our court can give the clerk's office a list of individuals and entities in whose cases we would recuse. I have provided such a list to the clerk's office, which provides automated conflict/recusal checks by email to ensure that no cases are missed. As a general matter, I recuse in cases where an objective, disinterested, and fully informed lay observer would entertain a significant doubt about my impartiality. *See* 28 U.S.C. §§ 144, 455.

I have recused *sua sponte* from the following cases:

(i) Cases involving the University of Miami and Florida International University, where I teach as an adjunct professor. This includes cases where a professor appeared as lead counsel through a clinic or similar legal program supported by either university.

Cruz v. Holder, Case No. 11-21343-Civ (S.D. Fla.)

Watts v. Fla. Int'l Univ., Case No. 02-601990-Civ (S.D. Fla.)

Faculty Senate of Fla. Int'l Univ. v. Winn, Case No. 06-21513 (S.D. Fla.)

Univ. of Miami v. Downrite Engineering Corp., Case No. 06-22431-Civ (S.D. Fla.)

United States v. Univ. of Miami, Case No. 06-22000-Civ (S.D. Fla.)

Sotolongo v. Univ. of Miami, Case No. 06-21635-Civ (S.D. Fla.)

Moore v. Univ. of Miami, Case No. 06-21398-Civ (S.D. Fla.)

Benitez v. Univ. of Miami, Case No. 05-21334-Civ (S.D. Fla.)

Kuljis v. Univ. of Miami, Case No. 04-20506-Civ (S.D. Fla.)

Certification Bd. for Sterile Processing & Distr. v. Berlant, Case No. 03-22299-Civ (S.D. Fla.)

Siegel v. Univ. of Miami, Case No. 02-21351-Civ (S.D. Fla.)

Rumph v. Univ. of Miami, Case No. 00-1536-Civ (S.D. Fla.)

(ii) Cases where a former law clerk of mine appeared as counsel of record and was primarily responsible for the litigation.

Richardson v. Astrue, Case No. 11-21255-Civ (S.D. Fla.)

Rodriguez v. Miami-Dade Cnty., Case No. 11-20680-Civ (S.D. Fla.)

Iqbal v. Holder, Case No. 11-20675-Civ (S.D. Fla.)

United States v. Chen, Case No. 10-23489-Mc (S.D. Fla.)

Hilliman v. Comm'r of Soc. Sec. Admin., Case No. 10-60578-Civ (S.D. Fla.)

United States v. Verissino, Case No. 10-20163-Civ (S.D. Fla.)

United States v. McFadden, Case No. 09-21034-Cr (S.D. Fla.)

Sanchez v. Obando-Echeverry, Case No. 09-21743-Civ (S.D. Fla.)

Jessup v. Miami-Dade Cnty., Case No. 08-21571-Civ (S.D. Fla.)

Corp. Fin. v. Principal Grp., Inc., Case No. 05-20595-Civ (S.D. Fla.)

(iii) Cases where the City of Hialeah or its employees were litigants because my brother-in-law works for the City as a firefighter and paramedic.

Coulson v. City of Hialeah, Case No. 09-22911-Civ (S.D. Fla.)

Sanchez v. Hialeah Police Dep't, Case No. 07-21139-Civ (S.D. Fla.)

Letizia v. City of Hialeah, Case No. 05-23265-Civ (S.D. Fla.)

Mitchell v. Resolve Fire & Hazard Response, Inc., Case No. 05-21374-Civ (S.D. Fla.)

Vasquez v. Hialeah Hous. Auth., Case No. 04-21469-Civ (S.D. Fla.)

Bustamante v. Bolanos, Case No. 02-20956-Civ (S.D. Fla.)

Llarena v. Hialeah Police Dept., Case No. 98-00763-Civ (S.D. Fla.)

Rolando Fernandez, et al. v. City of Hialeah, et al., Case No. 02-20505-Civ (S.D. Fla.)

(iv) Cases pending in the United States Attorney's Office prior to October 1, 1999, and cases involving motions to vacate when the underlying conviction stemmed from federal charges filed prior to October 1, 1999.

Biondolillo v. Myer, Case No. 05-21014-Civ (S.D. Fla.)

Ryman v. United States, Case No. 00-1262-Civ (S.D. Fla.)

United States v. Vanegas-Vera, Case No. 98-663-Civ (S.D. Fla.)

Guzman v. United States, Case No. 02-22515-Civ (S.D. Fla.)

Vanegas-Vera v. United States, Case No. 02-21028-Civ (S.D. Fla.)

United States v. Cole, Case No. 99-00926-Cr (S.D. Fla.)

United States v. Neusmeyer, Case No. 00-0032-Cr (S.D. Fla.)

United States v. Camacho, et al., Case No. 90-00399-Cr (S.D. Fla.)

United States v. Maximov, Case No. 00-181-Cr (S.D. Fla.)

United States v. Mascaro, Case No. 00-0201-Cr (S.D. Fla.)

United States v. Allen, Case No. 00-0213-Cr (S.D. Fla.)

United States v. Gomez, Case No. 00-00214-Cr (S.D. Fla.)

Villa-Arteaga v. United States, Case No. 00-583-Cr (S.D. Fla.)

United States v. $334,200 in U.S. Currency, Case No. 00-01183-Civ (S.D. Fla.)

United States v. Ceruelos, Case No. 00-0290-Cr (S.D. Fla.)

United States v. Torres-Perez, Case No. 00-410-Cr (S.D. Fla.)

United States v. Maragni, et al., Case No. 00-6154-Cr (S.D. Fla.)

United States v. Carmel, Case No. 00-0686-Cr (S.D. Fla.)

United States v. Dearmas, Case No. 00-0848-Cr (S.D. Fla.)

United States v. Salazar-Grillo, Case No. 00-916-Cr (S.D. Fla.)

United States v. Vazquez, Case No. 00-1011-Cr (S.D. Fla.)

United States v. Simon, Case No. 00-0969-Cr (S.D. Fla.)

United States v. Tripoli, et al., Case No. 01-00010-Cr (S.D. Fla.)

Brown v. United States, Case No. 01-0249-Civ (S.D. Fla.)

United States v. Acosta, et al., Case No. 01-0130-Cr (S.D. Fla.)

United States v. Matino, et al., Case No. 01-455-Cr (S.D. Fla.)

United States v. Luis Flores, Case No. 01-0996-Cr (S.D. Fla.)

United States v. Flores, Case No. 01-00996-Civ (S.D. Fla.)

King v. Ashcroft, Case No. 00-4216-Civ (S.D. Fla.)

United States v. Jimenez-Ceballo, Case No. 83-01013-Cr (S.D. Fla.)

(v) Cases where at the time I owned stock in a corporate entity that was a litigant.

GE Capital Assurance Co. v. Alonso, Case No. 05-21582-Civ (S.D. Fla.)

Allen v. Howmedica Leibinger, Inc., Case No. 02-60293-Civ (S.D. Fla.)

De Reus v. American Express Travel Related Services Co. Inc., Case No. 02-60113-Civ (S.D. Fla.)

Robles v. Center for Claims Resolution, et al., Case No. 01-34338-Civ (S.D. Fla.)

Lopez v. GE Capital Consumer Card Co., Case No. 00-4828-Civ (S.D. Fla.)

(vi) Cases where I had a strong, personal relationship with an attorney; someone related to me or my wife was a party, attorney, or important witness; or a former client was going to be a witness at a hearing in which I had to determine credibility. (The clerk's office has a list of certain individuals and entities for

whom I recuse automatically, and most of the recusals below are based upon that list.)

Am. Airlines, Inc. v. Am. Assist Travel Servs., Case No. 08-23476-Civ (S.D. Fla.)

Pointpay Int'l, Inc. v. Ingencio, Case No. 08-21724-Civ (S.D. Fla.)

Walker v. Walden, Case No. 08-81434-Civ (S.D. Fla.)

Future Media Architects, Inc. v. Ideastream Consumer, Case No. 08-60496-Civ (S.D. Fla.)

SM Licensing Corp. v. U.S. Med. Care Holdings, Case No. 07-20293-Civ (S.D. Fla.)

In re Diagnostic Inst. of Fla., Case No. 07-21885-Civ (S.D. Fla.)

United States v. Martinez, Case No. 05-20877-Cr (S.D. Fla.)

Goldberg v. Wallace, Case No. 04-22526-Civ (S.D. Fla.)

United States v. Garcia, Case No. 03-20728-Cr (S.D. Fla.)

Donovan v. Noven Pharm., Case No. 03-22120-Civ (S.D. Fla.)

Bank Espirito Santo Int'l v. E.S. Bankest LC, Case No. 03-22112-Civ (S.D. Fla.)

Sheridan Healthcare, Inc. v. Aetna Inc., Case No. 03-60779-Civ (S.D. Fla.)

Freeman v. Delgado, Case No. 03-21020-Civ (S.D. Fla.)

Advocating Disability Rights, Inc., et al. v. Suntrust Bank, et al., Case No. 01-1599-Civ (S.D. Fla.)

Certain Underwriters Subscribing Certificate v. Art Depot, et al., Case No. 01-00138-Civ (S.D. Fla.)

Executive Risk Indemnity, Inc. v. Alvarez, et al., Case No. 01-2443-Civ (S.D. Fla.)

Ripepi v. Concentra Health Services, Case No. 00-6695-Civ (S.D. Fla.)

LTU International Airways (USA), Inc. v. Air Namibia (PTY) Limited, Case No. 00-2742-Civ (S.D. Fla.)

Stevens, et al. v. Miami-Dade School Board, Case No. 00-2124-Civ (S.D. Fla.)

American Dynasty Surplus Lines Ins. Co. v. Lennar Corp., Case No. 00-01812-Civ (S.D. Fla.)

Palmer v. Dufresne, Case No. 00-2029-Civ (S.D. Fla.)

National Labor Relations Board v. Goya Foods of Florida, Case No. 00-01650-Civ (S.D. Fla.)

The Marist Brothers of the Schools, Inc. v. The School Board of Miami-Dade County, et al., Case No. 99-3258-Civ (S.D. Fla.)

Sheffield, et al v. FAU Restaurant Corp., Case No. 99-03108-Civ (S.D. Fla.)

(vii) Cases where I had previously represented one of the parties in similar matters as an attorney.

Hattaway v. E.I. Dupont de Nemours and Co., Case No. 00-00745-Civ (S.D. Fla.)

Farm Op, Inc. v. E.I. Dupont de Nemours and Co., Case No. 00-2771-Civ (S.D. Fla.)

(viii) Cases where the Archdiocese of Miami was a litigant, because my wife was and is employed as a high-school teacher by the Archdiocese.

Beauvil v. Catholic Charities of the Archdiocese of Miami, Case No. 07-22587-Civ (S.D. Fla.)

Rodriguez v. Mercy Hosp., Inc., Case No. 02-21886-Civ (S.D. Fla.)

(ix) Cases where I believed my impartiality might reasonably be questioned because, for example, I had personal knowledge about the case, or because a pro se litigant had brought similar claims against me.

McGuire v. Clerk of the Court, Case No. 04-20877-Civ (S.D. Fla.). Mr. McGuire brought an action in state court, which was removed, to recover fees from the clerk of court for his work as an expert witness in another case before me. Because a representative of the clerk of the court came to see me concerning Mr. McGuire's claims before they were removed, I felt uncomfortable presiding over the case and recused myself – despite the fact that both parties had no objections to my staying on as the judge.

May v. Moreno, et al., Case No. 00-4119-Civ (S.D. Fla.). I recused in this case because Mr. May's suit – which asserted claims against a district judge in the Central District of California – was similar to two actions he had filed against me arising from rulings I issued against him in his other cases. Mr. May was

proceeding *pro se*, and filed dozens of lawsuits, including actions against judges who ruled against him.

I have denied motions for recusal or disqualification in the following cases:

(i) *Driessen v. Christiani, et al.*, Case No. 11-20910-Civ-Jordan (S.D. Fla.). Ms. Driessen, proceeding *pro se*, filed an affidavit of bias, which I construed as a motion to recuse under 28 U.S.C. §§ 144 and 455(a). She argued that I was biased based on my rulings in another case over which I presided (and in which she was a defendant). She also noted that one of the defendants she had sued (a state court judge) was of Cuban heritage, like me. I denied Ms. Driessen's motion, finding that her affidavit failed to allege facts that would convince a reasonable person that bias actually existed. *See Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000).

(ii) *Rodriguez v. Brown, et al.*, Case No. 10-21529-Civ-Jordan (S.D. Fla.). Mr. Rodriguez, proceeding *pro se*, argued that I had improperly dismissed his complaint without prejudice. Based on the language he used, I construed Mr. Rodriguez's motion as one to recuse under 28 U.S.C. § 455(a). I denied the motion because "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *See United States v. Amedeo*, 487 F.3d 823, 828 (11th Cir. 2007).

(iii) *Aviles v. United States*, Case No. 10-20725-Civ-Jordan (S.D. Fla.). Mr. Aviles, who was convicted of narcotics offenses, brought a motion to vacate his conviction on a *pro se* basis. He moved to recuse me under 28 U.S.C. §§ 144 and 455(a) because I was allegedly biased against him and his co-defendants during his trial, based on rulings and statements I had made during the trial. Because my previous rulings and statements did not form a viable basis for recusal, I did not recuse.

(iv) *United States v. Steinger, et al.*, Case No. 08-21158-Cr-Jordan (S.D. Fla.). Mr. Steinger and Mr. Steiner – both accused of engaging in a viatical fraud scheme – moved to disqualify me (and all other judges in the Southern District of Florida) under 28 U.S.C. § 455(a). Two other defendants joined the motion, but a fifth defendant did not. The basis for their motion was that all the judges in district had ties to current and former public officials whom an individual, Mr. Mendelhson, had claimed to the defendants he could bribe in exchange for their efforts to dissuade then-U.S. Attorney Alexander Acosta from bringing federal charges against them. Among the public officials named by Mr. Mendelhson was Paul C. Huck, Jr., the son of U.S. District Judge Paul Huck. The Department of Justice's Public Integrity Section eventually charged Mr. Mendelhson with mail and wire fraud (and he pled guilty to the charges), but it found that his story regarding his dealings with current and former public officials was completely fabricated.

I limited my consideration of the defendants' recusal motion to myself, and referred the motion to recuse all of the district's other judges to the district's chief judge. I found that there was no reason for me, or any of the district's judges, to be biased against the defendants since it was not them, but Mr. Mendelsohn, whose actions would create any semblance of partiality, and also because it was ultimately uncovered that the entire story was fabricated.

(v) *Thompson v. The Florida Bar*, Case No. 07-21256-Civ-Jordan (S.D. Fla.). Mr. Thompson, proceeding *pro se*, moved to recuse me over a dozen times from his case. I denied all of the motions. For example, in one instance, Mr. Thompson suggested that an order to show cause that I issued – due to his having submitted pornographic images in a public court filing – showed that I was not impartial. I construed this as a motion to recuse under 28 U.S.C. § 455(a). I found that the order to show cause was warranted in light of the graphic images filed by Mr. Thompson, and that – though I had not yet sanctioned him or held him in contempt – any decision to sanction him based on that conduct would not demonstrate any impartiality. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion").

On another occasion, Mr. Thompson moved for relief from an order dismissing his case against the Florida Bar under Rule 60(b)(6). He argued that I was biased as a result of my participation in public seminars and speaking engagements for the Florida Bar. Among other reasons, I denied the motion because there was nothing improper or extraordinary about my participation in these events which would require that I disturb the finality of the judgment. *See e.g., Hirsch v. Justices of the Supreme Court of California*, 67 F.3d 708, 715 (9th Cir. 1995); *Hu v. American Bar Association*, 2009 WL 1796441, *1 (7th Cir. 2009). Mr. Thompson has been permanently disbarred by the Florida Bar.

(vi) *Barnes v. Home Equity Mortgage Corp.*, Case No. 07-60650-Civ-Jordan (S.D. Fla.). Mr. Barnes moved to recuse me from the case because one of my law clerks had been offered employment by the law firm representing one of the litigants. But under Eleventh Circuit precedent, in this scenario I was only required to isolate that law clerk from working on the matter, which I had done. I denied his motion to the extent it sought my recusal.

(vii) *Copeland, et al. v. Schwartz*, Case No. 07-60818-Civ-Jordan (S.D. Fla.). After the case had been thoroughly litigated at both the trial level and in the Eleventh Circuit, Ms. Copeland, proceeding *pro se*, moved to recuse me. Because the case had been exhaustively tried, and had been resolved, I denied her motion.

(viii) *Awala v. Levi, et al.*, Case No. 06-21014-Civ-Jordan (S.D. Fla.). I denied Mr. Awala's motion to recuse as moot because it was filed after the case had been dismissed and closed.

(ix) *Pintado v. Miami-Dade Housing Agency*, Case No. 04-22856-Civ-Jordan (S.D. Fla.). Mr. Pintado moved to disqualify me for bias under 28 U.S.C. § 144 primarily based on an order I had issued. In that order, I had incorrectly ruled that his Rule 59(e) motion was untimely, and thereby construed it as a Rule 60 motion, which I ultimately denied. But I vacated that erroneous order, and thus, cured any effect it had on Mr. Pintado's right to file a timely appeal. In fact, Mr. Pintado was able to file an appeal in the Eleventh Circuit. Mr. Pintado also argued that I should have been disqualified because counsel for the County and I had a mutual friend, also an attorney, in common. But he did not provide any case law suggesting that such a mutual third-party friendship is proper grounds for disqualification under § 144. Finally, I found that, to the extent Mr. Pintando sought to disqualify me based on my rulings against him on summary judgment or his post-trial motion, his argument did not have any merit.

(x) *United States v. Prada*, Case No. 04-20446-Cr-Jordan (S.D. Fla.). Mr. Prada, a criminal defendant facing narcotics trafficking charges, moved on a *pro se* basis to disqualify me for various rulings entered in the case. His reasons included that I "thwarted" a refund that he was supposedly owed by his former counsel; that I improperly rejected "affidavits" which he had submitted regarding the applicable law; and that I failed to provide him access to all grand jury transcripts. I denied Mr. Prada's motion because the reasons he offered for my disqualification were invalid and did not warrant recusal or disqualification under 28 U.S.C. § 455(a).

(xi) *Massachusetts Mutual Life Ins. Co. v. May*, Case No. 99-06774-Civ-Jordan (S.D. Fla.). Ms. May moved to recuse me under 28 U.S.C. § 455(a) because – while working in private practice at Steel Hector & Davis – I had represented Massachusetts Mutual in matters unrelated to her litigation. I denied the motion because a judge's previous representation of a party in an unrelated matter, or a judge's previous employment with a law firm representing a party before him, are not grounds for recusal under Eleventh Circuit and Supreme Court precedent.

(xii) *Azubko v. Commissioner of Police for the City of Boston, et al.*, Case No. 04-21072-Civ-Jordan (S.D. Fla.). Mr. Azubko, proceeding *pro se*, filed a document entitled "Plaintiff's Complaint Against Judge Jordan," which I construed as a motion to recuse. I denied the motion as moot because the case had already been closed for several months prior to the filing of the motion.

(xiii) *Lans v. Stuckey, et al.*, Case No. 04-22173-Civ Jordan (S.D. Fla.). Mr. Lans, proceeding *pro se*, moved to recuse me after I entered judgment in favor of the defendants following a bench trial. Mr. Lans contended that I was biased because I am Hispanic (like some of the defendants and their counsel) and because of prior rulings that I made against him. I found that neither reason was valid as a matter of law.

(xiv) *Stahl v. United States*, Case No. 07-20631-Civ-Jordan (S.D. Fla.). Mr. Stahl filed an "Emergency Health Letter," which I construed as a motion to recuse

under 28 U.S.C. § 455(a). Because the apparent basis for his motion was that I had ruled against him in part on summary judgment, I denied the motion.

(xv) *Awala v. Zloch*, Case No. 07-20863-Civ-Jordan (S.D. Fla.). In this case Mr. Awala sued all of the active and senior judges in the district – myself included – some of whom had issued rulings in his pro se cases. Although Mr. Awala did not raise the issue, I *sua sponte* determined that recusal was not warranted because of the rule of necessity, because the case was being dismissed without prejudice for lack of prosecution (i.e., Mr. Awala's failure to take any action in 18 months), and because I did not have to address the merits. In a footnote, I explained that recusal might have been warranted if the merits had to be reached.

The following is a motion for recusal that I have granted:

Comm-Lease International Limited, et al. v. Lucent Technologies, Inc., Case No. 01-05109-Civ-Martinez (Jordan) (S.D. Fla.). At calendar call in a case set for a bench trial, the plaintiffs indicated that a friend of mine was an important witness of theirs on both liability and damages. As a result, the plaintiffs stated that they were not comfortable with me remaining on the case. Despite the fact that the plaintiffs waited until basically the eve of trial to bring this matter to my attention, I found it appropriate to recuse.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than judicial office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not served as a member of, or rendered services to, any political party or election committee. I have also not held a position or played a role in a political campaign.

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

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

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

I served as a law clerk to Judge Thomas A. Clark, United States Court of Appeals for the Eleventh Circuit, from 1987 to 1988.

I served as a law clerk to Justice Sandra Day O'Connor, United States Supreme Court, from 1988 to 1989.

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

I never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1989 – 1994
Steel Hector & Davis LLP (now Squire Sanders & Dempsey)
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
Associate (1989 – 1993)
Non-equity Partner (1994)

1994 – 1999
United States Attorney's Office
Southern District of Florida
99 N.E. Fourth Street
Miami, Florida 33132
Assistant U.S. Attorney (1994 – 1999)
Deputy Chief, Appellate Division (1996 – 1998)
Chief, Appellate Division (1998 – 1999)
Special Counsel to U.S. Attorney on Legal Policy (1997 – 1999)

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

I never served as a mediator or arbitrator as an attorney.

b. Describe:

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

After clerking in the Eleventh Circuit and in the Supreme Court, I joined Steel Hector & Davis' litigation department in 1989. At SH&D, I initially handled First Amendment matters and commercial litigation cases. With respect to First Amendment matters, I worked on defamation (libel and slander) and media access cases as well as contempt proceedings involving media clients. In the commercial setting, I worked on business disputes that had resulted in litigation. The substantive areas of law included ERISA, insurance, contracts, attorney malpractice, civil rights, banking, zoning, products liability, foreclosures, personal injury, and wrongful death. The majority of my work in commercial litigation was on behalf of civil defendants.

Following my first several years at SH&D, I began to specialize in appellate practice, writing briefs and presenting oral arguments in the federal and state appellate courts. My appellate work was on behalf of both appellants and appellees. In addition, I handled numerous pro bono cases while at SH&D, including the appellate representation of abused and neglected children (through the Guardian Ad Litem Program) in state dependency/termination proceedings, the appellate representation of a death row inmate in a federal habeas corpus appeal in the Eleventh Circuit, the representation at trial of an inmate suing Dade County under 42 U.S.C. § 1983 for injuries sustained at the Dade County Jail, and the representation of an individual who alleged that he had been beaten by correctional officers in St. Lucie County.

From August of 1994 to September of 1999, I worked as an Assistant United States Attorney in the Appellate Division of the U.S. Attorney's Office and worked mainly on civil and criminal appeals involving the government. I became the Deputy Chief of the Appellate Division in October of 1996, and became the Chief of the Division in January of 1998. All of my work (except for some pro bono cases) was in the federal system. Approximately 80-90% of my work was in substantive and procedural criminal law (including the constitutional issues raised in criminal proceedings); the remaining 10-20% involved civil and asset forfeiture matters. I handled civil and criminal matters from all of the different trial sections in the U.S. Attorney's Office (e.g., Public Corruption, Organized Crime, Economic Crimes, Narcotics, Major Crimes, Environmental Crimes, Civil, and Asset Forfeiture).

In October of 1997, the U.S. Attorney, Thomas Scott, named me Special Counsel to the U.S. Attorney on Legal Policy and appointed me Chairperson of the Hiring Committee. As Special Counsel, I provided advice to Mr. Scott on legal and policy issues, including those arising in

pending criminal matters and investigations. I also worked on special projects he assigned to me.

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

While I was at Steel Hector & Davis (from 1989 to 1994), the non-pro bono clients for whom I did work were mainly mid- to large-sized corporations. The media/entertainment clients included *The St. Petersburg Times*, *The Miami Herald*, *The Palm Beach Post*, Turner Network Television, CNN, Cowles Media, Barbour-Langley Productions, and Post-Newsweek Stations. Other clients included Prudential Securities, Mass Mutual, Mitsubishi, Dupont, Espirito Santo Bank, Atlantic Gulf, Transportes Aereos de Honduras, Provident Insurance Company, Southeast Bank, Reedy Creek Improvement District (Walt Disney World's governmental arm), Paramount Pictures, Peat Marwick, Telesat, John Hancock, Florida Power & Light, and Goodyear Tire Company. During my first several years at SH&D, I did some First Amendment work, which mainly involved the representation of media clients in defamation (libel and slander) and access cases, as well as contempt proceedings. After my first couple of years at SH&D, and during my employment at the U.S. Attorney's office, I specialized in appellate litigation. I wrote over 125 appellate briefs (in both civil and criminal cases) in the federal and state courts, and had 36 appellate oral arguments in those courts.

From August of 1994 to September of 1999, my only client (except for pro bono cases) was the United States.

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

At Steel Hector & Davis, I appeared in court an average of once a month. At the U.S. Attorney's Office, where I did mostly appellate work, I appeared in court approximately once a month.

i. Indicate the percentage of your practice in:
   1. federal courts: 65%
   2. state courts of record: 35%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 55%
   2. criminal proceedings: 45%

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

I tried seven cases to judgment, including two preliminary injunction evidentiary hearings that resulted in final judgments. Of the seven cases, six were in federal district court, and the other was in state circuit court. I was sole counsel in one case, lead counsel in one case, and associate counsel (i.e., second chair) in the other five cases.

i. What percentage of these trials were:
   1. jury: 57%
   2. non-jury: 43%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

In re Investigation: Florida Statute 27.04, Subpoena of Tim Roche, 589 So. 2d 978 (Fla. 4th DCA 1991), *rev. denied*, 599 So. 2d 1279 (Fla. 1992), *cert. denied*, 506 U.S. 1071 (1993). I drafted (along with Martin Reeder and Wifredo Ferrer of Steel Hector & Davis) an *amicus* brief on behalf of *The Palm Beach Post* and *The Miami Herald* in support of a petition for writ of certiorari filed by a reporter who had been found guilty of criminal contempt for not revealing his sources for a story. Copy supplied.

Camp v. St. Paul Fire & Marine Fire Ins. Co., 928 F.2d 428 (11th Cir. 1993), *cert. denied*, 510 U.S. 964 (1993). I helped draft a brief opposing a petition for a writ of certiorari. Copy supplied.

Transportes Aereos Nacionales, S.A. v. De Brenes et al., 625 So. 2d 4 (Fla. 3d DCA 1993), *cert. denied*, 512 U.S. 1222 (1994). I helped draft a brief opposing a petition for a writ of certiorari. Copy supplied.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

In chronological order, these are the 10 most significant litigated matters which I personally handled.

(1) *Ocean Bio-Chem, Inc. v. Turner Network Television, Inc.*, 741 F. Supp. 1546 (S.D. Fla. 1990); District Judge Kenneth Ryskamp; 1989 – 1990.

In December of 1989, Turner Network Television (TNT) broadcast a fictional made-for-television movie entitled "Incident at Dark River." The movie portrayed the anguish of a father over his daughter's death, which had been caused by the river pollution of a company called "Starbrite Batteries." Ocean Bio-Chem, a company which marketed numerous products under the Starbrite name, filed suit against TNT, asserting federal and state trademark infringement and dilution claims. I was associate counsel on behalf of TNT. I handled portions of an evidentiary hearing held on Ocean BioChem's request for a preliminary injunction and co-drafted TNT's legal memoranda. The evidentiary hearing resulted in a final summary judgment in favor of TNT. Judge Ryskamp issued a lengthy published opinion on First Amendment protections and federal trademark law.

Opposing Counsel:

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Co-Counsel:

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Norman Davis, Esq., Squire Sanders & Dempsey, 200 South Biscayne Boulevard, Suite 4000, Miami, Florida 33131, (305) 577-2988

(2) *Camp v. St. Paul Fire and Marine Ins. Co.*, 127 B.R. 879 (N.D. Fla. 1991); 958 F.2d 340 (11th Cir. 1992); 616 So. 2d 12 (Fla. 1993); 989 F.2d 428 (11th Cir. 1993), *cert. denied*, 510 U.S. 964 (1993); United States Court of Appeals for the Eleventh Circuit Judges: Circuit Judges Phyllis Kravitch, Lanier Anderson, and Stanley Birch; 1990 – 1994.

This diversity case involved claims that St. Paul Fire and Marine Insurance Company had acted in bad faith in refusing to settle a negligence claim asserted against its insured, a neurosurgeon named Dr. Kimbell, and that this conduct had led to an excess judgment being entered against Dr. Kimbell. We represented the trustee of Dr. Kimbell's

bankruptcy estate. Our theory was that St. Paul had improperly tried to use Dr. Kimbell's bankruptcy as a shield to avoid a bad faith claim. The district court granted summary judgment in favor of St. Paul, and we appealed to the Eleventh Circuit. I drafted about 80% of our initial and reply briefs and presented oral argument. The Eleventh Circuit ended up certifying the case to the Florida Supreme Court on state law issues.

In the Florida Supreme Court, I again drafted about 80% of our appellate briefs, and Sandy D'Alemberte of Steel Hector & Davis handled the oral argument. In 1993, the Florida Supreme Court held that under Florida law a named insured's bankruptcy does not bar a bad faith action by the bankruptcy trustee against the insurer. When the case returned to the Eleventh Circuit, the panel reversed the district court's summary judgment based on the Florida Supreme Court's ruling. At trial, the jury returned a verdict in favor of our client for $2.7 million (the excess amount). After I left SH&D for the U.S. Attorney's Office, the Eleventh Circuit affirmed the jury verdict, rejected St. Paul's attempts to overturn the prior appellate rulings, and held that our client was entitled to pre-judgment interest.

Opposing Counsel:

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J. Dixon Bridgers, Esq., III, 55 Ferry Lane, Phoenixville, Pennsylvania 19460, (904) 537-6402

Co-Counsel:

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Judge Jonathan Sjostrom, Florida Circuit Judge, Leon County Courthouse, 301 South Monroe Street # 331-A, Tallahassee, Florida 32301, (850) 577-4321

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Lefferts Mabie, III, Esq., Levin Middlebrooks et al., P.O. Box 12308, Pensacola, Florida 32581, (850) 435-7000

Joel Perwin, Esq., 169 East Flagler Street, Suite 1422, Miami, Florida 33131, (305) 779-6090

(3) *United States v. Browne*, Case No. 92-6101-Cr-Ryskamp; District Judge Kenneth Ryskamp; 1992 – 1993.

A federal grand jury charged Mr. Browne, a Port Everglades Commissioner and union leader, with mail fraud and tax offenses. Thomas Scott (a former federal district judge and U.S. Attorney in Miami), Henry Salas, and I represented Mr. Browne. I was responsible for developing our legal theories and for handling the portions of the case relating to the tax charges. I worked with our tax expert and cross-examined the government's tax witness (Mr. Browne's accountant) at trial. I also presented the Rule 29 acquittal arguments on all of the charges to Judge Ryskamp after the government rested its case. Judge Ryskamp agreed with our arguments and acquitted Mr. Browne of all charges without submitting the case to the jury.

Opposing Counsel:

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Co-Counsel:

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Henry Salas, Esq., Cole Scott & Kissane, 9150 South Dadeland Boulevard, Suite 1400, Miami, Florida 33156, (305) 350-5300

(4) *Crow v. Transportes Aereos Nacionales, S.A. et al.*, 625 So. 2d 4 (Fla. 3d DCA), *rev. denied*, 632 So. 2d 1025 (Fla. 1993), *cert. denied*, 512 U.S. 1232 (1994); District Judges Alan Schwartz, Wilkie Ferguson, and Mario Goderich; 1993 – 1994.

In October 1989, a Boeing 727 aircraft operated by Transportes Aereos Nacionales, S.A., and Servicios Aereos de Honduras, S.A. ("TAN-SAHSA") crashed near Tegucigalpa, Honduras, killing 127 passengers and 4 crew members and injuring 15 others. Over 30 lawsuits were filed against our client, TAN-SAHSA, in Dade County Circuit Court by representatives of Nicaraguan citizens killed in the crash. The parties stipulated that Nicaraguan law governed, and that TAN-SAHSA would not contest liability for compensatory damages recoverable under Nicaraguan law. The parties disagreed, however, about whether or not the plaintiffs could recover "daños morales" ("moral damages" or damages based on noneconomic harm such as pain and suffering) under Nicaraguan law given the facts presented. After an evidentiary hearing, the circuit court ruled that the plaintiffs could recover damages for non-economic harm.

I drafted TAN-SAHSA's motion for reconsideration and the majority of its initial and reply briefs in the Third District. The appellate briefs focused on whether the circuit court had misapplied Nicaraguan law in its ruling on "moral damages." I also presented oral argument to the Third District panel on TAN-SAHSA's behalf. In March 1993, the

Third District reversed the circuit court's rulings. The Third District held that under Nicaraguan law TAN-SAHSA was not liable for "moral damages" given the facts presented, and set aside the $2.9 million award for such damages in the two cases on appeal.

Opposing Counsel:

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Marilyn O'Mara, Esq., 62 Quail Run, Elmira, New York 14903, (607) 738-7419

(5) *Ivory v. Dade County*, Case No. 88-2321-Civ-Marcus (Sorrentino); United States District Court for the Southern District of Florida; Magistrate Judge Charlene Sorrentino; 1992 – 1993.

In 1993, Jon Sjostrom and I tried, on a pro bono basis, a civil rights action against Dade County under 42 U.S.C. § 1983. We received the case from the Florida Justice Institute, which had filed the suit on behalf of plaintiff Ivory. In 1986, while a pre-trial detainee at the Dade County Jail, Mr. Ivory had been stabbed multiple times by an inmate with a history of violent attacks on others. The inmate, despite his prior actions, had not been segregated from non-violent inmates and had, in fact, been placed on a general population floor at the Dade County Jail. We asserted that Dade County was liable under § 1983 because it had a policy, custom, or practice of not maintaining adequate records by which to identify and segregate violent inmates, and because that policy had led to Mr. Ivory's stabbing.

With the consent of the parties, the case was tried before Magistrate Judge Sorrentino. Mr. Sjostrom and I divided the trial work. I handled the jury selection, conducted the direct examination of two officials from the Dade County Corrections Department, and worked on the jury instructions. Mr. Sjostrom presented the opening statement, conducted the direct examination of Mr. Ivory and four expert witnesses, and presented

closing argument. We were able to establish that the Dade County Jail, which was overcrowded, did not have any practical way to compile incident reports on violent inmates so as to segregate them from pre-trial detainees and non-violent inmates. The jury returned a verdict in Mr. Ivory's favor and awarded him $375,000 for his injuries and pain and suffering. Magistrate Judge Sorrentino later remitted (i.e., reduced) the sum awarded by the jury, and we settled the case on Mr. Ivory's behalf for a sum larger than the remittitur but smaller than the jury verdict.

Opposing Counsel:

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Co-Counsel:

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(6) *Routly v. Singletary*, 33 F.3d 1279 (11th Cir. 1994); Circuit Judges Gerald Tjoflat, Emmet Cox, and Stanley Birch; 1993 – 1994.

In 1993, Professor Steve Goldstein of the FSU Law School and the Volunteer Lawyers' Resource Center asked me to handle, on a pro bono basis, the Eleventh Circuit habeas corpus appeal of Mr. Routly. Mr. Routly had been convicted of murder in Ocala in 1980, and had been sentenced to death by a Florida judge who had overridden the jury's recommendation of life imprisonment. I agreed to take the case and, with the help of other attorneys and law clerks at Steel Hector & Davis, drafted a 70-page initial brief and a reply brief on behalf of Mr. Routly. Among the claims were constitutional challenges to Florida's jury override system in capital cases and an argument that the prosecution had knowingly permitted false testimony and failed to turn over exculpatory evidence. The record in the case was voluminous and had produced three published opinions in the Florida Supreme Court. I spent hundreds of hours on the case.

I presented oral argument before the Eleventh Circuit on July 19, 1994. At argument, the panel requested supplemental briefs on Mr. Routly's challenge to Florida's jury override system, and I prepared and filed a supplemental brief. Several months later, the Eleventh Circuit issued a published opinion adopting the district court's order and denying Mr. Routly relief.

Opposing Counsel:

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Co-Counsel:

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(7) *Arango v. U.S. Department of the Treasury*, 115 F.3d 922 (11th Cir. 1997); Circuit Judges Gerald Tjoflat and James Edmonson and Senior District Judge Thomas O'Neill; 1996 – 1997.

Under the customs laws, property valued at less than $500,000 can be forfeited administratively. To prevent summary forfeiture and obtain a hearing, a claimant must file a claim to the seized property and post a bond. The regulations of the U.S. Customs Service provide that the bond requirement will be waived "upon satisfactory proof of financial inability to post [the] bond." 19 C.F.R. § 162.47(e). In 1992, U.S. Customs agents seized $476,590 from Mr. Arango's home during an undercover money laundering investigation. When U.S. Customs sought to forfeit the money, Mr. Arango requested that the matter be referred for judicial forfeiture proceedings. He later sought to have the bond requirement waived, and filed a sworn declaration of indigency and a copy of his 1991 joint tax return. Because of discrepancies in the documents submitted by Mr. Arango, U.S. Customs asked him for an interview to clarify his financial status. Mr. Arango, invoking his Fifth Amendment privilege against self-incrimination, declined to submit to the interview. U.S. Customs then informed Mr. Arango that he would have to post the required cost bond. He did not post the bond, and therefore did not obtain a judicial forfeiture hearing.

In late 1994, Mr. Arango filed a civil action in federal district court alleging that U.S. Customs had acted arbitrarily in denying his request for waiver of the cost bond. The district court dismissed the complaint, and Mr. Arango appealed to the Eleventh Circuit. I drafted the government's brief and presented oral argument to the Eleventh Circuit, which affirmed the dismissal of Mr. Arango's complaint. The Eleventh Circuit agreed with the government's arguments that Mr. Arango had been provided with due process and that the U.S. Customs Service's application of § 162.47(e) was not arbitrary or capricious under the Administrative Procedure Act. The opinion was the first published federal appellate decision in the United States dealing with the constitutional and administrative implications of § 162.47(e).

Opposing Counsel:

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Co-Counsel:

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(8) *United States v. Brand*, 163 F.3d 1268 (11th Cir. 1998); Circuit Judge Joseph Hatchett and Senior Circuit Judges Paul Roney and Donald Lay; 1997 – 1998.

This case involved an issue of first impression concerning the restitution provisions of the Child Support Recovery Act of 1992 (codified at 18 U.S.C. § 228). The CSRA, which criminalizes the willful failure to pay "a past due support obligation with respect to a child who resides in another state," § 228(a), provides in § 228(c) that "upon conviction ... the court shall order restitution ... in an amount equal to the past due support obligation as it exists at the time of sentencing." The term "past due support obligation" is defined in § 228(d)(1)(A) of the CSRA as the amount due "for the support and maintenance of a child or of a child and the parent with whom the child is living." The issue of first impression was whether a defendant convicted of violating the CSRA could be made to pay, as restitution, the full amount set forth in a state court dissolution judgment which ordered the defendant to pay his spouse a lump sum for multiple, interrelated purposes.

The Eleventh Circuit agreed with the arguments set forth in the government's brief, which I drafted, and held that the defendant could be ordered to pay restitution of $4.5 million based on an underlying state court lump sum award. Significantly, the Eleventh Circuit rejected Mr. Brand's argument that the CSRA should be interpreted in light of state family law. The Eleventh Circuit also ruled (1) that the underlying state court order was not unconstitutionally vague, (2) that the CSRA does not permit collateral attacks on underlying support judgments, and (3) that due process concerns are not implicated by the refusal to entertain collateral attacks in CSRA cases where the defendant has not sought to challenge, modify, or clarify the underlying state court order. Finally, the Eleventh Circuit noted that the government's position that restitution under the CSRA was mandatory was "well taken," but said that it did not have to address that argument given its resolution of Mr. Brand's appeal.

Opposing Counsel:

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Co-Counsel:

Assistant U.S. Attorney Dawn Bowen, Esq., U.S. Attorney's Office, 99 N.E. Fourth Street, Miami, Florida 33132

(9) *United States v. Sepe*, 1 F. Supp. 2d 1372 (S.D. Fla. 1998), *rev'd*, Case No. 98-4607, 168 F.3d 506 (11th Cir. Jan. 4, 1999) (table); Circuit Judges Lanier Anderson and Joel Dubina and Senior Circuit Judge Peter Fay; 1998 – 1999.

In April 1998, before the RICO / "Operation Courtbroom" retrial of former state judge Alfonso Sepe, Senior District Judge Norman Roettger issued a ruling excluding the testimony of Mr. Sepe's convicted co-defendant. Judge Roettger found that the government had engaged in misconduct by, among other things, not being forthright with Mr. Sepe's lawyer about the co-defendant testifying on behalf of the government, and concluded that suppression of the testimony was the appropriate sanction. The government appealed Judge Roettger's ruling, and I drafted the government's brief, arguing that Judge Roettger's findings were not supported by the record and that the suppression of the co-defendant's testimony was erroneous. I also presented oral argument to a panel of the Eleventh Circuit, which reversed the suppression of the testimony.

Opposing Counsel:

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Co-Counsel:

Assistant U.S. Attorney Anne Schultz, Esq., 99 N.E. Fourth Street, Miami, Florida 33132, (305) 961-9117

(10) *United States v. Cerceda*, 869 F. Supp. 1574 (S.D. Fla. 1994), *aff'd*, 139 F.3d 847 (11th Cir. 1998), *panel opinion vacated and rehearing en banc granted*, 161 F.3d 652 (11th Cir. 1998) (*en banc*), *rev'd*, 172 F.3d 806 (11th Cir.1999) (*en banc*) (over 20 consolidated cases); Circuit Judges Gerald Tjoflat and Stanley Birch and Senior Circuit Judge Paul Roney (panel); 1994 – 1999.

On October 11 and 13, 1993, two Miami newspapers printed articles reporting that District Judge K. Michael Moore of the Southern District of Florida was under investigation by the U.S. Attorney's Office in Brooklyn, New York, for allegedly accepting gratuities worth thousands of dollars from officials of Central Security Systems, Inc. ("CSSI") while he served as Director of the U.S. Marshals Service. A few days later, Judge Moore entered an order recusing himself from all cases in which the United States was a party. In early 1994, various defendants who had been tried before and/or sentenced by Judge Moore prior to his recusal filed motions for new trials or new sentencing hearings. They argued that the grand jury investigation of Judge Moore had been ongoing since November 1992, and that Judge Moore should have recused himself at that earlier date pursuant to 28 U.S.C. § 455(a). Ultimately, Eleventh Circuit Chief Judge Gerald Tjoflat appointed District Judge William C. O'Kelley of Atlanta to rule on the new trial motions because judges in the Southern District of Florida had disqualified themselves from the cases. After an evidentiary hearing at which Judge Moore testified,

Judge O'Kelley ruled in a published opinion that Judge Moore should have recused himself in November of 1992, when he learned that he was a "subject" in the grand jury investigation. As a result, Judge O'Kelley granted new trials and new sentencing hearings in over 20 cases involving over 35 defendants.

The United States appealed, and I wrote the government's brief in the more than 20 consolidated cases. The case presented an issue of first impression in the entire country – whether a federal district judge who is a "subject" but not a "target" of a federal grand jury investigation is required to recuse himself from all cases in which the United States is a party. I presented oral argument to the Eleventh Circuit on October 7, 1997, in a proceeding that lasted over 2 hours.

In April 1998, an Eleventh Circuit panel issued a published opinion affirming Chief Judge O'Kelley's rulings and rejecting the government's arguments. I drafted and filed the government's suggestion of rehearing *en banc* in June 1998, and rehearing *en banc* was granted in November 1998. I drafted about 90% of the government's initial and reply *en banc* briefs, and represented the government at the *en banc* oral argument on January 27, 1999. The *en banc* Eleventh Circuit was evenly divided with respect to whether Judge Moore should have recused under § 455(a) but ruled that a defendant should be granted a new trial only upon a showing of prejudice.

Lead Opposing Counsel:

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Co-counsel:

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Assistant U.S. Attorney Evelio Yera, Esq., U.S. Attorney's Office, 99 N.E. Fourth Street, Miami, Florida 33132, (305) 961-9125 (former address and phone number) Current address, U.S. Embassy Bogota, JSRP-OPDAT, Unit 3030 Box 5143, DPO, AA 34004, United States of America

Linda Collins Hertz, Esq., 1257 Ortega Avenue, Coral Gables, Florida 33134, (305) 446-0977

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

    Throughout my career in private practice and at the U.S. Attorney's office, I regularly provided pro bono representation to indigent litigants. I am proud of my pro bono work – which was very informative and fulfilling – and which is summarized in the answer to question 25.

    In 1989, the United States Supreme Court ruled that state and local affirmative action programs were subject to strict scrutiny. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). The *Croson* decision led many state and local government entities to analyze whether their minority-set aside programs passed constitutional muster. My former firm, Steel Hector & Davis, joined together with the accounting firm of KPMG Peat Marwick, TEM Associates, and other consultants to conduct discrimination studies for state and local government entities and to make recommendations concerning their programs. I worked on the legal aspects of the studies together with two then-SH&D partners, Frank Scruggs and Sam Dubbin. My job on these studies consisted of taking the data assembled by other components of the team and analyzing it to see if the affirmative action program at issue was constitutional under *Croson* and its progeny. We conducted studies for the State of Florida (two studies – one for the Department of Transportation and the other for the remaining state agencies), the City of Miami, and the West Coast Regional Water Supply Authority. My work on these various studies allowed me to meet and work with government officials at the state and local levels, and permitted me to merge legal analysis with the public policy and planning involved in administering affirmative action programs.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    CDO ("Career Development Office") Externship Roundtables – University of Miami School of Law (2010 – present) (no syllabus used)

    Death Penalty Seminar – University of Miami School of Law (1990 – 1999, 2004 – 2005 (with Assistant U.S. Attorney E.J. Yera), 2010 – present) (copy of current syllabus supplied)

    Federal Courts – University of Miami School of Law (2010 – present) (copy of current syllabus supplied)

Federal Courts – Florida International University College of Law (2007 – present) (copy of current syllabus supplied)

Federal Criminal Practice Seminar (co-taught with Assistant U.S. Attorney E.J. Yera) – University of Miami School of Law (2006 – 2007) (copy of syllabus not available)

Judicial Inherent Powers Seminar (co-taught with Professor Ricardo Bascuas) – University of Miami School of Law (2001 – 2002) (copy of syllabus supplied)

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

    I do not have any such anticipated receipts or arrangements.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    If possible, I plan to continue my law school teaching, and have agreed to teach at Florida International University College of Law in the Spring of 2012. If possible, I also plan to continue serving as a volunteer soccer coach at St. Brendan High School.

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

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

If I am confirmed, I will recuse in all cases involving any of my family members. I will also recuse in any cases involving the University of Miami and Florida International University (where I teach), in cases involving the Archdiocese of Miami (where my wife is employed as a high school teacher), in cases involving the City of Hialeah (where my brother-in-law is employed as a firefighter and paramedic), in cases where my former law clerks are listed as counsel of record and have primary responsibility for litigating the matter, and in cases involving close friends.

I would recuse in any cases that were pending before me as a district judge. I would also follow any recusal protocol that the Eleventh Circuit has for cases arising out of the Southern District of Florida for a certain period of time.

I would further recuse in cases involving close friends involved in the practice of law. Those friends are listed on the clerk's recusal list in the Southern District of Florida, and I would ask the clerk of the Eleventh Circuit to provide some mechanism for notification (in addition to the certificate of interested persons) if any of those friends appeared in a case so that I could recuse.

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

If I am confirmed, I will apply the standards set forth in 28 U.S.C. §§ 144 and 455 to any scenario involving a potential conflict of interest or appearance of partiality.

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

As a judge, I am not allowed to practice law on behalf of others, so I have not engaged in any pro bono legal work since my confirmation in September of 1999. From 2000 – 2010, however, I was the court liaison to the Volunteer Lawyers Project, the pro bono program of the District Court for the Southern District of Florida. I regularly attended meetings of the Project's advisory committee and visited law firms to encourage attorneys to do pro bono work through the Project. My work as liaison ended in 2010, when I became chair of the Magistrate Judges Committee and the Rules Committee for the Southern District of Florida.

Before I became a judge, I regularly provided pro bono legal representation to the indigent, and received pro bono awards in 1993, 1996, and 1998. My pro bono work included the following matters:

Representation of a teacher wrongfully accused by the Florida Department of Health and Rehabilitative Services (now the Department of Children and Families) of fondling students by bouncing them on his knee (1990 – 1991).

Representation of a Florida death row inmate in federal habeas corpus proceedings in the Eleventh Circuit, district court, and state court (1990 – 1991).

Guardian ad Litem representation of a child who was the subject of a dependency proceeding (1991 – 1992).

Representation of plaintiff in a civil rights action for excessive force against St. Lucie County and several correctional officers (1991 – 1994).

Guardian ad Litem representation of a child who was the subject of a dependency proceeding (1992).

Representation of various individuals and families who had lost their homes and/or suffered property losses during Hurricane Andrew (1992).

Representation of a pretrial detainee who had been stabbed by another inmate while awaiting trial at the Dade County Jail, in a civil rights action (1992 – 1993).

Guardian ad Litem representation of children who were the subjects of a proceeding to terminate their mother's parental rights due to abuse and neglect (1992 – 1995).

Representation of a Florida death row inmate in a federal habeas corpus appeal in the Eleventh Circuit (1993 – 1994).

Representation of a minor mother seeking to obtain a domestic abuse/violence restraining order against the father of her child (1995 – 1996).

Representation of the Guardian ad Litem Program in litigation between the Program and Miami-Dade County over the payment of expert witness fees in dependency/termination proceedings (1996 – 1997).

Representation of a woman in a proceeding to obtain a domestic violence injunction against her husband (1998).

Guardian ad Litem representation of children who were the subjects of proceedings to terminate the parental rights of their mother and unknown father(s) (1998 – 1999).

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your

jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in my jurisdiction to recommend candidates for nomination to the United States Court of Appeals for the Eleventh Circuit.

On April 13, 2011, at the suggestion of former Florida Senator Bob Graham, I sent my resume to senior officials at the White House Counsel's Office. I did not speak to any attorneys from the office at this time. The following day, I was asked by a staff member from the White House Counsel's Office to send a copy of my resume to her so that it could be provided to another senior attorney in the office. I did so, and called the staff member later that same day to confirm that she had received the resume.

Since May 11, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 14, 2011, and on July 26, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On August 2, 2011, President Obama submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Jordan, Adalberto J.	Eleventh Circuit	08/2/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge	☑ Nomination, Date 8/2/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 08/02/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
400 N. Miami Avenue Room 10-1 Miami, FL 33128-1807	Reviewing Officer _____ Date _____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Adjunct Professor	FIU College of Law (2010-present)
2.	Adjunct Professor	University of Miami School of Law (2010-present)
3.	Member	ABA Standing Committee on Federal Judicial Improvements (2010-present)
4.	Volunteer Girls' Head Soccer Coach	St. Brendan High School (2010-present)
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2012	Adjunct Professor - FIU College of Law (Spring Semester 2012 - $4500.00)
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Jordan, Adalberto J.	Date of Report 08/2/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	Adjunct Professor - FIU College of Law	$4,500.00
2.	2010	Adjunct Professor - University of Miami School of Law	$15,000.00
3.	2010	Adjunct Professor - FIU College of Law	$4,500.00
4.	2011	Adjunct Professor - University of Miami School of Law	$15,000.00
5.	2011	Adjunct Professor - FIU College of Law	$4,500.00

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

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

	DATE	SOURCE AND TYPE
1.	2010	St. Brendan High School - Salary
2.	2011	St. Brendan High School - Salary
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Jordan, Adalberto J.	Date of Report 08/2/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Great Lakes	Educational Loans	L
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Jordan, Adelberto J.	08/2/2011

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. Income during reporting period: (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. Gross value at end of reporting period: (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period: (2) Date mm/dd/yy	D. Transactions during reporting period: (3) Value Code 2 (J-P)	D. Transactions during reporting period: (4) Gain Code 1 (A-H)	D. Transactions during reporting period: (5) Identity of buyer/seller (if private transaction)
1. Chase Checking Account		None	J	T	Exempt				
2. Wells Fargo Checking Account		None	J	T	Exempt				
3. ING Direct Savings Account	A	Interest	J	T	Exempt				
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Jordan, Adalberto J.	Date of Report 08/2/2011

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Jordan, Adalberto J.	Date of Report 08/2/2011

IX. CERTIFICATION.

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

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

Signature

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		5	669	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		1	861
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		266	481
Real estate owned – personal residence		375	600	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property (est.)		125	000	Car leases (through end of terms)		22	792
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan (with deduction for loan balance)		236	464				
Florida International University 401(a) Plan			943				
				Total liabilities		291	134
				Net Worth		452	542
Total Assets		743	676	Total liabilities and net worth		743	676
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts (car leases through end of terms)				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

AFFIDAVIT

I, Adalberto José Jordán, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/3/11
(DATE)

Adalberto José
(NAME)

FRANCINE C. SALOPEK
MY COMMISSION # DD 810227
EXPIRES: September 26, 2012
Bonded Thru Notary Public Underwriter

Francine C. Salopek
(NOTARY)

Senator KLOBUCHAR. Very good. Thank you so much. I am just going to ask you a few questions here at the beginning.

I am a former prosecutor myself, and I know you served in the Appellate Division, the chief of the Appellate Division of the United States Attorney's Office. How has that experience shaped your work as a judge?

Judge JORDAN. Well, it certainly helped me to figure out how to read records and learn hopefully what mistakes can be made and which ones can be avoided. I also argued and wrote a fair number of briefs while I was there at the office and was able to practice before the Eleventh Circuit for the majority of my time at the U.S. Attorney's Office. So it was certainly a different type of work than the one that I am doing now, but it certainly helped me to learn the law of the circuit, the traditions of the circuit, how things operate. And I think that that certainly helped prepare me, at least in part, for the job that I currently hold.

Senator KLOBUCHAR. And then you served for 12 years as a judge, and what surprised you about that job? And have you changed over the years in your philosophy as a judge?

Judge JORDAN. I do not think I have changed in my philosophy. Some judges who gave me advice when I came on told me it would take about 2 to 3 years to get your sea legs in a district like Miami, and I think they were basically right.

I was surprised at the speed of cases in a district like Miami where the criminal workload is pretty heavy, and we are in trial all of the time. I think last year we ended up maybe second or third in the country in trials, and for the past 4 or 5 years before that No. 1. So we are in trial a lot, and that is not something you get used to right away.

It also took me a little bit of time to get used to making calls on the spot, off the cuff, during a trial. That is not something you do on a normal, everyday basis as an appellate attorney. But you learn quickly that you better do it, or else things are going to get clogged up mighty fast.

Senator KLOBUCHAR. Very good. You are now going to be serving on a panel of judges on the circuit court, and talk about how you think you are going to handle that and trying to seek agreement. You have clearly gotten agreement between your two Senators that support you, so that is a good beginning. It is not that easy to do around here. So tell me about how you think you will handle the job differently than yours now and how you think you would go into that consensus building.

Judge JORDAN. It certainly is a different job. I think I am going to be helped in part by the fact that I have sat a number of times by designation on the circuit, and I have sat with I think half or a little bit over half of the judges on the circuit already.

The job of sitting by designation is certainly not the job of sitting as a full-time appellate judge. As a district judge in the Eleventh Circuit, you sit for just 2 days out of the 4, so you are able to fly in, hear 2 days' worth of cases, and then get your assignments and go back home. So the work will certainly be different in terms of volume.

But I think I understand what the process is like and what consensus building is about and how to be civil to your colleagues even

when you might disagree with a position and how to try to reach middle ground on cases where that middle ground can be reached. So I hope that those experiences have prepared me well for the job that I will hopefully have.

Senator KLOBUCHAR. Very good. I really appreciate your answers. They were good ones.

I am going to turn it over to Senator Hatch.

Judge JORDAN. Thank you.

Senator HATCH. Welcome back to the Judiciary Committee. We are happy to have you here.

Judge JORDAN. Thank you, Senator.

Senator HATCH. I appreciate your comments on the issue of judicial impartiality. Some have argued that the judicial branch ought to be very much like the legislative branch where substantive interests are actually represented. On the other hand, the judicial oath requires impartiality without regard to the identity of the parties.

You know that because you have, of course—you have to take the oath and you understand that. Each individual certainly brings his own background and experiences with him or her to the bench, but please comment on a judge's obligation to step back from that and to judge cases impartially, if you will.

Judge JORDAN. I think that is one of the paramount goals of a judge in our system. We are supposed to be the neutral arbiters and judge and decide cases without regard to who it is who is before us or what their views are. I have certainly strived to try to do that in my almost 12 years on the district court bench in Miami. I do not think that our personal views have any place in what we do on a day-to-day basis as judges. We are all human beings, of course, but I think as a judge you need to try and strive very, very hard to make sure you are deciding the case on something other than your own preferences and views, whatever those might be. So I have strived and I hope I have achieved impartiality in my years on the bench in Miami.

Senator HATCH. Well, thank you. You have been a Federal trial judge for a dozen years. If confirmed, you will instead review the decisions of Federal trial court judges. Appeals are not supposed to be simply do-overs, just another bite at the apple. Please comment on the difference between these two roles of the trial court and appeals court judges in our judicial system.

Judge JORDAN. Well, there certainly are differences, and you do not get to have complete do-overs in the court of appeals on a whole range of cases. Obviously, questions of law get reviewed de novo, without any deference being given. But when you are talking about a judge's findings of fact or an evidentiary ruling which is subject to an abuse of discretion standard or things like that, I think appellate judges need to keep in mind that the trial judge is usually in the best vantage point and the best position to be able to make those calls, knows the litigants, knows the history of a case, knows what lawyers have argued, what might be missing, what might be going on in a case.

I think as district judges we hope that those calls are given deference when appropriate when our cases go up to the court of ap-

peals, and I think and I hope that I will be able to do that if I am fortunate enough to be confirmed. I am confident that I can.

Senator HATCH. Thank you. I am certainly going to support your confirmation, and we congratulate you for being willing to serve in this very important position.

Judge JORDAN. Thank you very much, Senator.

Senator KLOBUCHAR. He did not even ask you the Christmas tree question, so you are really in good shape.

Judge JORDAN. Christmas trees do not grow in Miami.

[Laughter.]

Senator KLOBUCHAR. OK. Senator Lee.

Senator LEE. I have got one question I am just dying to ask you. As someone who has argued 36 appellate cases, briefed over 125 others, you made the transition when you became a district judge to that status, having probably had to jettison most of your appellate standards of review to one far corner of your brain. Which transition do you think will prove to be the more difficult one: the transition from appellate litigator to district judge or district judge to appellate judge—subject, again, to all the deferential standards of review?

Judge JORDAN. I think the first transition was more difficult. You know, as an appellate lawyer you get to sometimes sit in an ivory tower and pontificate about what might have happened or what theories might have been argued or what might be the best result in a world where everything else might be equal. And that is not the world of a district judge, not in a district like ours. So it takes a while to get used to that transition.

I did try some cases when I was an Assistant U.S. Attorney, so the trial courtroom was not foreign to me, but it certainly was not my specialty. So I think that transition was more difficult. I have sat with the Eleventh Circuit a number of times over the years and authored a number of opinions, so I think going back into that mind-set of what the appropriate standards of review are and working with colleagues and panels instead of being a lone judge making decisions at the trial level will not be as difficult. It will be a transition, but I do not think it will be as difficult as the first one that I made.

Senator LEE. I have got just one follow-up to that question, which is: Since the time when you were an appellate attorney, we have had the *Blakely* v. *Washington* era begin and sort of run its course. How substantial do you think the shift is now in the role of the appellate courts when you were an appellate attorney often handling criminal cases up on appeal and how it is now in the wake of *Blakely* v. *Washington* and its progeny?

Judge JORDAN. On sentencing issues, you mean?

Senator LEE. Yes.

Judge JORDAN. You know, I think at least I can comment on our circuit. I am certainly less familiar with the law in the other circuits. In our circuit I think that the Eleventh Circuit gives a fair amount of deference to district judges when they are applying *Blakely*, *Booker*, et cetera, as long as judges are reasoned and explain why it is that they might be imposing a sentence outside of the guidelines in a given case.

But the Eleventh Circuit is also not shy about reversing judges when they think they have gone too far, and they have done so on a number of occasions in pretty celebrated cases. So I think at least in our circuit, district judges know that if they have a reason to vary from the guidelines and express it and cogently explain why they are doing it and do not go crazy, there is a good chance that the circuit is going to give deference to that decision.

So I think——

Senator LEE. But probably more reversals than you had in criminal sentencing prior to *Blakely*.

Judge JORDAN. Well, you know, I do not know the statistical number, but they would be different reversals because before *Blakely* and *Booker*, the majority of sentencing appeals—we did them from the U.S. Attorney's Office when I was appellate chief—were basically guideline interpretations. There were not many departure appeals. Most of them were about whether or not the district judge correctly interpreted or applied a given guideline. So I think with regards to guideline application, the reversal rate probably has stayed about the same, which is relatively low. But now, of course, there is sentencing where the guidelines are not mandatory, and that is a new sort of deference that did not exist before. So they are two sort of target groups that you probably could not compare very well.

Senator LEE. Thank you.

Senator KLOBUCHAR. Do my colleagues have any additional questions?

[No response.]

Senator KLOBUCHAR. Well, thank you very much, Judge Jordan. We enjoyed your appearance here, and we wish you luck, and we will see you again. Thank you.

Judge JORDAN. Thank you very much.

Senator KLOBUCHAR. Very good.

Could the other nominees please come up and stand to be sworn? Do you affirm that the testimony that you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Justice GERRARD. I do.

Ms. PHILLIPS. I do.

Mr. RICE. I do.

Judge NUFFER. I do.

Senator KLOBUCHAR. Very good. Well, thank you very much. Welcome, and we will start with Judge Gerrard, if you would like to introduce anyone that is here with you today.

STATEMENT OF JOHN M. GERRARD, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEBRASKA

Justice GERRARD. I would be happy to, Senator, and thank you. I want to thank the President for the honor of the nomination and for both of my home State Senators, obviously, for their consistent support both beginning and through the process.

With me today is my wife and full partner in life, Nancy, and also with me is my daughter, Erin Ching, and my grandson, Joshua, but I think they might be in the cry room, appropriately. But she is here.

Senator KLOBUCHAR. We have a lot of crying rooms around here. I am sure you found one.

[Laughter.]

Justice GERRARD. He has got a good reason, though. He is 11 months old.

I also want to acknowledge my other three children: Michaela is in Lincoln, Nebraska, with her son, Jack, and husband, Brandon. My son Eric is a third-year law student and is hopefully in class or watching this broadcast at the University of San Diego. His wife, Esther, and daughter, Jayla, are also with us. And then my youngest son, Mitchell, is a senior at Pomona College out in Claremont, California.

I also want to acknowledge my sisters, Mary and Ann, and my brother Bill from various parts of the country who may be watching this webcast, and, of course, all of my judicial colleagues and staff and good friends back in Nebraska and throughout various parts of the country.

Thank you, Senator.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   John Melvin Gerrard

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

   United States District Judge for the District of Nebraska

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Nebraska Supreme Court
   State Capitol Building, Room 2219
   P.O. Box 98910
   Lincoln, Nebraska 68509

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

   1953; Schuyler, Nebraska

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1978 – 1981, Pacific McGeorge School of Law; J.D., 1981

   1976 – 1977, University of Arizona; M.P.A., 1977

   1972 – 1975, Nebraska Wesleyan University; B.S., 1976

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1995 – present
Nebraska Supreme Court
State Capitol Building, Room 2219
P.O. Box 98910
Lincoln, Nebraska 68509
Judge

1990 – 1995
Gerrard, Stratton & Ptak, P.C.
1307 South 13th Street
Norfolk, Nebraska 68701
Senior Partner

1982 – 1990
Domina, Gerrard, Copple & Stratton, P.C.
2425 Taylor Avenue
Norfolk, Nebraska 68701
Partner

1981 – 1982
Jewell, Otte, Gatz, Collins & Domina
105 South Second Street
Norfolk, Nebraska 68701
Associate

1979 – 1981
McGeorge Institute for Administrative Justice
3200 Fifth Avenue
Sacramento, California 95817
Researcher

1977 – 1978
State of Nebraska District Probation Office
110 South 13th Street
Norfolk, Nebraska 68701
Adult and Juvenile Probation Officer

1976 – 1977
University of Arizona
1200 East University Boulevard
Tucson, Arizona 85721
Graduate Assistant/Researcher

Other Affiliations (uncompensated):

1998 – 2007
Southeast Nebraska Fellowship of Christian Athletes
1909 North First Street, Suite Two
Lincoln, Nebraska 68508
Advisory Board Member

2000 – 2005
City Impact
400 North 27th Street
Lincoln, Nebraska 68503
Board Member

1990 – 1995
Madison County Democrats
1305 South 13th Street
Norfolk, Nebraska 68701
Vice Chair (1990 – 1992)
Chairman (1992 – 1995)

1982 – 1995
City of Battle Creek
102 South Second Street
Battle Creek, Nebraska 68715
City Attorney (Law firm compensated by City)

1992 – 1994
Big Brothers/Big Sisters of Northeast Nebraska
103 South Eighth Street
Norfolk, Nebraska 68701
Chair of Board of Directors

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I registered for the Selective Service when I turned 18.

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

   Nebraska State Bar Foundation, Legal Pioneer Award (for leading initiatives promoting racial and ethnic fairness), March 27, 2009.

Nebraska Judicial System, Distinguished Judge for Improvement of Judicial System Award, November 2, 2006.

Nebraska College of Law Black Law Students Association, Outstanding Community Leader Award (for contributions to legal diversity), 2005.

Nebraska Wesleyan University Alumni Achievement Award, 1999.

Nebraska State Bar Foundation, Elected Lifetime Fellow, 1996.

Elected to American Board of Trial Advocates, 1994.

Certified as a Civil Trial Advocate by The National Board of Trial Advocacy (now known as National Board of Legal Specialty Certification), 1994.

In private practice, obtained and maintained an "AV" rating from Martindale-Hubbell, 1991.

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

Judicial
Nebraska Supreme Court Committees:
Minority and Justice Committee, Co-Chair, 2000 – present
Interpreter Advisory Committee, Chair, 1998 – present
Judicial Branch Education Committee, Court's Chair, 1998 – present
Gender Fairness Implementation Committee, Chair, 1995 – present

Bar Associations
American Bar Association, Member, Litigation Section, 1992 – 1995
American Board of Trial Advocates, 1994 – present (now judicial member)
Madison County Bar Association
National Board of Trial Advocacy
Nebraska Association of Trial Attorneys
Nebraska Council of School Attorneys (was President Elect for 1995)
Nebraska State Bar Association, Member, Legislative Council, 1993 – 1995
Robert Van Pelt American Inns of Court
Seventh Judicial District Bar Association

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

State Bar of Nebraska, 1981

There has been no lapse in membership.

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

United States Court of Appeals for the Eighth Circuit, 1981
United States District Court for the District of Nebraska, 1981
Nebraska Supreme Court, 1981

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Dates of membership are to the best of my recollection as I have few records documenting specific years of affiliation.

Big Brothers/Big Sisters of Northeast Nebraska
Chair, Board of Directors (1992 – 1994)
City Impact
Board Member (2000 – 2005)
Lincoln People's City Mission, Youth Volunteer (2001 – 2002)
Lincoln Youth Track Club, Active Member and triple jump coach (1997 – 2005)
Madison County Democrats
Chairman (1992 – 1995)
Vice Chair (1990 – 1992)
Meals on Wheels, Volunteer (1998 – 2006)
Norfolk Area Chamber of Commerce
Chair, Legislative Committee (1994)
Norfolk Country Club (approximately 1989 – 1994)
Pheasant Ridge First Edition Home Owners Association
President (2003 – present)
Rejoice Ministries International, Advisory Board (2002 – 2010)
Robert Van Pelt American Inns of Court (2000 – present)
Southeast Nebraska Fellowship of Christian Athletes
Advisory Board Member (1998 – 2007)

Wilderness Ridge Golf Course (2009 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed above currently discriminates on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. To the best of my knowledge, none of the organizations ever so discriminated.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

This list represents the published materials that I was able to locate after a diligent review of my records and the internet. It is possible that there are other published materials to which I no longer have access or for which I did not retain records.

With Melodie Bellamy, *Appellate Practice in Nebraska: An Insider's View on Doing it Right*, THE NEBRASKA LAWYER, Volume 13, No. 5, May 2010. Copy supplied.

Foreword, NEBRASKA LAW REVIEW, Volume 79, No. 4, 2000. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

From 2000 to the present, I have co-chaired the Supreme Court/Nebraska State Bar Association's joint Minority and Justice Task Force. As part of the chair's responsibility, I have had significant input (both authoring and editing) in all of the Minority and Justice Committee's reports and publications. These reports are listed below and copies are supplied:

The Nebraska Minority Justice Committee Progress Report of 2010 (January 2011).

The Nebraska Minority Justice Committee Progress Report of 2009 (January 2010).

The Nebraska Minority Justice Committee Progress Report of 2008 (January 2009).

Representative Juries: Examining the Initial and Eligible Pools of Jurors, Nebraska Minority Justice Committee (December 2008).

The Nebraska Minority Justice Committee Progress Report of 2007 (January 2008).

The Nebraska Minority Justice Committee Progress Report of 2006 (January 2007).

Report to the Nebraska Supreme Court on Indigent Defense Systems and Fee Structures, Nebraska Minority Justice Committee (Summer 2006).

The Nebraska Minority and Justice Implementation Committee Progress Report of 2005 (January 2006).

The Nebraska Minority and Justice Implementation Committee Progress Report (February 2005).

The Indigent Defense System In Nebraska: An Update, A Report of the Nebraska Minority and Justice Task Force/Implementation Committee (October 2004).

The Nebraska Minority and Justice Implementation Committee Progress Report (February 2004).

The Nebraska Minority and Justice Task Force Final Report (January 2003).

Since 1998, I have served on the Nebraska Judicial Branch Education Advisory Board. In 2009, the Board issued an End-Year Report. I played no role in the preparation of that report, but a copy is supplied.

Since 1995, I have chaired the Nebraska Supreme Court Gender Fairness Implementation Committee. The reports issued are listed below and copies are supplied:

Progress Report of the Gender Fairness Implementation Committee (1999/2000).

Progress Report of the Gender Fairness Implementation Committee (1998).

Progress Report of the Gender Fairness Implementation Committee (1996).

I am not aware of any other reports, memoranda, or policy statements that I prepared or contributed to the preparation of, but I have been a member of several Supreme Court and bar association committees such that there may be additional reports I do not recall and of which I have not been able to find any record.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

January 6, 2006: With Linda Crump, co-chair of the Minority Justice Committee, I wrote a letter to Norfolk Mayor Gordon Adams to request a proclamation for Juror Appreciation Week. Copy supplied.

On November 14, 1997, I testified before a legislative interim subcommittee that was studying, among other things, possible legislation to add diversity education as part of the training for judicial nominating commissions. I have been unable to locate a transcript or recording, but I am supplying a copy of a newspaper article setting forth the primary point of the testimony, which was to emphasize the importance of encouraging qualified female and minority applicants to seek judgeships in Nebraska.

In approximately 2004, as chair of the Minority Justice Committee, I also testified before the Legislature about the importance of obtaining access to data that would ensure fairness in the courts.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list of speeches includes those I was able to locate after a diligent search. In a few instances, I used fully prepared remarks, and in some other instances, I utilized notes or outlines. On several other occasions, I did not speak from prepared speeches, notes, or outlines. I have attempted to locate all speeches or talks given by me but there may be additional occasions on which I have given remarks that I have been unable to identify or recall.

September 17, 2010: Introduction of Prof. Don Hickey, as Alexander Hamilton, to middle school and high school students for Constitution Day (Norfolk, NE). I have no notes, transcript or recording, but press coverage is supplied. The event was co-sponsored by the Nebraska State Bar Foundation and the Nebraska Supreme Court. The address of the Court is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

September 16, 2010: Remarks to northeast Nebraska journalists providing an overview of court system (Norfolk, NE). I have no notes, transcript or recording. The address of the Nebraska Supreme Court, which sponsored the event, is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

March 23, 2010: Remarks on professionalism to high school students and to Educational Service Unit #6 for Professional Development Day (Crete, NE). I have no notes, transcript or recording. The address of ESU #6 is 210 5th Street, Milford, Nebraska 68405.

December 18, 2009: Commencement address to University of Nebraska College of Law graduates (Lincoln, NE). Speech supplied.

October 16, 2009: Remarks at Nebraska State Bar Association seminar, *How to Apply for a Judicial Vacancy* (Omaha, NE). I have no notes, transcript or recording. The address of the NSBA is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

May 9, 2009: Commencement address to Northeast Community College graduates (Norfolk, NE). Speech supplied.

March 27, 2009: Thank-you remarks at the Legal Pioneer Award ceremony, Nebraska State Bar Foundation. I have no notes, transcript, or recording. The address of the Foundation is 635 South 14th Street, Suite 120, P.O. Box 95103, Lincoln, Nebraska 68509.

March 18, 2009: Lecture at Lou Ashe symposium regarding civility and ethics, Pacific McGeorge School of Law (Sacramento, CA). I have no notes, transcript or recording. The address of the law school is 3200 Fifth Avenue, Sacramento, California 95817.

September 27, 2008: Lecture to Evidence and Family Law classes, Touro Law School (Central Islip, NY). I have no notes, transcript or recording. The address of Touro Law is 225 Eastview Drive, Central Islip, New York 11722.

June 3, 2008: Remarks to Lincoln Downtown Rotary Club on access to justice (Lincoln, NE). Outline of remarks supplied.

May 5, 2008: Presentation to high school students for Law Day (Lincoln, NE). I have no notes, transcript or recording, but Nebraska State Bar Foundation coverage is supplied. The address of the NSBF is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

September 13, 2007: Remarks to Minority Justice Committee's annual Diversity Summit (Omaha, NE). I have no notes, transcript or recording. The committee is overseen by the Nebraska Supreme Court, which is located at the State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

Fall 2007: Remarks on "Integrity in the Practice of Law" during a dinner hosted by the University of Nebraska College of Law chapter of the J. Reuben Clark Law Society. I have no notes, transcript or recording, but JRCLS coverage is supplied.

February 2007: Lecture to Advanced Trial Advocacy class on the importance of making and preserving a record, Nebraska College of Law (Lincoln, NE). I have no notes, transcript or recording. The address of the college is P.O. Box 830902, Lincoln, Nebraska 68583.

November 2, 2006: Remarks upon receiving the Distinguished Judge for Improvement of the Judicial System. I have no notes, transcript or recording, but Nebraska Supreme Court coverage is supplied. The address of the Nebraska Supreme Court, which sponsored the event, is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

October 3, 2006: Remarks to Minority Justice Committee's annual Diversity Summit (Omaha, NE). Outline of remarks supplied.

September 18, 2006: Remarks at Juror Appreciation Week ceremony (Lincoln, NE). Outline of remarks supplied.

August 31, 2006: Presentation to Judicial Nominating Commission about my qualifications to be the chief justice. I have no notes, transcript or recording, but press coverage is supplied. The address of the Nebraska Supreme Court, which sponsored the event, is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

July 18, 2006: Remarks to Sertoma Club regarding Nebraska's judicial selection system (Schuyler, NE). I have no notes, transcript or recording. The event was sponsored by the Sertoma Club of Schuyler, Nebraska.

April 25, 2006: Remarks at a reception honoring Justice James Hardesty (Reno, NV). I have no notes, transcript, or recording. The address of the Pacific McGeorge School of Law, which sponsored the event, is 3200 Fifth Avenue, Sacramento, California 95817.

February 25, 2006: Benediction at Nebraska Leadership Prayer Breakfast (Lincoln, NE). I have no notes, transcript or recording.

June 12, 2005: Commencement address to Hamilton College graduates (Lincoln, NE). I have no notes, transcript or recording. The college is now known as Kaplan University-Lincoln, which is located at 1821 K Street, Lincoln, Nebraska 68508.

April 11, 2005: Opening remarks to the Minority Justice Committee's annual Diversity Summit (Omaha, NE). I have no notes, transcript or recording. The committee is overseen by the Nebraska Supreme Court, which is located at the State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

February 11, 2005: Remarks regarding leadership and integrity to Nebraska Future Business Leaders of America (high school, college) (Lincoln, NE). I have no notes, transcript or recording. The address of NFBLA is 301 Centennial Mall South, Lincoln, Nebraska 68509.

October 20, 2004: Remarks at the Nebraska State Bar Association's annual meeting, *Using Interpreters in Nebraska's Courtrooms* (Lincoln, NE). I have no notes, transcript or recording. The address of the NSBA is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

April 16, 2004: Presentation at Nebraska State Bar Association Seminar, *Briefing and Oral Argument: A View From the Bench* (Lincoln, NE). Materials supplied.

December 1, 2003: Presentation of the Nebraska Minority and Justice Implementation Committee's findings at town hall meeting (Norfolk, NE). I have no notes, transcript or recording, but press coverage is supplied. The committee is overseen by the Nebraska Supreme Court, which is located at the State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

October 16, 2003: Presentation of the Nebraska Minority and Justice Implementation Committee's findings to Lincoln community members (Lincoln, NE). I have no notes, transcript or recording, but press coverage is supplied. In addition, I made a similar presentation in late October or early November in Lexington, Nebraska, but I have no record of the precise date. The event was co-sponsored by the Nebraska State Bar Association and the Nebraska Supreme Court. The address of the Court is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

September 24, 2003: Opening remarks to statewide interpreter training session (Lincoln, NE). I have no notes, transcript or recording. The address of the Nebraska Supreme Court, which sponsored the event, is State Capitol Building, Room 2219, P.O. Box 98910, Lincoln, Nebraska 68509.

January 17, 2002: Remarks to Martin Luther King, Jr., breakfast kicking off the statewide public hearings for the Minority and Justice Task Force (Lincoln, NE). Outline of remarks supplied.

October 1, 2001: Remarks to Nebraska College of Law, Public Service Section, *Access to Justice: Public Service in the Private Sector* (Lincoln, NE). Outline of remarks supplied.

September 7, 2001: Remarks at Young Lawyers Seminar *Appellate Practice in Nebraska* (Lincoln, NE). I have no notes, transcript or recording. The address of the Nebraska State Bar Association, which sponsored the event, is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

May 1, 2001: Presentation to high school students for Law Day (Lincoln, NE). I have no notes, transcript or recording, but press coverage is supplied. The address of the Nebraska State Bar Foundation, which sponsored the event, is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

May 1, 2001: Administered the oaths to Nebraska's first five courtroom interpreters. I have since administered the oath to other interpreters on multiple occasions. I have no notes, transcript or recording, but Nebraska Supreme Court coverage is supplied.

September 25, 2001: I was the emcee of the swearing-in ceremony for U.S. Attorney Michael Heavican. I have no notes, transcript, or recording.

March 2000: Lecture to Advanced Trial Advocacy class on the importance of making and preserving a record, Nebraska College of Law (Lincoln, NE). I have no notes, transcript or recording. The address of the college is P.O. Box 830902, Lincoln, Nebraska 68583.

February 18, 2000: Remarks at Nebraska Leadership Prayer Breakfast (Lincoln, NE). I have no notes, transcript or recording, but press coverage is supplied.

December 1999: Moderator of Inns of Court meeting on gender fairness. I have no notes, transcript or recording. The event was sponsored by the Robert Van Pelt Inn of Court in Lincoln, Nebraska.

October 1998: Remarks during a panel discussion on elimination of bias and the promotion of diversity in law during the Nebraska State Bar Association Annual Meeting. I have no notes, transcript or recording. The address of the NSBA is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

April 4, 1998: Remarks at Nebraska Associated Press Broadcasters Association Convention, *Healthy Tension Between the Press and the Courts* (Norfolk, NE). I have no notes, transcript or recording, but press coverage is supplied. The address

of the Associated Press is 909 North 96th Street, Suite 104, Omaha, Nebraska 68114.

May 1997: Presented on gender fairness during the Nebraska State Bar Association Bench Bar Conference. I have no notes, transcript or recording. The address of the NSBA is 635 South 14th Street, Suite 200, P.O. Box 81809, Lincoln, Nebraska 68508.

July 21, 1995: Investiture Remarks (Omaha, NE). I have no notes, transcript or recording, but press coverage is supplied.

In addition, I speak on an annual basis to groups of students at Youth Leadership Lincoln (in March) and to Nebraska's future leaders at Boys State (in June) about the law, the Constitution, and living a life of integrity. I have done this annually from 1998 through the present. I have not retained any outlines or notes from these various talks. The address of YLL is 920 O Street, Suite 300, Lincoln, Nebraska 68508. Boys State is sponsored by the American Legion, P.O. Box 5205, Lincoln, Nebraska 68505.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have searched my files and numerous electronic databases in an effort to locate the times I have spoken to a reporter or have been quoted in some official capacity. It has not been my practice to give interviews on a regular basis, but it is possible that other press accounts exist that I have not been able to locate.

Growing Need for Spanish Translators in Nebraska Courts, EFE World News Service, June 18, 2009. Copy supplied.

Jordan Pascale, *Demand for Interpreters Outpaces Budget Cost in Translation*, OMAHA WORLD-HERALD, June 15, 2009. Copy supplied.

James Barnes, *State's Minority Committee Continues Seeking Justice*, THE DAILY RECORD, May 1, 2009. Copy supplied.

Jean Ortiz, *Neb. Grapples with Diversity's Pressure on Courts*, ASSOCIATED PRESS, Sept. 29, 2008. Copy supplied.

Interview along with Minority Justice Committee Co-Chair Linda Crump for an article about the implementation success of the committee's report. The article was published as the following: Elizabeth Neeley, *From Investigation to Implementation: Factors for Successful Commissions on the Elimination of Racial and Ethnic Bias*, 44 COURT REVIEW 156 (2007 – 2008). Copy supplied.

Press release, *Three Spanish Court Interpreters to be Certified by the Nebraska Supreme Court*, Nebraska Supreme Court, Jan. 17, 2007. Copy supplied.

Jerry Guenther, *Supreme Court Justice Feels at Home in Norfolk*, NORFOLK DAILY NEWS, Sept. 30, 2006. Copy supplied.

Clarence Mabin, *State's Chief Justice Retiring*, LINCOLN JOURNAL STAR, July 19 2006. Copy supplied.

Butch Mabin, *Diversifying State Bar a Challenge*, LINCOLN JOURNAL STAR, Apr. 21, 2006. Copy supplied.

Jurors Thanked for Contribution to Justice System, NORFOLK DAILY NEWS, Mar. 4, 2006. Copy supplied.

Butch Mabin, *Changes Reported in Minority Justice*, LINCOLN JOURNAL STAR, Feb. 1, 2006. Copy supplied.

Kevin O'Hanlon, *Racial Profiling Reporting Law Expires Quietly*, Associated Press, Jan. 27, 2006. Copy supplied.

Quoted in *Results for Nebraska, Models for the Nation*, a publication of the University of Nebraska Public Policy Center, 2006. Copy supplied.

Leah Thorsen, *Interpreters Fill Courtroom Niche*, LINCOLN JOURNAL STAR, May 30, 2005. Copy supplied.

Julien Fielding, *Jury Reform Train has 'Left the Station'*, THE DAILY RECORD, May 2, 2005. Copy supplied.

Radio/TV Spot for Public Service Campaign Remembering Favorite Teachers, Sept. 2004. Audio recording available at http://nsea.org/news/media/NSEA_Radio_2.mp3.

Julien Fielding, *Task Force Has Made 17 Months of Progress*, THE DAILY RECORD, May 4, 2004. Copy supplied.

Julien Fielding, *Minority Students Get Taste of Law School Stress*, THE DAILY RECORD, May 3, 2004. Copy supplied.

Butch Mabin, *Task Force: Changes are Ongoing*, LINCOLN JOURNAL STAR, Mar. 26, 2004. Copy supplied.

Jerry Guenther, *Court Interpreters Needed in State Initiatives Suggested to Fix Legal Inequities*, NORFOLK DAILY NEWS, Nov. 19, 2003.

Margaret Reist, *Public Meeting to Address Report on Bias in Courts*, LINCOLN JOURNAL STAR, Oct. 15, 2003. Copy supplied.

Jan. 31, 2003: Press conference to release the Minority and Justice Task Force report. Remarks supplied.

Lorraine Boyd, *Minority and Justice Task Force to Examine Fairness in Nebraska's Courts at Hearings on Feb. 20, 27*, THE DAILY RECORD, Feb. 12, 2002. Copy supplied.

Nancy Evans, *Supreme Court Justice Keeps Perspective With Volunteer Work*, NEBRASKA JUDICIAL NEWS, Jan.-Mar. 2001. Copy supplied.

Butch Mabin, *Study to Look at Justice for Minorities in Nebraska: Is it Fair?*, LINCOLN JOURNAL STAR, Dec. 31, 2000. Copy supplied.

Robynn Tysver, *Judicial Race Bias Targeted*, OMAHA WORLD-HERALD, Oct. 17, 1999. Copy supplied.

Kevin O'Hanlon, *Nebraska's Highest Judges Strive for Legal Consistency*, ASSOCIATED PRESS, Oct. 1, 1999. Copy supplied.

Joe Duggan, *John Gerrard*, LINCOLN JOURNAL STAR, Nov. 17, 1996. Copy supplied.

Stakes in Vote Go Beyond One Judge's Job, OMAHA WORLD-HERALD, Oct. 21, 1996. Copy supplied.

Leslie Boellstorff, *Nelson Picks Gerrard to Fill Seat on Court*, OMAHA WORLD-HERALD, Apr. 21, 1995. Copy supplied.

Leslie Boellstorff, *Norfolk Attorney, 41, Named to High Court*, OMAHA WORLD-HERALD, Apr. 21, 1995. Copy supplied.

Nebraska: Madison Co. Dems Encourage Nelson to Run, THE HOTLINE, Apr. 5, 1995. Copy supplied.

Jerry Guenther, *High Court Sides With County Group*, NORFOLK DAILY NEWS, July 2, 1992. Copy supplied.

Jerry Guenther, *Champagne Flows at Victory Celebration*, NORFOLK DAILY NEWS, July 2, 1992. Copy supplied.

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

On April 20, 1995, I was appointed by then Governor E. Benjamin Nelson to serve as a judge on the Nebraska Supreme Court. I was sworn in on July 6, 1995, and I have been retained (by election) to serve in 1998, 2004, and 2010. Nebraska is a Missouri Plan retention state, and my current term of office expires on December 31, 2016. The supreme court is the appellate court of last resort in Nebraska's judicial system.

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

I was appointed directly from private practice to the Nebraska Supreme Court. Although I participated as a lawyer in numerous civil and criminal jury trials, and bench trials, that have gone to verdict or judgment, I have not presided over any such cases as a trial judge.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0%
civil proceedings:	0%
criminal proceedings:	0%

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

Because I have written over 450 published opinions and 30 other unpublished opinions, I am separately attaching a list of all opinions authored by me, in chronological order. See attachment.

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

I have not presided over any civil or criminal case as a trial judge. Below are 10 cases over which the Nebraska Supreme Court, as an appellate body, presided. The cases are listed in reverse chronological order, but not necessarily in order of significance or importance.

1. *A.W. v. Lancaster Cnty. Sch. Dist. 0001*, 280 Neb. 205, 784 N.W.2d 907 (2010).

A kindergarten student was sexually assaulted in a school restroom during the school day. The student's mother sued the school district on his behalf, alleging that its negligence permitted the assault to occur. The district court entered summary judgment for the school district, reasoning that the assault was not foreseeable. The fundamental issue in this appeal, as framed by the parties, was whether the school district had a legal duty to the student to protect him from the assault. We concluded that although our case law had, in the past, placed factual questions of foreseeability in the context of legal duty, they are more appropriately decided by the finder of fact in the context of determining whether a tort-feasor's duty to take reasonable care has been breached. We adopted the Restatement (Third) of Torts and held that the questions of foreseeability presented in this appeal were matters of fact, not of law, and that there was a genuine issue of material fact regarding whether the school district's conduct met its duty of reasonable care. We reversed and remanded for further proceedings.

Appellants' Counsel:	Vincent M. Powers Vincent M. Powers & Associates 411 South 13th Street, #300 Lincoln, NE 68508 (402) 474-8000
Appellee's Counsel:	John M. Guthrey Perry, Guthrey, Haase & Gessford, P.C., LLO 233 South 13th Street, #1400 Lincoln, NE 68508 (402) 476-9200

2. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009).

The victim in this murder case disappeared on her way to the defendant's house, and although her body was never found, her blood was found on the mattress and walls in the defendant's bedroom, on a weapon found in his closet, and in the trunk of his car. The defendant was convicted of second degree murder and use of a deadly weapon to commit a felony. The primary issue on appeal was whether the evidence was sufficient to establish the corpus delicti of homicide, even though the victim's body was never found. Our court concluded that the circumstantial evidence was sufficient to prove that the victim was killed and that the defendant killed her. We also rejected the defendant's *Daubert* challenge to the State's DNA evidence and his other evidentiary challenges. We affirmed the defendant's convictions and sentence.

Appellant's Counsel:	Denise E. Frost Johnson & Mock 1321 Jones Street P.O. Box 3157 Omaha, NE 68103 (402) 346-8856 Steven J. Lefler Lefler & Kuehl 209 South 19th Street, #440 Omaha, NE 68102 (402) 342-4433
Appellee's Counsel:	Jon C. Bruning, Nebraska Attorney General, and Kimberly A. Klein, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2682

3. *State v. Henderson*, 277 Neb. 240, 762 N.W.2d 1 (2009).

The appellant was fired from his job as a Nebraska State Patrol trooper after he joined the Knights Party, a Ku Klux Klan-affiliated organization. But the trooper was reinstated when his case was submitted to arbitration under a collective bargaining agreement. The district court concluded that public policy precluded enforcement of the arbitrator's award. Our court, concluding that the laws should be enforced without racial or religious discrimination and the public should reasonably perceive this to be so, agreed with the district court and affirmed its order vacating the arbitration award.

Appellants' Counsel:	Vincent Valentino 100 North 12th Street, #200 P.O. Box 84640 Lincoln, NE 68501 (402) 742-9240

Appellees' Counsel:	Jon C. Bruning, Nebraska Attorney General, and Thomas E. Stine, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2682

4. *Neb. Legislature ex rel. State v. Hergert*, 271 Neb. 976, 720 N.W.2d 372 (2006).

In this case, an elected University of Nebraska Regent was impeached by the Nebraska Legislature and tried in an original action before the judges of the Nebraska Supreme Court. After a full trial, our court found that Hergert intentionally manipulated and violated Nebraska's campaign finance laws in a scheme to prevent his opponent from receiving public campaign funds, and that during the election campaign and, significantly, after he took office, Hergert intentionally filed false reports of campaign spending in an attempt to cover up this conduct. Thus, we concluded that the Legislature had proved by clear and convincing evidence that Hergert was guilty of false reporting and obstructing government operations. We, therefore, removed Hergert from office and disqualified him from holding any office of trust in the future.

Plaintiff's Counsel:	David A. Domina Domina Law Group, P.C., LLO 2425 South 144th Street Omaha, NE 68144 (402) 493-4100
Defendant's Counsel:	Christopher M. Ferdico Baylor, Evnen, Curtiss, Grimit & Witt, LLP Wells Fargo Center 1248 "O" Street, Suite 600 Lincoln, NE 68508 (402) 475-1075 Sean J. Brennan Brennan & Nielsen Law Offices, P.C. The Apothecary 140 North 8th Street, Suite 340 Lincoln, NE 68508 (402) 441-4848

5. *State v. Molina*, 271 Neb. 488, 713 N.W.2d 412 (2006).

The defendant was convicted of second degree murder and child abuse resulting in death for the beating death of his 2-year-old daughter. We affirmed the convictions. We rejected the defendant's primary Double Jeopardy argument, finding that second degree murder was not a lesser-included offense of child abuse resulting in death. Among other things, we also found that the district court had erred in not instructing the jury on negligent child abuse as a lesser-included offense of child abuse resulting in death, but the error was harmless because the jury had resolved the element of intent in the context of lesser-included offenses of homicide.

Appellant's Counsel:	Gerald L. Soucie James R. Mowbray Nebraska Commission on Public Advocacy 140 North 8th Street, Suite 270 P.O. Box 98932 Lincoln, NE 68509 (402) 471-7774 Gerard A. Piccolo Hall County Public Defender 117 East 1st Street, Suite 2 Grand Island, NE 68801 (308) 385-5016
Appellee's Counsel:	Jon C. Bruning, Nebraska Attorney General, and Kimberly A. Klein, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2682 Mark J. Young Hall County Attorney 231 South Locust Street P.O. Box 367 Grand Island, NE 68802 (308) 385-5150

6. *State v. Hembertt*, 269 Neb. 840, 696 N.W.2d 473 (2005).

The defendant was convicted in the county court of assault and battery, based in part on the testimony of an Omaha police officer regarding statements made by

the victim when police arrived at the scene shortly after the assault. The domestic violence victim did not testify at trial. The issues presented on appeal were whether the officer's testimony as to the victim's statements were properly admitted into evidence under the excited utterance exception to the hearsay rule and, if so, whether the statements were "testimonial" within the meaning of the Confrontation Clause standards explained in *Crawford v. Washington*, 541 U.S. 36 (2004). We concluded that the county court correctly determined that the officer's testimony regarding statements made by the victim was admissible and affirmed the judgment. Certiorari was requested and ultimately denied by the U.S. Supreme Court based on our analysis of the Confrontation Clause.

Appellant's Counsel:	Thomas C. Riley Douglas County Public Defender H05 Civic Center Omaha, NE 68183 (402) 444-7175
Appellee's Counsel:	Jon C. Bruning, Nebraska Attorney General, and James D. Smith, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2682

7. *State v. Gales*, 269 Neb. 443, 694 N.W.2d 124 (2005).

The defendant was sentenced to death by a three-judge panel pursuant to jury findings of aggravating circumstances, for each of two counts of first degree murder, following our remand for resentencing in *State v. Gales*, 265 Neb. 598 (2003) (*Gales I*). On appeal, we affirmed the sentences of death. We rejected the defendant's challenges to the applicability of L.B.1, which had implemented the system of jury findings of aggravating circumstances following the U.S. Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), based on our rejection of the same arguments in *Gales I*. Among other things, we also found no error in the fact that the jurors were not individually questioned about their awareness of Gales' prior death sentences, as the jurors were carefully instructed about the questions they were to answer, which were specific to the findings of aggravating circumstances.

Appellant's Counsel:	Susan M. Bazis (now Hon.) Douglas County Court 1701 Farnam Street Hall of Justice, 2nd Floor Omaha, NE 68183 (402) 444-5411
Appellee's Counsel:	Jon C. Bruning, Nebraska Attorney General, and J. Kirk Brown, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2644 Donald W. Kleine Douglas County Attorney 100 Hall of Justice 1701 Farnam Street Omaha, NE 68183 (402) 444-7040

8. *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001).

The plaintiffs won a $120,000 jury verdict based upon the jury's finding that contaminated hog feed, negligently delivered to the plaintiffs, caused illnesses and deaths among the plaintiffs' dairy cattle. The Court of Appeals affirmed the district court. We reversed the Court of Appeals, determining that the district court abused its discretion in permitting the plaintiffs' expert to testify regarding causation. Significantly, we also held that after October 1, 2001, Nebraska trial courts should evaluate the admissibility of expert opinion testimony under the analytical framework of *Daubert v. Merrell Dow Pharmaceuticals, Inc* , 509 U.S. 579 (1993).

Appellant's Counsel:	Dan H. Ketcham Engles, Ketcham, Olson & Keith, P.C. 1350 Woodmen Tower 1700 Farnam Street Omaha, NE 68102 (402) 348-0900

Jason R. Yungtum
Alegent Health
12809 West Dodge Road
Omaha, NE 68154
(402) 343-4387

Appellees' Counsel:

David A. Domina
Domina Law Group, P.C., LLO
2425 South 144th Street
Omaha, NE 68144
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9. *State v. Harrold*, 256 Neb. 829, 593 N.W.2d 299 (1999).

County court convicted defendant of manufacturing and distributing obscene material, after he delivered a videotape to a Lincoln cablevision studio for production and showing. The district court affirmed the judgment but the Court of Appeals reversed, finding error in the determination of obscenity and in excluding evidence offered to prove community standards. On further review, we reversed the Court of Appeals and reinstated the conviction, after setting forth and applying Nebraska's obscenity standard as gleaned from *Miller v. California*, 413 U.S. 15 (1973), and its progeny.

Appellant's Counsel:

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Appellee's Counsel:

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Joseph P. Kelly
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10. *Hartwig v. Oregon Trail Eye Clinic*, 254 Neb. 777, 580 N.W.2d 86 (1998).

In this case, a cleaning worker, who was stuck by a hypodermic needle while emptying a medical clinic's nonmedical waste, brought a negligence action

against the clinic. After granting the clinic's motion in limine to preclude evidence that the worker suffered mental anguish resulting from her fear of testing positive for HIV and contracting AIDS, the district court entered a $3,000 jury verdict limited to the minor needle stick injury sustained by the plaintiff. The district court denied the plaintiff's motion for new trial based on the alleged error of limiting proof on fear of AIDS mental anguish. In this case of first impression, our court reversed the order of the district court denying the motion for new trial and held that a plaintiff may adduce proof and potentially recover damages for the mental anguish of reasonably fearing AIDS resulting from a physical injury when (1) the plaintiff may have been exposed, via a medically sufficient channel of transmission, to the tissue, blood, or body fluid of another; (2) in circumstances where the identity of the patient upon whom the contaminated needle or instrument was used is unknown; and (3) when it is impossible or impracticable to ascertain whether any such tissue, blood, or body fluid may be HIV positive. The cause was remanded to the district court for a new trial solely on the issue of damages.

Appellant's Counsel:	Michael W. Meister 614 East 27th Street, #C Scottsbluff, NE 69361 (308) 635-7083
Appellees' Counsel:	John K. Sorensen Sorensen & Hahn, P.C. P.O. Box 1557 1620 Avenue A Scottsbluff, NE 69363 (308) 632-5111

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

I am listing 10 published opinions in reverse chronological order, but not necessarily in order of significance or importance.

1. *A.W. v. Lancaster Cnty. Sch. Dist. 0001*, 280 Neb. 205, 784 N.W.2d 907 (2010).

Appellants' Counsel:	Vincent M. Powers Vincent M. Powers & Associates 411 South 13th Street, #300 Lincoln, NE 68508 (402) 474-8000

Appellee's Counsel:	John M. Guthrey Perry, Guthrey, Haase & Gessford, P.C., LLO 233 South 13th Street, #1400 Lincoln, NE 68508 (402) 476-9200

2. *State v. Henderson*, 277 Neb. 240, 762 N.W.2d 1 (2009).

Appellants' Counsel:	Vincent Valentino 100 North 12th Street, #200 P.O. Box 84640 Lincoln, NE 68501 (402) 742-9240
Appellees' Counsel:	Jon C. Bruning, Nebraska Attorney General, and Thomas E. Stine, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2682

3. *Trosper v. Bag 'N Save*, 273 Neb. 855, 734 N.W.2d 704 (2007) (Gerrard, J., concurring).

Appellant's Counsel:	Michael P. Dowd Dowd, Howard & Corrigan 1411 Harney Street, #100 Omaha, NE 68102 (402) 341-1020
Appellee's Counsel:	Robert F. Rossiter, Jr. Fraser Stryker P.C., LLO 500 Energy Plaza 409 South 17th Street Omaha, NE 68102 (402) 341-6000

4. *State v. Moore*, 273 Neb. 495, 730 N.W.2d 563 (2007).

Appellant's Counsel:	Alan E. Peterson Mayfair Building, #103 625 South 14th Street Lincoln, NE 68508 (402) 435-0008
Appellee's Counsel:	Jon C. Bruning, Nebraska Attorney General, and J. Kirk Brown, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2644

5. *Larsen v. D B Feedyards, Inc.*, 264 Neb. 483, 648 N.W.2d 306 (2002) (Gerrard, J., dissenting).

Appellant's Counsel:	Walter E. Zink, II Baylor, Evnen, Curtiss, Grimit & Witt, LLP Wells Fargo Center 1248 "O" Street, Suite 600 Lincoln, NE 68508 (402) 475-1075
Appellee's Counsel:	Clarence E. Mock, III Denise E. Frost Johnson & Mock 307 North Oakland Avenue P.O. Box 62 Oakland, NE 68045 (402) 685-5647

6. *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001).

Appellant's Counsel:	Dan H. Ketcham Engles, Ketcham, Olson & Keith, P.C. 1350 Woodmen Tower 1700 Farnam Street Omaha, NE 68102 (402) 348-0900

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Appellees' Counsel:

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7. *Holmes v. Crossroads Joint Venture*, 262 Neb. 98, 629 N.W.2d 511 (2001).

Appellant's Counsel:

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Appellees' Counsel:

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8. *State v. Harrold*, 256 Neb. 829, 593 N.W.2d 299 (1999).

Appellant's Counsel:

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Appellee's Counsel:

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Justice & Law Enforcement Center
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Lincoln, NE 68508
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9. *Hartwig v. Oregon Trail Eye Clinic*, 254 Neb. 777, 580 N.W.2d 86 (1998).

Appellant's Counsel:	Michael W. Meister 614 East 27th Street, #C Scottsbluff, NE 69361 (308) 635-7083
Appellees' Counsel:	John K. Sorensen Sorensen & Hahn, P.C. P.O. Box 1557 1620 Avenue A Scottsbluff, NE 69363 (308) 632-5111

10. *State v. Ryan*, 249 Neb. 218, 543 N.W.2d 128 (1996) (Gerrard, J., dissenting).

Appellant's Counsel:	J. William Gallup 1001 Farnam Street, 3rd Floor Omaha, NE 68102 (402) 341-0700
Appellee's Counsel:	Kimberly A. Klein, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2682

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

Majority opinions

State v. Moore, 256 Neb. 553, 591 N.W.2d 86 (1999), *cert. denied sub nom.*, *Knight v. Florida*, 528 U.S. 990, 120 S. Ct. 459, 145 L. Ed. 2d 370 (1999)

State v. Harrold, 256 Neb. 829, 593 N.W.2d 299 (1999), *cert. denied*, 528 U.S. 1142, 120 S. Ct. 992, 145 L. Ed. 2d 939 (2000)

State v. Mata, 266 Neb. 668, 668 N.W.2d 448 (2003), *cert. denied*, 543 U.S. 1128, 125 S. Ct. 1088, 160 L. Ed. 2d 1081 (2005)

Martin v. Nebraska Dept of Correctional Services, 267 Neb. 33, 671 N.W.2d 613 (2003), *cert. denied*, 540 U.S. 1196, 124 S. Ct. 1451, 158 L. Ed. 2d 110 (2004)

State v. Gales, 269 Neb. 443, 694 N.W.2d 124 (2005), *cert. denied*, 546 U.S. 947, 126 S. Ct. 449, 163 L. Ed. 2d 341 (2005)

State v. Hembertt, 269 Neb. 840, 696 N.W.2d 473 (2005), *cert. denied*, 548 U.S. 925, 126 S. Ct. 2977, 165 L. Ed. 2d 987 (2006)

State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007), *cert. denied sub nom., Sommer v. Nebraska*, 552 U.S. 876, 128 S. Ct. 186, 169 L. Ed. 2d 126 (2007)

State v. Henderson, 277 Neb. 240, 762 N.W.2d 1 (2009), *cert. denied*, 129 S. Ct. 2841, 174 L. Ed. 2d 556 (2009)

In re Chance J., 279 Neb. 81, 776 N.W.2d 519 (2009), *cert. denied sub nom., Andrew J. v. Nebraska*, 131 S. Ct. 113, 178 L. Ed. 2d 69 (2010)

Concurring or dissenting opinions

State v. Ryan, 249 Neb. 218, 543 N.W.2d 128 (1996) (dissent), *cert. denied*, 519 U.S. 927, 117 S. Ct. 293, 136 L. Ed. 2d 213 (1996)

State v. Hansen, 249 Neb. 177, 542 N.W.2d 424 (1996) (dissent), *cert. denied*, 517 U.S. 1249, 116 S. Ct. 2509, 135 L. Ed. 2d 198 (1996)

State v. Lotter, 255 Neb. 456, 586 N.W.2d 591 (1998) (concurrence), *cert. denied*, 526 U.S. 1162, 119 S. Ct. 2056, 144 L. Ed. 2d 222 (1999)

Tipp-It, Inc. v. Conboy, 257 Neb. 219, 596 N.W.2d 304 (1999) (concurrence), *cert. denied*, 528 U.S. 1116, 120 S. Ct. 934, 145 L. Ed. 2d 813 (2000)

State v. Lammers, 267 Neb. 679, 676 N.W.2d 716 (2004) (dissent), *cert. denied*, 543 U.S. 861, 125 S. Ct. 186, 160 L. Ed. 2d 102 (2004)

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

I did not find any opinions authored by me that were reversed by a reviewing court. After a diligent search, I did find one opinion in which the U.S. District Court, on habeas review, criticized our rationale. (See *McCracken* below.)

State v. McCracken, 260 Neb. 234, 615 N.W.2d 902 (2000). McCracken was convicted of murder in the first degree and, on appeal, argued that he was prejudiced by the admission at trial of two mental health evaluations. We determined that by the time the mental health evaluations were admitted at trial, McCracken had placed his sanity at issue; thus, the admission of evidence derived from those evaluations did not violate the Fifth Amendment.

McCracken v. Clarke, 2005 WL 2405927 (No. 4:02CV3090, D. Neb. Sept. 29, 2005). On habeas review, the federal district court also rejected McCracken's argument regarding the admission of the mental health evaluations at trial, but on different grounds. The court stated that we had apparently assumed that both examinations had been compelled, and that the Fifth Amendment privilege was therefore implicated when the evidence was admitted at trial. But according to the federal court's review, the record showed that one examination was not actually received at trial, and the other was the result of a jointly-requested examination. The court therefore found that our analysis was based on a factual error. However, the court found that our error did not avail McCracken. Having so determined, the court saw no need to decide whether our analysis would have been correct otherwise.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Less than 8% of our court's opinions are unpublished – and the reason an opinion is unpublished is because there is nothing in the case that changes, or modifies in any way, existing case law. I have listed all unpublished opinions authored by me in Attachment 13b. Each of the opinions is publically accessible in the Nebraska Supreme Court case files that are maintained by the Clerk of the Supreme Court.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Gas 'N Shop v. City of Kearney, 248 Neb. 747, 539 N.W.2d 423 (1995) (Equal Protection Clause)

State v. Hansen, 249 Neb. 177, 542 N.W.2d 424 (1996) (dissent) (Double Jeopardy Clause – multiple punishments)

Palmer v. Palmer, 249 Neb. 814, 545 N.W.2d 751 (1996) (Free Exercise Clause)

State v. Orduna, 250 Neb. 602, 550 N.W.2d 356 (1996) (Sixth Amendment right to counsel – use of uncounseled conviction for sentence enhancement; Fourteenth Amendment Due Process Clause – use of uncounseled conviction for sentence enhancement)

State v. Privat, 251 Neb. 233, 556 N.W.2d 29 (1996) (Confrontation Clause – cross-examination of witness)

State v. White, 254 Neb. 566, 577 N.W.2d 741 (1998) (Double Jeopardy Clause – retrial after acquittal)

State v. Fitch, 255 Neb. 108, 582 N.W.2d 342 (1998) (Fourth Amendment warrant clause – probable cause for nighttime search)

State v. Moore, 256 Neb. 553, 591 N.W.2d 86 (1999) (Sixth Amendment right to counsel – ineffective assistance of counsel)

Shearer v. Leuenberger, 256 Neb. 566, 591 N.W.2d 762 (1999) (Fifth Amendment right to remain silent; Fourteenth Amendment Due Process Clause)

State v. Harrold, 256 Neb. 829, 593 N.W.2d 299 (1999) (First Amendment right to free speech – obscenity prosecution)

In re Interest of Dustin H., et al., 259 Neb. 166, 608 N.W.2d 580 (2000) (Concurrence and dissent) (Fourteenth Amendment Due Process Clause – parental rights)

King v. State, 260 Neb. 14, 614 N.W.2d 341 (2000) (concurrence) (Congressional Art. I authority – abrogation of state sovereign immunity)

State v. Davidson, 260 Neb. 417, 618 N.W.2d 418 (2000) (Fourth Amendment warrant clause – probable cause for warrant)

State v. Hess, 261 Neb. 368, 622 N.W.2d 891 (2001) (Sixth Amendment right to counsel – ineffective assistance of counsel; Fourteenth Amendment Due Process Clause – procedural due process)

Marshall v. Wimes, 261 Neb. 846, 626 N.W.2d 229 (2001) (Fourteenth Amendment Due Process Clause – procedural due process)

State v. Thomas, 262 Neb. 138, 629 N.W.2d 503 (2001) (Double Jeopardy Clause – multiple punishment/civil forfeiture)

Medlock v. Medlock, 263 Neb. 666, 642 N.W.2d 113 (2002) (Establishment Clause; Free Exercise Clause)

Rush v. Wilder, 263 Neb. 910, 644 N.W.2d 151 (2002) (Eighth Amendment cruel and unusual punishments clause – failure to provide necessary medical care)

State v. Zarate, 264 Neb. 690, 651 N.W.2d 215 (2002) (Sixth Amendment right to counsel – ineffective assistance of counsel)

State v. Keup, 265 Neb. 96, 655 N.W.2d 25 (2003) (Fourth Amendment reasonableness clause – warrantless search)

Hass v. Neth, 265 Neb. 321, 657 N.W.2d 11 (2003) (Fourth Amendment reasonableness clause – lawfulness of traffic stop; Fourteenth Amendment Due Process Clause – procedural due process)

State v. Kelley, 265 Neb. 563, 658 N.W.2d 279 (2003) (Fourth Amendment reasonableness & warrant clauses – failure to knock and announce)

Gourley v. Nebraska Methodist Health Sys., 265 Neb. 918, 663 N.W.2d 43 (2003) (concurrence) (Nebraska special legislation clause; Nebraska equal protection clause; Nebraska open courts clause; Nebraska right of trial by jury; Nebraska takings clause; Nebraska separation of powers clause; Nebraska due process clause)

State v. Mata, 266 Neb. 668, 668 N.W.2d 448 (2003) (Fifth Amendment right to counsel – invocation of right; Fourth Amendment reasonableness clause – consent to search; Double Jeopardy Clause – multiple punishments; Sixth Amendment right to jury trial – *Apprendi* claim)

State v. Lammers, 267 Neb. 679, 676 N.W.2d 716 (2004) (dissent) (Fourth Amendment reasonableness and warrant clauses – failure to knock and announce)

In re Guardianship of D.J., 268 Neb. 239, 682 N.W.2d 238 (2004) (Due Process Clause – parental rights)

Slansky v. Nebraska State Patrol, 268 Neb. 360, 685 N.W.2d 335 (2004) (Ex Post Facto Clause; Double Jeopardy Clause; Equal Protection Clause)

Welvaert v. Nebraska State Patrol, 268 Neb. 400, 683 N.W.2d 357 (2004) (Ex Post Facto Clause)

State v. Gales, 269 Neb. 443, 694 N.W.2d 124 (2005) (Ex Post Facto Clause; Eighth Amendment cruel and unusual punishments clause – capital sentencing aggravators; Due Process Clause – capital sentencing aggravators; Sixth Amendment right to jury trial – *Apprendi* claim)

State v. Hembertt, 269 Neb. 840, 696 N.W.2d 473 (2005) (Confrontation Clause – use of hearsay evidence)

In re Interest of Corey P. et al., 269 Neb. 925, 697 N.W.2d 647 (2005) (Fourth Amendment – exclusionary rule)

State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006) (Double Jeopardy Clause – lesser included offense; Fourteenth Amendment Due Process Clause – instruction on lesser included offense; Sixth Amendment right to counsel – ineffective assistance of counsel)

State v. Moyer, 271 Neb. 776, 715 N.W.2d 565 (2006) (Nebraska fines and penalties clause)

Le v. Lautrup, 271 Neb. 931, 716 N.W.2d 713 (2006) (dissent) (Nebraska equal protection clause)

State v. Stark, 272 Neb. 89, 718 N.W.2d 509 (2006) (Confrontation Clause – limit on cross-examination)

State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006) (Equal Protection Clause – *Batson* claim)

State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007) (Equal Protection Clause – *Batson* claim)

State v. Ramirez, 274 Neb. 873, 745 N.W.2d 214 (2008) (Fourteenth Amendment Due Process Clause; Double Jeopardy Clause; Sixth Amendment Right to Counsel – ineffective assistance of counsel)

State v. Rogers, 277 Neb. 37, 760 N.W.2d 35 (2009) (concurrence) (Fifth Amendment right to remain silent – invocation of right during custodial interrogation)

State v. Henderson, 277 Neb. 240, 762 N.W.2d 1 (2009) (First Amendment freedom of association)

State v. Smith, 279 Neb. 918, 782 N.W.2d 913 (2010) (Fourth Amendment reasonableness clause – warrantless search)

Murray v. Neth, 279 Neb. 947, 783 N.W.2d 424 (2010) (Fourteenth Amendment Due Process Clause – procedural due process)

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

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I recognize that public confidence in the courts is maintained only by stringent adherence to conflict of interest principles. If there is any actual conflict or the objective appearance of a conflict of interest, I recuse myself from a case. I review the parties and counsel in each case to ensure I do not have a close relationship to any of the parties, witnesses, or counsel that would interfere with my neutrality or compromise the objective appearance of justice. I have strictly followed the Nebraska Code of Judicial Conduct during my time on the bench.

For example, in 2008 and 2009, my daughter was employed as a lawyer for the Nebraska Appleseed Center, and I recused myself from all matters in which that organization was counsel to a party. Likewise, my wife is employed as a psychiatric nurse practitioner at the University of Nebraska, and in the rare event that the University Health Center would be involved in a case as a party or witness (or if a decision would have a direct financial impact on my spouse), I would recuse myself from a case. But, I have never had a litigant or party request recusal during my tenure on the bench.

With that said, I am listing all recusals (from a search of my records) in reverse chronological order, with the reasons stated for each recusal. All of the recusals have been sua sponte. There were no actions that could be taken to cure the grounds for recusal, but the court was able to resolve all of the below appeals without the benefit of my participation.

Davio v. Nebraska Dept. of Health & Human Servs., 280 Neb. 263, 786 N.W.2d 655 (2010) (my daughter represented appellee in trial court).

State v. Lewis, 280 Neb. 246, 785 N.W.2d 834 (2010) (wife was a friend and professional colleague of the murder victim).

Metcalf v. Metcalf, 278 Neb. 258, 769 N.W.2d 386 (2009) (appellee was business and personal friend).

Yoder v. Cotton, 276 Neb. 954, 758 N.W.2d 630 (2008) (appellants and family were personal friends, knowledge required recusal).

Schuyler Co-op Assn. v. Sahs, 276 Neb. 578, 755 N.W.2d 802 (2008) (appellant is good (high school) friend, and knowledge of circumstances required recusal).

Nielsen v. Nielsen, 275 Neb. 810, 749 N.W.2d 485 (2008) (formerly represented primary witness, Zwygart, in private practice; professional knowledge required recusal).

JCB Enters. v. Nebraska Liq. Cont. Comm., 275 Neb. 797, 749 N.W.2d 873 (2008) (I had personal knowledge of underlying facts requiring recusal).

Zwygart v. State Bd. of Public Accountancy, 273 Neb. 406, 730 N.W.2d 103 (2007) (formerly represented Zwygart in private practice; matters of professional knowledge required recusal).

State v. Bakewell, 273 Neb. 372, 730 N.W.2d 335 (2007) (appellant and family were personal friends, knowledge required recusal).

State ex rel. Stivrins v. Flowers, 273 Neb. 336, 729 N.W.2d 311 (2007) (Dr. Stivrins is my personal physician, professional knowledge required recusal).

State v. Phelps, 273 Neb. 36, 727 N.W.2d 224 (2007) (while in private practice, my firm was counsel of record for the appellant regarding the subject matter of this appeal).

State v. Barnes, 272 Neb. 749, 724 N.W.2d 807 (2006) (while in private practice, my firm represented the appellant in the case that is the subject of this appeal).

Kaplan v. McClurg, 271 Neb. 101, 710 N.W.2d 96 (2006) (appellant was former associate/employee of mine; professional knowledge required recusal).

Ptak v. Swanson, 271 Neb. 57, 709 N.W.2d 337 (2006) (appellant was former law partner of mine; personal knowledge of facts required recusal).

Zwygart v. State Bd. of Public Accountancy, 270 Neb. 41, 699 N.W.2d 362 (2005) (formerly represented Zwygart in private practice; matters of professional knowledge required recusal).

Blair v. State Farm Ins. Co., 269 Neb. 874, 697 N.W.2d 266 (2005) (professional knowledge of facts required recusal).

Swanson v. Ptak, 268 Neb. 265, 682 N.W.2d 225 (2004) (appellee was law partner in private practice; personal knowledge of facts required recusal).

State ex rel. Counsel for Discipline v. Rokahr, 267 Neb. 436, 675 N.W.2d 117 (2004) (professional knowledge of facts required recusal).

Kracl v. American Family Ins. Grp., No. S-02-1243 (2004), available at 2004 WL 3741930 (appellant Kracl is my first cousin).

State ex rel. Counsel for Discipline v. Mills, 267 Neb. 57, 671 N.W.2d 765 (2003) (I was personal friend of the respondent and had personal knowledge of certain facts that were the subject of this action).

Langemeier v. Urwiler Oil & Fertilizer, Inc., 265 Neb. 827, 660 N.W.2d 487 (2003) (formerly represented primary witness, Zwygart, in private practice; professional knowledge required recusal).

Vonderschmidt v. Sur-Gro and Tri-State Ins. Co. of Minnesota, 262 Neb. 551, 635 N.W.2d 405 (2001) (appellee's counsel had been recently employed as a law clerk of mine; appearance of conflict required recusal).

In re Estate of Eickmeyer, 262 Neb. 17, 628 N.W.2d 246 (2001) (my daughter was employed as a summer clerk by the appellant's law firm).

Kirwan v. Chicago Title Ins. Co., 261 Neb. 609, 624 N.W.2d 644 (2001) (represented appellant in private practice and professional knowledge of facts required recusal).

Lancaster Co. School Dist. No 0001 v. State Dept. of Labor, 260 Neb. 108, 615 N.W.2d 441 (2000) (at the time, my wife was employed by the appellee school district; appearance of conflict required recusal).

Langemeier v. Urwiler Oil & Fertilizer, Inc., 259 Neb. 876, 613 N.W.2d 435 (2000) (formerly represented primary witness, Zwygart, in private practice; professional knowledge required recusal).

Hood v. AAA Motor Club Ins. Assn., 259 Neb. 63, 607 N.W.2d 814 (2000) (personal and professional knowledge of facts, from private practice, required recusal).

Pfeifer v. E.I. Du Pont de Nemours and Co., 258 Neb. 756, 606 N.W.2d 773 (2000) (while in private practice, I was counsel of record for appellee; similar issue, required recusal).

Smith Barney, Inc. v. Painters Local Union No. 109 Pension Fund, 254 Neb. 758, 579 N.W.2d 518 (1998) (had substantial retirement account with appellee investment firm; appearance of conflict required recusal).

Cedars Corp. v. Sun Valley Dev. Co., 253 Neb. 999, 573 N.W.2d 467 (1998) (professional knowledge of facts, case involving former law partners).

Bonge v. County of Madison, 253 Neb. 903, 573 N.W.2d 448 (1998) (professional knowledge of facts, as former Battle Creek city attorney).

Darrah v. Bryan Memorial Hosp., 253 Neb. 710, 571 N.W.2d 783 (1998) (at the time, my wife was employed by appellee hospital; appearance of conflict required recusal).

Allphin v. Ward, 253 Neb. 302, 570 N.W.2d 360 (1997) (while in private practice, I was counsel of record for the appellant regarding the subject matter of this appeal).

Hobbs v. Midwest Ins., Inc., 253 Neb. 278, 570 N.W.2d 525 (1997) (professional knowledge of facts, from private practice, required recusal).

State ex rel. Wieland v. Moore, 252 Neb. 253, 561 N.W.2d 230 (1997) (business relationship with relator's counsel, Denzel Busick, required recusal).

Spulak v. Tower Ins. Co., Inc., 251 Neb. 784, 559 N.W.2d 197 (1997) (business relationship with appellant's counsel, Denzel Busick, required recusal).

State v. Cook, 251 Neb. 781, 559 N.W.2d 471 (1997) (while in private practice, my firm was counsel of record for the appellant regarding the subject matter of this appeal).

State ex rel. Nebraska State Bar Ass'n v. Van. 251 Neb. 196, 556 N.W.2d 39 (1996) (personal knowledge of facts and the respondent, while in private practice required recusal).

Rauert v. School Dist. 1-R of Hall County, 251 Neb. 135, 555 N.W.2d 763 (1996) (business relationship with appellant's counsel, Denzel Busick, required recusal).

Hauserman v. Stadler, 251 Neb. 106, 554 N.W.2d 798 (1996) (business relationship with appellees' counsel, Denzel Busick, required recusal).

Schiffern v. Niobrara Valley Electric, 250 Neb. 1, 547 N.W.2d 478 (1996) (while in private practice, I filed companion case (wrongful death action) to this cause – professional knowledge of facts required recusal).

In re Appeal of Lane, 249 Neb. 499, 544 N.W.2d 367 (1996) (business relationship with appellee's counsel, Denzel Busick, required recusal).

Nebraska Methodist Health System, Inc. v. Dept. of Health of the State of Nebraska, 249 Neb. 405, 543 N.W.2d 466 (1996) (at the time, my wife was serving on the Nebraska Board of Health, requiring recusal).

Kocsis v. Harrison, 249 Neb. 274, 543 N.W.2d 164 (1996) (business relationship with appellants' counsel, Tom Gleason, required recusal).

State ex rel. Nebraska State Bar Ass'n v. Gleason, 248 Neb. 1003, 540 N.W.2d 359 (1995) (while in private practice, served as co-counsel in malpractice case; professional knowledge required recusal).

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held any public office, other than my current judgeship, nor have I had any unsuccessful candidacies for elective office. In 2006, I was one of three finalists for the Nebraska chief justice position. Governor Dave Heineman selected then U.S. Attorney Michael G. Heavican to fill the chief justice position. I have never had an "unsuccessful nomination" for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was an active member of the Madison County Democrats, and while in the private practice of law, I served as vice chair from 1990 to 1992 and as chairman from 1992 to 1995. I played an informal role in assisting Governor E. Benjamin Nelson (1990, 1994) and U.S. Senator J. Robert Kerrey (1988, 1994) in their respective political campaigns. I had no particular title or any formal responsibilities; I simply assisted the candidates with fundraising and introduced the candidates to the people of northeast Nebraska. Again, with no formal responsibilities, I also assisted my former law partner, David A. Domina, during his unsuccessful primary campaign for governor of Nebraska in 1986.

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

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

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

I did not serve as a clerk to a judge after law school.

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

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1981 – 1982
Jewell, Otte, Gatz, Collins & Domina
105 South Second Street
Norfolk, Nebraska 68701
Associate

1982 – 1990
Domina, Gerrard, Copple & Stratton, P.C.
2425 Taylor Avenue
Norfolk, Nebraska 68701
Partner

1990 – 1995
Gerrard, Stratton & Ptak, P.C.
1307 South 13th Street
Norfolk, Nebraska 68701
Senior Partner

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

I have never served as a mediator or arbitrator in an alternative dispute resolution proceeding.

b. Describe:

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

I began my career in 1981 as an associate in an "AV" rated general litigation firm. Although I was assigned primarily insurance defense tasks, and cut my teeth on insurance subrogation trials, I nonetheless performed a wide variety of legal functions in my first year including criminal law defense, juvenile court, and many transactional law projects.

In 1982, David Domina started a new law firm in Norfolk and I joined his law practice. During the next eight years, I conducted primarily a general litigation practice. Our firm represented both plaintiffs and defendants in civil and criminal litigation in all state and federal courts. In addition, I was very active in the community – so I represented a number of businesses and nonprofit entities in northeast Nebraska.

In 1990, Domina moved to Omaha and I, along with two partners, opened a new law office in Norfolk. During the last five years of my private practice (1990 – 1995), I engaged primarily in an active trial practice

(70%) and an administrative law/school law practice (30%). My trial practice included several civil jury trials in the state courts and federal courts of Nebraska and South Dakota. In addition, I represented felony criminal defendants in bench trials, jury trials, and appeals in the state court. I have represented numerous administrative clients and school districts in state court, federal court, and agencies such as the Equal Opportunity Commission. In a community the size of Norfolk (population 23,000), a general practice of law really means "general." In addition to general trial practice, I drafted wills and business agreements, prepared private adoption agreements, and litigated before the workers' compensation court and social security administration, etc. – in other words, the general practice of law covers a rather full slate of legal issues.

I was sworn in as a judge on the state supreme court in July 1995, and I did not represent clients in private practice after that date.

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

I never did specialize during my law practice days, and it would be very difficult to do so in northeast Nebraska. As the years went by, I did tend to take on more large litigation matters (e.g., wrongful death, product liability) and delegated some of the general office practice to willing partners and associates. But I did not have a "typical client": I represented everyone from clergy to vagabonds, grieving relatives to hardened criminals, and everything in-between. My clients were individuals, corporations, and businesses from all sectors of the community. In addition, area colleges, school districts, and municipalities made up approximately 30% of my client base.

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

Approximately 70 to 75% of my private practice involved litigation. As a result, I appeared in court frequently. It was typical to appear in court many times weekly for various motions, hearings, and trials.

i. Indicate the percentage of your practice in:

1. federal courts: 15%
2. state courts of record: 80%
3. other courts: 0%
4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 80%
2. criminal proceedings: 20%

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

In private practice, I tried approximately 120 cases, as sole counsel or chief counsel, to verdict, judgment, or final decision.

i. What percentage of these trials were:
1. jury: 20%
2. non-jury: 80%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Sobansky, as Special Administratrix of the Estate of Sobansky, deceased v. Ford Motor Co.*; U.S. District Court for the District of South Dakota, Civil No. 91-4181; Honorable John B. Jones presiding.

I represented the plaintiff (on her behalf and on behalf of her children) from 1991 through 1993 in this federal court litigation against Ford Motor Company. The plaintiff's husband struck a patch of ice while he was driving a Ford Bronco II on a highway near Vermillion, South Dakota. As he attempted to correct the sliding Ford

Bronco II, the vehicle rolled over in the middle of the highway and he died in the accident. Co-counsel Gerald L. Reade and I filed a wrongful death lawsuit in federal court alleging that Ford Motor Company had defectively designed and manufactured its Bronco II vehicle and knew of the defects that were causing a significant number of unnecessary rollover accidents, including the instant one. Exhaustive investigation and discovery occurred, expert witnesses were retained and deposed, and just prior to trial, the parties were able to mediate a substantial court-supervised settlement agreement. The terms of the settlement remain confidential.

Opposing Counsel:	Snell & Wilmer, LLP 400 East Van Buren Street Phoenix, AZ 85004 (602) 382-6000
Co-Counsel:	Gerald L. Reade 200 West Third Street Yankton, SD 57078 (605) 665-5009
	Russell L. Cook, Jr. The Cook Law Firm 919 Congress Avenue, Suite 1220 Austin, TX 78701 (512) 482-9556

2. *Koch, Personal Representative v. Martin and Breitkreutz*; Valley County District Court, Case No. 6342, Honorable Ronald D. Olberding presiding.

From 1994 through 1995 (until I was appointed to the bench), I represented the plaintiff as the personal representative of his wife, who was a 30-year-old young wife and mother when she died from bacterial pneumonia in July 1992. I filed a medical malpractice (wrongful death) lawsuit on behalf of the family, against Dr. Martin and his physician assistant, Breitkreutz. The plaintiff alleged that the defendants failed to timely and correctly diagnose and treat the decedent (i.e., treated for viral rather than bacterial pneumonia); and that the defendant's care and treatment fell below the standard of care and caused the decedent's death. Prior to my appointment to the bench in July 1995, I had filed the lawsuit and obtained a full report and deposition of our primary expert witness, an infectious disease specialist. My co-counsel, Denzel Busick, and I conducted discovery and prepared the case for trial. Busick tried the case to a jury (in the months after I took the bench) and obtained a $700,000 verdict in favor of the Koch family.

Opposing Counsel:	David J. Schmitt Lamson, Dugan & Murray, LLP 10306 Regency Parkway Drive Omaha, NE 68114 (402) 397-7300
Co-Counsel:	Denzel R. Busick (now Hon.) Social Security Administration – Administrative Law Judge 1720 South Southeastern Avenue, Suite 200 Sioux Falls, SD 57103 (877) 378-9080

3. *State of Nebraska v. Manzer*, 246 Neb. 536, 519 N.W.2d 558 (1994); Pierce County District Court, Honorable Richard P. Garden presiding.

   I represented 17-year-old defendant Manzer from late 1992 through 1994. Manzer was charged with one count of first degree murder for the shotgun slaying of his father, and another count of first degree assault for shooting and wounding his sister on the same night. There were significant issues regarding Manzer's mental state and alleged abuse in the home prior to the crime. Experts were hired and deposed, and substantial defenses were raised and prepared to show diminished capacity and a lack of premeditation on the part of the defendant. On the eve of trial, Manzer reached a plea agreement. As a result of pleading guilty to a reduced charge of second degree murder and one count of assault, Manzer was sentenced to life in prison and a consecutive term of years for the assault. His conviction was reversed on appeal, and Manzer was ultimately resentenced to life in prison for the murder and a lesser term of years for the accompanying charge. Manzer's life sentence was commuted to a term of years, and he was eventually paroled.

Opposing Counsel:	Verlyn Luebbe Pierce County Attorney 106 East Main Street P.O. Box 203 Pierce, NE 68767 (402) 329-4646
Co-Counsel:	Robert F. Bartle Bartle & Geier Law firm 1141 "H" Street P.O. Box 83104 Lincoln, NE 68508 (402) 476-2847

4. *State of Nebraska v. Quick*, 1 Neb. App. 756, 511 N.W.2d 168 (1993); Wayne County District Court, Honorable Richard P. Garden presiding.

   In 1992 and 1993, I represented the defendant, who was charged with first degree sexual assault of his daughter. This matter was tried to a jury; Quick had originally been charged for an alleged act occurring sometime between March 27 and April 9, 1988. At trial, after adducing all evidence, the State moved to amend the information to conform to controverted evidence, by changing the beginning date of the charged time period to April 25, 1987, thereby extending from two weeks to almost one year the time period in which the alleged act could have occurred. I objected on grounds of lack of notice and a violation of due process. The trial judge granted the motion to amend the information, the trial proceeded, and Quick was convicted. On appeal, the Court of Appeals reversed and remanded this cause for a new trial, finding that the trial court's decision to allow the State to amend the information constituted prejudicial error. On remand, the defendant was able to secure a plea agreement to a reduced charge, and Quick was released from custody based on time served.

   Opposing Counsel: Michael E. Pieper
   Wayne County Attorney
   Pieper, Miller & Dahl
   218 Main Street
   P.O. Box 427
   Wayne, NE 68787
   (402) 375-3585

5. *Day v. Nelson*, 240 Neb. 997, 485 N.W.2d 583 (1992); Lancaster County District Court, Honorable Earl J. Witthoff presiding.

   In 1991 and 1992, co-counsel Robert F. Bartle and I represented a group of Madison County citizens who challenged the constitutionality of Nebraska's reapportionment plan in light of the 1990 Federal Census. After substantial discovery, this equity matter was tried to the court. We alleged that the reapportionment plan, insofar as it abolished Madison County as a unitary legislative district and instead divided the county between two preexisting districts, violated the Nebraska Constitution, as well as the 14th Amendment to the U.S. Constitution. The plaintiffs requested a declaratory judgment determining that the reapportionment plan was unconstitutional and permanently enjoining the Governor and the Secretary of State from enforcing the provisions of the plan. The district court determined that the reapportionment plan was not constitutionally deficient and dismissed the case. We appealed. The Nebraska Supreme Court, on appeal, determined that the reapportionment plan did, in fact, violate Article III, Section 5, of the Nebraska Constitution in that it was practicable to follow the county lines of Madison County in the legislative redistricting plan and the Legislature failed to do so. The district court judgment was reversed and the cause remanded with directions to enter judgment for the citizens of Madison County. As a result, the Governor called a special session of the Legislature and legislative redistricting was performed within the strictures of the Constitution.

Opposing Counsel:	Charles E. Lowe, Assistant Attorney General Dale A. Comer, Assistant Attorney General Nebraska Attorney General's Office 2115 State Capitol P.O. Box 98920 Lincoln, NE 68509 (402) 471-2682
Co-Counsel:	Robert F. Bartle Bartle & Geier Law firm 1141 "H" Street P.O. Box 83104 Lincoln, NE 68508 (402) 476-2847

6. *Tunender v. Niobrara Valley Electric Membership Corp.*; Holt County District Court, Case No. 19047, Honorable William B. Cassel presiding.

   From 1989 through 1993, I represented the family of a man who was killed when the vehicle in which he was riding struck Niobrara Valley's parked truck. I filed a wrongful death lawsuit, on behalf of the family, against Niobrara Valley, alleging that employees of the utility company were negligent for parking a large truck partially on the wrong side of the highway (in thick fog), facing oncoming traffic. There were extenuating circumstances, and numerous issues were litigated. The utility company denied negligence, claiming that the truck was parked in the best place possible while repairing a faulty utility line (emergency) in the middle of the night; and the defendant asserted that the driver of the car was the proximate cause of the accident, citing excessive speed and use of alcohol. This case was tried to a jury twice. The first time, in 1992, the trial ended in a hung jury (eight to four, jury could not agree on amount of damages). The second time, in 1993, a unanimous jury returned a verdict in favor of the Tunender estate.

Opposing Counsel:	Steven E. Guenzel Johnson, Flodman, Guenzel & Widger 1227 Lincoln Mall P.O. Box 81686 Lincoln, NE 68501 (402) 475-4240

7. *Schieffer v. Catholic Archdiocese of Omaha*, 244 Neb. 715, 508 N.W.2d 907 (1993); Douglas County District Court, Honorable Donald J. Hamilton presiding.

   In 1992 and 1993, I represented a Catholic priest and co-counsel, Patrick Vipond, represented the Catholic Archdiocese of Omaha. The plaintiff-appellant had commenced an action against the archdiocese and the priest arising from a sexual

relationship that allegedly began while the priest was counseling the plaintiff. Substantial discovery occurred and depositions were taken in preparation for trial; but prior to trial, the district court sustained the defendants' motion to dismiss after an evidentiary hearing was conducted. Plaintiff appealed. The district court found (and the Supreme Court affirmed) that (1) plaintiff failed to adequately state causes of action against the priest for intentional infliction of emotional distress, negligence, and breach of fiduciary duty, given the consensual nature of the relationship; and (2) the archdiocese could not be held liable for the priest's conduct without tort liability as to the priest individually.

Opposing Counsel:
Herbert J. Friedman
Friedman Law Offices
3800 Normal Boulevard, #200
P.O. Box 82009
Lincoln, NE 68501
(402) 476-1093

Co-Counsel:
Patrick G. Vipond
Lamson, Dugan & Murray, LLP
10306 Regency Parkway Drive
Omaha, NE 68114
(402) 397-7300

8. *Bruns v. Estates of Swanson and Balestra, et al.*; Madison County District Court, Case No. 25971G, Honorable Richard P. Garden presiding.

From 1993 through early 1995, I represented Bruns, the husband and personal representative of his wife, who died as a passenger in a mid-air airplane collision on a clear day near Norfolk, Nebraska, in July 1993. I, along with co-counsel, Mark H. Goodrich, filed a wrongful death lawsuit, on behalf of the family, against both (deceased) pilots' estates and the aviation companies. There was substantial investigation and discovery performed with regard to the Federal Aviation Administration investigation and various experts' reports assigning fault as between the two pilots. After multiple depositions (of expert and fact witnesses) were taken, and the case was fully prepared for trial, the plaintiff and defendants were able to reach a satisfactory (confidential) settlement agreement.

Opposing Counsel:
Michael F. Kinney
Cassem, Tierney, Adams, Gotch & Douglas
8805 Indian Hills Drive, #300
Omaha, NE 68114
(402) 390-0300

Michael J. Mooney
Gross & Welch, P.C., LLO
1500 Omaha Tower
2120 South 72nd Street
Omaha, NE 68124
(402) 392-1500

Co-Counsel: Mark H. Goodrich
Goodrich & Associates
P.O. Box 12850
Reno, NV 89510
(775) 851-4800

Counsel for Other Plaintiff: John V. Hendry
(Former Chief Justice of Nebraska Supreme Court)
7224 Carmen Drive
Lincoln, NE 68516
(402) 440-0197

9. *Otoe Cnty. Nat'l Bank v. Lewis et al.*; Brown County District Court, Case No. 6151, Honorable Edward E. Hannon presiding.

In 1988 and 1989, I defended Lewis in an alleged fraudulent conveyance equity lawsuit in Ainsworth, Nebraska. This case presented some intricate badges of fraud issues. The plaintiff bank sued Lewis to set aside certain assignments of trust interests from a brother-in-law to Lewis. It was alleged that the brother-in-law was trying to defraud the plaintiff bank and that Lewis was part of a scheme to convey income to him through the trust instruments. This sophisticated case was tried to the court, and although Lewis was deemed to be an innocent party and received the consideration he paid for the trust annuity, the court annulled and canceled the assignments of trust interest conveying income to the brother-in-law.

Opposing Counsel: Terrence L. Michael (now Hon.)
U.S. Bankruptcy Judge
224 South Boulder Avenue, Room 123
Tulsa, OK 74103
(918) 699-4065

10. *State of Nebraska v. Coenen*; Madison County District Court, Case No. 20746, Honorable Richard P. Garden presiding.

In 1984 and 1985, I defended Coenen after he was charged with first degree murder and two counts of assault. Coenen spent a long day (in late 1984) at a house with his wife, her new boyfriend, and his adult daughter. Although all parties appeared to be getting along for most of the day, things turned sour in the evening. A confrontation ensued late in the evening, and Coenen ended up shooting and killing the boyfriend,

and wounding his wife and daughter. Expert witnesses were employed and extensive discovery occurred in preparation for trial. I raised a *State v. Vosler* diminished capacity defense on Coenen's behalf. As a result of discovery and final trial preparation, an agreement was reached wherein Coenen pled guilty to a reduced charge of second degree murder and lesser counts of assault. Coenen was sentenced to a term of life imprisonment; there was no appeal.

Opposing Counsel: Richard W. Krepela (now Hon.)
Madison County Court
Seventh Judicial District
P.O. Box 230
Madison, NE 68748
(402) 454-3311

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While in private practice, I enjoyed every aspect of representing clients, from getting to know clients to being able to provide legal relief in very difficult circumstances – and oftentimes, the effective presentation of law and facts caused a major civil case to settle (prior to litigation) or caused the government to decline to file charges or negotiate a favorable criminal plea without going to trial. But I equally enjoyed presentations to the public, particularly to high school and college groups, that would educate others and demystify the justice system. Thus, coaching a local mock trial team or engaging in public forums or debates was always rewarding. One of the rewarding legal activities while in private practice was representing the citizens of Madison County (on a pro bono basis) in 1991 and 1992, when we were able to successfully bring suit and set aside the legislative redistricting plan in Nebraska. The particular facts of the case are described elsewhere in this questionnaire, but the ultimate significance of the case was to maintain the representation of Madison County in one contiguous unit as contemplated by the state constitution.

After assuming the bench in 1995, in addition to deciding cases, I have chaired various Supreme Court committees that helped even the playing field in the courts of Nebraska. The Minority Justice Committee and the Interpreter Advisory Committee, for example, have done great work to help increase full access to justice for non-English speaking persons and to significantly increase minority representation on our juries in the state, among many other things. All of these practical changes affect due process, on a wide-scale basis and in real ways, throughout our system. I do not want to take too much credit for many of these changes because the changes have come as a result of much study and

the sweat of others. It has been rewarding to be a part of all of this and to provide some modicum of leadership and direction in most of the projects.

I have performed no lobbying activities on behalf of any client or organization.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    I have not taught any courses.

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

    I will receive payments, upon reaching age 65 (or upon later retirement), from the Nebraska Judges Retirement System.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest

when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My wife is a psychiatric nurse practitioner at the University of Nebraska Health Center. A case may arise directly implicating her, or the University Health Center; however, that should be a rare occurrence. Should such a matter arise, I would recuse myself unless it did not present a conflict or the appearance of a conflict. I can think of no other categories of litigation or financial arrangements that are likely to present potential conflicts of interest if I am confirmed.

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

If confirmed, I will handle all matters involving actual or potential conflicts of interest by following the Code of Conduct for United States Judges and the federal recusal statutes. I recognize that public confidence in the courts is maintained only by stringent adherence to these principles. I intend to err on the side of recusing myself when faced with any legitimate challenge to my impartiality.

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

During my private practice, I regularly provided pro bono legal services to the citizens of northeast Nebraska. I was a long-time panel member with the Nebraska State Bar Association pro bono section and represented low-middle income individuals in all types of legal matters, including family law, adoptions, landlord-tenant disputes, and general litigation. In addition, I represented numerous nonprofit organizations in Norfolk and surrounding communities, on a pro bono basis. This representation included not only the drafting of documents and attendance at meetings, but also often involved representation to employees and volunteers of the nonprofit organization for various criminal, administrative, and civil matters. On a personal basis, I often took on pro bono cases that I felt had merit and would benefit the community at large. One such cause was the *Day v. Nelson* redistricting case, referenced earlier in this questionnaire. A fair estimate of the time I spent on pro bono cases would be in the 6 to 10% range.

Since being appointed to the bench, I regularly speak to high school and college classes, to Boys State, and to community groups about our entire civil and criminal justice system. But just as importantly, I lead bar committees and regularly speak to lawyers about the critical needs of the underserved in our system. Thus, access to justice and the need for pro bono services are a significant part of my ongoing speaking agenda.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In November 2010, Senator E. Benjamin Nelson's chief of staff and I engaged in a conversation about a potential vacancy on the district court when District Judge Richard G. Kopf was about to announce his intention to take senior status in 2011. We discussed various possible candidates, including the possibility of my interest in the federal bench. Senator Nelson's staff arranged a meeting with me on November 29, 2010, to discuss in detail my background, interests, and cases that I had decided since assuming the bench in July 1995. An advisory committee utilized by Senator Nelson vetted the information. On December 10, 2010, I met and interviewed personally with Senator Nelson. And on January 10, 2011, I met and interviewed personally with Senator Mike Johanns.

Since January 20, 2011, I have been in contact with pre-nomination officials at the Department of Justice. On February 18, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. The President submitted my nomination to the Senate on May 4, 2011.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Gerrard, John M.	U.S. District Court, Nebraska	05/04/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Active Status	**5a. Report Type** (check appropriate type) ☑ Nomination, Date 05/04/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	**6. Reporting Period** 01/01/2010 to 04/28/2011
7. Chambers or Office Address Robert F. Denney Federal Building & U.S. Courthouse 100 Centennial Mall North, #586 Lincoln, Nebraska 68508	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer_____ Date_____	

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

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Gerrard, John M.	Date of Report 05/04/2011

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2011	State of Nebraska judge salary	$43,250.00
2. 2010	State of Nebraska judge salary	$126,040.00
3. 2010	University of Nebraska College of Law - commencement address honorarium	$500.00
4. 2009	State of Nebraska judge salary	$124,412.00

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

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

DATE	SOURCE AND TYPE
1. 2011, 2010	University of Nebraska Health Center - psychiatric nurse practitioner salary
2. 2011, 2010	Bryan LGH Physician Network, Inc. - psychiatric nurse practitioner salary
3.	
4.	

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Gerrard, John M.	Date of Report 05/04/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	U.S. Bank	Personal note	K
2.	Key Bank	Education loan	K
3.	Nelnet	Education loan	J
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Gerrard, John M.	05/04/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. U.S. Bank Checking Account	A	Interest	J	T					
2. Charles Schwab Market Account	A	Interest	J	T					
3. ABT Common Stock	A	Dividend	J	T					
4. BRKB Common Stock		None	J	T					
5. CSCO Common Stock		None	J	T					
6. CVX Common Stock	A	Dividend	J	T					
7. DEO Common Stock	A	Dividend	J	T					
8. EMR Common Stock	A	Dividend	J	T					
9. EXPD Common Stock	A	Dividend	J	T					
10. FTE Common Stock	A	Dividend	J	T					
11. GFAFX Growth Fund	A	Interest	J	T					
12. HCP Common Stock	A	Dividend	J	T					
13. IBSCX Small Cap Fund		None	J	T					
14. LVLTCommon Stock		None	J	T					
15. OKS Common Stock	A	Dividend	J	T					
16. ORCL Common Stock		None	J	T					
17. PTTRX Institutional Fund		None	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Gerrard, John M.	Date of Report 05/04/2011

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

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. RERGX Growth Fund		None	J	T					
19. RFNGX Growth Fund		None	J	T					
20. SNY Common Stock	A	Dividend	J	T					
21. TCLFX Investment Fund		None	J	T					
22. TEVA Common Stock	A	Dividend	J	T					
23. TIP Bond Fund	A	Dividend	K	T					
24. VALE Common Stock	A	Dividend	J	T					
25. VFORX Investment Fund		None	J	T					
26. VIPSX Securities Fund	A	Dividend	J	T					
27. WEFIX Bond Fund	A	Dividend	J	T					
28. WR Common Stock	A	Dividend	J	T					
29. American General Universal Life Insurance		None	J	T					
30. Genworth Adjustable Life Insurance		None	J	T					
31. Nebraska Judges Retirement System (no control)	A	Interest	J	T					
32.									

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Gerrard, John M.	Date of Report 05/04/2011

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Gerrard, John M.	Date of Report 05/04/2011

IX. CERTIFICATION.

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

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

Signature John M. Gerrard

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		21	581	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds		1	000	Notes payable to banks-unsecured		47	500
Listed securities-see schedule		191	882	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-personal residence		413	000
Real estate owned-personal residence		415	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		85	000	- Education loans		83	000
Cash value-life insurance		11	141				
Other assets itemize:							
- Nebraska Judges Retirement System		158	131				
				Total liabilities		543	500
				Net Worth		340	235
Total Assets		883	735	Total liabilities and net worth		883	735
CONTINGENT LIABILITIES (none)				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts (educ. loan)		16	500	Are any assets pledged? (Add schedule)	No		
Legal Claims				Are you defendant in any suits or legal actions?	No		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	No		
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
ABT	$ 4,905
BRKB	12,544
CSCO	3,430
CVX	10,749
DEO	7,622
EMR	5,843
EXPD	5,015
FTE	4,502
GFAFX	1,272
HCP	3,794
IBSCX	11,007
LVLT	156
OKS	8,235
ORCL	3,343
PTTRX	1,995
RERGX	619
RFNGX	9,425
SNY	10,566
TCLFX	6,420
TEVA	10,034
TIP	21,832
VALE	13,340
VFORX	7,008
VIPSX	11,957
WEFIX	8,343
WR	7,926
Total Listed Securities	$191,882

AFFIDAVIT

I, **JOHN MELVIN GERRARD**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 2, 2011
(DATE)

John M. Gerrard
(NAME)

Pamela J. Kraus
(NOTARY)

GENERAL NOTARY - State of Nebraska
PAMELA J. KRAUS
My Comm. Exp. Dec. 8, 2012

Senator KLOBUCHAR. Very good. Well, thank you.

Judge Phillips, we enjoyed the story of you and your husband, so we hope to see him out there, and I will note that I also went to the University of Chicago.

Ms. PHILLIPS. Good.

Senator KLOBUCHAR. So I am pleased to hear that part of your resume. Please go ahead.

STATEMENT OF MARY ELIZABETH PHILLIPS, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI

Ms. PHILLIPS. Thank you, Madam Chairwoman. I appreciate the opportunity to address the Committee, and I first want to thank members of the Committee for holding this hearing today and considering these nominations.

I do have some family members present. In addition to my husband, who has already been referenced, I would like to acknowledge he is not only a judge but a former State court prosecutor and a former Assistant United States Attorney, and he does have that look of Assistant United States Attorneys.

[Laughter.]

In addition, with me today is my sister, Jennifer Phillips, who follows in the footsteps of Senator McCaskill and is currently an assistant Jackson County prosecutor; her husband, Buck Williams, who is a homicide detective with the Kansas City, Missouri, Police Department.

My parents, who still live in the small town in north Missouri that I grew up in: My father, Bill Phillips, who is a former prosecutor and currently still practices in Milan; and my mother, who not only puts up with living in a family full of lawyers, but holds her own quite well.

In addition, I have some family here from McAllen, Texas: my sister, Ann Valarde. Unfortunately, her husband is a high school football coach in Texas and could not—this is not a good time of year for him to get away, but he is watching on the webcast.

Also with me today are my two nieces, Katie and Chloe Slusher, who are having the time of their lives watching what is going on here in the Senate.

Senator KLOBUCHAR. They are back there. They waved. Very nice. I hope they get on the webcam. Kind of like being at a sporting event.

Ms. PHILLIPS. Yes. I also have some people who are watching on the webcam, namely, my 101-year-old grandmother, Jane Pratt. She is, with some assistance today, watching. And I have a number of family and friends and supporters, some of whom are in my office, hopefully still working, but also watching on the webcam there in the Western District of Missouri.

In addition to those supporters, I have to thank Senator McCaskill who not only gave me my first job out of law school, but who has continued to support me, and through her support and confidence has provided me unbelievable opportunities.

In addition, I need to thank the President, President Obama, for once again nominating me for a Senate-confirmed position.

Thank you.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Mary Elizabeth "Beth" Phillips

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

   United States District Judge for the Western District of Missouri

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   400 East 9th Street
   Suite 5510
   Kansas City, Missouri 64106

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

   1969; Kirksville, Missouri

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1994 – 1996, University of Missouri School of Law; J.D., 1996
   1991 – 1992, University of Chicago; M.A., 1992
   1987 – 1991, University of Chicago; B.A., 1991

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2009 – Present
   U.S. Attorney's Office – Western District of Missouri
   400 East 9th Street, Suite 5510
   Kansas City, Missouri 64106
   U.S. Attorney

2008 – 2009
U.S. Attorney's Office – Western District of Missouri
400 East 9th Street, Suite 5510
Kansas City, Missouri 64106
Assistant United States Attorney

Summer 2008
U.S. Attorney's Office – Western District of Missouri
400 East 9th Street, Suite 5510
Kansas City, Missouri 64106
Litigation Consultant

2001 – 2008
Bartimus, Frickleton, Robertson & Gorny
11150 Overbrook Road, Suite 200
Leawood, Kansas 66211
Associate

2002 – 2008
Jackson County Circuit Court
415 East 12th Street
Kansas City, Missouri 64106
Special Prosecutor

1997 – 2001
Jackson County Prosecutor
415 East 12th Street, 11th Floor
Kansas City, Missouri 64106
Assistant Prosecutor

Spring 1997
Levy & Craig
1301 Oak
Kansas City, Missouri 64105
Secretary

Summer 1996
Jackson County Counselor
415 East 12th Street
Kansas City, Missouri 64105
Intern

Summer 1995
U.S. Attorney's Office – Western District of Missouri
400 East 9th Street, Suite 5510
Kansas City, Missouri 64106
Intern

1993 – 1994
U.S. Congresswoman Pat Danner
1323 Longworth
Washington, D.C. 20515
Legislative Assistant

1992
U.S. Senate Special Committee on Aging
Dirksen G31
Washington, D.C. 20515
Legislative Correspondent

1991 – 1992
Chicago Department of Health
121 LaSalle Street
Chicago, Illinois 60002
Masters Student Intern

Summer 1991
Phillips & Spencer
103 North Market Street
Milan, Missouri 63556
Paralegal

Other Affiliations (uncompensated):

2006 – 2009
Metropolitan Organization to Counter Sexual Assault
3100 Broadway, Suite 400
Kansas City, Missouri 64111
Board Member

2005 – 2009
Child Protection Center, Inc.
3101 Broadway, Suite 750
Kansas City, Missouri 64111
Board Member
Treasurer

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the U.S. Military. I have not registered for selective service.

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

   Distinguished Barrister/American, Kansas City Business Executives for National Security (2010)
   Criminal Justice Legal Leader, Kansas City Daily Record (2009)
   Jackson County Prosecutor's Warrant Desk Officer of the Year, Jackson County (1999)

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

   American Association for Justice (2001– 2008)
   Catholic Lawyers Guild of Kansas City (2007 – Present)
   Kansas City Association of Women Lawyers (2001 – Present)
   Kansas City Metropolitan Bar Association (2001 – Present)
   Continuing Legal Education Committee (2008 – 2009)
   Missouri Bar Association (1997 – Present)
   Missouri Association of Trial Attorneys (2001 – 2008)

10. **Bar and Court Admission**:

    a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

       Missouri, 1997
       Kansas, 2005 (inactive status since 2008)

       There have been no lapses in membership.

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

       United States District Court for the Western District of Missouri, 2001
       United States District Court for the District of Kansas, 2005 (inactive since 2008)
       Courts of the State of Missouri, 1997

Courts of the State of Kansas, 2005 (inactive since 2008)

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Child Protection Center (CPC) (2005 – 2009)
Member of Board of Directors (2005 – 2009)
Treasurer of Board of Directors (2005 – 2009)
Greater Kansas City Women's Political Caucus (2004 – 2009)
Metropolitan Organization to Counter Sexual Assault (MOCSA) (2006 – 2009)
Member of Board of Directors (2006 – 2009)
Chair of Program Services Committee (2009)
Chair of Fund Development Committee (2008)
Chair of Friends of MOCSA (2006 – 2008)
University of Missouri Alumni Association (2000 – Present)
Visitation Catholic Church (1997 – Present)
Member of Parish Council (2009 – Present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations of which I am a member or have been a member currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On November 29, 2010, I spoke to the Jackson County, Missouri Legislature. I spoke very briefly in support of a proposal for the Legislature to partially fund a Comprehensive Gang Assessment of Jackson County. I have no notes, transcript or recording, but press coverage is supplied.

Testimony to the Senate Judiciary Committee, Subcommittee on Human Rights and the Law (February 24, 2010). Transcript supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I have located the following:

May 26, 2011: I spoke at the swearing-in for Jackson County Prosecutor Jean Peters-Baker. I spoke generally on the role of a prosecutor, my background and my working relationship with Ms. Peters-Baker. I have no notes, transcript or recording. The event took place at the Jackson County Courthouse, which is located at 415 East 12th Street, Kansas City, Missouri 64106.

April 20, 2011: Somali Community Town Hall Meeting. I spoke to a group of Somali-Americans regarding civil rights and cases prosecuted by the Department of Justice. Notes supplied.

April 14, 2011: I spoke at an event commemorating Crime Victim Rights Week that was hosted by my office and other law enforcement agencies. At the event I presented the Crystal Kipper & Ali Kemp Memorial Award to S.A. James Kantazar of the Department of Homeland Security. My notes and a press release are supplied.

February 4, 2011: North Kansas City Rotary Club. I spoke for approximately 15 minutes on the role of the office of the U.S. Attorney and recent cases the office has prosecuted. I have no notes, transcript or recording. The Club has no physical address.

January 31, 2011: I welcomed attendees to a training seminar sponsored by the U.S. Attorney's Office of the Western District of Missouri and the Human Trafficking Rescue Project. Video supplied.

January 18, 2011: I spoke to the Association of Government Accountants for approximately 25 minutes and discussed the role of the U.S. Attorney and various cases my office recently prosecuted. I have no notes, transcript or recording. The address of the AGA is 2208 Mount Vernon Avenue, Alexandria, Virginia 22301.

January 14, 2011: Kansas City Civil Rights Advisory Committee meeting, Turkish Raindrop Foundation, 9303 Pflumm Road, Lenexa, Kansas. I spoke for approximately 10 minutes and discussed civil rights investigations and prosecutions my office has pursued. I have no notes, transcript or recording. The event was sponsored by the FBI, which is located at 1300 Summit Street, Kansas City, Missouri 64105.

December 3, 2010: I participated in a training sponsored by Business Executives for National Security entitled "Interagency Coordination on Terrorism." I discussed a terrorism case prosecuted by our office and focused on the various law enforcement techniques utilized during the case. Because law enforcement sensitive information was shared, the event was not recorded and the notes of my presentation are not available to the public.

October 26, 2010: I gave welcoming remarks to individuals attending a JDM Private Counsel Seminar. In addition to welcoming the attendees to Kansas City, I briefly discussed the role of my office. Notes supplied.

October 13, 2010: I participated in a panel that answered questions from law students regarding potential legal careers. I discussed the various jobs I have held as a lawyer, tips for those interested in a litigation career and how I became U.S. Attorney. I have no notes, transcript or recording. This event was sponsored by

the Inns of UMKC Mentoring Program, which is located at 500 East 52nd Street, Kansas City, Missouri 64110.

September 22, 2010: I spoke at a dinner sponsored by the Business Executives for National Security at the River Club. Notes supplied.

September 8, 2010: I presented a CLE to the Missouri Association of Trial Attorneys Women's Caucus. Presentation slides supplied.

August 19, 2010: U.S. Attorney's Office. I spoke to attendees of a training coordinated by the Law Enforcement Coordinating Committee of the Western District of Missouri, and presented the Enoch B. Morelock Award to Detective Trenny Wilson. Notes and press release covering the event supplied.

August 5, 2010: I spoke at an informal lunch meeting of the ABA White Color Crime Committee of Kansas City. I spoke for approximately 15 minutes on the priorities of the Department of Justice and of my office. I have no notes, transcript or recording. The event was sponsored by the ABA Midwest/KC Region White Collar Crime Committee. The ABA is located at 321 North Clark Street, Chicago, Illinois 60654.

May 21, 2010: I spoke at a CLE sponsored by the Kansas City Metropolitan Bar Association. The CLE was entitled "Corporate Prosecutions." Presentation slides supplied.

April 21, 2010: I spoke at an event commemorating Crime Victim Rights Week that was hosted by my office and other law enforcement agencies. At the event I presented the Crystal Kipper & Ali Kemp Memorial Award to INOBTR, a non-profit agency focused on educating children, parents and teachers of the dangers children face while on the internet. Notes supplied.

March 31, 2010: I welcomed attendees to a law enforcement training sponsored by my office and the Anti-Terrorism Advisory Committee. Notes supplied.

March 5, 2010: I spoke at my formal swearing-in as United States Attorney. Notes and press coverage are supplied.

February 5, 2010: I spoke to an assembly of grade school students about the role of a prosecutor and, in very basic terms, how our criminal justice system works. I have no notes, transcript or recording. Our Lady of the Presentation School is located at Northwest Murray Road, Lee's Summit, Missouri 64081.

June 14, 2005: I presented a CLE entitled "Using Hospital Records to Prove Liability." The CLE was organized by the American Association for Justice. The CLE was a teleseminar and I presented from my office. Audio supplied.

June 8, 2004: I presented a CLE entitled "Nursing Home Malpractice in Missouri: Successful Case Management from Investigation to Trial." The CLE was organized by the National Business Institute. I presented this day long CLE with a local defense attorney. Presentation slides and notes supplied.

May 7, 2004: Metropolitan Organization to Counter Sexual Assault's (MOCSA) Annual Luncheon. I described my experiences as a volunteer for MOCSA. I spoke for approximately 15 minutes. I have no notes, transcript or recording. MOCSA is located at 3100 Broadway, Suite 400, Kansas City, Missouri 64111.

April 5, 2002: Kansas City Metropolitan Bar Association. I presented a CLE entitled "Tried and True Tips for the Trial Attorney." I presented for approximately 25 minutes and discussed lessons I have learned from my trial experiences. Presentation slides supplied.

I periodically give presentations to Metropolitan Organization to Counter Sexual Assault (MOCSA) clients and volunteers. I usually speak on the various agencies and entities that a family may encounter when a child discloses sexual abuse. I do not know the specific dates I have given such presentations, and I have no notes, transcripts or recordings.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. In my official capacity as U.S. Attorney, I periodically give interviews to local radio, television and print media reporters. I do not recall all the interviews I have given or the dates I have given interviews. The interviews have centered on a particular case my office was prosecuting. I have located the following:

Scott Lauck, *New Jackson County Prosecutor 'Mean Jean' Says Her Door is always Open*, Missouri Lawyers Media, May 27, 2011. Copy supplied.

Press release, *21 Defendants Indicted for $1.4M Drug-Trafficking, Firearms Conspiracies*, United States Attorney for the Western District of Missouri, May 25, 2011. Copy supplied.

Press release, *Uzbek Man Sentenced for Role in Multi-National Racketeering and Forced Labor Enterprise*, United States Department of Justice, May 9, 2011. Copy supplied.

Press release, *Three Men Indicted for $52 Million Ponzi Scheme*, United States Department of Justice, May 4, 2011. Copy supplied.

Press release, *Ohio-Based Cardinal Health Inc. to Pay U.S. $8 Million to Resolve False Claims Act Allegations*, United States Department of Justice, Apr. 21, 2011. Copy supplied.

Steve Kraske, *Time to Remove Feds' Cloud Over Rod Jetton*, Kansas City Star, Apr. 3, 2011. Copy supplied.

Kelly Weise, *Does a Cellphone Equal a Computer? 8th Circuit Ruling Says It Does*, Missouri Lawyers Weekly, Feb. 13, 2011. Copy Supplied.

Bill Draper, *Fed Initiative Targets Gangs in KC, Across Nation*, Associated Press, Feb. 12, 2011. Copy Supplied.

Press release, *Seven Gang Members Indicted for Crack Cocaine Conspiracy*, United States Attorney for the Western District of Missouri, Feb. 10, 2011. Copy supplied.

Press release, *North Carolina Man Sentenced for $225,000 Scheme to Defraud the Federal Government*, United States Attorney for the Western District of Missouri, Jan. 10, 2011. Copy supplied.

Mark Morris, *Defendant in Sex Torture Case Allegedly Wanted Victim, Prosecutor Killed*, Kansas City Star, Jan. 7, 2011. Copy supplied.

Press release, *U.S. Attorney's Office Collects More Than $15 Million in Victim Restitution, Fines, Civil Actions*, United States Attorney for the Western District of Missouri, Dec. 16, 2010. Copy supplied.

Press release, *Springfield Business Owner, Michigan Associate Sentenced for $11.9 Million Fraud Scheme*, United States Attorney for the Western District of Missouri, Nov. 22, 2010. Copy supplied.

Press release, *Former Students Indicted for Computer Hacking at University of Central Missouri*, United States Attorney for the Western District of Missouri, Nov. 22, 2010. Copy supplied.

Press release, *Christian County Assessor Pleads Guilty to Mail Fraud; Failed to Assess to Her Own Property for Taxes*, United States Attorney for the Western District of Missouri, Nov. 9, 2010. Copy supplied.

Assistant US Attorney to Monitor Election in KC, Associated Press, Nov. 2, 2010. Copy supplied.

Press release, *KCK Man Charged in $7.2 Million Fraud Scheme That Targeted Thousands of Investors Nationwide*, United States Attorney for the Western District of Missouri, Oct. 27, 2010. Copy supplied.

Press release, *Uzbek Man Pleads Guilty to Charges for Involvement in Racketeering Enterprise that Engaged in Forced Labor*, United States Department of Justice, Oct. 21, 2010. Copy supplied.

Press release, *North Carolina Man Pleads Guilty to $225,000 Scheme to Defraud the Federal Government*, United States Attorney for the Western District of Missouri, Sept. 29, 2010. Copy supplied.

Press release, *Woman Tortured as Slave, Victim of Sex Trafficking and Forced Labor*, United States Attorney for the Western District of Missouri, Sept. 9, 2010. Copy supplied.

Mark Morris, *Dane Accused of Sexually Manipulating St. Joe Girl via Internet*, Kansas City Star, Sept. 8, 2010. Copy supplied.

Mike McGraw, *Investigation of 1988 Blast that Killed Six Firefighters Is Still Wrapped in Mystery*, Kansas City Star, Aug. 23, 2010. Copy supplied.

Press release, *Credit History Fraud Alleged in $2.7 Million Lee's Summit Mortgage Scheme*, United States Attorney for the Western District of Missouri, Aug. 4, 2010. Copy supplied.

Press release, *Two MU Graduates Plead Guilty to College E-Mail Spam Conspiracy*, United States Attorney for the Western District of Missouri, July 28, 2010. Copy supplied.

Press release, *38 Defendants Indicted in Multi-Million Dollar Fraud*, United States Attorney for the Western District of Missouri, July 9, 2010. Copy supplied.

Press release, *Former Congressman Pleads Guilty to Obstructing Justice, Acting as Unregistered Foreign Agent*, United States Attorney for the Western District of Missouri, July 7, 2010. Copy supplied.

Press release, *IARA Director Pleads Guilty to Violating U.S. Sanctions against Iraq*, United States Attorney for the Western District of Missouri, June 25, 2010. Copy supplied.

Press release, *Hereford House Owner Indicted for Arson, Mail Fraud Conspiracy*, United States Attorney for the Western District of Missouri, June 22, 2010. Copy supplied.

Press release, *Twenty-Three Defendants Indicted for Cocaine, Crack Cocaine Conspiracy*, United States Attorney for the Western District of Missouri, June 10, 2010. Copy supplied.

Press release, *Al-Qaida Supporter Pleads Guilty to Supporting Terrorist Organization*, United States Attorney for the Western District of Missouri, May 19, 2010. Copy supplied.

Press release, *Two Eastern Jackson County Men Plead Guilty to $23 Million Mortgage Fraud*, United States Attorney for the Western District of Missouri, Apr. 22, 2010. Copy supplied.

Press release, *Former Jackson County Deputy Sentenced to 14 Years for Civil Rights Violation*, United States Attorney for the Western District of Missouri, Apr. 9, 2010. Copy supplied.

Press release, *Three Men Sentenced for Dog Fighting*, United States Attorney for the Western District of Missouri, Apr. 2, 2010. Copy supplied.

James Hart, *More about the New U.S. Attorney*, Crime Scene KC, Mar. 5, 2010. Copy supplied.

Mark Morris, *New U.S. Attorney Is a Career Trial Lawyer and a Steady Advocate for Women and Children*, Kansas City Star, Mar. 5, 2010. Copy supplied.

Press release, *St. Joseph Man Sentenced for Dog Fighting Conspiracy*, United States Attorney for the Western District of Missouri, Feb. 22, 2010. Copy supplied.

16 Arrested in $10 Million Mo. Bank Fraud Scheme, Associated Press, Feb. 18, 2010. Copy supplied.

Press release, *Business Owners Sentenced for Distributing Tainted Pet Food Ingredient*, United States Attorney for the Western District of Missouri, Feb. 5, 2010. Copy supplied.

Laura Bauer and Mike McGraw, *Two Agencies Won't Seek Federal Funds in an Effort against Human Trafficking*, Kansas City Star, Feb. 3, 2010. Copy supplied.

Press release, *Beth Phillips Sworn In as U.S. Attorney*, United States Attorney for the Western District of Missouri, Dec. 31, 2009. Copy supplied.

Alyson E. Raletz, *Senate Confirms Missouri's New Federal Prosecutors*, Missouri Lawyers Media, Dec. 29, 2009. Copy supplied.

Betsy Frye, *Legal Leaders, 2009*, Kansas City Daily Record, Mar. 9, 2009. Copy Supplied.

Mark Morris, *Child Exploitation Convictions Up in 2008*, Kansas City Star, Jan. 5, 2009. Copy Supplied.

Erica Wood, *Man Found Not Guilty in Infant Son's Death*, Kansas City Star, May 24, 2001. Copy supplied.

In my official capacity as the U.S. Attorney, I have held press conferences on the dates listed below and videos are supplied.

March 31, 2011
February 9, 2011
October 27, 2010
August 4, 2010
July 9, 2010
June 22, 2010
May 19, 2010

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

I have never held a judicial office.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never been a judge.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held any memberships or offices in any political party or election committee.

I have played a minimal role in the following political campaigns:

Kanatzar for Prosecutor, approximately April 2008 to August 2008
Candidate: Jim Kanatzar
Title: Volunteer (distributed campaign material door-to-door, co-hosted fundraiser, made telephone calls in relation to fundraisers)

McCaskill for Auditor, approximately June 1998 to November 1998
Candidate: Claire McCaskill
Title: Volunteer (made telephone calls in relation to fundraisers)

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

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

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

I have not served as a judicial law clerk.

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

I have never practiced as a solo practitioner.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1997 – 2001
Jackson County Prosecutor
415 East 12th Street, 11th Floor
Kansas City, Missouri 64106
Assistant Prosecutor

2001 – 2008
Bartimus, Frickleton, Robertson & Gorny
11150 Overbrook Road, Suite 200
Leawood, Kansas 66211
Associate

2002 – 2008
Jackson County Circuit Court
415 East 12th Street
Kansas City, Missouri 64106
I was periodically appointed as Special Prosecutor for the Jackson County, Missouri Circuit Court

2008
U.S. Attorney's Office – Western District of Missouri
400 East 9th Street, Suite 5510
Kansas City, Missouri 64106
Litigation Consultant

2008 – 2009
U.S. Attorney's Office – Western District of Missouri
400 East 9th Street, Suite 5510
Kansas City, Missouri 64106
Assistant United States Attorney

2009 – Present
U.S. Attorney's Office – Western District of Missouri
400 East 9th Street, Suite 5510
Kansas City, Missouri 64106
United States Attorney

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

I have never served as a mediator or arbitrator.

b. Describe:

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

I have been a trial attorney my entire legal career. From June 1997 to August 2001, I served as an Assistant Prosecutor for Jackson County, Missouri. From September 2001 to February 2008, I practiced with the firm Bartimus, Frickleton, Robertson and Gorny representing plaintiffs in medical malpractice, nursing home negligence and product liability lawsuits. During this time period, I periodically was appointed as Special Prosecutor for Jackson County, Missouri, Circuit Court when the county prosecutor's office encountered a conflict with a particular defendant. From June 2008 to July 2008, I served as a litigation consultant to the U.S. Attorney for the Western District of Missouri. In August 2008, I continued my career as a prosecutor as an Assistant United States Attorney for the Western District of Missouri. In December 2009, I was confirmed by the United States Senate and was appointed United States Attorney for the Western District of Missouri by President Obama.

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

1997 – 2001: As an Assistant Jackson County Prosecutor, I represented the State of Missouri in criminal prosecutions. While I pursued criminal cases in the General Crimes, Grand Jury and Drug Units, the majority of my caseload was in the Child Abuse and Sex Crimes Unit of the office.

2001– 2008: With Bartimus, Frickleton, Robertson and Gorny, I represented victims of catastrophic injuries and their families. My caseload included medical malpractice, nursing home negligence and product liability cases.

2008 – 2009: As an Assistant United States Attorney, I was the Project Safe Childhood Coordinator and represented the United States in the prosecution of child exploitation crimes.

2009 – Present: As the United Stated Attorney for the Western District of Missouri, I represent the United States in the prosecution of criminal cases, defend the United States in civil cases and collect debts owed the federal government.

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

Throughout my legal career, 100% of my practice has been in litigation.

1997 – 2001: During my practice with the Jackson County Prosecutor's Office I appeared in court frequently.

2001 – 2008: My practice with Bartimus, Frickleton, Robertson and Gorny involved occasional court appearances.

2008 – 2009: My practice as an Assistant U.S. Attorney involved frequent court appearances.

2009 – Present: As United States Attorney I maintain a small docket of cases and occasionally appear in court.

i. Indicate the percentage of your practice in:
   1. federal courts: 20%
   2. state courts of record: 80%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

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

I have tried approximately 40 cases to verdict. In approximately 25 of these cases I served as chief counsel. I served as associate counsel in the remaining cases.

i. What percentage of these trials were:
   1. jury: 90%
   2. non-jury: 10%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases

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

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *State of Missouri v. Buffington*
Case Number: 16CR98004507-01
50 S.W.3d 858
Charges Filed – March 5, 1999
Final Disposition – February 17, 2000
Jackson County, Missouri Circuit Court
Judge Justine Del Muro

Buffington was charged with Forcible Rape after coercing a neighbor into the basement of an abandoned house and raping her at knife-point. Although Buffington argued the encounter was consensual, the extensive DNA evidence directly contradicted Buffington's story. The jury convicted Buffington of the sole count, and the judge sentenced him to ten years in prison.

I served as lead counsel in the case and was responsible for all pre-trial matters, the exhibits and jury instructions. Assistant Jackson County Prosecutor Ted Hunt served as co-counsel. At trial, I conducted voir dire, direct examination of one-half of the witnesses, including the DNA expert, and the first half of closing argument.

Co-Counsel: Ted Hunt
Assistant Jackson County Prosecutor
415 East 12th Street, 7M
Kansas City, Missouri 64106
(816) 881-3888

Defense Counsel: Jarrett Johnson
The Jarrett Johnson Law Firm
215 West 18th Street, Suite 220
Kansas City, Missouri 64108
(816) 875-5754

2. *State of Missouri v. Dorsey*
Case Number: 16CR99001457
156 S.W.3d 825; 70 S.W.3d 552
Case Filed – April 2, 1999
Final Disposition – October 5, 2000
Jackson County, Missouri Circuit Court
Judge Preston Dean

The State presented evidence that the victim was driving to her cousin's house and became lost. When she stopped to ask for directions, Dorsey approached the victim's car with a knife and ordered her to let him in the car. Dorsey then ordered her to drive to a remote location and forced her to perform oral sex on him. Dorsey then forced the victim out of the car and drove off in the car. The State charged him with Kidnapping, Sexual Abuse, Attempted Forcible Rape, Forcible Sodomy, First Degree Robbery and five corresponding counts of Armed Criminal Action.

At trial, Dorsey testified that the victim stopped to ask him about drugs, and he entered the car to discuss purchasing drugs. He further testified that the victim voluntarily agreed to the sex act in exchange for drugs. Dorsey acknowledged driving off with the car but contended that the victim rented him the car in exchange for drugs. After two days of deliberations, the jury convicted Dorsey of Forcible Sodomy, Robbery and two counts of Armed Criminal Action. The jury acquitted him of the remaining counts. The judge sentenced Dorsey to 12 years for Forcible Sodomy, ten years for Robbery and three years for each Armed Criminal Action count. The judge further ordered that the Robbery and Armed Criminal action sentences be served concurrently and consecutive to the Forcible Sodomy sentence.

In speaking with the jurors after the verdict, co-counsel and I learned that between the two days of deliberations one of the jurors visited the crime scene to confirm the victim's testimony that she got lost in the area. He reported his trip to the other jurors and informed them that he too had gotten lost in the area. The lead prosecutor immediately informed the court and defense counsel of the juror's statements.

On appeal, Dorsey argued that his counsel was ineffective for, among other things, failing to timely file a motion for new trial and failing to properly address the issue of juror misconduct. The court of appeals agreed, found Dorsey's counsel ineffective, reversed the judgment and remanded the case to the trial court to vacate the convictions and sentences and to order a new trial. After the case returned to the trial court, Dorsey pled guilty to Forcible Rape, Robbery and Armed Criminal Action. He was sentenced to 18 years in prison.

I served as co-counsel in the case and was responsible for opening statement, direct examination of approximately one-half of the witnesses and the first half of closing argument.

Lead Counsel: Jennifer Vincent
11914 Sterns
Overland Park, Kansas 66213
(913) 707-1223

Defense Counsel: Geary Jaco
2322 Council Lane
Buford, Georgia 30519
(770) 967-0018

3. *State of Missouri v. Mattic*
Case Number: 16CR99005182-01
84 S.W.3d 161
Charges Filed – September 22, 1999
Final Disposition – February 23, 2001
Jackson County, Missouri Circuit Court
Judge Justine Del Muro

The State charged Mattic with two counts of Statutory Rape and one count of Statutory Sodomy in connection with his sexual abuse of his two nieces when they were approximately four and five years old. The girls testified at trial, along with the social workers to whom they initially disclosed the abuse and the social worker who conducted forensic interviews of the girls. Although Mattic testified in his defense, the jury found him guilty of all counts and the judge sentenced him to 30 years in prison.

As lead counsel, I made the decision to file the case and handled all pre-trial matters, including an extensive hearing pursuant to R.S. Mo. § 491.075 to determine whether the hearsay statements of the social workers were reliable and admissible. At trial, I presented the opening statement, conducted the direct examination of one-half of the witnesses, including the two minor victims, the cross-examination of Mattic and rebuttal closing argument. I was also responsible for the exhibits and jury instructions.

Co-Counsel: Jennifer Vincent
11914 Sterns
Overland Park, Kansas 66213
(913) 707-1223

Defense Counsel: Bryon Woehlecke
600 East 8th Street, Suite A
Kansas City, Missouri 64106
(816) 886-9143

4. *State of Missouri v. Rogers*
Case Number: 16CR00002321-01
95 S.W.3d 181
Charges Filed – May, 26, 2000
Final Disposition – May 15, 2001
Jackson County, Missouri Circuit Court
Judge Preston Dean

Rogers was charged with Attempted Statutory Rape in the Second Degree, three counts of Statutory Sodomy in the Second Degree, Statutory Rape in the Second Degree and Forcible Rape. The State's evidence established that Rogers, age 33, had a sexual relationship with his niece, age 14. When the young girl became pregnant and told her aunt of the pregnancy, the aunt reported the relationship to the police. The young girl subsequently underwent an abortion. In addition to the young girl's testimony, the State presented DNA evidence from the aborted fetus and handwriting analysis of an apology letter Rogers sent from pre-trial custody. The jury found Rogers guilty and based upon a previous conviction for forcible rape the judge determined the defendant to be a predatory sex offender. The court sentenced Rogers to consecutive terms of imprisonment of five years for Attempted Statutory Rape, seven years for each count of Statutory Sodomy, seven years for Statutory Rape and life imprisonment for Forcible Rape without eligibility for parole until he has served twenty-seven years of his life sentence.

Assistant Jackson County Prosecutor Ted Hunt served as lead counsel, and I served as co-counsel. As co-counsel, I participated in all pre-trial preparation, was responsible for one-half of the witnesses at trial, including the handwriting analysis expert, and the first half of closing argument. I also assisted with the exhibits and jury instructions.

Co-Counsel: Ted Hunt
Assistant Jackson County Prosecutor
415 East 12th Street, 7M
Kansas City, Missouri 64106
(816) 881-3888

Defense Counsel: Chase Higinbotham
Higinbotham & Higinbotham
117 Bradford Lane
Belton, Missouri 64012
(816) 322-5297

5. *State of Missouri v. Porras*
Case Number: 16CR00000306-1
84 S.W.3d 153
Charges Filed – February 24, 2000
Final Disposition – May 18, 2001
Jackson County Missouri Circuit Court
Judge Michael Manners

Porras was charged with two counts of Statutory Sodomy involving his three-year-old step-daughter. Although the victim was very young at the time of her disclosure, she was a very verbal and articulate child. The victim was five years old at the time of trial and testified in person. Despite her age, the victim's consistent, detailed and descriptive disclosure of the abuse persuaded the jury of Porras' guilt despite his adamant denials. After a day and a half of deliberations, the jury found Porras guilty of one count of Statutory Sodomy, and he was sentenced to ten years in prison.

As lead counsel, I made the decision to file the case and was responsible for all pre-trial matters. At trial, I conducted voir dire and direct examination of approximately one-half of the state's witnesses, including the victim. I also cross-examined the defendant, presented rebuttal closing argument and was responsible for the exhibits and jury instructions. Assistant Jackson County Prosecutor Melissa Rodriguez co-chaired the trial.

Co-Counsel: Melissa Rodriguez
96 Ledgewood Drive
Glastonbury, Connecticut 06033
(860) 430-5681

Defense Counsel: Steve Sakoulas
Bortnick, McKeon, Sakoulas & Shanker, P.C.
1222 McGee
Kansas City, Missouri 64106
(816) 221-2470

6. *State of Missouri v. Stephens*
Case Number: 16CR99005672-01
88 S.W.3d 876
Charges filed - November 8, 1999
Final Disposition – June 21, 2001
Jackson County, Missouri Circuit Court
Judge Edith Messina

Stephens was charged by way of indictment with Forcible Rape, two counts of Assault in the First Degree, Kidnapping and Robbery in the Second Degree. Stephens accompanied the victim on a social date and demanded oral sex from the

victim. When the victim refused, Stephens ultimately beat and raped the victim, leaving her for dead in a remote wooded area. When the victim regained consciousness, she was able to walk to the nearest house and called the police.

After a four day trial, the jury deliberated for a day and a half and convicted Stephens on all counts. However, when speaking with the jurors after the verdict, I learned that between the two days of deliberations one of the jurors visited the remote wooded area which was the scene of the crime. I made the trial court and defense attorney aware of this information. Although the defendant argued the juror's actions constituted misconduct and warranted a new trial, the trial court and Missouri Western District Court of Appeals disagreed. Stephens was ultimately sentenced to life in prison.

I served as lead counsel during the trial and was responsible for all pre-trial matters. At trial, I gave the opening statement, conducted the direct examination of approximately one-half of the State's witnesses, including the victim, and cross examined the defendant. I also gave rebuttal closing. Assistant Jackson County Prosecutor Melissa Rodriguez served as my co-counsel.

Co-Counsel: Melissa Rodriguez
96 Ledgewood Drive
Glastonbury, Connecticut 06033
(860) 430-5681

Defense Counsel: Chase Higinbotham
Higinbotham & Higinbotham
117 Bradford Lane
Belton, Missouri 64012
(816) 322-5297

7. *Funk v. Girkin*
Case Number: 00CV207107
Case Filed: March 16, 2000
Final Disposition: April 17, 2003
Jackson County, Missouri Circuit Court
Judge J.D. Williamson

I represented plaintiff Funk in a medical malpractice case against multiple physicians and medical services providers. The lawsuit alleged that Mrs. Funk's husband suffered a fractured vertebra which the defendant physicians failed to properly diagnosis. The suit alleged that the misdiagnosis caused Mr. Funk to become a quadriplegic and ultimately caused Mr. Funk's death.

After extensive discovery, plaintiff entered into a monetary settlement with several of the defendants prior to trial. Based upon the information learned in discovery, plaintiff dismissed two physicians from the lawsuit prior to trial.

I served as co-counsel at the trial against two of the defendants. I presented two experts for deposition prior to trial and played a significant role in pre-trial preparation. At trial, I assisted with the exhibits and jury instructions and conducted the direct examination of two witnesses. The jury entered a verdict for defendants.

Lead Counsel: Jim Frickleton
Bartimus, Frickleton, Robertson & Gorny
11150 Overbrook Road, Suite 200
Leawood, Kansas 66211
(913) 266-2300

Defense Counsel: Mark Lynch
Holbrook & Osborn
7400 West 110th Street, Suite 600
Overland Park, Kansas 66210
(913) 342-0603

8. *Mayberry v. Birnbaum and Sand Cars Unlimited*
Case Number: 00CV05530
Case Filed: August 31, 2000
Final Disposition: January 12, 2004
Johnson County, Kansas District Court
Judge Larry McClain

In this civil case, I, along with lead counsel Steve Gorny, represented plaintiff Mayberry. Mayberry alleged that Sand Cars Unlimited used a defective design in the manufacture of a seat belt for a dune buggy. Mayberry further alleged that the design defect caused the seat belt to fail when Mayberry's husband was driving the dune buggy causing his death. Mayberry also contended that Birnbaum, the owner of the dune buggy, knew of problems with the seat belt and failed to properly warn Mayberry's husband of the problems. After a week of evidence, the jury entered an award of $1.5 million, finding Sand Cars 25% at fault and plaintiff 75% at fault.

I served as co-counsel in the case and became involved in the case a few months before trial, which required me to quickly familiarize myself with the extensive facts of the case and the intricacies of the plaintiff's product liability theory. I provided substantial assistance in researching and writing many of the pre-trial motions, and at trial I was responsible for approximately one half of the witnesses including two experts.

Lead Counsel: Steve Gorny
Bartimus, Frickleton, Robertson & Gorny
11150 Overbrook Road, Suite 200
Leawood, Kansas 66211
(913) 266-2300

Defense Counsel: Mike Dutton
Wallace, Saunders, Austin, Brown & Enochs
110111 West 87th Street
Overland Park, Kansas 66282
(913) 888-1000

Sarah Fulkerson
Healthcare Services Group
4700 Country Club Drive
Jefferson City, Missouri 65109
(573) 230-2478

9. *United States v. Grant*
Case number: 09-00045-01-CR-W-SOW
Case Filed: February 4, 2009
Final Disposition: April 7, 2010
Western District of Missouri
Judge Scott Wright

A child victim disclosed to her mother that Grant sexually abused her and her sister for approximately 9 years. She further alleged that Grant would engage in oral, vaginal or anal sex with both victims and, in exchange, would give them money or goods. The child victim further disclosed that, on one occasion, Grant videotaped the incident. A search warrant was executed on Grant's residence and a computer was seized. A forensic examination of the computer revealed child pornography on the hard drive. During a post-Miranda interview, Grant admitted to downloading child pornography to his computer. He further admitted molesting both victims and giving the girls money and gifts in exchange for sex. He also confessed to videotaping one incidence of sexual abuse.

Grant was charged with Publishing a Notice of Child Pornography, Attempted Distribution of Child Pornography, Receipt of Child Pornography, Possession of Child Pornography, Attempted Transferring a Child for Sexual Exploitation, Attempted Inducing a Child to Engage in Sexually Explicit Conduct for Production of Visual Depiction and Enticement of a Child to Engage in Prohibited Sexual Conduct. Grant subsequently pled guilty and was sentenced to 30 years imprisonment with 20 years of supervised release.

As sole counsel on the case I was involved in all aspects of the case from charging to sentencing.

Defense Counsel: Larry Pace
Office of the Federal Public Defender
818 Grand Blvd.
Kansas City, MO 64106
(816) 471-8282

10. *United States v. Dillingham*
Case number: 10-CR-0002-DW
Case Filed: December 14, 2009
Final Disposition: March 24, 2011
Western District of Missouri
Judge Dean Whipple

Through an undercover peer-to-peer investigation, the Independence, Missouri Police Department discovered that Dillingham was sharing child pornography using the peer-to-peer software Limewire. A search warrant was obtained for Dillingham's residence and his computer and hard drive were seized. A forensic examination of the media revealed approximately 325 images and 150 videos of child pornography, including videos of children being raped and engaging in sadistic and masochistic conduct. The examination also revealed approximately 1400 photos of children playing in the grassy area outside Dillingham's apartment.

During a post-Miranda interview, Dillingham admitted that he downloaded child pornography using Limewire. He explained that he knew how Limewire worked and knew that the files in his Limewire shared folder were available for other Limewire users to access and download. He also admitted to taking pictures of neighborhood children while they were playing outside his apartment window.

Dillingham was charged with Receipt of Child Pornography, a charge that carries a statutory minimum sentence of five years imprisonment. Dillingham pled guilty to the charge and a pre-sentence investigation calculated Dillingham's range of punishment using United States Sentencing Guideline § 2G2.2, which provided for a sentence of 210-240 months. Dillingham's counsel filed a sentencing memorandum requesting the Court "categorically reject" § 2G2.2 and sentence Dillingham "far below the applicable Guideline range." I filed a response to Dillingham's sentencing memorandum responding to Dillingham's arguments and providing an abbreviated history to § 2G2.2.

After extensive testimony at the sentencing hearing, Judge Whipple entered an order sentencing Dillingham to 36 months imprisonment. The government filed a Motion to Correct Sentence and the Court entered a subsequent order sentencing Dillingham to 60 months imprisonment.

As sole counsel in the case, I was intimately involved in all aspects of the pre-indictment review and charging decisions. I prepared all pleadings and handled all major hearings in the matter.

Defense Counsel: Phil Gibson
Thomason and Gibson
2400 Lee's Summit Road, Suite 200
Independence, Missouri 64055
(816) 252-5050

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

1. U.S. Attorney for the Western District of Missouri

As U.S. Attorney for the Western District of Missouri I oversee the prosecution of a wide variety of cases. During my tenure, the office successfully prosecuted the first case in the District involving a confessed member of Al Qaida who provided material support to the organization, the first credit history fraud case in the country and one of the largest forced labor human trafficking/RICO cases in history. I have made reduction of violent crime a priority by developing a Steering Committee of community leaders to conduct a Comprehensive Gang Assessment of the Kansas City area and creating an initiative that focuses on illegal gang prosecutions.

While U.S. Attorney I have also focused on internal office management. I conducted a thorough review and revision of the office discovery policy and instituted new procedures to obtain potential Giglio related information on law enforcement witnesses. I also reorganized the office to place an emphasis on financial litigation, asset forfeiture and recovery of monetary penalties.

2. Civil Litigation

For over six years, I maintained a civil practice focused on representation of plaintiffs who suffered catastrophic injuries. I represented numerous individuals in medical malpractice, nursing home negligence and product liability lawsuits. As part of this practice, I conducted extensive investigations into alleged negligence and any potential legal issues to determine whether to file suit. I worked closely with expert witnesses and conducted hundreds of depositions of doctors, nurses and other medical personnel. I frequently participated in mediations and successfully negotiated settlements for most of my clients. I also tried five civil jury trials in four different jurisdictions.

3. Child Protection Center

Prior to becoming U.S. Attorney, I assisted the Child Protection Center (CPC) transition from an entity of the Family Court of Jackson County, Missouri, to a separate non-profit entity. While working with the executive director of the center, we successfully completed the process to obtain non-profit status through the Internal Revenue Service, created board of director by-laws and financial and personnel policies and procedures for the agency.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

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

The only future benefits I expect to receive are from the following: federal government Thrift Savings Plans, rental property, Missouri State Retirement Plans (457), and various IRAs and stocks, all of which are listed on my Net Worth Statement.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments or agreements to pursue outside employment, with or without compensation, during my service.

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

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

Should I be appointed, I initially would have a conflict with cases and matters pending in the U.S. Attorney's office while I was U.S. Attorney. I would address any such conflict by working with the Interim U.S. Attorney and the Clerk of the Court to assure that I was not assigned any such cases.

After current cases and matters in the U.S. Attorney's office are disposed of, I do not anticipate any conflicts of interest.

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

If any matter were to arise that involved an actual or potential conflict of interest, I would handle it by careful and diligent application of the Code of Conduct for United States Judges as well as other relevant cannons and statutory provisions.

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

Prior to becoming United States Attorney I served on the board of the Child Protection Center (CPC), a child advocacy center that conducts forensic interviews and provides crisis intervention to children who have disclosed sexual abuse and their families. CPC provides services free of charge to all children in Jackson County and Cass County, Missouri, who disclose that they have been sexually abused. In late 2004, CPC decided to spinoff from the Family Court of Jackson County, Missouri, and become a separate non-profit agency. I have assisted CPC with all legal issues associated with becoming a non-profit agency and an entity separate from the court. I completed all the paperwork submitted to the Internal Revenue Service to obtain non-profit status, created a draft of the board of director's by-laws, worked with the board to create the final by-laws, and worked closely with the executive director to create financial policies and procedures and personnel policies and procedures for the agency. Through the process, I provided legal advice on various issues. I estimate that I spent an average of five hours a month providing assistance and advice to CPC.

I served on the board of the Metropolitan Organization to Counter Sexual Assault (MOCSA) from 2006 to 2009. MOCSA exists to lessen the ill effects of sexual assault

and violence through intervention, advocacy, education, and treatment by providing services free of charge to the metropolitan Kansas City community. I also served as the chair of the Young at Art event, the fundraising committee and the program services committee for MOCSA. In addition, I provided legal advice to the executive director on an ad hoc basis. I have provided suggestions and input on a variety of issues including record retention, the proper way to respond to subpoenas, and agency policy and procedure. I spent approximately four hours a month providing assistance to MOCSA.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

To my knowledge, my jurisdiction does not have a selection committee. On March 3, 2011, I was contacted by U.S. Senator McCaskill. I had previously interviewed with Senator McCaskill as part of the process to become U.S. Attorney. During the March 3rd conversation, Senator McCaskill inquired if I was interested in being considered for one of the open federal judgeships in the Western District of Missouri. I responded that I was interested and Senator McCaskill said that my name would be sent to the White House for consideration.

Since March 8, 2011, I have been in contact with pre-nomination officials from the Department of Justice. On April 7, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 7, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Phillips, Mary E.	U.S District Court, Western District of Missouri	06/07/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
District Judge	☑ Nomination, Date 06/07/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2010 to 6/3/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
400 East 12th Street Suite 5510 Kansas City, MO 64105	Reviewing Officer_____ Date_____	

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

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4		
5		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Phillips, Mary E.	Date of Report 06/07/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4			

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

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

	DATE	SOURCE AND TYPE
1.	2010	State of Missouri - Salary
2.	2011	State of Missouri - Salary
3		
4.		

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting	Date of Report
	Phillips, Mary E.	06/07/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	U.S. Bank	Mortgage on Rental Property, Kansas City, Missouri (Pt. VII, Line 4)	M
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Phillips, Mary E.	06/07/2011

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Country Club Bank Account	A	Interest	K	T	Exempt				
2. Bank of America Account	A	Interest	J	T	Exempt				
3. Discover Savings Account	B	Int./Div.	K	T	Exempt				
4. Rental Property, Kansas City, Missouri ($170,000 -2007)	E	Rent	M	R	Exempt				
5. Mass. Mutual Variable Life Policy - Oppenheimer Cap Appr Div	A	Int./Div.	J	T	Exempt				
6. Mass. Mutual Variable Life -Fidelity VIP Contrafund Division	A	Int./Div.	J	T	Exempt				
7. Mass. Mutual Variable Life Policy -MML Equity Index Division	A	Int./Div.	J	T	Exempt				
8. 457(b) Plan #1									
9 - American Century Value Fund		None	J	T	Exempt				
10. - Drey Appreciation Fund		None	J	T	Exempt				
11. - Northwestern Fund D		None	J	T	Exempt				
12. - Northwestern International Index A		None	J	T	Exempt				
13. - American Centruy International Disc		None	J	T	Exempt				
14. Vanguard Total Stock Market Index Fund (IRA)	A	Dividend	J	T	Exempt				
15. T.Rowe Price Small Cap Value Fund (IRA)	A	Dividend	K	T	Exempt				
16. 457(b) Plan #2									
17. - ING Black Rock Large Cap Gr Port - Inst.		None	J	T	Exempt				

1 Income Gain Codes (See Columns B1 and D4): A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000; I =$15,000 or less; J =$15,001 - $50,000; K =$50,001 - $100,000; L =$100,001 - $250,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000

2 Value Codes (See Columns C1 and D3)

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

FINANCIAL DISCLOSURE REPORT Page 5 of 8	Name of Person Reporting Phillips, Mary E.	Date of Report 06/07/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. - ING Templeton Foreign Equity Port - Inst.		None	J	T	Exempt				
19. IRA Account #1									
20. -T. Rowe Price Retirment Fund (2035)		None	M	T	Exempt				
21. IRA Account #2									
22. -Buffalo Fund - Midcap Fund	A	Dividend	K	T	Exempt				
23. - Century Cap Management Small Cap Select	A	Dividend	K	T	Exempt				
24. - T. Rowe Price Intl. Emerging Markets Fund	A	Dividend	K	T	Exempt				
25. - Vanguard Target Retirement Fund (2035)	B	Dividend	L	T	Exempt				
26. 457 (b) Plan #3 - MO 2035 Fund		None	L	T	Exempt				
27. Vanguard Select Value Fund	A	Dividend	K	T	Exempt				
28. Brokerage Acct #1									
29. - Berkshire Hathaway B	A	Dividend	K	T	Exempt				
30. - American Funds - Growth Fund of America	A	Dividend	K	T	Exempt				
31. - Clipper Fund	A	Dividend	K	T	Exempt				
32. - Dodge & Cox Stock Fund	A	Dividend	K	T	Exempt				
33. - Greenspring Fund	A	Dividend	K	T	Exempt				
34. - Harbor Fund Bond Institutional	A	Dividend	K	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 6 of 8	Name of Person Reporting Phillips, Mary E.	Date of Report 06/07/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. - Jenson Portfolio Fund, Cl J shares	A	Dividend	L	T	Exempt				
36. - Loomis Sayles Bond Fund Retail	A	Dividend	J	T	Exempt				
37 - Matthew Pacific Tiger	A	Dividend	L	T	Exempt				
38. - Metropolitan West Total Return Bond Fund	A	Dividend	J	T	Exempt				
39. - Vanguard Tax Managed Capital Appreciation Fund	A	Dividend	K	T	Exempt				
40. - Vanguard Primecap Core Fund	A	Dividend	K	T	Exempt				
41. - Vanguard Tax Managed Small Cap Fund	A	Dividend	K	T	Exempt				
42. Adorn Inc.(2007)		None	K	W	Exempt				
43. Om Financial Fixed Index Annuity-Prosperity Plus	A	Int./Div.	J	T	Exempt				
44 National Western Life Ins. Equity Indexed Annuity	A	Int./Div.	K	T	Exempt				
45. Alcatel Lucent		None	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Phillips, Mary E.	Date of Report 06/07/2011

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Phillips, Mary E.	Date of Report 06/07/2011

IX. CERTIFICATION.

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

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

Signature Mary Elizabeth Phillips

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		81	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		808	957	Notes payable to relatives			
Unlisted securities – see schedule		56	800	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		306	860
Real estate owned – see schedule		520	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000				
Cash value-life insurance		10	208				
Other assets itemize:							
Thrift Savings Plan		73	416				
				Total liabilities		306	860
				Net Worth	1	273	521
Total Assets	1	580	381	Total liabilities and net worth	1	580	381
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	Yes		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Century International Discovery Fund	$1,433
American Century Value Fund	1,412
American Funds Growth Fund of America	15,044
Berkshire Hathaway, B	34,313
Buffalo Mid Cap Fund	42,221
Century Small Cap Select Fund	29,736
Clipper Fund	24,139
Drey Appreciation Fund	1,413
Dodge & Cox Stock Fund	18,486
Greenspring Fund	13,866
Harbor Fund Bond Fund	13,191
ING BlackRock Large Cap Growth Portfolio	3,507
ING Templeton Foreign Equity Portfolio	5,412
Jenson Portfolio Fund	50,341
Loomis Sayles Bond Fund	9,066
Matthew Pacific Tiger Fund	58,080
Metropolitan West Total Return Bond Fund	14,055
Missouri 2035 Fund	53,745
Nationwide Fund D	1,515
Nationwide International Index Fund	882
T. Rowe Price Int'l Emerging Markets Fund	34,306
T. Rowe Price Retirement 2035 Fund	151,860
T. Rowe Price Small Cap Value Fund	22,206
Vanguard Primecap Core Fund	17,871
Vanguard Select Value Fund	36,325
Vanguard Target Retirement 2035 Fund	89,275
Vanguard Tax Managed Cap. Appreciation Fund	24,402
Vanguard Tax Managed Small Cap Fund	31,524
Vanguard Total Stock Market Index Fund	8,961
Alcatel Lucent	370
Total Listed Securities	$808,957

Unlisted Securities	
Adorn, Inc.	33,523
Nat'l Western Life Ins. Equity Indexed Annuity	16,515
OM Financial Fixed Index Annuity	6,762
Total Unlisted Securities	$56,800

Real Estate Owned	
Personal residence	$350,000
Rental property	170,000
Total Real Estate Owned	$520,000

Real Estate Mortgages Payable	
Personal residence	$186,864
Rental property	119,996
Total Real Estate Mortgages Payable	$306,860

AFFIDAVIT

I, Mary Elizabeth Phillips, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6/6/11
(DATE)

Mary Elizabeth Phillips
(NAME)

ANNETTE L. CORDELL
Notary Public - Notary Seal
State of Missouri
Commissioned for Clay County
My Commission Expires: September 07, 2013
Commission Number: 09388247

Annette L Cordell
(NOTARY)

Senator KLOBUCHAR. Very good. Thank you.

Mr. Rice from Washington State.

STATEMENT OF THOMAS OWEN RICE, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON

Mr. RICE. Thank you, Senator. I want to thank you as well as the entire Committee for having me here today. It is an honor and a privilege to appear here.

I want to thank the Senators, Senator Maria Cantwell as well as Senator Murray, for their support in this nomination process.

Additionally, I want to thank the President for nominating me to this honorable position.

Today in the audience I have my parents, Carly and Laramie Rice from Spokane. They were able to travel from Washington State.

Senator KLOBUCHAR. Where are they? Oh, there they are. Good to see you.

Mr. RICE. Back there waving. As well, I want to thank and acknowledge my wife, my loving wife and supportive wife, Heather Rice.

Thank you very much.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Thomas Owen Rice

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

   United States District Judge for the Eastern District of Washington

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   United States Attorney's Office for the Eastern District of Washington
   920 West Riverside Avenue, Suite 340
   Spokane, Washington 99201

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

   1960; Spokane, Washington

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1983 – 1986, Gonzaga University School of Law; J.D. (*magna cum laude*), 1986

   1979 – 1983, Gonzaga University; B.B.A., 1983

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   1987 – present
   United States Attorney's Office for the Eastern District of Washington
   920 West Riverside Avenue, Suite 340
   Spokane, Washington 99201
   First Assistant United States Attorney (2006 – present)

Criminal Chief (2003 – 2006)
Deputy Criminal Chief (2000 – 2003)
Assistant United States Attorney (1987 – present)

1986 – 1987
United States Department of Justice
Office of Special Litigation, Tax Division
555 Fourth Street, NW
Washington, D.C. 20001
Honors Program Trial Attorney

Summer 1986
Delay, Curran, Thompson & Pontarolo, PS
601 West Main, Suite 1212
Spokane, Washington 99201
Law Clerk

1984 – 1986
United States Attorney's Office for the Eastern District of Washington
920 West Riverside Avenue, Suite 340
Spokane, Washington 99201
Legal Intern

1977 – 1983
Rosauer's Supermarkets
1808 West Third Avenue
Spokane, Washington 99201
Box boy to Journeyman Clerk

Other Affiliations (Uncompensated):

1993 – 1997
Conservatory Ballet Theatre (non-profit, now dissolved)
Spokane, Washington
Secretary, Treasurer and Board Member

1985 – 1986
Gonzaga Law School Student Bar Association
721 North Cincinnati Street
Spokane, Washington 99202
Treasurer

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have registered for the selective service.

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

Performance Bonus Award (2009)
Sustained Superior Performance Award (2008)
Letter of Commendation from the Director of the Federal Bureau of Investigation (2007)
Sustained Superior Performance Award (2002)
Director's Award from Executive Office of the United States Attorneys (1998)
Letter of Commendation from Director of the Federal Bureau of Investigation (1998)
Sustained Superior Performance Award (1998)
Prosecutorial Award from Federal Law Enforcement Officers Association (1997)
Letter of Commendation from Director of the Federal Bureau of Investigation (1995)
Sustained Superior Performance Award (1994)
Sustained Superior Performance Award (1992)
Order of the Barristers (1986)
Linden Cup Moot Court Competition,
Best Brief and 1st Place Orals (1986)
Phillip C. Jessup Moot Court Competition
Regional Best Brief and 3rd Place Orals (1985)
American Jurisprudence Awards for Contracts
Criminal Procedure and Federal Income Taxation (1984 – 1985)
Thomas More Scholarship (full law school tuition) (1983 – 1986)
Washington State Board of Accountancy, Certified Public Accounting Certificate (1983)

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

American Bar Association
Federal Bar Association, Eastern District of Washington
Gonzaga Student Bar Association
Spokane County Bar Association
Washington State Bar Association

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Washington, 1986

There has been no lapse in membership.

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

Supreme Court of the United States, 1993
United States Court of Appeals for the Ninth Circuit, 1987
United States District Court for the Western District of Washington, 1992
United States District Court for the Eastern District of Washington, 1987

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Conservatory Ballet Theatre
Secretary, Treasurer and Board Member (1993 – 1997)

Edgecliff SCOPE Weed and Seed
Vice-chair of Steering Committee (2006 – present)

Spokane Club (1996 – 1997, 2006 – present)

Washington State Joint Executive-Legislative Workgroup on Tribal Retrocession (2011)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I understand that, prior to my membership in the Spokane Club, there were restrictive membership and use requirements, which were long ago removed. I would not have joined if the restrictions still existed. To the best of my knowledge, none of the other organizations listed in response to 11a above

currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Throughout my career, I have provided both formal and informal non-public training to law enforcement officers and other prosecutors. Although I conducted a thorough search of my calendars and records, I do not have a complete list of the meetings, conferences and training sessions in which I participated. My response below represents my best efforts to compile a list of speaking engagements that is as complete as possible, but there may be some events that I was unable to recall or locate.

May 17, 2011: 2011 Tribal Combined Annual Skills-Building Training. I provided welcoming remarks to the participants at the beginning of the conference. I have no notes, transcript or recording. The three day training was presented by Unified Solutions Tribal Community Development Group, Inc., 2164 East Broadway Road, Suite 200, Tempe, Arizona 85282, for the Department of Justice Office for Victims of Crime.

November 4, 2010: Remarks at retirement reception honoring former U.S. Attorney James A. McDevitt. I provided remarks and introduced speakers thanking Mr. McDevitt for his service as the U.S. Attorney. I have no notes, transcripts, or recording. The address of the U.S. Attorney's Office is 920 West Riverside Avenue, Suite 340, Spokane, Washington 99201.

October 27, 2010: Gonzaga University Law School, panel member for a hypothetical ethics exercise recorded by Professor DeWolf for his class, "Perspectives on the Law." Video supplied.

September 21, 2010: Affiliated Tribes of Northwest Indians 57th Annual Conference. During a morning session, I was a guest speaker on the Law and Order panel with the United States Attorney about the role of the United States Attorney's Office and the new Tribal Law and Order Act of 2010. I also attended and spoke during a Law & Justice Committee breakout session that afternoon on the same topic. The Law and Order panel was recorded, but I have been unable to obtain a copy of the video recording. My notes for both sessions and press coverage are supplied.

December 9, 2009: Criminal Discovery Professionalism Training. I provided professional responsibility training to the attorneys in the U.S. Attorney's Office. Powerpoint supplied.

June 15, 2009: Operation Pipeline/Convoy Criminal Highway Interdiction Training sponsored by El Paso Intelligence Center (EPIC), the Drug Enforcement Administration, and the Spokane County Sheriff's Office. I provided an update to federal search and seizure law. Notes supplied.

December 12, 2008: United States Attorney's Office Ethics. I provided professional responsibility training to the attorneys in the U.S. Attorney's Office. Powerpoint supplied.

February 23, 2006: Economic Crimes Training provided by the U.S. Attorney's Office to state and federal law enforcement agencies. I provided training concerning how to make a referral for prosecution and some of the office's prosecution guidelines for frequently used statutes. Some of the presentation materials contain law enforcement sensitive material; those that do not are supplied.

October 19, 2005: Fall Drug/Narcotics Supervisors Conference hosted by the Washington State Patrol. As the Criminal Chief at the time, I was a guest speaker to discuss the role and processes of the U.S. Attorney's Office. Notes supplied.

June 28, 2005: Inland Northwest Native Conference sponsored by the U.S. Attorney's Office, the Western Regional Institute for Community Oriented Public Safety, the FBI, and Partners with Families and Children. As the Criminal Chief at the time, I along with the First Assistant provided welcoming remarks and a greeting to the participants at the beginning of the conference. I have no notes, transcript, or recording. The address of the U.S. Attorney's Office is 920 West Riverside Avenue, Suite 340, Spokane, Washington 99201.

May 24, 2005: Federal, State and Local Law Enforcement Training Seminar provided by the U.S. Attorney's Office. I provided training regarding the use of pen registers and trap and trace devices. Powerpoint supplied.

April 4, 2005: Stevens County Republican Women's luncheon. As the Criminal Chief at the time, I was invited to speak about the Patriot Act and how it impacted law enforcement and citizens. I have no notes, transcript, or recording. The Stevens County Republican Women has no physical address.

March 10, 2005: Contracting Officer/Forest Service Representative Workshop sponsored by the United States Forest Service. I provided training concerning timber theft and an update to Constitutional law. Powerpoint supplied.

December 1, 2004: Basic Law Enforcement Academy Graduation. As the Criminal Chief at the time, I was a guest speaker offering congratulations on behalf of the United States Attorney's Office. Notes supplied.

November 18, 2004: Spokane Federal Executive Association meeting. As the Criminal Chief at the time, I was asked to speak about the Department of Justice Weed and Seed program and other community outreach programs. I have no notes, transcript, or recording. The Association has no physical address.

April 15, 2004: Spokane Republican Women's luncheon. As the Criminal Chief at the time, I was invited to speak about the Patriot Act and how it impacted law enforcement and citizens. I have no notes, transcript, or recording. The Spokane Republic Women has no physical address.

October 16, 2002: Multi-Disciplinary Team Training provided by the U.S. Attorney's Office to tribal law enforcement and tribal representatives. I provided information about the U.S. Attorney's Office prosecution guidelines and common problems in prosecutions. Notes supplied.

September 14, 2000: Operation Jetway Interdiction Seminar sponsored by the Drug Enforcement Administration for state and federal law enforcement. I presented information regarding search and seizure issues. Notes supplied.

June 28-29, 1999: Asset Forfeiture/Equitable Sharing Conference provided by the U.S. Attorney's Office in Spokane the first day and Yakima the second day to state and federal law enforcement. I presented information regarding federal asset forfeiture overview of administrative and judicial forfeiture procedures, minimum net equity values to justify a forfeiture and punitive forfeitures, federal case law update including excessive fines, probable cause, seizure without a warrant and innocent spouses, equitable sharing updates, certifications and uses of funds. Outline supplied.

April 1, 1996: Asset Forfeiture Update for State, Local and Federal Agents provided by the U.S. Attorney's Office. I provided comprehensive asset forfeiture training to state, local and federal agents in Yakima, Washington. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 920 West Riverside, Suite 340, Spokane, Washington 99201.

June 16, 1994: Federal Asset Forfeiture/Equitable Sharing Conference provided by the U.S. Attorney's Office to state and federal law enforcement. I presented material regarding the introduction to forfeiture and Constitutional challenges. Notes supplied.

September 10, 1992: Washington State Narcotics Investigators Association (WSNIA) Fall Conference to state and federal law enforcement. I made a presentation about overcoming defense tactics. Notes supplied.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

During my entire career, news articles have occasionally attributed quotes to me that come from the pleadings which are publically filed or the public court proceedings. As the press officer for the United States Attorney's Office since 2006, I regularly talk to reporters about press releases and case developments. I do not have any copies of recordings nor do I have any transcripts of any interviews. I have searched the Internet, public databases and my own records in an effort to compile a list of interviews that is as complete as possible.

John Hanron, *Primitive Skills Guide Banned from Forest*, Methow Valley News, July 8, 2011. Copy supplied.

Sept. Trial Date Set for Twisp Family Accused of Killing Wolves, Other Federal Crimes, Northwest Sportsman, June 30, 2011. Copy supplied.

Kevin Gaboury, *Bomb Suspect Pleads Innocent*, Lewiston Morning Tribune, June 30, 2011. Copy supplied.

In Brief; Spokane Attorney is Pick for Federal Post, Spokesman Review, June 30, 2011. Copy supplied.

Barb Pacholik, *Dead GPS Thwarts Accused Drug Runners*, The Leader-Post, June 25, 2011. Copy supplied.

Andy Walgamott, *June 29 Arraignment for Twisp Residents Suspected of Wolf Poaching, Smuggling*, Northwest Sportsman, June 17, 2011. Copy supplied.

Ann McCreary, *Twisp Residents Indicted for Poaching Wolves, Smuggling*, Methow Valley News, June 15, 2011. Copy supplied.

Nicholas K. Geranios, *Parade Bombing Suspect's Trial Delayed to Aug. 22*, Associated Press, May 20, 2011. Copy supplied.

Thomas Clouse, *Lebret Faces Theft Charges*, Spokesman Review, May 19, 2011. Copy supplied.

More Raids on Marijuana Dispensaries in Spokane, Associated Press, May 19, 2011. Copy supplied.

Thomas Clouse, *Feds Raid More Spokane Marijuana Dispensaries*, Spokesman Review, May 18, 2011. Copy supplied.

Jonathan Martin, *King County, Seattle Officials Ask for Olympia to Fix Medical Marijuana Law*, Seattle Times, May 18, 2011. Copy supplied.

Mike Carter, *Man Injured in Bomb Blast Suspected of Terrorism Ties*, Seattle Times, May 14, 2011. Copy supplied.

Staff, *Clarkston Man Held without Bond on Federal Charge*, KLEW TV, May 13, 2011. Copy supplied.

Kevin Gaboury, *Feds Charge Man Injured in Blast*, Lewiston Morning Tribune, May 10, 2011. Copy supplied.

WA Man Accused of Manufacturing Explosive Device, Associated Press, May 10, 2011. Copy supplied.

Melissa Luck, *Clarkston Man Arrested on Federal Explosives Charge*, KXLY News, May 9, 2011 [re-printed in multiple outlets]. Copy supplied.

Tracei Dial, *FBI Arrests Clarkston Heights Man on Explosives Charge*, KLEW TV, May 9, 2011. Copy supplied. Related video available at http://www.klewtv.com/news/local/121541609.html?tab=video.

Nicholas Deshais, *The Death of Dispensaries*, The Inlander, May 5, 2011. Copy supplied.

Nicholas K. Geranios, *MLK Parade Bomb Suspect in WA Seeks Trial Delay*, Associated Press, May 3, 2011. Copy supplied.

Washington Governor Partially Vetoes Marijuana Bill Day after Federal Raids, MJ Business Update, Apr. 29, 2011. Copy supplied.

Chelsea Bannach, *Marijuana Outlets Raided*, Spokesman Review, Apr. 29, 2011. Copy supplied.

Keegan Hamilton, *Spokane Marijuana Dispensaries Raided*, Seattle Times, Apr. 29, 2011. Copy supplied.

Gene Johnson, *Agents Raid Wash. Medical Marijuana Dispensaries*, Associated Press, Apr. 29, 2011 [re-printed in multiple outlets]. Copy supplied.

Rob Kauder, *Authorities Raid Spokane Medical Marijuana Dispensaries*, KXLY News, Apr. 28, 2011. Copy supplied.

Nicholas K. Geranios, *MLK Parade Bomb Suspect Pleads Innocent to Charges*, Lewiston Morning Tribune, Apr. 26, 2011. Copy supplied.

Thomas Clouse, *Harpham Enters Plea on New Charges*, Spokesman Review, Apr. 26, 2011. Copy supplied.

Nicholas K. Geranios, *Wash. MLK Parade Bomb Suspect Pleads Not Guilty*, Associated Press, Apr. 25, 2011. Copy supplied.

Elaine Porterfield, *MLK Day Bomb Plot Suspect Pleads Innocent to Hate Crimes*, Reuters, Apr. 25, 2011. Copy supplied.

Thomas Clouse, *Nomination Near for Federal Judge*, Spokesman Review, Apr. 16, 2011. Copy supplied.

Keegan Hamilton, *Eastern Washington U.S. Attorney Michael Ormsby and his State Rep. Brother Timm on Opposite Sides of Medical-Marijuana Issue*, Seattle Weekly, Apr. 11, 2011. Copy supplied.

Meghann M. Cuniff, *Spokane Pot Shops on Federal Notice*, Spokesman Review, Apr. 7, 2011. Copy supplied.

Nicholas Deshais, *Justice Department Threatens Spokane Pot Dispensaries*, The Inlander, Apr. 6, 2011. Copy supplied.

Mike Carter, *Grand Jury Indicts Bomb Suspect*, Seattle Times, Mar. 23, 2011 [re-printed in multiple outlets]. Copy supplied.

Mary Swift, *Reunion after ICE Raid*, Daily Record, Mar. 21, 2011. Copy supplied.

Keegan Hamilton, *The War on Mexicans Strikes Ellensburg*, Seattle Weekly, Mar. 16, 2011. Copy supplied.

Jefferson Robbins, *'Ballcap Bandit' Gets Eight Years*, Wenatchee World, Mar. 5, 2011. Copy supplied.

Meghann M. Cuniff, *Hells Angels Hangout Raided*, Spokesman Review, Mar. 4, 2011. Copy supplied.

K.C. Mehaffey, *State Officials Investigating Wolf's Killing*, Wenatchee World, Feb. 24, 2011. Copy supplied.

Phil Ferolito and Mark Morey, *Immigration Bust*, Yakima Herald-Republic, Jan. 22, 2011. Copy supplied.

Shannon Dininny, *Ellensburg Residents Respond to Immigration Raids*, Associated Press, Jan. 22, 2011 [re-printed in multiple outlets]. Copy supplied.

Jefferson Robbins, *Robber of Three NCW Banks Pleads Guilty*, Wenatchee World, Dec. 15, 2010. Copy supplied.

Thomas Clouse, *Couple Sent to Prison for Tax Crimes*, Spokesman Review, Nov. 18, 2010. Copy supplied.

Jennifer Sullivan, *Ex-Customs Agent Avoids Prison for Importing Steroids*, Seattle Times, Nov. 2, 2010. Copy supplied.

Former ICE Agent Gets Probation for Importing Steroids, The Blotter, Nov. 1, 2010. Copy supplied.

Ross Courtney, *Gang Commission*, Yakima Herald-Republic, Oct. 20, 2010. Copy supplied.

Meghann A. Cuniff, *Alleged Drug Ring Associate Pleads Not Guilty to Charges*, Spokesman Review, Oct. 19, 2010. Copy supplied.

John Hanron, *Total of Six Arrested in Raids on Pot Grows*, Methow Valley News, Sept. 1, 2010. Copy supplied.

Staff, *In Brief; Marijuana Operation in Forest Nets Prison*, Spokesman Review, Aug. 7, 2010. Copy supplied.

K.C. Mehaffey, *Three Marijuana Growers Get Prison Time*, Wenatchee World, Aug. 7, 2010. Copy supplied.

Staff, *Woman Stopped at U.S. Border with Almost $150,000 in Cash*, Vancouver Province, July 30, 2010. Copy supplied.

K.C. Mehaffey, *Man Arrested for Robberies Had History of Counterfeiting. Forgeries*, Wenatchee World, July 22, 2010. Copy supplied.

Robert Matas, *Abbotsford Man on Drug Charges in U.S. Granted Bail*, Globe and Mail, July 8, 2010. Copy supplied.

John Stucke, *Suspicious Powder Sets Off Scare in Two States*, Spokesman Review, June 15, 2010. Copy supplied.

John Stucke, *Physicians Clinic, Feds Settle*, Spokesman Review, June 8, 2010. Copy supplied.

Meghann M. Cuniff, *Motorcycle Gang Member's Release Appealed by Feds*, Spokesman Review, June 3, 2010. Copy supplied.

Michelle McNiel, *Wenatchee Man Gets 20 Years for Producing Child Pornography*, Wenatchee World, May 21, 2010. Copy supplied.

Philip Ferolito, *Couple that Stole Cultural Artifacts is Sentenced*, Yakima Herald-Republic, May 14, 2010. Copy supplied.

Tom Sowa, *More Hanford Fraud Alleged*, Spokesman Review, May 2, 2010. Copy supplied.

Meghan M. Cuniff, *Escapee in Custody after Chase*, Spokesman Review, Apr. 30, 2010. Copy supplied.

Officials Investigate Bomb Left at Federal Courthouse in Spokane, Lewiston Morning Tribune, Apr. 8, 2010. Copy supplied.

Thomas Clouse, *Bomb Found at U.S. Courthouse*, Spokesman Review, Apr. 8, 2010 [quotes re-printed in multiple outlets]. Copy supplied.

Bomb Left at Spokane Federal Building, Associated Press, Apr. 7, 2010 [re-printed in multiple outlets]. Copy supplied.

Annette Cary, *Developer Pleads Guilty to $380,000 Scam*, Tri-City Herald, Mar. 26, 2010. Copy supplied.

Sam Cooper, *Salmon Arm Dad Pleads Guilty to Charges*, Vancouver Province, Feb. 11, 2010. Copy supplied.

K.C. Mehaffey, *Omak Shooting Suspect Turns Himself in to Cops*, Wenatchee World, Dec. 10, 2009. Copy supplied.

Marcy Stamper, *Second Trail Fee Case Dismissed*, Methow Valley News, Nov. 25, 2009. Copy supplied.

Targeted Sweep by Authorities in E. Washington, Associated Press, Nov. 21, 2009. Copy supplied.

Meghann M. Cuniff, *Inmate Granted Holiday Wish*, Spokesman Review, Nov. 18, 2009. Copy supplied.

Michele Mihalovich, *Big Pot Bust Cases Move to Federal Court*, Wenatchee World, Nov. 7, 2009. Copy supplied.

Marcy Stamper, *Judge Dismisses Trail Fee Case*, Methow Valley News, Oct. 29, 2009. Copy supplied.

Nicholas Deshais, *Pot(us) Proclamation*, The Inlander, Oct. 21, 2009. Copy supplied.

Paula Horton, *Justice Department to Probe Police Shooting*, Tri-City Herald, Oct. 6, 2009. Copy supplied.

John Hanron, *Local Man Convicted of Child Pornography*, Methow Valley News, Sept. 30, 2009. Copy supplied.

Paul Butler, *Multiple Drug Raids in Valley Last Week*, Methow Valley News, Sept. 2, 2009. Copy supplied.

Dee Riggs, *Grant Co. Men Charged with Possessing Grizzly Carcass*, Wenatchee World, Aug. 5, 2009 [re-printed on Aug. 8, 2009]. Copy supplied.

Joyce Campbell, *Wolf Poaching Investigation Continues*, Methow Valley News, June 24, 2009. Copy supplied.

Joyce Campbell, *Cows May Graze in Wolf Area*, Methow Valley News, June 10, 2009. Copy supplied.

Staff, *In Brief; Bankruptcy Fraud Leads to Prison*, Spokesman Review, May 15, 2009. Copy supplied.

K.C. Mehaffey, *Keller Man Gets Six Years in Prison for Murder of Cousin*, Wenatchee World, Apr. 30, 2009. Copy supplied.

Joyce Campbell, *Wolf Case Could Take Months to Process*, Methow Valley News, Apr. 8, 2009. Copy supplied.

Joyce Campbell, *Feds Looking at Three Twisp Locals in Wolf Kill Incident*, Methow Valley News, Apr. 1, 2009. Copy supplied.

Jody Lawrence-Turner, *Jail Suicide Victim Was B.C. Man Suspected of Transporting Pot*, Spokesman Review, Mar. 3, 2009. Copy supplied.

Pot Smuggling Suspect Hangs Self in Spokane Jail, Associated Press, Mar. 3, 2009 [re-printed in multiple outlets]. Copy supplied.

Bill Morlin, *20 Suspects Arrested in Marijuana Ring*, Spokesman Review, Feb. 27, 2009. Copy supplied.

25 Arrested in Pot Raids in Washington State, Associated Press, Feb. 27, 2009 [re-printed in multiple outlets]. Copy supplied.

Bill Morlin, *Feds Arresting Two Dozen in Drug Bust*, Spokesman Review, Feb. 26, 2009. Copy supplied.

Bill Morlin, *Women Convicted of Smuggling Monkey*, Spokesman Review, Dec. 9, 2008. Copy supplied.

Philip Ferolito, *Guest Worker Program*, Yakima Herald-Republic, Nov. 16, 2008 [re-printed in multiple outlets]. Copy supplied.

Paula Horton, *Drug Bust: 10 Arrested in Tri-Cities, Spokane Sweeps*, Tri-City Herald, Oct. 1, 2008 [re-printed in multiple outlets]. Copy supplied.

Bill Morlin, *Man Charged with Selling Artifacts. Remains*, Spokesman Review, Sept. 16, 2008. Copy supplied.

Jay Patrick, *Plea Deal: 10 Years in Prison for Child Porn*, Wenatchee World, Sept. 10, 2008 [quote re-printed in multiple outlets]. Copy supplied.

Melissa Klein and Susan Edelman, *Bachelor's Padded – Bigshots Here Bought Fraud Diplomas*, New York Post, Aug. 17, 2008. Copy supplied.

Russell Working and Jodi S. Cohen, *Cops on Bogus Diploma List*, Chicago Tribune, Aug. 5, 2008. Copy supplied.

Marcus Gilmer, *Illinois Professor Helps Feds Track, Crack Diploma Mill*, Chicagoist, Aug. 4, 2008 [re-printed in multiple outlets]. Copy supplied.

Ken Gousseau, *Hells Angel Set to Smuggle Marijuana: Police*, Prince Rupert Daily News, July 25, 2008. Copy supplied.

Diana Jean Schemo, *Diploma Mill Concerns Extend Beyond Fraud*, New York Times, June 29, 2008 [re-printed in multiple outlets]. Copy supplied.

Kristin M. Kraemer, *Alabama Man Now Faces Federal Charges in Kidnapping*, Tri-City Herald, June 25, 2008. Copy supplied.

Nicholas K. Geranios, *Fire Boss Pleads Guilty to Misdemeanors for 4 Crew Deaths*, Associated Press, Apr. 30, 2008 [re-printed in multiple outlets]. Copy supplied.

Philip Ferolito, *Shooting Victim*, Yakima Herald-Republic, Apr. 28, 2008. Copy supplied.

Bill Morlin, *Father, Son Accused of Swindling $1.7 Million*, Spokesman Review, Apr. 25, 2008. Copy supplied.

Bill Morlin, *Spokane Fugitive Caught in Colorado*, Spokesman Review, Apr. 15, 2008. Copy supplied.

Bill Morlin, *Few Answers in Zehm Death*, Spokesman Review, Mar. 21, 2008. Copy supplied.

Sarah Antonacci, *Diploma Mills Pose Degrees of Danger*, State Journal-Register, Feb. 19, 2008. Copy supplied.

Staff, *Briefs*, Tri-City Herald, Jan. 18, 2008. Copy supplied.

Philip Ferolito, *Curator, Daughter Indicted in Tribal Museum Thefts*, Yakima Herald-Republic, Jan. 18, 2008. Copy supplied.

Tongan Cocaine Ringleader Fled to NZ in International Chase, PacNews, Dec. 7, 2007 [re-printed in multiple outlets]. Copy supplied.

Bill Morlin, *Fugitive Cocaine Distributor Sentenced*, Spokesman Review, Dec. 6, 2007. Copy supplied.

Andy Ivens, *B.C. 'Pipeline' Smuggling South Koreans into U.S.*, Vancouver Province, Dec. 6, 2007. Copy supplied.

Cocaine Supplier who Fled for 12 Years Sentenced in Spokane WA, Associated Press, Dec. 6, 2007. Copy supplied.

David Cole, *Couple Charged with Fraud over Katrina Disaster Money*, Lewiston Morning Tribune, Nov. 10, 2007. Copy supplied.

Idaho Couple Sentenced for Smuggling Untaxed Cigarettes into WA, Associated Press, Oct. 23, 2007 [re-printed in multiple outlets]. Copy supplied.

Ex-Tri-City Man Arraigned on Child Pornography Charges, Tri-City Herald, Oct. 20, 2007. Copy supplied.

John K. Wiley, *Fugitive Arraigned after Return to U.S.*, Associated Press, Oct. 20, 2007 [re-printed in multiple outlets]. Copy supplied.

John K. Wiley, *Fugitive Accused in Videotaped Sex Attack on Daughter Arraigned*, Associated Press, Oct. 1, 2007 [two versions printed]. Copies supplied.

Bill Morlin, *Child Porn Suspect Extradited to Spokane*, Spokesman Review, Oct. 19, 2007. Copy supplied.

Staff, *Agencies Get Loot from Smuggling Case*, Spokesman Review, Aug. 31, 2007. Copy supplied.

Staff, *In Brief; Day Care Workers Accused of Theft*, Spokesman Review, Aug. 30, 2007. Copy supplied.

Leah Beth Ward, *Grand Jury Indicts Mattawa Day-Care Providers*, Yakima Herald-Republic, Aug. 30, 2007. Copy supplied.

John Craig, *Drug Case Hinges on Dubious Informer*, Spokesman Review, Aug. 19, 2007. Copy supplied.

Former Canadian Union Leader Sentenced in U.S. Cocaine Case, Associated Press, Aug. 2, 2007. Copy supplied.

US Cda Cocaine Smuggling, Broadcast News, Aug. 2, 2007. Copy supplied.

Bill Morlin, *Canadian Man to Serve 8 Years for Smuggling*, Spokesman Review, Aug. 2, 2007. Copy supplied.

David Carrigg, *Ex-B.C. Union Boss Gets 8 Years for Cocaine Bust*, Vancouver Province, July 31, 2007. Copy supplied.

Catherine Rolfsen, *Union Leader Gets 8 Years in U.S. Prison*, Vancouver Sun, July 31, 2007 [re-printed in multiple outlets]. Copy supplied.

Bill Morlin, *Indictment: Clinic Gave Abusers Painkillers*, Spokesman Review, June 21, 2007. Copy supplied.

Bill Morlin, *Guard Fired in Peeping Case*, Spokesman Review, June 20, 2007. Copy supplied.

Spokane Guard Fired Over Alleged Surveillance Camera Abuse, Associated Press, June 20, 2007. Copy supplied.

Bill Morlin, *Fraud Suspect in Court after 15 Years*, Spokesman Review, June 16, 2007. Copy supplied.

Phil Ferolito, *Yakama Alcohol Sales Under Federal Probe*, Yakima Herald-Republic, May 28, 2007. Copy supplied.

Shannon Dininny, *U.S. Man Arrested in Hong Kong in Notorious Child Abuse Case*, Associated Press, May 3, 2007 [re-printed in multiple outlets]. Copy supplied.

In Brief; Six Mexican Nationals Arrested at Tree Farm, Spokesman Review, Apr. 21, 2007. Copy supplied.

Ex-Convict Sentenced for Weapons Possession, Associated Press, Feb. 14, 2007. Copy supplied.

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More Admit Cocaine Sales Ring Roles, The Oregonian, Nov. 18, 1994. Copy supplied.

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Ellis E. Conklin, *Rancher Who Had Lost Ground Succumbed to Lure of Drug Crop*, Seattle Post-Intelligencer, May 12, 1993. Copy supplied.

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Man Draws Prison Term for Threat to Kill Agent, The Oregonian, Jan. 15, 1993. Copy supplied.

Staff, *Lawsuit Filed to Seize Property from Pot Bust*, Seattle Times, Sept. 12, 1992. Copy supplied.

Credit Union Aide Admits Fraud, The Oregonian, Dec. 10, 1990. Copy supplied.

Timothy Egan, *Thousands Plan Life Below, After Doomsday*, New York Times, Mar. 15, 1990. Copy supplied.

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Jury Returns Indictment on Gun Count, The Oregonian, July 27, 1989 [re-printed in multiple outlets]. Copy supplied.

Don Lattin, *Trouble in Paradise – Members of Sect Stockpiling Weapons*, San Francisco Chronicle, July 20, 1989 [re-printed in multiple outlets]. Copy supplied.

In addition, I do recall giving a television interview about a pending criminal bank fraud case in 1989, but I do not have a copy of that video.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have not had any unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not been a member, held office, or rendered services for any political party, election committee, or political campaign.

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

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

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

I have not served as a clerk to a judge.

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

I have not been a sole practitioner.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Summer 1986
Delay, Curran, Thompson & Pontarolo, PS
601 West Main, Suite 1212
Spokane, Washington 99201
Law Clerk

1986 – 1987
United States Department of Justice
Office of Special Litigation, Tax Division
555 Fourth Street, NW
Washington, D.C. 20001
Honors Program Trial Attorney

1987 – present
United States Attorney's Office for the Eastern District of Washington
920 West Riverside Avenue, Suite 340
Spokane, Washington 99201
First Assistant United States Attorney (2006 – present)
Criminal Chief (2003 – 2006)
Deputy Criminal Chief (2000 – 2003)
Assistant United States Attorney (1987 – present)

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

I have not served as a mediator or an arbitrator.

b. Describe:

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

During the summer of 1986, after I graduated from law school and while I was studying for the bar exam, I was a law clerk for a small law firm. After taking the bar exam, I moved to Washington, D.C. and began working for the Department of Justice, Tax Division in September 1986. My work centered upon curbing abusive tax shelter schemes. In the spring of 1987, I transferred to the United States Attorney's Office for the Eastern District of Washington. As an Assistant United States Attorney, I represent the United States of America in civil and criminal litigation in Federal court. I have personally handled all aspects of litigation involving eminent domain, property forfeiture, water rights, environmental regulation, medical malpractice, social security claims, habeas, bankruptcy, flooding, tax litigation and a host of tort cases from slip-and-fall to Constitutional torts. The breadth of my civil experience encompasses every stage of litigation, including pre-filing investigations, discovery (interrogatories and depositions), motions practice, trials, judgments, appeals and debt collection. I have prosecuted nearly every type of federal crime, including bank robbery, drug trafficking, firearm violations, money laundering, wire fraud, bank fraud, bombings, arson, bribery, tax evasion, and witness intimidation. I have handled all aspects of criminal cases, from grand jury proceedings through trial, sentencing and appeal. I have held numerous positions and performed various duties within the U.S. Attorney's Office, including First Assistant U.S. Attorney (2006 – present), Criminal Chief (2003 – 2006), Deputy Criminal Chief (2000 – 2003), professional responsibility officer (2006 – present), senior litigation counsel (2000 – 2002), criminal appellate brief reviewer, asset forfeiture attorney, computer fraud coordinator, money laundering contact, and Special Assistant United States Attorney for the Districts of Montana, Idaho, and the Western District of Washington. I also hold an appointment as a Special Attorney to the United States Attorney General to handle certain criminal cases outside the Eastern District of Washington.

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

Throughout my career, I have represented the United States of America. At the Tax Division of the Department of Justice, I specialized in abusive tax shelter litigation. When I began as an Assistant United States Attorney, I specialized in eminent domain and social security claims. Even though I have always maintained a broad variety of civil and criminal cases throughout my career, corresponding with collateral duty assignments, I have specialized in asset forfeiture, computer crimes, and money laundering. I have also specialized in all types of fraud cases throughout my career.

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

Prior to 2003, I appeared in court frequently and my practice was completely litigation based. After being promoted to Criminal Chief in 2003, I appeared in court a moderate amount of time and after being promoted to First Assistant U.S. Attorney in 2006, I have appeared in court occasionally. As a supervisor, my practice has included more review of cases and litigation strategies while supervising and mentoring attorneys.

i. Indicate the percentage of your practice in:

1. federal courts:	100 %
2. state courts of record:	0 %
3. other courts:	0 %
4. administrative agencies:	0 %

ii. Indicate the percentage of your practice in:

1. civil proceedings:	10 %
2. criminal proceedings:	90 %

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

I have tried 38 cases to final decision. I was the sole counsel in all those cases except six. In those six, I was lead counsel.

i. What percentage of these trials were:

1. jury:	79 %
2. non-jury:	21 %

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any

oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    a. the date of representation;

    b. the name of the court and the name of the judge or judges before whom the case was litigated; and

    c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

        1. *Richardson v. United States*, 943 F.2d 1107 (9th Cir. 1991), *cert. denied*, 503 U.S. 936 (1992); Eastern District of Washington, U.S. District Judge Robert McNichols.

    This case involved a multi-million dollar claim for burn injuries sustained by two young men as they were moving irrigation pipe under a 115 kilovolt Bonneville Power (BPA) transmission line near Finley, Washington. I appeared as counsel in 1988, after the case was reversed by the Ninth Circuit a second time for a new trial. Coming into the case midstream, I had to learn everything about the case including all of the previous trial evidence and prepare the case for a third trial. I contended that the BPA could not be liable under the Federal Tort Claims Act for discretionary functions of the government that balanced the cost of safety devices with the risk of injury. Here the BPA chose to follow the National Electric Safety Code and not provide greater (more expensive) safety devices to protect from lightening induced electrical line arcs. Along with agency counsel Robert Jones, I presented the case for the third trial and advanced the discretionary function jurisdictional defense to liability. We prepared extensive expert testimony, from a lightning expert from the University of Florida, that the accident could not have been prevented by additional ground wires even if it occurred the way plaintiffs contended. We also presented detailed testimony concerning the economic and engineering considerations supporting the decision not to install additional ground wires. The district court ruled for the United States on the discretionary function defense, which was affirmed on appeal.

    Co-counsel: Robert L. Jones
    Unknown

Opposing counsel: David E. Williams for Plaintiff Richardson
P.O. Box 1487
1177 Jadwin Avenue
Richland, Washington 99352
(509) 375-3470

Greg L. Tinker for Plaintiff Trapp
(deceased)

2. *United States v. King*, CR-93-016-WFN, CR-92-264-WFN, CR-92-265-WFN, CR-92-266-WFN, CR-92-292-WFN, CR-293-WFN, CR-92-294-WFN, Eastern District of Washington, U.S. District Judge William Fremming Nielsen.

In 1992, the FBI received information that the defendant was growing marijuana on his ranch outside Odessa, Washington. I orchestrated an extensive financial investigation while the FBI monitored the grow site to determine the conspirators involved and to determine the ultimate destination for the marijuana. By mid-August 1992, multiple search warrants were executed, over 6,000 marijuana plants were eradicated from the center of a circle irrigated corn field on the Bud King Ranch, and seven co-conspirators were arrested. Over a million dollars in assets were seized and forfeited and all of the defendants pleaded guilty and were sentenced to prison. At the time, it was the biggest seizure of marijuana in the Eastern District of Washington and one of the biggest forfeitures cases.

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Larry C. Stephenson for Defendant King
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Patrick K. Stiley for Defendant M. Anderson
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Roger J. Peven for Defendant T. McKenna
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3. *United States v. Paulsen*, CR-94-190 through CR-94-214, CR-94-217, CR-94-222 through CR-94-225, CR-94-236, CR-94-237, CR-94-248, CR-94-249, CR-94-252, CR-94-285, CR-96-184, *United States v. Young and Tamez*, 86 F.3d 944 (9th Cir. 1996), 89 F.3d 848 (table), 129 F.3d 129 (table), *cert. denied*, 118 S. Ct. 1688 (1998); U.S. District Judges Justin L. Quackenbush, William Fremming Nielsen, and Fred Van Sickle.

In 1992, the FBI enlisted me to lead a multi-agency investigation into a long-standing cocaine distribution ring that previously could not be infiltrated by local or federal attempts. For two years, I advised the FBI and regional drug task force during the investigation, I conducted an extensive grand jury investigation, and the agents recorded hundreds of conversations. In August 1994, the investigation culminated in my preparing about two dozen search warrants which were executed simultaneously with nearly 30 arrests. I presented a 127-count indictment to the grand jury. At the time, it was the largest law enforcement operation in the Eastern District of Washington. The case resulted in the conviction of 37 defendants, including three different sources of cocaine, one from California, a family from the Tri-Cities and an Electric City connection. The defendants included Paulsen and Larsen, who were jointly responsible for managing the distribution of hundreds of pounds of cocaine into the Spokane area

for years. All but two of the defendants pleaded guilty, including a physician's assistant, a stock broker, a car salesman, and two lawyers. Two defendants went to trial and AUSA Stephanie Lister and I tried those cases together in an eight-day jury trial. Both of those defendants were convicted; one was sentenced to ten years in prison and the other was sentenced to 20 years in prison. Nearly a million dollars in cars, cash and real property were forfeited.

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Opposing counsel: Rosanna Peterson for Defendant Alley
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4. *United States v. Merrell*, CR-96-257-WFN, CR-96-258-WFN, CR-96-259-WFN, CR-97-066-WFN, Eastern District of Washington, 182 F.3d 929 (table) (9th Cir.), *cert. denied*, 120 S. Ct. 266, 120 S. Ct. 516 (1999), U.S. District Judge William Fremming Nielsen.

On April 1, 1996, a U.S. Bank branch in Spokane was robbed and then blown up. As a diversion, another office building on the same street was blown up immediately before the robbery. It appeared three robbers were involved. I worked with the FBI and local law enforcement and conducted an extensive grand jury investigation. On July 16, 1996, the Planned Parenthood building was bombed as a diversion so the same U.S. Bank branch could be robbed again. This time, it appeared four robbers were involved. I continued to work with the FBI and the other agencies involved, and I negotiated a cooperation and immunity agreement with the attorney for an informant. By October 1996, the FBI had installed a closed circuit camera on the suspects' auto repair shop in Sandpoint, Idaho. One night, the suspects were observed leaving the shop in a suspicious manner and were followed by the FBI to a U.S. Bank branch in Portland, Oregon. The bank was contacted and ordered to lock its doors, which caused the suspects to abort their robbery attempt. They were followed back to Washington and three suspects were arrested completely by surprise in Union Gap. They were driving a stolen van and two Suburbans that were full of bank robbery gear, an arsenal of weapons, hand grenades, and disguises. Four search warrants were prepared and executed at the suspects' houses and auto repair shop. AUSAs Harrington and Lister were then assigned to help me with the cases. While preparing for grand jury and trial for the three robbers, we continued to work with the FBI to identify the fourth robber. AUSAs Harrington, Lister and I divided up the witnesses and tried the first case together. The case involved hundreds of exhibits and several expert witnesses, including an explosives expert, a computer expert, an ink expert, a firearm expert, and a chemist analyzing the lead pellets in the Planned Parenthood bomb. During the first trial, the fourth bank robber was arrested. The first trial lasted five weeks and resulted in a hung jury. AUSA Harrington and I conducted the second trial. All three defendants were convicted and sentenced to double life terms of incarceration. AUSA Harrington and I then conducted a third trial for the fourth bank robber. He was convicted of all the charges and sentenced to 55 years in prison. I handled all the appellate cases and continue to handle all the habeas challenges to their convictions.

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5. *United States v. Booth*, CR-99-018-EFS and CR-99-019-EFS, Eastern District of Washington, 309 F.3d 566 (9th Cir. 2002), U.S. District Judge Edward F. Shea.

Defendant Booth was convicted in the Eastern District of California for operating an advance fee fraud scheme. He was released from prison and moved to Spokane to serve his period of supervised release. He became involved with a company called LeasX which offered financing for equipment leases. He purchased the company and installed Defendant Bories as the President of the company. Between December 1997 and January 1999, Booth contracted with

five companies, several of whom were in financial difficulties, to find them a total of $393.3 million in financing, sometimes promising funding within one or two days. LeasX received advance fees totaling nearly $2 million. Although the advance fees were represented to be refundable if a satisfactory funding source was not secured, Booth and Bories spent all the advance fees on salaries for employees and for their own personal expenses, including, among other things, the rental of a jet airplane, automobile leases, jewelry, trips to Las Vegas, and professional golf lessons. Working with the FBI, I began an investigation when one of the customers complained about not receiving his promised financing. We uncovered the elaborate scheme Booth perpetrated all while being supervised by the Probation Office. I sought an indictment for wire fraud and nearly 100 counts of money laundering. After a 13-day jury trial, Booth was convicted of all the major counts and Bories was convicted of wire fraud. Both were sentenced to prison.

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6. *United States v. Glynn*, CR-01-160-EFS, CR-01-161-EFS, CR-01-162-EFS, and CR-03-011-EFS, Eastern District of Washington, U.S. District Judge Edward F. Shea.

In July 2001 a bank was robbed in Spokane, Washington. On September 26, 2001, a cooperating witness (CW) told an FBI agent in Idaho that he/she knew the three people who robbed the bank, as well as many other banks in the United States based on statements they made to the CW. The CW said these three tried to recruit the CW to participate in future robberies. I worked with the FBI to obtain search and arrest warrants, and on September 29, 2001, all three individuals were arrested and search warrants were executed at their residences. Shotguns, latex masks, gloves, and other clothing were seized from the defendants' residences and cars, consistent with descriptions of items used in the bank robberies. The FBI agent then uncovered eleven unsolved takeover bank robberies which began in March 1998, and spanned seven states. The banks' losses exceeded $1.2 million. Some of these robberies were profiled on America's Most Wanted television show which called them the "100 percent" robbers based upon statements the robbers made during the robberies. I negotiated global plea agreements encompassing the crimes in all the other districts and then one defendant waived venue and pleaded guilty to eleven bank robberies. The other two defendants also pleaded guilty to their roles in the

robberies. A fourth bank robber was later arrested in Florida in 2002, and pleaded guilty, too. All were sentenced to prison.

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7. *United States v. Martin*, CR-02-130-JLQ, CR-02-142-JLQ, and CR-02-143-JLQ, Eastern District of Washington, U.S. District Judge Justin L. Quackenbush.

On April 15, 2002, a tavern in Spokane, Washington burned down. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Spokane Fire Department began an investigation and determined the fire was arson. The building was insured and the loss was determined to be $281,000. A part-owner of the business and his bodyguard/bouncer were developed as suspects. However, the bodyguard had an alibi confirmed by his girlfriend, who testified to the alibi in front of the grand jury. Subsequent investigation by the ATF, the Spokane Fire investigator and the grand jury proceedings that I headed, proved her alibi false. I assisted in obtaining a search warrant for the bodyguard's house where incriminating evidence was located. The owner then confessed and pleaded guilty to conspiracy to commit mail fraud and arson of property used in interstate commerce, and use of fire to commit a federal felony. The girlfriend pleaded guilty to perjury. The bodyguard pleaded guilty to using fire to commit a federal felony and suborning perjury. All three were sentenced to prison.

Opposing counsel: David M. Miller for Defendant Martin
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8. *United States v. Jenny*, CR-02-190-WFN through CR-02-194-WFN, Eastern District of Washington, U.S. District Judge William Fremming Nielsen.

During 2002, the Drug Enforcement Administration became aware of allegations that two elderly women, Mrs. Erickson and Mrs. Jenny, were depositing large amounts of cash that smelled of marijuana into a bank account for their purported decorating business. I headed up a multi-agency investigation to determine where they were growing and who was involved. The investigation culminated in the execution of about eight search warrants and the arrest of the five people involved, including their two husbands and another person. Vacant houses in affluent neighborhoods were being used as grow houses. Nearly a million dollars in distribution proceeds and five upper middle class houses were seized and forfeited.

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9. *United States v. Perry*, CR-06-098-EFS, Eastern District of Washington, U.S. District Judge Edward F. Shea.

The Federal Bureau of Investigation (FBI) received information that the elected mayor of Airway Heights, Washington, may have been bribed by defendant Moe, who sought to influence an admissions tax on the Spokane Raceway Park, which Moe operated and controlled. Airway Heights is a local government body that receives more than $10,000 a year in federal assistance. I worked with the FBI on a lengthy grand jury investigation of the mayor's finances. Eventually, we discovered that Moe gave the mayor two loans secured by the mayor's home, one in October of 2002 and one in October of 2004. The then-former mayor was indicted for accepting bribes and Moe was indicted for bribing a public official. As the FBI and I were preparing for trial, the former mayor Perry pleaded guilty to accepting a bribe from Moe. Moe's case went to trial where the charges were dismissed by the Court.

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Mark Vovos for Defendant Moe
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10. *United States v. Ganley*, CR-10-183-JLR, Western District of Washington, U.S. District Judge James L. Robart.

The Food and Drug Administration's Office of Criminal Investigations began an investigation when a package containing human growth hormone and steroids arrived in New York from Beijing, China in April 2008. It was discovered by Customs and Border Protection (CBP) Inspectors working the International Mail Facility at JFK Airport in New York. Further investigation revealed that defendant, who was a Special Agent with U.S. Immigration and Customs Enforcement (ICE) assigned to the Blaine, Washington office, surreptitiously sent three wire transfers to China and ordered the steroids using a false telephone number and fictitious address. To avoid any appearance of a conflict of interest with the United States Attorney's Office in the Western District of Washington, I was appointed as a Special Attorney to the Attorney General to prosecute the case. After reviewing the case with the agents, prior to indictment, I presented the

matter to Mr. Ganley's attorney and negotiated a felony plea to illegal importation of steroids. The defendant also agreed to immediately resign from his position with ICE.

Opposing counsel: John R. Crowley for Defendant Ganley
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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a prosecutor, the decision to decline a case, the decision to charge and what to charge have a tremendous effect on the outcome of the proceeding. These decisions carry great consequence for not only the defendant, but also his or her family, the victims, as well as the public. My decision to seek a prosecution has never been lightly made as it committed resources and carried the power and prestige of a prosecution in the name of the United States. I have exercised these decisions for more than two decades.

As a manager within the office (Deputy Criminal Chief, Criminal Chief and now First Assistant) I have declined cases for all sorts of reasons, including cases presenting ethical issues or otherwise not in the best interest of the public. As the First Assistant, I continue to screen cases and give advice to less experienced AUSAs.

Additionally, I have been the United States Attorney's Office Professional Responsibility Officer (PRO) since March 2006. As the PRO, I am charged with giving ethics advice to all the other Assistant United States Attorneys. I regularly counsel attorneys that no conviction is more important than the ethics and reputation of the Government and its attorneys.

I have not performed any lobbying activities on behalf of any client or organization.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted

contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

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

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

    If confirmed, I would recuse myself from any cases in which I played any role as an Assistant United States Attorney. It is not likely that any other potential or actual conflicts would arise. However, if that were to occur, I would recuse myself according to the Code of Conduct for United States Judges as well as other relevant cannons and statutory provisions.

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

    If confirmed, I will consult and apply the Code of Conduct for United States Judges as well as other relevant cannons and statutory provisions.

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

Since March 2006, I have been the vice-chair of the Edgecliff SCOPE Weed and Seed site. This is a neighborhood organization in the Spokane Valley that partners with law enforcement and volunteers to combat crime and improve the community using the Department of Justice's Weed and Seed grant program. While this position is part of my official duties as an Assistant United States Attorney, I have also volunteered evenings and weekends to participate in Edgecliff functions and activities. I would estimate that I have volunteered 40 hours of my time.

From September 1993 to April 1997, I served as an unpaid Secretary, Treasurer and board member on the non-profit Conservatory Ballet Theatre. I was responsible for the finances and bookkeeping and I estimate I spent about 100 hours a year working on this endeavor.

During two years of law school, I was a Volunteer Income Tax Assistance (VITA) site coordinator. In that capacity, I worked with the IRS to obtain forms and materials and provided tax preparation assistance to low income and elderly persons by recruiting volunteers and staffing a VITA site during tax season. I would estimate I spent 40 to 60 hours each year working on this cause.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Senators Patty Murray and Maria Cantwell and Representative Doc Hastings formed a bi-partisan judicial selection committee to screen and recommend potential candidates in the Eastern District of Washington. After submitting my application on May 28, 2010, I was notified that I would be interviewed by the selection committee on September 18, 2010. In the meantime, I requested a judicial evaluation from the Minority Bar Associations of the State of Washington by submitting written materials on July 31, 2010, and participating in an interview on August 28, 2010. After my September 18, 2010, interview, the bi-partisan judicial selection committee recommended my candidacy, along with others, to

Senators Murray and Cantwell. On October 28, 2010, I met with Senator Murray's legislative assistant, Jason Park, and answered background questions. I was interviewed by Senator Murray on December 15, 2010. On December 17, 2010, Senators Murray and Cantwell forwarded my name, along with others, to the White House for consideration for nomination by the President.

Since December 17, 2010, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 25, 2011, I met with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 29, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Rice, Thomas O.	U.S. District Court, Eastern District of Washington	06/30/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
U.S. District Judge	☑ Nomination, Date 6/29/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2010 to 6/30/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
U.S. Attorney's Office 920 West Riverside Avenue, Suite 340 Spokane, WA 99201	Reviewing Officer_____ Date_____	

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

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Rice, Thomas O.	Date of Report 06/30/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2010	Self-employed eBay sales
2.	2011	Self-employed eBay sales
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Rice, Thomas O.	Date of Report 06/30/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Rice, Thomas O.	06/30/2011

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Numerica Credit Union (accounts)	A	Interest	L	T					
2. Schwab 1000 Index Fund		None	K	T					
3. Columbia Mid Cap Growth Z		None	K	T					
4. ING Growth and Income Portfolio I		None	J	T					
5. Fidelity VIP Growth Portfolio I		None	J	T					
6. ING T.Rowe Price Growth Equity Portfolio I		None	J	T					
7. ING Templeton Foreign Equity Portfolio I		None	J	T					
8. Undeveloped lot, Priest Lake, ID (2007 $135,000)		None	M	R					
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Rice, Thomas O.	Date of Report 06/30/2011

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Rice, Thomas O.	Date of Report 06/30/2011

IX. CERTIFICATION.

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

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

Signature Thomas O Rice

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		48	800	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		70	516	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		8	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		314	000
Real estate owned – see schedule		670	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		74	000				
Cash value-life insurance							
Other assets itemize:							
- Thrift Savings Plan		504	035				
				Total liabilities		322	000
				Net Worth	1	045	351
Total Assets	1	367	351	Total liabilities and net worth	1	367	351
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts: co-signor on son's apartment for four more months.		2	300	Are any assets pledged? (Add schedule)	No		
Legal Claims				Are you defendant in any suits or legal actions?	No		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	No		
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Schwab 1000 Index Fund	$37,805
Columbia Mid Cap Growth Z	26,845
ING Growth and Income Portfolio I	1,279
Fidelity VIP Growth Portfolio I	1,365
ING T. Rowe Price Growth Equity Portfolio I	1,641
ING Templeton Foreign Equity Portfolio I	1,581
Total Listed Securities	$70,516

Real Estate Owned	
Personal residence	$540,000
Undeveloped lot	130,000
Total Real Estate Owned	$670,000

AFFIDAVIT

I, Thomas Owen Rice, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 28, 2011
(DATE)

Thomas O. Rice
(NAME)

(NOTARY)

Official Seal
DEBRA ANN DOLL
NOTARY PUBLIC STATE OF WASHINGTON
COMMISSION EXPIRES SEPTEMBER 30, 2012

Senator KLOBUCHAR. Well, thank you very much.

And last but not least, Judge Nuffer, with your support crew right up here on the dais.

STATEMENT OF DAVID NUFFER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF UTAH

Judge NUFFER. Thank you very much, and I am very grateful to the Committee for this opportunity, and I have been watching your work and webcasts and how you schedule these judicial nominations, and you have a remarkable number of nominees coming through, and you are getting them to the floor. And I think all the courts in the United States appreciate that.

I am very grateful to Senator Hatch and Senator Lee for their continued support, for the great courtesies they have extended to my family today to make this a very memorable day, and for their continued interest in and support of our court.

I am very grateful and honored by the President's nomination and for the staff, the executive staff who have helped me so far in this process.

Attending here today, I was seated just until a moment ago very comfortably next to my wife, Lori. Our daughter, Jessica, and her boyfriend, James Raftery, are here. Lori's brother, Ken Lyons, and our nephew, David Lyons, are here. Friends from the judiciary, Lori Murphy, Jim Buchanan, and Tom Natowski are here with us.

In the webcast audience—and, again, I thank the Committee for having this webcast. It made it possible for my mother, who is watching today with friends Dixie Lyman and Paul Lyman in Richfield, Utah, to see these proceedings, and I hope she is approving so far of what I have said.

Our other children, Pete, Chris, Paul, Lisa, Laura, Michael, and their families and friends, are watching as are other friends in Utah, Oregon, and other States and family there.

I believe also our court colleagues are watching, including my chamber staff and judges who are very anxious to get this vacancy filled so they can give me special cases; and their colleagues from the judiciary in other courts as well in other States; as well as colleagues from courts, law schools, and the practice of law, and from the Rule of Law Projects in the U.S., Turkey, and Ukraine, who I am informed are watching. And, finally, my students at the J. Reuben Clark Law School.

We all appreciate this opportunity.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   David Ogden Nuffer

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

   United States District Judge for the District of Utah

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   350 South Main Street #483
   Salt Lake City, Utah 84101

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

   1952; Portland, Oregon

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1975 – 1978, J. Reuben Clark Law School; J.D. (*cum laude*), 1978
   1970, 1973 – 1975, Brigham Young University; B.A. (*cum laude*), 1975

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2003 – present
   United States District Court for the District of Utah
   350 South Main Street #483
   Salt Lake City, Utah 84101
   United States Magistrate Judge

2001– present
J. Reuben Clark Law School at Brigham Young University
Provo, Utah 84602
Adjunct Professor of Law

2009 – 2010
American Bar Association Rule of Law Initiative
740 15th Street NW
Washington, DC 20005
Consultant, Lecturer

2008
Ukraine Rule of Law Project
36 Ivana Franka, Third Floor
Kyiv, Ukraine 01030
Consultant, Lecturer

1995 – 2003
United States District Court for the District of Utah
197 East Tabernacle Street
St. George, Utah 84770
United States Magistrate Judge (part-time)

1979 – 2002
Snow Nuffer (formerly Snow, Nuffer, Engstrom, Drake, Wade & Smart, merged into Durham, Jones & Pinegar on January 1, 2003)
192 East 200 North
St. George, Utah 84770
Member, Officer and Director

1995 – 2000
Sleight Expeditions, Inc.
974 North 1400 West
St. George, Utah 84770
River Guide (part-time)

1977 – 1978
Allen, Thompson & Hughes (firm no longer exists)
149 East Tabernacle Street
St. George, Utah 84770
Law Clerk and Associate

1976 – 1978
Howard, Lewis & Peterson
120 East 300 North
Provo, Utah 84601
Law Clerk

1974 – 1976
Harold B. Lee Library
Brigham Young University
Provo, Utah 84602
Book Shelver

Other Affiliations (uncompensated):

2007 – present
Leavitt Institute for International Development
594 East 800 South, Suite E
Orem, Utah 84097
Board Member

2000 – 2002
SmartUtah Foundation
201 South Main Street, Suite 600
Salt Lake City, Utah 84111
Board Member

1994 – 2001
Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111
President (2000 – 2001)
President Elect (1999 – 2000)
Commissioner (1994 – 1999)

1996 – 2000
Utah Electronic Law Project (no longer in existence)
645 South 200 East
Salt Lake City, Utah 84111
Director

1993 – 1996
Virgin River Land Preservation Association
53 North Main Street
St. George, Utah 84771
Founding Board Member (1993 – 1994)
Chair and President (1995 – 1996)

1994 – 1995
Washington County Democratic Party
No physical address
Secretary

1982 – 1986
St. George Chamber of Commerce
97 East St. George Boulevard
St. George, Utah 84770
Board Member (1982 – 1986)
President (1985)

. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I registered for selective service in 1970 at age 18.

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

Distinguished Service Award, Utah Federal Bar Association (2006)
Honored Alumni Award, BYU Alumni Association J. Reuben Clark Law School (2001)
Academic Scholarship, J. Reuben Clark Law School (1975 – 1978)

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

Aldon J. Anderson Inn of Court
Member and Master of Inn (2003 – present)
American Bar Association (1990 – 2003)
Midyear Meeting Advisory Committee (2005)
Fifth District Court Judicial Nominating Commission (1984 – 1988; 1992 – 1994)
Southern Utah Bar Association (1995 – 2003)
United States Courts
Chambers Functional Requirements Working Group for Future Case Management System, Administrative Office of the U. S. Courts (2009 – present)
IT Advisory Council, U.S. Courts (2009 – present)
IT Security and Network Management Working Group, U.S. Courts (2008 – 2009)
Federal Judicial Center Judges IT Training Advisory Group (2007 – present)
Magistrate Judges Advisory Group, U.S. Courts (2006 – 2009)

United States District Court for the District of Utah
- Utah District Court Disciplinary Panel (2003 – present)
- Utah District Court Rules Advisory Committee (2003 – present)
- Utah District Court Technology Committee (2001 – present)
  - Vice-chair (2003 – present)

Utah Judicial Conduct Commission (1997 – 2000)
- Vice-chair (1998 – 1999)
- Chair (1999 – 2000)

Utah State Bar
- President (2000 – 2001)
- President Elect (1999 – 2000)
- Commissioner (1994 – 1999)
- Utah State Bar Membership Services Software Analysis Group (2010 – present)
- Distinguished Paralegal of the Year Nomination Selection Committee (2006 – 2011)
- Utah State Bar Multidisciplinary Practice Task Force (2000)
- Chair, Utah State Bar Long Range Planning Committee (1997 – 1998)
- Chair, Utah State Bar Internet Services Committee (1995 – 2000)
- Chair, Utah State Bar Computer Advisory Committee (1989)

Utah State Government
- Governor's Impact Fee Resolution Group (1995)
- Team Co-Leader, Utah Attorney General's Safe at Home Program (1995 – 1998)
- Team Leader, Utah Attorney General's Regional Exchange Effort ("AGREE") (1993 – 1995)

Utah Supreme Court
- Utah State Supreme Court Advisory Committee on Rules of Civil Procedure (2003 – present)
- Utah State Supreme Court Study Committee on Delivery of Legal Services (2001 – 2002)
- Judicial Council Ad Hoc Committee on Access to Electronic Court Records (1995)
- Utah Supreme Court Special Task Force on the Management and Regulation of the Practice of Law (1990 – 1991)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Utah, 1978 (inactive status since 2003)
Arizona, 1989 (resigned in 2003 due to judicial office)

There have been no other lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

Untied States District Court for the District of Arizona, 1995 (resigned in 2004 due to judicial office)
United States District Court for the District of Utah, 1978 (lapsed in 2004 due to judicial office)

There have been no other lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Boy Scouts of America (various times and positions from 1987 – 2008 and Merit Badge Counselor presently)
The Church of Jesus Christ of Latter-day Saints (various leadership and teaching positions throughout my life)
Kiwanis Club, St. George, Utah (1979 – 1981)
Leavitt Institute for International Development (2006 – present)
Board Member (2007 – present)
SmartUtah Foundation
Board Member (2000 – 2002)
St. George Chamber of Commerce
Board Member (1982 – 1986)
President (1985)
Taxpayers for Washington County
Chair (1988)
Utah Electronic Law Project
Chair (1996 – 2000)
Virgin River Land Preservation Association
Founding Board Member (1993 – 1994)
Chair and President (1995 – 1996)
Washington County Democratic Party
Secretary (1994 – 1995)
Organizer (1978 – 1994)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above

currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

My church, the Church of Jesus Christ of Latter-day Saints, requires one to be a member for certain activities and privileges but the overwhelming majority of activities and events are available to the general public. The church limits its priesthood to male members and, until 1978, barred African-Americans from the priesthood. The Boy Scouts of America limits certain programs to males. I have not taken any action to change the policies of these organizations.

Otherwise, to the best of my knowledge, none of the organizations listed in response to 11a above currently discriminates or has ever discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

TechNews for Judges and Chambers (last updated June 28, 2011) (blog on U.S. Courts' intranet). Copies of my posts are supplied.

Posting on Ukraine Kiev Mission message board, Aug. 8, 2010. I have also written a short personal profile for the site. Copies supplied.

In April 2010, I created posts on a Twitter account, but only maintained it for about two days. Copy supplied.

Utah District Court CMECF Updates (last updated Jan. 6, 2010) (discontinued), http://utd-cmecf.blogspot.com/. Copies of my posts are supplied.

American Legal Education, 2010 American Studies Journal (Американські Студії) 101. Copy supplied.

The Ukraine – Utah Connection, Federal Bar Association Utah Chapter Newsletter, Spring 2008. Copy supplied.

Useful Computer Skills in the CM/ECF Environment, U.S. District Court for the District of Utah, 2005. Copy supplied.

Multiple Monitor/Large Monitor Computer Systems, U.S. District Court for the District of Utah, 2005. Copy supplied.

The View from the Electronic Bench, 17 Utah B.J. 8 (June/July 2004). Copy supplied.

Motions Flow Chart, U.S. District Court for the District of Utah, 2003. Copy supplied.

O Sistema Jurídico nos Estados Unidos – A Competência do U.S. Magistrate Judge, 21 Direito Federal 39 (2003). Copy supplied.

Preparing for Practice in 2010, 14 Utah B.J. 6 (June/July 2001). Copy supplied.

Protecting the Best Interests of Our Children by Ensuring that All have the Benefits of the Rule of Law, The Intermountain Commercial Record, May 4, 2001 Copy supplied.

Choosing the Future of the Bar, 14 Utah B.J. 6 (May 2001). Copy supplied.

Strange Opposition, Salt Lake Tribune, Mar. 11, 2001. Copy supplied.

Sharing, Selecting and Supporting, 14 Utah B.J. 6 (Mar. 2001). Copy supplied.

Working with Utah's Legislature, 14 Utah B.J. 8 (Jan./Feb. 2001). Copy supplied.

Circles and Lines, 13 Utah B.J. 10 (Dec. 2000). Copy supplied.

Should We Be Able to Practice Law Everywhere We Can Drive a Car?, 13 Utah B.J. 6 (Dec. 2000). Copy supplied.

Pick Your Next Partner: Social Worker? CPA? Insurance Agent? Engineer?, 13 Utah B.J. 7 (Nov. 2000). Copy supplied.

A New Paradigm for a Season of Change, New Hampshire Bar News, Oct. 6, 2000. Copy supplied.

Consider Legal Profession's 'Core Values' in Context, New Hampshire Bar News, Sept. 22, 2000. Copy supplied.

Improve the Bottom Line – Serve on a Committee!, 13 Utah B.J. 7 (Aug./Sept. 2000). Copy supplied.

The Future of Legal Systems, the Legal Profession and the Rule of Law: A New Paradigm for A Season of Change, 13 Utah B.J. 9 (May 2000). Copy supplied.

Candidate Statement for President of Utah State Bar election, published in 12 Utah B.J. 29 (Apr. 1999). Copy supplied.

Are Lawyers the Railroad of the Future?, 11 Utah B.J. 7 (Nov. 1998). Copy supplied.

The Seven Surprising Signs of Highly Successful Litigators, 10 Utah B.J. 7 (Aug. 1997). Copy supplied.

David Nuffer, Rolen Yoshinaga and Eric Leeson, *Is Electronic Court Filing in Your Future?*, 10 Utah B.J. 15 (Apr. 1997). Copy supplied.

Utah State Bar Commission Candidate Statement, published in 10 Utah B.J. 31 (Apr. 1997). Copy supplied.

Workflow and Groupware, 9 Utah B.J. 35 (Dec. 1996). Copy supplied.

Imaging for Attorneys, 9 Utah B.J. 18 (Oct. 1996). Copy supplied.

The Convergence of Law and Technology, 9 Utah B.J. 6 (Aug./Sept. 1996). Copy supplied.

Adversarial or Conciliatory?: What Litigators Should Know About Mediation, 51 Disp. Resol. J. 24 (Jan./Mar. 1996). Copy supplied.

David Nuffer and Bruce C. Jenkins, *Qualifying Senior Communities Under the Fair Housing Act's New Rules*, 12 Practical Real Estate Lawyer, No. 2, 41 (Mar. 1996).

E-Mail for the Office and the World, 9 Utah B.J. 12 (Mar. 1996). Copy supplied.

Surfing (the Net) in the Desert, 8 Utah B.J. 6 (Oct. 1995). Copy supplied.

Utah's 1995 Impact Fee Legislation, 8 Utah B.J. 12 (Aug./Sept. 1995). Copy supplied.

Editorial Misconstrued Use of Impact Fee, Salt Lake Tribune, Feb. 23, 1995. Copy supplied.

Brief Notices – Rocky Mountain Divide: Selling and Saving the West by John B. Wright, 35 BYU Studies 251 (1995). Copy supplied.

The Second Computer Revolution, 7 Utah B.J. 34 (Dec. 1994). Copy supplied.

Non-Lawyer Legal Technicians, 7 Utah B.J. 6 (Oct. 1994). Copy supplied.

An Introduction to Land Trusts and Conservation Easements, 7 Utah B.J. 12 (Aug./Sept. 1994). Copy supplied.

Do I Need a Compact Disk Reader for My Computer?, 7 Utah B.J. 32 (Apr. 1994). Copy supplied.

In 1992, I released a flyer and brochure for my state Senate campaign. Copies supplied.

In 1992, I also released a flyer for my County Attorney campaign. Copy supplied.

Fast Microsoft Word 3.0, InfoWorld, June 15, 1987. Copy available at http://tinyurl.com/NufferInfoWorld.

Laptops for Lawyers, Utah Lawyer Alert, Dec. 10, 1986. Copy supplied.

Considerations in Implementing a Time and Billing System, Utah Lawyer Alert, Dec. 10, 1986. Copy supplied.

A Computer Primer, Utah Lawyer Alert, Oct. 25, 1986. Copy supplied.

Software Every Lawyer Should Consider, Utah Lawyer Alert, Oct. 25, 1986. Copy supplied.

Suggestions for Further Reference, Utah Lawyer Alert, Oct. 25, 1986. Copy supplied.

On the Horizon, Utah Lawyer Alert, Oct. 25, 1986. Copy supplied.

President's Message, St. George Chamber of Commerce, Jan. 31, 1985. Copy supplied.

In 1979, I released a flyer for my City Council campaign. Copy supplied.

Straining at Gnats; Swallowing Camels, Clark Memorandum, Dec. 1976. Copy supplied.

Brigham Young on Lawyers, Clark Memorandum, 1976. Copy supplied.

I have created several online presentations on technology for my official judicial web site as resources for attorneys. Links to the presentations are listed below:

> Hyperlinks to Cited Authorities:
> http://www.utd.uscourts.gov/judges/Hyperlinks.htm

Copying & Pasting from Westlaw:
http://www.utd.uscourts.gov/judges/Copying_text_from_Westlaw.htm

Copying & Pasting from Lexis:
http://www.utd.uscourts.gov/judges/Copying_text_from_Lexis.htm

E-Research in Westlaw:
http://www.utd.uscourts.gov/judges/E-Research.htm

E-Research in Lexis:
http://www.utd.uscourts.gov/judges/E-Research_Lexis.htm

The list of writings above includes all those that I was able to locate after diligent review of my records and online searches. There may be other publications I have been unable to identify.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Proposed Rules Governing Civil Discovery, Utah Supreme Court Advisory Committee on the Rules of Civil Procedure, June 1, 2010. Copies of the draft rules and briefing paper are supplied.

In addition to the 2010 civil procedure rules changes, the committee has considered a number of other rules changes since I began serving in 2003. A copy of all the proposed and approved rule amendments are available at http://www.utcourts.gov/resources/rules/comments/.

Report to the Utah Supreme Court of the Supreme Court Study Committee on the Delivery of Legal Services, Sept. 5, 2002. Copy supplied.

Utah State Bar Multidisciplinary Practice Task Force Report, Nov. 1, 2000. Copy supplied.

Utah State Bar Long Range Plan, 1998. Copy supplied.

Final Report of Utah Supreme Court Special Task Force on the Management and Regulation of the Practice of Law, Nov. 1, 1991.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

September 11, 2001: Testimony as Past President of Utah State Bar before Utah House Judiciary Committee regarding Unauthorized Practice of Law. I have been unable to obtain a transcript or recording, but an August 31, 2001 letter that I wrote to Representative Stephen Urquhart, which states substantially what was said in my testimony, is supplied.

September 10, 1999: Testimony before Utah Constitutional Revision Commission regarding proposed changes in Utah's retention election laws regarding judges. Outline and meeting minutes supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Since 2003, I have served on the Utah Supreme Court Advisory Committee on Rules of Civil Procedure. In this capacity, I have occasionally discussed my views on rule changes and proposals. Copies of these meeting minutes are available at http://www.utcourts.gov/committees/civproc/.

June 8, 2011: Training for Chambers IT Trainers, Federal Judicial Center, Cincinnati, Ohio. Presentation slides supplied.

May 13, 2011: The Effective Advocate, Federal Bar Association Utah Chapter, St. George, Utah. Handouts supplied.

May 12, 2011: The Lawyer as Citizen, Federal Bar Association Utah Chapter, Ivins, Utah. Presentation slides, remarks and notes supplied.

April 1, 2011: The American Legal Education System, Izmir Turkey. Presentation slides supplied.

March 24, 2011: Co-Mediation, Utah Law and Justice Center, Salt Lake City, Utah. Notes supplied.

February 24, 2011: Judicial Discretion, Delegating Judicial Duties and the Vanishing Trial, Judicial Process course, University of Utah College of Law. Handout supplied.

In 2011, 2010 and 2008, I judged approximately twenty rounds of mock trial competitions in Ukraine for the Leavitt Institute program, including the final round in 2010. During the preliminary rounds, I offered advice to competitors and in the final round I addressed the entire group present. I have no notes, transcripts or recordings. The address of the Leavitt Institute is 594 East 800 South, Suite E, Orem, Utah 84097.

November 19, 2010: Sixty Tips in Sixty Minutes (Panel Member), Utah State Bar Fall Forum, Salt Lake City, Utah. Presentation slides supplied.

November 19, 2010: Deposition Boot Camp (Panel Member), Utah State Bar Fall Forum, Salt Lake City, Utah. I answered questions from a presenter. I have no notes or transcript, and have been unable to obtain a copy of the recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 8-11, 2010: Presenter (Legal Ethics, Computers in the Law Office – slides and notes supplied) and Panel Member (Gender in the Law – I have no notes, transcript or recording), Baçeşehir University, Law Practice Management Seminar, Antalya, Turkey. The address of the American Bar Association Middle East Law – North Africa Initiative is 740 15th Street, NW Washington, DC 20005 and Baçeşehir University, Yıldız Mh., Çırağan Caddesi 47, Istanbul, Turkey.

October 7, and 20, 2010: The World of U.S. Magistrate Judges, New Social Security Administrative Law Judge Orientation, Fairfax, Virginia. Presentation slides supplied.

September 11, 2010: E-Discovery Best Practices: Pointers, Pitfalls & Ethical Dilemmas (Panel Member), Federal Bar Association Utah Chapter Tri-State Seminar, Park City, Utah. Handout supplied.

September 11, 2010: Litigation Before U.S. Magistrate Judges: Procedure and Professionalism (Panel Member), Federal Bar Association Utah Chapter Tri-State Seminar, Park City, Utah. Handout supplied.

August 11, 2010: Tools for Case Management, District CM/ECF Operational Practices Forum, Washington, DC. Handouts supplied.

August 5-6, 2010: New Magistrate Judge IT Orientation, San Antonio, Texas. Curriculum handout supplied.

July 13-15, 2010: Training for Chambers IT Trainers, Federal Judicial Center, Seattle, Washington. I participated most in presenting pages 5-17. Curriculum handouts supplied.

May 12, 2010: JIT: Judges' Hands on Training, Automation Trainers Community of Practice, San Antonio, Texas. Handout supplied.

May 11, 2010: Judges IT Training: Local Strategies, Automation Trainers Community of Practice, San Antonio, Texas. Outline and presentation slides supplied.

April 30, 2010: Ethical Issues for Defense Lawyers (panel member), Utah Federal Defender Seminar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah Federal Defender's Office is 46 West Broadway, Suite 110, Salt Lake City, Utah 84101.

April 18-22, 2010: Panel Member and Moderator, International Courts and Society Summit, Kyiv, Ukraine. Outline supplied.

April 12-14, 2010: Judge, Mock Trial Competition, BUILD Initiative, Kyiv, Ukraine. I have no notes, transcript or recording. The sponsoring organization was the Leavitt Institute for International Development, 594 East 800 South, Suite E, Orem, Utah 84097.

March 11-12, 2010: New Magistrate Judge IT Orientation, San Antonio, Texas. Materials supplied in response to August 5-6, 2010 event.

February 24, 2010: Decision Making/Crowded Trial Courts, Judicial Process course, University of Utah College of Law. I used the same materials supplied in response to the Feb. 24, 2011 event.

January 20, 2010: Professionalism and Civility in Society, Utah State Bar, Salt Lake City, Utah. Presentation slides supplied.

Between 2008 and 2010, I have judged roughly six rounds of mock trial or appellate competition rounds at the University of Utah, Brigham Young University and McGeorge Law Schools. I have offered evaluations and comments at the end of some rounds, but have never spoken to participants in a large group setting. I have no notes, transcripts or recordings. The address of the University of Utah College of Law is 332 South 1400 East, Salt Lake City, Utah 84112. The address of the Brigham Young University Law School is P.O. Box 28000, Provo, Utah 84602. The address of the McGeorge School of Law is 3200 Fifth Avenue, Sacramento, California 95817.

Annually for the past four years (2007-2010), I have acted as professional host for delegations of Ukrainian judges and court staff who visit the United States. The visits are sponsored by Open World and the Administrative Office of the U.S. Courts. Presentation handouts and slides supplied.

December 9, 2009: Advanced Legal Writing (Panel Member), Litigation Section of the Utah State Bar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 6, 2009: Cooperative Discovery and Understanding Muslims, Utah Federal Bar Seminar, Salt Lake City, Utah. Notes and handouts supplied.

November 1-5, 2009: Creating and Administering a Continual Legal Education Program (Law Practice Management), Cairo, Egypt. Outline, handouts and presentation slides supplied.

October 29-30, 2009: Designing and Delivering Judicial Education, United Arab Emirates Institute of Training and Judicial Studies, Sharjah, UAE. Presentation slides, handout and ABA coverage are supplied.

October 23, 2009: The Present and Future of the Federal Courts in Southern Utah (panelist) and Best Practices in Federal Court Discovery (panelist), Federal Bar Association Utah Chapter, St. George, Utah. I have no notes, transcript or recording. The address of the Federal Bar is c/o Benson L. Hathaway, Jr., President, 60 East South Temple, #1800, Salt Lake City, Utah 84111.

October 19-22, 2009: Training for Chambers IT Trainers, Federal Judicial Center, Baltimore, Maryland. Presentation slides supplied.

September 22-25, 2009: Training for Chambers IT Trainers, Federal Judicial Center, Denver, Colorado. Presentation slides supplied.

August 13-14, 2009: New Magistrate Judge IT Orientation, San Antonio, Texas. Materials supplied in response to August 5-6, 2010 event.

June 22, 2009: The Work of Judges, 5th and 10th Circuit IT Conference, Denver, Colorado. Notes and presentation slides supplied.

May 28 – June 1, 2009: Judicial Performance Evaluation (Interviews and discussions with legal community and government officials), Bahrain. Report of the discussions is supplied.

April 24, 2009: Civility and Stress, Utah State Bar, Salt Lake City, Utah. Notes and handouts supplied.

April 20-21, 2009: Best Practices in Continuing Legal Education for Judges (Judicial Education for New Judges in the United States; Methods of Distance Education; Teaching Judicial Ethics: Why and How; Introduction to Advanced Education Techniques; Mentoring Programs and Peer Evaluations for Members of the Judicial Authority) (Co-presenter with Mira-GurArie and Valerie Armand), Abu Dhabi, UAE. I have no notes, transcript or recording. The address of the American Bar Association Middle East Law – North Africa Initiative is 740 15th Street, NW Washington, DC 20005.

March 5-6, 2009: New Magistrate Judge IT Orientation, San Antonio, Texas. Materials supplied in response to the August 5-6, 2010 event.

January 27, 2009: Judicial Selection and Retention, Judicial Process course, University of Utah College of Law. I have no notes, transcript or recording. The address of the College of Law is 332 South 1400 East, Salt Lake City, Utah 84112.

September 26, 2008: Federal Court Update, Federal Bar Association, St. George, Utah. Presentation slides supplied.

August 12, 2008: Judges' IT Awareness and Training Program, Automation Trainers Conference, San Antonio, Texas. Handouts supplied.

August 7-8, 2008: New Magistrate Judge Automation Orientation, San Antonio, Texas. Handouts supplied.

June 6, 2008: Geek Chic, Jackrabbit Bar, Salt Lake City, Utah. Presentation slides supplied.

May 22-23, 2008: New Magistrate Judge Automation Orientation, San Antonio, Texas. Handouts supplied.

April 30, 2008: Best Practices for Judges & Attorneys Working with Electronic Case Files, Third Circuit Judicial Conference, Cambridge, Maryland. Handouts supplied.

March 5, 2008: State Court E-Filing is Coming: Are You Ready?, Utah State Bar Litigation Section, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

February 11-22, 2008: Evidence, Kyiv, Ukraine. Curriculum and handouts supplied.

January 30, 2008: IT Issues in Federal Courts, University of Utah IT Class, Salt Lake City, Utah. Presentation slides supplied.

January 10, 2008: A Practical Guide to Practice under the New Federal and State E-Discovery Rules, Logan, Utah. Handouts and presentation slides supplied.

December 20, 2007: E-Ethics, Manexa WebCast. Handout and presentation slides supplied.

November 16, 2007: Expert Reports and Discovery, Utah State Bar Fall Forum, Salt Lake City, Utah. Presentation slides supplied.

November 2, 2007: Expert Discovery: How to Get What You Want, Manexa WebCast. Presentation slides supplied.

October 19, 2007: World Jury Systems, Utah Federal Bar Association, Salt Lake City, Utah. Handouts supplied.

October 13, 2007: Ethics of Electronic Discovery Panel Discussion, University of Utah College of Law and Utah State Bar. Video supplied.

September 17-28, 2007: Introduction to the American Court System, Leavitt Institute for International Development, Kyiv, Ukraine. Curriculum supplied.

September 15, 2007: Discovery in the Electronic Age, Federal Bar Association Tri-State CLE Program, Park City, Utah. I have no notes, transcript or recording. The address of Federal Bar is c/o Benson L. Hathaway, Jr., President, 60 East South Temple, #1800, Salt Lake City, Utah 84111.

July 13, 2007: IT Tips for Judges, Tenth Circuit Judicial Conference, Vail, Colorado. Handouts supplied.

July 2007: Expert Witness Discovery Issues, Utah State Bar Annual Meeting, Sun Valley, Idaho. Outline supplied.

June 8, 2007: A Practical Guide to E-Discovery, Arkansas Bar Annual Meeting, Hot Springs, Arkansas. Handout and presentation slides supplied.

June 8, 2007: E-Ethics, Arkansas Bar Annual Meeting, Hot Springs, Arkansas. Handout and presentation slides supplied.

April 9, 2007: Basic Federal Court Practice, St. George, Utah. Handouts supplied.

March 15, 2007: Lay Participation in Criminal Justice, Ukraine National Law Academy, Kharkiv, Ukraine. Handout and remarks supplied.

March 12-23, 2007: Trial Preparation, Evidence and Witnesses. The Leavitt Institute for International Development, Kyiv, Ukaine. Outline of my lessons supplied.

January 4, 2007: Constitutional Law Primer for New Utah State Legislators, Salt Lake City, Utah. Outline and handout supplied.

December 5, 2006: IT Tips for Judges, Federal Judicial Center Workshop for District Judges of the 11th Circuit, Key West, Florida. Outline and handouts supplied.

November 3, 2006: Electronic Discovery Panel, Utah State Bar Fall Forum, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 3, 2006: Ethical Issues in Complex Criminal Cases (Panel Member), Utah Federal Defender Seminar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah Federal Defender is 46 West Broadway, Suite 100, Salt Lake City, Utah 84101.

November 3, 2006: 15 Tech Tips in 15 Minutes, Utah State Bar Fall Forum, Salt Lake City, Utah. Handouts enclosed.

October 27, 2006: Advanced Tips for CM/ECF Users, Federal Bar Association Seminar, Salt Lake City, Utah. Handouts supplied.

August 17-18, 2006: New Magistrate Judge Automation Orientation, San Antonio, Texas. Presentation outline and handouts supplied.

August 8, 2006: IT Tips for Judges, Federal Judicial Center National Workshop for District Judges, Denver, Colorado. Agenda supplied. I have no notes, transcript or recording. This presentation was very similar to those given July 26 and December 5, 2006. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

July 26, 2006: IT Tips for Judges, Federal Judicial Center National Workshop for Magistrate Judges, New York City, New York. Event description and handouts supplied.

May 3, 2006: IT Tips for Judges, Federal Judicial Center National Workshop for District Judges, Arlington, Virginia. I have no notes, transcript or recording. This presentation was very similar to those given July 26 and December 5, 2006. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, DC 20002.

April 5, 2006: IT Tips for Judges, Federal Judicial Center National Workshop for Magistrate Judges, San Francisco, California. I have no notes, transcript or recording. This presentation was very similar to those given July 26 and December 5, 2006. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, DC 20002.

February 7-8, 2006: I was filmed by the Federal Judicial Center in a technical training video for the federal judiciary entitled *Judges' Tech Tips*. Video supplied.

2006: I gave brief acceptance remarks upon receiving the Distinguished Service Award, Utah Federal Bar Association. I have no notes, transcript or recording. The address of the Utah Federal Bar is c/o Benson L. Hathaway, Jr., President, 60 East South Temple, #1800, Salt Lake City, Utah 84111.

December 5, 2005: Electronic Discovery, Utah State Bar (Panel Member), Salt Lake City, Utah. Handouts supplied.

November 2005 and September 14, 2005: Choosing Civility and CM/ECF Information, Utah Federal Bar Association, Salt Lake City, Utah. I used the same handouts at each presentation. Handouts supplied.

September 29, 2005: IT Tips for Judges, Federal Judicial Center Workshop for Judges of the 1st and 7th Circuits, Chicago, Illinois. I have no notes, transcript or recording. This presentation was very similar to those given July 26 and December 5, 2006. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Washington, DC 20002.

July 2005: Attorney Document Retention and Destruction (Panel Member), Utah State Bar, Sun Valley, Idaho. Handout supplied.

July 2005: Motions to Compel, Utah State Bar (Panel Member), Sun Valley, Idaho. Outline and handout supplied.

February 11-15, 2005: Administrative Law Presentation – Social Security Mock Hearing, Administrative Law and Regulatory Practice Section, American Bar Association (Panel Member), Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Administrative Law and Regulatory Practice Section, American Bar Association is 740 15th Street NW, 8th Floor Suite 885, Washington, DC 20005.

February 11, 2005: The Perils of Electronic Filing, Tort Trial and Insurance Practice Section, American Bar Association (Panel Member), Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Tort Trial and Insurance Practice Section, American Bar Association is 321 North Clark Street, Floor 18, Chicago, Illinois 60654.

October 22, 2004: The Proposed Federal Rules and ABA Standards for Electronic Discovery, Federal Bar Association, Salt Lake City, Utah. Outline, handouts and presentation slides supplied.

September 2004: CM/ECF (Case Management/Electronic Case Files), Utah State Bar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 2004: CM/ECF (Case Management/Electronic Case Files), Utah State Bar, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

April 2004: A Judge's View of ADR, Utah Dispute Resolution Summit, Salt Lake City, Utah. Outline and handout supplied.

March 12, 2004: CM/ECF (Case Management/Electronic Case Files), Utah State Bar, St. George, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

March 12, 2004: A Practical Introduction to Electronic Discovery, Utah State Bar, St. George, Utah. Handouts supplied.

February 2004: Electronic Filing, National Conference of Bar Presidents (Panel Member), San Antonio, Texas. I have no notes, transcript or recording. The address of the National Conference of Bar Presidents is 321 North Clark Street, Chicago, Illinois 60654.

October 2003: Utah Standards of Professionalism and Civility, Federal Bar Association, Salt Lake City, Utah. Handouts supplied.

March 7, 2003: I gave remarks during my investiture ceremony. Outline of my remarks supplied.

October 18, 2002: A Practical Introduction to Electronic Discovery, Federal Bar Association, Salt Lake City, Utah. Curriculum handout supplied.

September 10, 2002: I spoke to a high school history class on rights of U.S. citizens, "Dialogue on Freedom" program, Utah State Bar. I have no notes, transcript or recording, but press coverage is supplied. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

June 2002: O Sistema Jurídico nos Estados Unidos – A Competência do U.S. Magistrate Judge (The Jurisdiction of the Magistrate Judge in the United States Judicial System), Ribeirão Preto, Sao Paulo, Brasil. Remarks and presentation slides supplied.

May 29, 2002: Electronic Discovery, Federal Bar Association, Salt Lake City, Utah. Presentation slides supplied.

March 22, 2002: Making a Federal Magistrate Judge Happy, Utah State Bar, St. George, Utah. Outline supplied.

October 12, 2001: CM/ECF (Case Management/ Electronic Case Files), Federal Bar Association, Salt Lake City, Utah. Presentation slides supplied.

July 7, 2001: How to Act Not React to Technology, Utah State Bar, Annual Convention, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 5, 2001: Report on the Utah State Bar, Utah State Bar Annual Convention, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

June 27, 2001: Presentation on the regulation of the practice of law in Utah and delivery of legal services, Judicial Rules Review Committee. Meeting minutes supplied.

April 2001: Useful Technology, Broadcast International (Internet broadcast-on-demand). Presentation slides supplied.

March 15, 2001: Judicial Council Meeting, importance of cooperation between the courts and the Utah State Bar. Meeting minutes supplied.

February 2001: Managing Change, National Conference of Bar Presidents (Panel Member), San Diego, California. I have no notes, transcript or recording. The address of the National Conference of Bar Presidents is 321 North Clark Street, Chicago, Illinois 60654.

February 2001: Making Technology Relevant, National Conference of Bar Presidents, San Diego, California. Outline supplied.

Winter 2001 and Fall 2000: The Future of the Legal Profession, Utah State Bar, various locations across Utah. Presentation slides supplied.

July 20, 2000: Presentation to Multidisciplinary Practice Task Force, Utah State Bar, Salt Lake City, Utah. Minutes supplied.

July 3, 1999: The Challenge of Multidisciplinary Practice, Utah State Bar, Sun Valley, Idaho. Presentation slides supplied.

July 3, 1999: Fifty Ways to Use the Internet Today, Utah State Bar, Sun Valley, Idaho. Outline supplied.

July 2, 1999: Advocacy in Mediation, Utah State Bar, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

May 17, 1999: discussion of pro-tem judges in Utah, Judicial Council. Meeting minutes supplied.

April 1999: Advocacy in Mediation, Utah State Bar, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 31, 1998: Leading Your State to the (Paperless) Future, National Conference of Bar Presidents, Toronto, Ontario, Canada. I have no notes, transcript or recording. The address of the National Conference of Bar Presidents is 321 North Clark Street, Chicago, Illinois 60654.

July 4, 1998: Utah Electronic Law and Commerce Partnership Update, Utah State Bar, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 2, 1998: Fifty Internet Sites in 50 Minutes, Utah State Bar, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 4, 1997: Leveraging with Legal Assistants, Utah State Bar, Salt Lake City, Utah. The content was identical to the July 3, 1997 presentation for which presentation slides were supplied.

August 1, 1997: Bar Association Web Sites, National Conference of Bar Presidents, San Francisco, California. Outline supplied.

July 4, 1997: Utah Electronic Law Project, Utah State Bar Annual Meeting, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 3, 1997: Leveraging with Legal Assistants, Utah State Bar Annual Meeting, Sun Valley, Idaho. Presentation slides supplied.

August 19, 1996: Connecting to the World, Utah State Bar Annual Meeting, Price and Vernal, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

August 16, 1996: Connecting to the World, Utah State Bar Annual Meeting, Sun Valley, Idaho. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

July 4, 1996: Connecting to the World, Utah State Bar Annual Meeting, Cedar City and St. George, Utah. Presentation slides supplied.

March 15, 1996: Utah's 1995 Impact Fee Legislation, Utah Public Works Association, St. George, Utah. I have no notes, transcript or recording. The address of the Utah Public Works Association is c/o Michael Gladbach, City Engineer, Sandy City, 8775 South 700 West, Sandy, Utah 84070.

March 8, 1996: How Small Firm/Solo Practitioner Can Use the Internet to Level the Field with Larger Firms, Utah State Bar Mid-Year Bar Meeting, Panel Member, St. George, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

February 16, 1996: Utah State Bar Internet Seminar, Co-presenter with Howard Roberts and Blake Miller, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

January 24, 1996: Utilization of Legal Assistants, Legal Assistants Association of Utah, Salt Lake City, Utah. I have no notes, transcript or recording. The content was similar to the July 3, 1997 presentation. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

November 17, 1995: Mediation Advocacy, Co-presenter with Jim Holbrook, Utah Administrative Office of the Utah Courts, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Administrative Office of the Utah Courts is 450 South State Street, Salt Lake City, Utah 84111.

October 18, 1995: Mediation Advocacy, Co-presenter with Jim Holbrook, Administrative Office of the Utah Courts, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Administrative Office of the Utah Courts is 450 South State Street, Salt Lake City, Utah 84111.

June 12, 1995: Alternative Dispute Resolution Overview, Co-presenter with Diane Hamilton, Salt Lake City, Utah. I have no notes, transcript or recording. The address of the Administrative Office of the Utah Courts is 450 South State Street, Salt Lake City, Utah 84111.

1992: I gave a number of campaign speeches and participated in debates while running for the state Senate. I believe I participated in approximately twenty such events during my state Senate bid. I have no notes, transcripts or recordings.

1985 – 1986: I participated in two client interview scenarios to be taped for Professor Constance Lundberg's law classes at Brigham Young University. She is now retired but showed them for many years to her students. Video supplied.

1982: I gave a number of campaign speeches and participated in debates while running for County Attorney. I believe I participated in approximately ten such events during this campaign. I have no notes, transcript or recording, but press coverage is supplied.

1979: I gave roughly five speeches during my campaign for the St. George City Council. I have no notes, transcripts or recordings.

From 1994 to 2001, I served as a Commissioner (1994 – 1999); President-Elect (1999 – 2000); and President (2000 – 2001) of the Utah State Bar. In these capacities, I occasionally gave presentations during Board of Bar Commissioners meetings. I have no notes, transcripts or recordings of these meetings, but Bar coverage is supplied.

As Utah State Bar Commissioner and President, I also spoke to numerous groups, often in connection with other programs. I do not have copies of any notes or reports of these presentations. The address of the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

As a judge, I often speak to visiting groups of foreign judges and school students who visit the court about the court, the court building and the American judicial system. I do not have any notes or reports of these presentations. The address of the United States District Court for the District of Utah is 350 South Main Street, Salt Lake City, Utah 84101.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Bryan J. Pattison, *Writing to Persuade*, 24 Utah B.J. 10 (Mar./Apr. 2011). Copy supplied.

Tami Kamin-Meyer, *'Nothing is Invisible'*, Utah CEO, May 2008. Copy supplied.

Jonathan O. Hafen, *Magistrate Judge David O. Nuffer*, FBA Newsletter, Oct. 2003. Copy supplied.

Robert O. Rice, *Magistrate Judge David Nuffer*, Utah State Bar Profile, Apr. 2003. Copy supplied.

Wells to be Named Fed Magistrate, Salt Lake Tribune, Feb. 28, 2003. Copy supplied.

C.G. Wallace, *Bar Still Won't Be Able to Go After Those Illegally Practicing Law*, Associated Press, June 21, 2001 [quote re-printed in multiple outlets]. Copy supplied.

Paul Beebe, *Utah Companies' Digital-Signature Technology Expands E-Commerce Options*, Salt Lake Tribune, June 1, 2001. Copy supplied.

Press release, *Zions Bank Facilitates Online License Renewal for 7,200 Utah State Bar Members*, Zions Bancorporation, May 31, 2001. Copy supplied.

Law Alum David Nuffer Serves as Utah Bar President, Clark Memorandum, Spr. 2001. Copy supplied.

Telephone interview with Bryn T. Infanger on Feb. 15, 2001, published in *Case Retrospective: In re W.A.T. and the State of Adoption in Utah*, 4 J.L. & Fam. Stud. 167 (2002). Copy supplied.

Anna Cekola, *Utah Bar Panel Backs Proposal for Lawyers to Partner with Other Professionals*, Salt Lake Tribune, Jan. 27, 2001. Copy supplied.

Bar Considers Allowing Lawyers to Team with Nonlawyers, Associated Press, Dec. 28, 2000. Copy supplied.

Anna Cekola, *Utah State Bar Considers Allowing Lawyers to Team with Other Professionals*, Salt Lake Tribune, Dec. 24, 2000. Copy supplied.

Max Knudson, *Law Firms Seeking Partners*, Deseret News, Dec. 18, 2000. Copy supplied.

Karen Van Splawn, *Tell It to the Judge*, The Spectrum, June 3, 1999. Copy supplied.

Phil Sahm, *Utah's Legal Community Ponders Paralegal Certification*, Salt Lake Tribune, May 25, 1999. Copy supplied.

Anna Marie Kukec, *Bars Should Hone Web Site Strategies to Fully Serve Their Members and Public*, 23 B. Leader 14 (Fall 1998). Copy supplied.

Robert Mims, *Privacy Battles Likely to Focus on the Internet*, The Intermountain Commercial Record, Oct. 24, 1997. Copy supplied.

Chip Parkinson, *Panel Sidesteps a Stand on Opening Judge Files*, Deseret News, Feb. 13, 1997. Copy supplied.

Brent Israelsen, *Nonprofit Trust Organizes to Protect Lands in S. Utah*, Deseret News, Jan. 10, 1994. Copy supplied.

2 Representatives Challenge 2 Senators, Deseret News, Oct. 29, 1992. Copy supplied.

Dixie Politicians Caught in Environmental Debate, Deseret News, Aug. 9, 1992. Copy supplied.

Kanab Council Votes 3-2 for City Attorney, Deseret News, May 19, 1992. Copy supplied.

County Attorney Faces Prosecution in DUI Case, Salt Lake Tribune, Feb. 27, 1992. Copy supplied.

Kane County Attorney Cited for Second DUI, Salt Lake Tribune, Feb. 11, 1992. Copy supplied.

In 1992, I released several radio spots for my County Attorney campaign. Scripts supplied.

2 Sue Over Legality of Mayor's Orders, Deseret News, Aug. 25, 1991. Copy supplied.

Jerry Spangler, *Human Discord Shatters Nature's Harmony in S. Utah*, Deseret News, Apr. 30, 1991. Copy supplied.

Utah Polygamists Allowed to Adopt, New York Times, Mar. 29, 1991. Copy supplied.

Lisa Riley Roche and Jerry Spangler, *Polygamy Doesn't Make Couple Ineligible to Adopt*, Deseret News, Mar. 27, 1991. Copy supplied.

General media interview after oral argument on July 12, 1989 at the Utah Supreme Court in *In the Matter of the Adoption of W. A. T., et al.* I have been unable to obtain a transcript, but two articles based on my interview are listed below:

Chris Jorgensen, *Attorneys Argue Merits of Polygamy as High Court Hears Adoption Case*, June 13, 1989. Copy supplied.

Attorney: Polygamy Offense against Family, The Spectrum, June 13, 1989. Copy supplied.

Phillip Swift, *Graf, Nuffer Square Off Nov. 2*, The Spectrum, Oct. 20, 1982. Copy supplied.

Boyack, Nuffer Filed for County Attorney, The Spectrum, Apr. 30, 1982. Copy supplied.

In 1979, I released a radio spot for my City Council campaign. Script supplied.

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

1995 – 2003: United States Magistrate Judge (part-time), United States District Court for the District of Utah, St. George, Utah. I was appointed by the court on May 1, 1995. This is a federal court whose jurisdiction is defined by 28 U.S.C. § 636. As a part-time Magistrate Judge, I exercised jurisdiction over federal petty offense cases arising in Zion National Park, Bryce Canyon National Park and Bureau of Land Management administered lands in Southern Utah. I also handled occasional preliminary felony matters such as issuance of warrants and initial appearances. In 1998, at the request of the court, I also began to handle non-felony criminal matters that arose in Northern Utah, in sessions in Salt Lake City.

2003 – present: United States Magistrate Judge, United States District Court for the District of Utah, Salt Lake City, Utah. I was appointed by the court on January 17, 2003 and reappointed on January 17, 2011. This is a federal court whose jurisdiction is defined by 28 U.S.C. § 636. As a full-time Magistrate Judge, I exercise jurisdiction over federal civil and criminal cases. I handle all preliminary criminal proceedings including issuing arrest and search warrants, pen register and trap and trace orders, initial appearances, appointments of counsel and detention hearings.

I am responsible for resolving discovery disputes in civil cases which are referred to me, and for making reports and recommendations in all civil and criminal matters referred to me for that purpose, including hearing and ruling on motions to dismiss and to suppress evidence/statements when requested by the district judges. I also serve as a mediator in cases pending before the district court. I handle any other matter referred from district court judges.

Civil cases are assigned to me to preside in the same proportion as the district judges. Upon the consent of the parties, I preside over all civil jury and non-jury matters in those cases. I hear and rule on Social Security Administrative Appeals.

As Chief Magistrate Judge since January 1, 2009, I also handle administrative matters in the court as directed by the district judges, including coordination of the work of the magistrate judges, establishment and adjustment of policies affecting magistrate judges, policy recommendations of general concern to the court, and responses to outside requests for cooperation on matters affecting others who work with the court.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 30

   i. Of these, approximately what percent were:

jury trials:	<1%
bench trials:	>99%
civil proceedings:	0%
criminal proceedings:	100%

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

   As a Magistrate Judge I prepare Reports and Recommendations on dispositive matters (e.g., Motions for Summary Judgment, Motions to Dismiss, Motions to Suppress Evidence) referred to me by the District Judges of this Court, who remain the presiding judge in the case. I also prepare orders on motions referred to me, which are not dispositive. From time to time, parties will consent to my jurisdiction, and in such cases, I am the presiding judge over the case. When I am the presiding judge, I do not prepare Reports and Recommendations. Instead, I enter orders for all motions adjudicated in the case. I am attaching a list of the

Reports and Recommendations that I have prepared for matters that have been referred to me by the District Judges on this Court as well as orders I have entered when acting as the presiding judge.

See attached list of opinions and orders.

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

1. *Winderlin v. Kunz*, 2:08-cv-00512-DN, 2009 WL 224486 (D. Utah Jan. 29, 2009), 2009 WL 1124473 (D. Utah Apr. 23, 2009). Winderlin alleged that excessive force was used in his arrest which aggravated his pre-existing shoulder injury. I presided over the case by consent of the parties. I entered preliminary orders regarding discovery. I was preparing to decide several motions in limine and preside over a jury trial when the case settled. Copies of the opinions in this case are attached.

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Counsel for Defendants:
Allan L. Larson
Heather S. White
Snow Christensen & Martineau
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2. *Mathis v. Perriraz*, No. 2:08-cv-507 DN, 2010 WL 56073 (D. Utah Jan. 6, 2010). The parties to this dispute about ownership of land and a hotel consented that I preside over the case. I entered summary judgment quieting title in favor of Plaintiff, as to a one-half interest in the property.

Counsel for Plaintiff:
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Counsel for Defendant: Joshua L. Lee
Bennett Tueller Johnson & Deere PC
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(801) 438-2000

3. *Heimerdinger v. Collins*, No. 2:07-cv-844 DN, 2009 WL 1743764 (D. Utah June 18, 2009). This dispute about ownership of copyrighted works between two former business associates was assigned to me and the parties consented that I preside over the case. I determined several early procedural issues, including unsealing many documents which the parties had sealed. An early sealed order dismissed several of plaintiff's state law claims, and the final order rejected several theories advanced by the plaintiff.

Counsel for Plaintiff: Douglas B. Thayer
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Counsel for Defendant: John A. Snow
Cassie J. Medura
Van Cott, Bagley, Cornwall & McCarthy
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4. *Webster v. Gower*, No. 2:07-cv-00888 DN, 2010 WL 520522 (D. Utah Feb. 8, 2010). The suit against a jail and jailers alleged civil rights violations leading to the death of plaintiff's son. I presided over the case by the parties' consent. My order dismissing the claims was appealed, but the parties later stipulated to the dismissal of the appeal and the case.

Counsel for Plaintiff: Damian W. Kidd
Driggs Bills & Day
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Counsel for Defendants: Frank D. Mylar
Mylar Law, P.C.
6925 South Union Park Center, Suite 600
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(801) 858-0700

5. *Loafer Rim Prop., L.C. v. United States*, No: 2:08-CV-798 DN, 2009 WL 1796977 (D. Utah June 22, 2009). The plaintiff sought to quiet title against a governmental easement. The parties stipulated that I would preside over the case. My decision denied the government's motion to dismiss on the basis of the statute of limitations, finding that the factual issues decisive of the motion were the same issues which would decide the case. The parties later stipulated to resolve the case.

Counsel for Plaintiff: Russell D. Collings
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Counsel for Defendant: Jared C. Bennett
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6. *Smith v. Union Pac. R.R. Co.*, No. 2:08-cv-81 DN. Railroad employee brought suit under 45 U.S.C. § 51 for injuries sustained on the job due to employer's negligence. I handled the initial scheduling of the case. Upon request of the parties and their consent under 28 U.S.C. § 636(c), I handled all contested pretrial motions, including motions to exclude certain deposition testimony and objections to jury instructions. I conducted the final pre-trial conference and all trial preparations. The case settled shortly before trial was set to begin.

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Richard A. Haydu
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Counsel for Defendants: E. Scott Savage
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7. *Forbes v. Wal-Mart Stores, Inc.*, No. 2:08-cv-00008-DN, 2010 WL 988492 (D. Utah Mar. 15, 2010). This removal case was before me by consent of the parties under 28 U.S.C. § 636(c). The plaintiff, who slipped on ice and injured himself while repairing a garage door at Wal-Mart, asserted a claim for negligence. I granted Wal-Mart's motion for summary judgment. The plaintiff appealed to the Tenth Circuit, but the appeal was dismissed by stipulation.

Counsel for Plaintiff: Kevin K. Robson
Bertch Robson
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Counsel for Defendant: Mitchel T. Rice
Stephen F. Edwards
Morgan Minnock Rice & James
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8. *Conlin Enterprises Corp. v. SNEWS, LLC*, No. 2:07-cv-00922-DN, 2008 WL 803041 (D. Utah Mar. 24, 2008). I presided over this case by consent of the parties under 28 U.S.C. § 636(c). Plaintiffs filed suit in Utah Third District Court asserting claims of defamation, interference with business relationships and civil conspiracy. The case was removed to federal court. Defendants then filed a motion to dismiss for lack of personal jurisdiction over the defendants, improper venue, and failure to state a claim for civil conspiracy. I found that the defendants were properly served with process, the court had personal jurisdiction over the defendants, venue was proper, and the civil conspiracy claim should be dismissed for failure to state a claim. The case eventually settled.

Counsel for Plaintiffs: Brian W. Steffensen
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Counsel for Defendants: Adam Strachan
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9. *Thomas v. Oreck Vacuums*, No. 2:09-cv-737 CW, 2010 WL 1064436 (D. Utah Mar. 18, 2010); 2010 WL 2671382 (D. Utah June 30, 2010); 2010 WL 2868844 (D. Utah July 20, 2010). In this case involving allegations of wrongful termination, I adjudicated pending dispositive motions at the request and consent of the parties under 28 U.S.C. § 636(c). The motions I handled included Defendant's Motion for Summary Judgment, Plaintiff's Motion for Partial Summary Judgment, and two of Plaintiff's Motions to Strike. The case eventually settled before trial.

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Counsel for Defendants: Jeremy G. Knight
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10. *United States v. Goold*, No. SG-96-mj-0033-DN (tried March 10, 1997). The case alleged three counts against two defendants including Operating a Vehicle Without Due Care, Exceeding Group Size, and Interfering with Agency Function. It was the first jury trial in Southern Utah in the history of the federal court. The jury found defendants guilty. I later sentenced them.

Counsel for Prosecution: Leshia M. Lee-Dixon
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Criminal Division
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(202) 514-3601

Counsel for Defendants: R. Clayton Huntsman
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St. George, UT 84790
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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Adams v. Gateway, Inc.*, No. 2:02-cv-106 TS, 2003 WL 23787856 (D. Utah Dec. 30, 2003).

Counsel for Plaintiff:	Gregory D. Phillips Howard Phillips & Andersen 560 East 200 South, Suite 300 Salt Lake City, UT 84102 (801) 366-7471
Counsel for Defendant:	David M. Connors Chapman & Cutler 201 South Main Street, Suite 2000 Salt Lake City, UT 84111 (801) 320-6700
	John R. Posthumus Greenberg Traurig 1200 17th Street, Suite 2400 Denver, CO 80223 (303) 572-6500

2. *Phillip M. Adams & Assocs. v. Dell*, 621 F. Supp. 2d 1173 (D. Utah 2009).

Counsel for Plaintiff:	Gregory D. Phillips Kevin Howard Howard, Phillips & Andersen 560 East 200 South, Suite 300 Salt Lake City, UT 84102 (801) 366-7471
Counsel for Defendant:	R. Stephen Marshall J. Mark Gibb Durham Jones & Pinegar 111 East Broadway, Suite 900 P.O. Box 4050 Salt Lake City, UT 84110 (801) 415-3000

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3. *digEcor, Inc. v. e.Digital*, No. 2:06-cv-437 TS, 2008 WL 803108 (D. Utah Mar. 22, 2008).

Counsel for Plaintiff:
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4. *ClearOne Commc'ns, Inc. v. Chiang*, No. 2:07-cv-37 TC DN, 2008 WL 704228 (D. Utah Mar. 10, 2008).

Counsel for Plaintiff:
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Counsel for Defendants:
Karra J. Porter
Christensen & Jensen PC
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5. *Benson v. Hartford Life & Acc. Ins. Co.*, No. 2:10-cv-00275-TS, 2011 WL 285831 (D. Utah Jan. 28, 2011).

Counsel for Plaintiff:	Brian S. King 336 South 300 East, Suite 200 Salt Lake City, UT 84111 (801) 532-1739
Counsel for Defendant:	James L. Barnett Holland & Hart, LLP 222 South Main Street, Suite 2200 Salt Lake City, UT 84101 (801) 799-5826

6. *Winderlin v. Kunz*, 2009 WL 224486 (D. Utah 2009).

Counsel for Plaintiff:	Alyson E. Carter Robert B. Sykes Robert B. Sykes & Associates, P.C. 311 South State Street, Suite 240 Salt Lake City, UT 84111 (801) 533-0222
Counsel for Defendants:	Allan L. Larson Heather S. White Snow Christensen & Martineau 10 Exchange Place, Eleventh Floor Post Office Box 45000 Salt Lake City, UT 84145 (801) 521-9000

7. *Lee v. Utah*, No. 2:09-cv-544 DN, 2010 WL 2901610 (D. Utah July 22, 2010).

Counsel for Plaintiff:	S. Clark Newhall 57 West 200 South #101 Salt Lake City, UT 84101 (801) 230-8705
Counsel for Defendant:	Bradley Ross Blackham Snow Christensen & Martineau 10 Exchange Place, 11th Floor P.O. Box 45000 Salt Lake City, UT 84145 (801) 521-9000

8. *Mathis v. Perriraz*, No. 2:08-cv-507 DN, 2010 WL 56073 (D. Utah Jan. 6, 2010).

Counsel for Plaintiff:	Darren G. Reid David K. Broadbent Holland & Hart 222 South Main Street, Suite 2200 Salt Lake City, UT 84101 (801) 799-5800
Counsel for Defendant:	Joshua L. Lee Bennett Tueller Johnson & Deere PC 3165 East Millrock Drive, 5th Floor Salt Lake City, UT 84121 (801) 438-2000

9. *Heimerdinger v. Collins*, No. 2:07-cv-844 DN, 2009 WL 1743764 (D. Utah June 18, 2009).

Counsel for Plaintiff	Douglas B. Thayer Jordan K. Cameron Hill, Johnson & Schmutz, L.C. RiverView Plaza, Suite 300 4844 North 300 West Provo, UT 84604 (801) 375-6600
Counsel for Defendant	John A. Snow Cassie J. Medura Van Cott, Bagley, Cornwall & McCarthy 36 South State Street, Suite 1900 P.O. Box 45340 Salt Lake City, UT 84111 (801) 532-3333

10. *Martinez v. City of Ogden*, No. 1:08-cv-87 TC DN, 2009 WL 424785 (D. Utah Feb. 18, 2009).

Counsel for Plaintiff:	Erika Birch Lauren I. Scholnick Strindberg & Scholnick LLC 785 North 400 West Salt Lake City, UT 84103 (801) 359-4169

Counsel for Defendant: Camille N. Johnson
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Stanley J. Preston
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e. Provide a list of all cases in which certiorari was requested or granted.

I know of no cases in which certiorari was granted. Certiorari was requested in *United States v. Echeverria*, No. 2:04-cr-136 DB (D. Utah Oct. 29, 2004), *cert. denied*, 549 U.S. 1297 (2007).

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

1. *Phillip M. Adams & Assocs., LLC v. Sony Elecs., Inc.*, No. 1:05-cv-64 TS, 2010 WL 2219424 (D. Utah May 26, 2010), *rev'd in part*, 2010 WL 3447818 (D. Utah Aug. 30, 2010). I denied plaintiff's motion to amend the complaint and for terminating sanctions. In denying the motion to amend, I concluded that there was no need to discuss the motion for terminating sanctions because it was contingent on amendment of the complaint. The District Court upheld the ruling on amendment, but reversed the ruling on the sanctions motion. The court found that the motion for sanctions was not moot because it also related to the plaintiff's claims of patent infringement. The district court did not rule on sanctions at that time.

2. *United States v. Skutley*, No. 2:08-cr-676 DB (D. Utah June 8, 2010), *rev'd*, 2010 WL 3362718 (D. Utah Aug. 23, 2010). In a Report and Recommendation on a motion to suppress, I concluded that the evidence seized during a traffic stop should be suppressed because the officers did not have reasonable suspicion to make the stop. The District Court disagreed, concluding that the officers had observed a traffic violation and that the stop was therefore lawful. Report and Recommendation supplied.

3. *United States v. Alcala*, No. 2:09-cr-535 DB (D. Utah Mar. 16, 2010), *rev'd*, No. 2:09-cr-535 DB (D. Utah May 14, 2010). In a case involving conspiracy to smuggle illegal aliens into the country and VISA fraud, I detained the lead defendant after finding he violated pre-trial release conditions by leaving the jurisdiction without permission. Defendant moved for release from custody after the time had expired to object to the original order of detention. I denied the

motion because it failed to cite any information that was not known at the time of the hearing. District Judge Dee Benson reversed, setting pre-trial release conditions. Defendant has since absconded from pre-trial release and his whereabouts are unknown. Opinion supplied.

4. *Systemic Formulas, Inc. v. Kim*, No. 1:07-cv-159-TC, 2009 WL 5205995 (D. Utah Dec. 23, 2009) *aff'd in part, rev'd in part*, No. 1:07-cv-159-TC (D. Utah Feb. 4, 2010). I sanctioned an attorney appearing *pro hac vice* because he violated a protective order by providing his client with information obtained in discovery marked "For Attorney's Eyes Only." One of the sanctions prohibited the attorney from appearing *pro hac vice* in this court for three years. On appeal, District Judge Tena Campbell affirmed all other sanctions except for the three year restriction on the attorney appearing in this court. Opinion supplied.

5. *Wade v. Reg'l Dir. of IRS*, No. 1:08-cv-148-CW, 2009 WL 2423535 (D. Utah Aug. 4, 2009), *rev'd*, 2009 WL 4906853 (D. Utah Dec. 10, 2009). The petitioner filed a petition for a writ of mandamus to compel the IRS to remove tax liens from his property and to enjoin the IRS from further collections. In a Report and Recommendation, I concluded that the IRS's motion to dismiss should be granted on the grounds that the relief sought was barred by the doctrine of sovereign immunity, the Anti-injunction Act, and the Declaratory Judgment Act, and that the petitioner had failed to state a viable claim under the Mandamus Act. The District Court declined to adopt the Recommendation, concluding that when reading the petition in the light most favorable to the petitioner, the sovereign immunity doctrine did not bar the action, it was error to characterize the petition as one for declaratory relief under the Declaratory Judgment Act, the action was not barred by the Anti-injunction Act, and the petition stated a claim under the Mandamus Act.

6. *ClearOne Commc'ns, Inc. v. Chiang*, No. 2:07-cv-37 TC, 2008 WL 687104 (D. Utah Mar. 10, 2008), *vacated*, 2009 WL 1108800 (D. Utah Apr. 20, 2009). I entered an order granting plaintiff's motion to consolidate this case with another case involving the same parties. The district court later vacated this order to bring the initial case to trial at an early date.

7. *S.E.C. v. Merrill Scott & Assocs, Ltd.*, No. 2:02-cv-39 TC, 2007 WL 3275146 (D. Utah Nov. 5, 2007), *vacated in part*, 2008 WL 276502 (D. Utah Jan. 30, 2008), *aff'd in part, rev'd in part*, 600 F.3d 1262 (10th Cir. 2010). I granted the government's motion to intervene and also allowed investor to seek limited discovery. District Judge Tena Campbell vacated the portion of my order allowing investor's discovery. The Tenth Circuit ruled that it did not have jurisdiction to review the intervention order because investor had failed to object to my order before the District Judge.

8. *United States v. Evanson*, No. 2:05-cr-805 TC, 2007 WL 128960 (D. Utah Jan. 12, 2007), *rev'd*, 2007 WL 3171547 (D. Utah Apr. 20, 2007). I granted

Defendant's motion for discovery of a Suspicious Activity Report mentioned in affidavit supporting a search warrant because the validity of the search warrant was at issue in defendant's motion to suppress. District Judge Tena Campbell reversed my decision after the government objected, as she found that after the government's disclosure of other related documents the Suspicious Activity Report was not material.

9. *United States v. Evanson*, No. 2:05-cr-805 TC, 2006 WL 2992561 (D. Utah Oct. 18, 2006), *rev'd*, No. 2:05-cr-805 TC (D. Utah Mar. 21, 2007). I denied the government's motion to disqualify defendant's counsel. District Judge Tena Campbell effectively reversed when granting a related motion on issue of attorney/client conflict of interest. Opinion supplied.

10. *United States v. Barney*, No. 2:04-cr-370 DB (D. Utah Jan. 5, 2005), *rev'd*, No. 2:04-cr-370 DB (D. Utah May 20, 2005). In a Report and Recommendation on a motion to suppress, I concluded that evidence seized during an arrest should be suppressed because the officers did not have probable cause for the arrest. The district court reversed, finding that the officers' actions in placing the defendant on his knees and handcuffing him were not a seizure in violation of the Fourth Amendment. Opinions supplied.

11. *United States v. Morrison*, No. 2:03-mj-41 DN (D. Utah May 6, 2004), *aff'd*, No. 2:04-CR-288 PGC (D. Utah July 19, 2004), *rev'd*, 415 F.3d 1180 (10th Cir. 2005). Defendant was charged with willfully and knowingly transmitting in interstate commerce an internet communication threatening to injure another person. The government moved to authorize involuntary antipsychotic medication to render defendant competent to stand trial. I granted the motion, and the District Court affirmed. The Tenth Circuit reversed holding that inquiry into whether it was appropriate to medicate defendant to ensure his safety or others' safety should have preceded inquiry into medication to render defendant competent. Opinions supplied.

12. *United States v. Baker*, No. 1:03-cr-128 DB (D. Utah May 18, 2004), *rev'd*, No. 1:03-cr-128 DB (D. Utah June 29, 2004). In a Report and Recommendation on a motion to suppress, I concluded that the evidence should be suppressed because it was obtained as a result of a traffic stop that violated the Fourth Amendment. The District Court declined to adopt the Recommendation, concluding that the officers had reasonable suspicion to make the traffic stop. Opinions supplied.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Civil: As a magistrate judge, I issue orders on non-dispositive matters and orders on dispositive matters in consent cases, and I issue reports and recommendations

on all dispositive matters referred to me. My non-dispositive orders include discovery matters, motions to amend the pleadings, motions to modify the schedule and other miscellaneous civil motions. I issue hundreds of such orders in any given year. Because my duties have included all civil scheduling for the active district judges for the past several years, I issue many scheduling orders and orders amending case schedules. Very few of the pretrial civil orders are published, although I have filed all of my orders with our court's Electronic Case Filing system for as long as the court has maintained that system.

Criminal: As a magistrate judge, I issue orders on non-dispositive criminal matters such as appointment of counsel, detention and scheduling, which are all referred by rule to the magistrate judge in this district. Very few if any of these orders are published.

In consulting all known sources, including Westlaw, Lexis and CM/ECF, I have found approximately 400 opinions which I understand to mean "reasoned decisions." Because tracking mechanisms were not automated before 2005 in our court, the actual number is likely higher. Only three opinions have been published, which is less than 1%. The unpublished opinions are stored in CM/ECF and are designated as "written opinions," which makes them available without cost on PACER. It appears that West and Lexis download and post the majority of these opinions on their services.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. *United States v. Benard*, No. 2:09-cr-56 DAK, 2010 WL 3734847 (D. Utah Aug. 17, 2010), *adopted by* District Judge Dale Kimball, 2010 WL 3734846 (D. Utah Sept. 22, 2010). Defendant's appeal is pending before the Tenth Circuit Court of Appeals.

2. *United States v. Skutley*, No. 2:08-cv-676 DB (D. Utah June 8, 2010), *rev'd*, 2010 WL 3362718 (D. Utah Aug. 23, 2010). Report and Recommendation supplied in response to question 13f.

3. *United States v. Gordon*, No. 2:04-cr-00688-CW (D. Utah July 21, 2008), *adopted by* District Judge Dee Benson, 2008 WL 3540007 (D. Utah Aug. 13 2008).

4. *United States v. Montoya*, No. 2:04-cr-673-DB (D. Utah Nov. 2, 2005), *adopted by* District Judge Dee Benson on December 1, 2005. Opinion supplied.

5. *United States v. Jackman*, No. 2:05-cr-228 PGC (D. Utah Oct. 18, 2005), *adopted by* District Judge Paul Cassell on November 8, 2005, *aff'd*, 214 F. App'x 814 (10th Cir. 2007). Opinion supplied.

6. *Barker v. Utah State Office of Educ.*, No. 2:04-cv-518 DAK (D. Utah Aug. 26, 2005), *adopted by* District Judge Dale Kimball on September 21, 2005. Opinion supplied.

7. *United States v. Roman*, No. 2:04-cr-00544-TS (D. Utah June 15, 2005) (two separate written Reports and Recommendations), *adopted by* District Judge Ted Stewart on August 5, 2005, and September 28, 2005. Opinion supplied.

8. *United States v. Norlander*, No. 2:04-cr-00720-DB (D. Utah Apr. 27, 2005), *adopted by* District Judge Dee Benson on May 16, 2005. Opinion supplied.

9. *United States v. Sotelo*, No. 2:04-cr-388 TC (D. Utah Feb. 24, 2005), *adopted by* District Judge Tena Campbell on April 13, 2005. Opinion supplied.

10. *United States v. Barney*, No. 2:04-cv-370 DB (D. Utah Jan. 5, 2005), *rev'd*, No. 2:04-cr-370 DB (D. Utah May 20, 2005). Report and Recommendation supplied in response to question 13f.

11. *United States v. Echeverria*, No. 2:04-cr-136 DB (D. Utah Oct. 29, 2004), *adopted by* District Judge Dee Benson on February 3, 2005, *aff'd*, 203 F. App'x 936 (10th Cir. 2006), *cert. denied*, 549 U.S. 1297 (2007). Opinion supplied.

12. *United States v. Hurst*, No. 2:03-cr-795-DB (D. Utah June 25, 2004), *adopted by* District Judge Dee Benson on July 14, 2004. Opinion supplied.

13. *United States v. Baker*, No. 1:03-cr-128 DB (D. Utah May 18, 2004). This case involved two separate written Reports and Recommendations ("R&Rs"). One R&R (Document 33) was adopted by District Judge Dee Benson on June 29, 2004; but on the same date, Judge Benson declined to follow the other R&R (Document 32). Opinions supplied.

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

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I follow the recusal statutes and Code of Conduct for United States Judges. Whenever called for by the Code of Conduct for United States Judges, the recusal statutes, or my general interest in maintaining impartiality and the appearance of impartiality of the Court, particularly with pro se parties, I disclose the potential conflict and/or recuse myself.

Our court does not employ an "automatic" recusal system. I evaluate each case when referred to me and when assigned for the parties' consent to my jurisdiction. CM/ECF maintains a conflict checking tool which I periodically update. The conflict checking tool runs cases against a list I maintain in the system. That list includes former clients, former adverse parties and for several years included all attorneys in my former firm and the firm with which my former law firm merged. Names of attorneys who are close personal friends are included. I also review cases as they proceed, examining the list of counsel and parties to determine if an association appears which is not listed in our conflict database.

In the following cases, a party moved for my removal or disqualification. None of these motions were granted.

The motion was procedurally deficient in these cases:
Layland v. United States, No. 2:01-cv-00076
Anderson v. Ireland, No. 2:03-cv-00068
Burbank v. USDC UT, No. 2:04-cv-00742

The motion was substantively deficient in the following cases, because the motion only alleged adverse rulings:
Mikesell v. Galetka, No. 2:01-cv-00891
Soc'y of Lloyd's v. Bennett, No. 2:02-cv-204
Travis v. Park City Mun. Corp., No. 2:05-cv-00269

In the following cases, I initiated recusal due to personal, family or staff relationships:

United States v. Great Salt Lake Council, Inc. (BSA), No. 2:04-cv-00604. I was a Boy Scout leader at the time and the case sought substantial damages against the regional BSA organization.

Jensen v. Utah, No. 2:05-cv-00739. A law clerk was employed previously as counsel for the defendant state agency.

George v. Delta Air Lines, Inc., No. 2:07-cv-00742; *Smith v. Delta Airlines*, No. 2:07-cv-00843. A law clerk was formerly employed by the defendant and her husband was still employed by that same party.

United States v. Kaplar, No. 2:06-cv-00261. I recused on this case because my law clerk's husband was related to a pro se party.

Wright Express Fin. Servs. Corp. v. ACAS Acquisition (Logex), Inc., No. 2:06-cv-01039. My neighbor was counsel for a party.

Rose v. Utah State Bar, No. 2:08-cv-00592. I had served as a Utah State Bar Commissioner and President.

York v. U.S. Dep't of Justice, No. 2:09-cv-00063. During my years in St. George, I had many legal encounters with this pro se plaintiff.

Wood-Federowicz v. Yengich, No. 2:09-cv-00482. I, like all the other judges in this district, recused in this case against a prominent defense lawyer and former CJA Panel Chair.

Brazzle v. Washington City, No. 2:09-cv-00074. I have a close personal friendship with the Washington City Attorney and previously performed significant legal work for that party.

Torrey v. Davol, No. 2:09-cv-00883. A defendant in the suit was a physician for my wife and me.

Western World Ins. v. Special Population Learning Outdoor Recreation & Educ., No. 2:06-cv-00967. My wife, son and I had been volunteers for the defendant entity.

Driessen v. Sony BMG Music Entertainment, No. 2:09-cv-00140. A former student was co-plaintiff and his spouse, a law professor, was the other plaintiff.

I recused myself in cases in which I felt pro se plaintiffs would not feel fairly treated or could later claim such unfairness if I remained:

Raiser v. Utah Cnty., No. 2:02-cv-01209. I had ruled against the pro se plaintiff in another case.

Johnson v. Johnson, No. 2:05-cv-00749. The pro se plaintiff made a significant written threat against me.

Wade v. Reg'l Dir. of IRS, No. 1:08-cv-00148. The pro se plaintiff objected to my recommendation to dismiss the case and the district judge declined to adopt it. I was concurrently referral judge on the pro se plaintiff's civil complaint against his former lawyer in a case with closely related subject matter.

Biers v. State of Utah, No. 2:09-cv-01008. Mr. Biers filed an ethics complaint against me after I ruled against him on some motions and I recused.

I do not recall the reason for recusal in this case:

MyGym v. Engel, Case No. 1:06-cv-00130.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices other than judicial offices. I was an unsuccessful candidate for the following offices, in the years indicated:

St. George City Council, 1979
Washington County Attorney, 1982
Utah State Senate District 29, 1992

I have not had any unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Chair, Taxpayers for Washington County, 1988. At the request of local business and education leaders, I chaired a campaign to educate about and encourage rejection of tax limitation initiatives. I raised funds, responded to state-wide coordinators' requests for assistance, coordinated local public appearances, and arranged for placement of advertisements regarding the initiatives.

Secretary, Washington County Democratic Party, 1994 – 1995. Formal service as a party organizer. I provided administrative support for the party by maintaining

lists of party members and district organizations. I provided local support for various state campaigns.

Organizer, Washington County Democratic Party, 1978 – 1994. As the county grew from a relatively small population to exceed 80,000, along with others in my law firm, I informally provided administrative support for the party by maintaining lists of party members and district organizations, as well as supporting local and state candidates in their individual campaigns.

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

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

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

I have not served as a clerk to a judge.

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

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1978
Allen, Thompson & Hughes (firm no longer exists)
149 East Tabernacle
St. George, Utah 84770
Associate

1979 – 2002
Snow Nuffer (formerly Snow, Nuffer, Engstrom, Drake, Wade & Smart, now merged into Durham, Jones & Pinegar)
192 East 200 North
St. George, Utah 84770
Member, Officer and Director

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

Starting in 1993, I began to serve as a mediator. Since appointment to the bench, I have continued to serve as a settlement judge or mediator on cases as assigned by the district judges.

Mediations in Private Practice

1. *Confidential v. Confidential.* This wrongful death case arising out of a gravel crusher malfunction mediated to settlement.

2. *Claw Constr. v. Hurricane.* This case between a municipality and a contractor centered on construction rights under changing permit laws and city exaction policies. The case resolved.

3. *Road Creek Ranch, Inc. v. Freemont Irrigation Co.* This water dispute between a landowner and an irrigation company regarding water rights for irrigation and the stream flow needed to maintain a hatchery was resolved.

4. *Confidential v. Confidential.* This domestic mediation with serious emotional and financial issues was resolved.

5. *Yee v. Utah Dep't of Transp.* This state litigation over an accident allegedly caused by road conditions did not settle the case on the day of mediation but settled a week later for the amount of the state's last offer during the mediation.

Mediations as a Judge

6. *Wing v. various parties.* Several claims in a group of over 30 cases filed by a receiver seeking to recover funds which allegedly passed through a Ponzi scheme have been resolved in mediation.

7. *Confidential v. Confidential.* This trade secret case between prominent industry parties was co-mediated with a law professor to unsuccessful conclusion. Nearly a year later, the case settled just after opening statements in an anticipated three week trial.

8. *Disabled Rights Action Comm. v. Brentwood,* 2:02-cv-1005 DB. This is one of a series of cases dealing with architectural violations of ADA in residential rental properties. It was necessary to adjourn this mediation for ten days to allow measurements and verification of site plans, and then the case settled.

9. *Ridgeway v. Fleet,* 2:03-cv-00858 TS. This case first came to mediation in January 2005 but did not resolve. At a second session in May of that year, five days before trial, the case resolved.

10. *Ammons v. La-Z-Boy*, No. 1:04-cv-67 TC. Working with a private mediator who had vast mediation experience, we co-mediated to settlement a consolidation of 19 separate plaintiffs' claims for wrongful termination and retaliation. The resolution included three plaintiffs who had filed bankruptcy because the bankruptcy trustees were involved before and during the mediation.

b. Describe:

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

In the early years of my practice, in a two-attorney firm in a small town, I did virtually all types of legal work, with some emphasis on estate planning and business documentation.

During all phases of my practice from 1978 to 2002, I was involved in real estate development and foreclosures and also retained as counsel by different municipalities in Utah and Arizona. These retainers ranged from general representation, to representation for special projects such as establishment of municipal electric systems, to service as special litigation counsel.

From 1982 to 1992, I was heavily involved in criminal prosecution in Utah and criminal defense in Arizona. I was "city attorney" for Kanab, Utah, a small municipality in Southern Utah. In that part-time retained position I performed a broad variety of work for the city, including general advice on governmental compliance, legal assistance on specific projects, ordinance drafting, and misdemeanor prosecution.

From 1995 to 2002, I limited my practice to real estate development, special municipal work, foreclosure and civil litigation. I handled that kind of work throughout my practice, but in those latter years, I did little else. In these years I was also a part-time magistrate judge.

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

My typical clients were municipalities; individuals and businesses involved in real estate development and general civil litigation; and insurance companies for defense of civil cases. These clients came from across the southern Utah, southern Nevada, and northern Arizona area. We also had many clients from outside the southern Utah area due to our firm's early internet presence. I also represented individuals in domestic and probate litigation from time to time.

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

Throughout my practice I appeared regularly in court. I regularly appeared in courts in southern Utah counties and on occasion in northern Arizona.

i. Indicate the percentage of your practice in:
   1. federal courts: 2%
   2. state courts of record: 60%
   3. other courts: 35%
   4. administrative agencies: 3%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 65%
   2. criminal proceedings: 35%

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

I would estimate the number of cases, civil and criminal, that I tried to verdict, judgment or final adjudicated decision to be 150.

i. What percentage of these trials were:
   1. jury: 15%
   2. non-jury: 85%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *K.L.L. Inc. dba Pro Care Home Health & Infusion Specialists v. Bowers*, Washington County Fifth District Court, Civil No. 970500264; Hon. James L. Shumate; 1997 – 2001.

The case started as a collection action by a supplier of medications used by my oncologist client, the defendant, to treat cancer. Hundreds of thousands of dollars were claimed. The doctor counterclaimed because discovery revealed the drug supplier was not purchasing enough drugs to fulfill the orders for which he was billing the doctor. The supplier's records – and the terms of the agreement as to price – were very unclear. I was sole counsel for the defendant doctor. The case was settled at the end of plaintiff supplier's case due to the supplier's severe evidentiary problems.

Opposing counsel: Russell S. Mitchell
Jones, Waldo, Holbrook & McDonough
301 North 200 East, Suite 3-A
St. George, UT 84770
(435) 628-1627

2. *Christy v. Best Friends Animal Sanctuary*, Kane County Sixth District Court, Civil No. 920600032; Hon. Don V. Tibbs; 1992 – 1993.

This case was a claim by the personal representative and widow of a veterinarian for services allegedly owing from my client, the largest no-kill animal sanctuary in the United States. While the relationship between the doctor and sanctuary had been extremely close, it was apparent the surviving spouse viewed the sanctuary as taking the doctor's time and attention to the doctor's financial detriment. She attempted to construct billings and account records based on standard fees charged to individual clients, and not the practice of billing between the doctor and sanctuary. The case was settled at the end of plaintiff's evidence due to evidentiary problems.

Opposing counsel: Marcus Taylor
Labrum & Taylor
175 North Main
Richfield, UT 84701
(435) 896-6484

3. *Petersen v. Hales Sand and Gravel*, United States District Court for District of Utah Case No. 2:95-cv-00081-DKW; Hon. David Winder; 1995 – 1996.

I represented the defendants in this sexual harassment suit. The plaintiff was a woman who found a well-paying job on a road crew. The plaintiff claimed she was subjected to bad treatment because of her gender, but the essence of the case was sexual harassment by reason of no port-a-potties and sexual banter of the crew. The evidence demonstrated that plaintiff was often an instigator and always a participant in the offensive activities. The case was not resolved through the administrative process and proceeded through a three-day jury trial. The jury returned a no-cause verdict, but with a note admonishing the corporate defendant on its practices.

Opposing counsel: John Preston Creer
No longer in practice

4. *Kanab City v. Utah Power & Light*, Kane County Sixth District Court, Civil No. 2155; Hon. Don V. Tibbs; 1986 – 1987.

My client Kanab City had a unique provision in its electric franchise ordinance, authorizing Utah Power & Light to use rights of way in the city. The provision allowed the city, at the end of the franchise, to purchase the system by condemnation. In Utah, public uses eligible for eminent domain are usually regarded as of equivalent value, to prevent the many entities with condemnation power from attacking each other. However, this contractual provision appeared to trump case law. The litigation to condemn the system was met with a powerful response from Utah Power & Light which feared the exercise of similar provisions in other municipal franchises and the precedent of involuntary sale of its system. The litigation involved numerous issues beyond the unique legal issues, including inventory and valuation of the system and the utility's right to recover "stranded investment" such as generation capacity and power supply and wheeling contracts dedicated to the service of the municipality. Expert consultants and witnesses were key, and the parties employed all strategies available including publicity campaigns, legislative attacks and initiative petitions, which expanded the litigation. The case was on appeal to the Utah Supreme Court when the utility conceded and negotiated a sale.

Opposing counsel: Helen Edwards
No longer in practice

5. *In the Matter of the Adoption of W. A. T.*, 808 P.2d 1083 (Utah 1991); Washington County Fifth District Court; Hon. Dean Conder, by assignment; 1989 – 1991.

This was a simple adoption until sisters of the deceased mother objected and sought to adopt the children. The case developed into a serious contest about

rights of children and relatives. My clients, the adopting parents, were legally married, but the natural mother of the children was a polygamous wife of the adopting father. Her children by a prior marriage were the adoption subjects. The children and adopting mother had lived in the home but the natural mother's sisters were hearing impaired and strangers to the fully hearing children. Overlaid on the standard "best interests of the child" issue was the sisters' argument that the polygamous relationship was a law violation that disqualified the proposed adoptive parents. The Utah Supreme Court decision was 2-1-2, with a decisive concurrence in favor of the adoption.

Opposing counsel: Timothy B. Anderson
Jones, Waldo, Holbrook & McDonough
301 North 200 East, Suite 3-A
St. George, UT 84770
(435) 628-1627

6. *Jacobs v. Hafen*, 917 P.2d 1078 (Utah 1996); Kane County Sixth District Court; Hon. Don V. Tibbs; 1993 – 1996.

My client Jacobs and his neighbor Hafen disputed ownership of a strip of land between their larger holdings. The case was decided against Jacobs at the trial level, but an appeal to the Utah Court of Appeals remanded to the trial court for additional findings. The trial court found that Utah Supreme Court case law suggested that a term shorter than 20 years might support acquiescence in "unusual circumstances." Our Supreme Court appeal asked to clarify the case law, and decide that Utah would not permit a boundary to be established by less than 20 years acquiescence. The Supreme Court reversed the trial court, quieting title in my clients' favor without the need for remand.

Opposing counsel: LaMar J. Winward
150 North 200 East, Suite 204
St. George, UT 84770
(435) 628-1191

7. *Matter of Estate of Beesley*, 883 P.2d 1343 (Utah 1994); Washington County Fifth District Court; Hon. J. Philip Eves; 1991 – 1994.

This was an estate dispute between nieces and nephews of the decedent, who were my clients, and the surviving widow. The decedent and his wife executed a self-prepared pre-nuptial agreement and four self-prepared post-nuptial agreements. The widow claimed she was entitled to the entire estate, but the trial court and appellate court held that she was limited by the agreements with her deceased husband to the specific property mentioned and one half of the overall estate.

Opposing counsel: Philip L. Foremaster
No longer in practice

8. *Hales Sand & Gravel, Inc. v. Audit Div. of State Tax Comm'n of Utah*, 842 P.2d 887 (Utah 1992).

The Utah State Tax Commission took the position that the taxpayer owed taxes on transportation charges for its rock products. In spite of numerous arguments to avoid the imposition of tax, the Tax Commission and Utah Supreme Court held that the transportation charges were taxable. The appeal was successful, however, in cancelling the penalty for negligent non-payment, because the Supreme Court recognized that the taxpayer based its nonpayment of taxes on a legitimate, good faith interpretation of an arguable point of law.

State Tax Comm. counsel: Major General Brian L. Tarbet
Adjutant General
Utah Army National Guard
12953 South Minuteman Drive
Post Office Box 1776
Draper, UT 84020
(801) 432-4401

9. *Matter of Estate of Scarriti*, 845 P.2d 938 (Utah App. 1992); Washington County Fifth District Court, Probate No. 913500084; Hon. J. Philip Eves; 1991 – 1992.

I represented a son of the decedent in contesting a will at the trial and appellate levels. We were unsuccessful in arguing that the literal language of the will left significant amounts of property to pass intestate. The court held that since testacy was preferred, all the property passed through the will.

Opposing counsel: Michael W. Park
The Park Firm
315 West Hilton Drive #4
St. George, UT 84770
(435) 673-8689

10. *Moore v. Kanab City*, Kane County Sixth District Court, Civil No. 2134; Hon. Don V. Tibbs; 1986.

I defended the City in this excessive force civil rights case against a police officer who stopped the plaintiff and drew a gun on him, when the plaintiff failed to respond to commands and appeared to be attempting to access a weapon. The issue was the fine point of an officer's ability to act in anticipation of a threat. The trial judge, with a jury present, entered a dismissal at the end of plaintiff's evidence, on the issue of law, based on all facts as proven in the case in chief.

Opposing counsel: Jim R. Scarth
Kane County Attorney's Office
76 North Main Street
Kanab, Utah 84741
(435) 644-5278

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have not performed lobbying activities for any client, though I have appeared in planning and zoning administrative settings in many municipalities and negotiated with their staff on behalf of developer clients. These discussions would typically consist of arriving at understandings of the application of zoning requirements, development layout, integration of utilities and roads inside the development with those outside the development, and voicing opinions on municipal master plan proposals.

Activities During Legal Practice

1. Electric Utility Projects. In 1986, I represented Kanab City, a municipal client in exercising its right to condemn and operate its electric system and eventually negotiating the purchase of the system.

2. Innovative Real Estate Covenants. Working with engineers and the developers in the mid-1980s, we created the concept of a "Flexible Footprint" townhome. A "pad" was designated for private ownership, and the walls of various floor plans would fit inside it. By covenant provision, all area outside the walls, regardless of ownership, was maintained in a common and consistent fashion, using common funds.

3. Pro Bono Covenant Amendment. I provided pro bono assistance in the amendment of subdivision covenants for Our Savior's Lutheran Church in Bloomington, Utah.

4. Park Service Permit Negotiation. In 1991-1993 I represented Lake Powell Tours, Inc. in renegotiation of its National Park Service (NPS) permit to operate on Lake Powell.

5. Water Rights Administrative Proceeding. During 1991-1993 I was retained by Brigham Young University to monitor and, if needed, protest an application for diversion of underground water from a creek area in Motoqua, on the border of Utah and Nevada in western Washington County.

International Legal Activities

6. Hosting Foreign Delegations. Annually for the past four years (2007-2010), I have acted as professional host for delegations of Ukrainian judges and court staff who visit the United States. The visits are sponsored by Open World and the Administrative Office of the U.S. Courts.

7. Legal Curriculum Development. In 2007 I compiled the curriculum now entitled "Foundations of a Free Society" for The Leavitt Institute for International Development. This is a practical course in American citizenship, ethics, democracy and the rule of law in the context of the American Jury Trial. It is taught annually in several Ukrainian law schools, concluding with a mock trial competition each spring.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Alternative Dispute Resolution – Brigham Young University, J. Reuben Clark Law School, 2008 – present. A survey course teaching fundamentals of negotiation, mediation and arbitration, designed to enable student to advise clients in ADR settings. Syllabus supplied.

Law Practice Management – Brigham Young University, J. Reuben Clark Law School, 2001 – 2007. A general introduction to law office management including accounting, staff management, practice systems, and planning. Syllabus supplied.

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

I held the right to receive a share of payments on certain cases on which work was finished by the dissolved law firm Snow Nuffer, but paid after January 1, 2003. No further payments are expected, though it is theoretically possible.

I receive royalties on two online courses taught on the web through Manexa/LegalSpan in 2007. Payments have declined over time and are irregular. When received, any payment is usually less than $50 per month.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I intend to continue teaching one class per year at Brigham Young University, J. Reuben Clark Law School, if permission continues to be granted by my chief judge and the chief judge of the circuit. I do not have any commitment to teach from year to year.

I intend to continue teaching with The Leavitt Institute program in Ukraine. I do not have any commitment to teach from year to year.

I intend to participate in presentation of Continuing Legal Education and community outreach efforts. I do not have any commitment to continue this work.

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

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       Based on my prior experience, the conflicts I am likely to encounter are with attorneys with whom I have a close personal relationship, businesses with whom I or a chambers staff member have conflicts, or clients or adverse parties from the time of my practice. However, based on experience, these are infrequent.

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

       To prevent conflicts of interest from arising, I do not have investments other than personal real estate and the Thrift Savings Plan. I maintain the conflict database provided in CM/ECF and our case manager runs conflict check reports at case referral and case assignment. I also review the notices of case assignment and referral to ensure that no conflict arises which is not flagged by the conflict database. I will continue to follow the federal recusal statutes and the Code of Conduct for United States Judges. If necessary, I would seek advice from the

Code of Conduct Committee of the Judicial Conference. I have erred and always will err on the side of disqualification.

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

While a judge, I have participated in hosting visits of young people to the court and discuss with them the many and varied opportunities for work in the justice system. I also participated in the design of the pro bono civil appointment program for our court which provides counsel for pro se litigants in cases that appear to have merit or complex issues that counsel might assist in resolving.

In my law practice in St. George prior to 2003, because of the relatively lower income levels in Southwestern Utah, I regularly provided reduced fee or no-fee services. There were many opportunities to assist persons charged with crimes, facing domestic litigation or involved in juvenile court proceedings. I would estimate I handled thirty of these cases during my practice. I assisted in the establishment of the St. George Children's Justice Center, a location for child victims of crime to meet with law enforcement, counselors and therapists.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In the Spring of 2009, the idea of applying for the judicial vacancy was suggested to me by Paul Warner, U.S. Magistrate Judge and former U.S. Attorney. To express interest, I then contacted the offices of Senator Hatch, Senator Bennett, and Congressman Matheson, and met with staff members. I met personally with Congressman Matheson on June 30, 2009; with Senator Bennett on October 16, 2010; with Senator Lee on January 14, 2011; and with Senator Hatch on January 19, 2011. There is no selection commission in Utah.

I sent a letter expressing my interest to the President on February 9, 2010 and to the White House Counsel's Office on February 26, 2011. Since March 2011, I have been in contact with officials from the Office of Legal Policy at the

Department of Justice. On May 10, 2011, I met with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 29, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2011

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Nuffer, David O.	District of Utah	06/29/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
United States District Judge	☑ Nomination, Date 06/29/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 06/25/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
350 South Main, #483 Salt Lake City, UT 84101	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Trustee	Trust #1
2. Employee	Brigham Young University
3 Board Member	The Leavitt Institute for International Development
4.	
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2002	Payment on sale of Snow Nuffer stock on 12/31/02 payable from legal fees earned prior to 12/31/02 but paid after that date No control
2.	
3	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Nuffer, David O.	Date of Report 06/29/2011

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2011	Manexa LLC	$32.51
2. 2010	Brigham Young University	$4,000.00
3. 2010	Manexa LLC	$1,231.00
4. 2009	Brigham Young University	$4,000.00
5. 2009	Manexa LLC	$1,090.01

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

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

DATE	SOURCE AND TYPE
1. 2010	Self employed accompanist
2. 2010	Salt Lake School for the Performing Arts - Teacher
3. 2011	Self employed accompanist
4. 2011	Salt Lake School for the Performing Arts - Teacher

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Nuffer, David O.	Date of Report 06/29/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1	US Bank	Lela LC Loan #1	O
2			
3.			
4.			
5			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Nuffer, David O.	Date of Report 06/29/2011

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

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	B (2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D (2) Date mm/dd/yy	D (3) Value Code 2 (J-P)	D (4) Gain Code 1 (A-H)	D (5) Identity of buyer/seller (if private transaction)
1. Receivable from Snow Nuffer Stock Sale	A	Distribution	J	W	Exempt				
2. LELA LC Membership Interest	C	Distribution	M	W					
3. Genworth Life Whole Life Policy	B	Interest	L	T					
4. Trust #1									
5. - Zions Bank Gold CD	B	Interest							
6 - Zions Bank Money Market Account	A	Interest	J	T					
7. - Zions Bank Savings Account	A	Interest	L	T					
8. - Am. Nat'l Wealth Quest Citadel Diamond Ann.	A	Interest	K	T					
9. - Hartford CRC Select Annuity	A	Interest	K	T					
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17									

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

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

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Nuffer, David O.	Date of Report 06/29/2011

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

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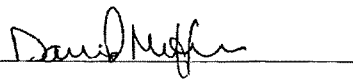
IX. CERTIFICATION.

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

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

Signature 

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		8	687	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured		7	977
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		177	039
Real estate owned-add schedule		350	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		9	000				
Cash value-life insurance		96	410				
Other assets itemize:							
LELA LLC Interest		150	000				
Thrift Savings Plan		307	361				
				Total liabilities		185	016
				Net Worth		736	442
Total Assets		921	458	Total liabilities and net worth		921	458
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		48	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 225,000
Second House	125,000
Total Real Estate Owned	350,000
Real Estate Mortgages Payable	
Personal residence	$ 177,039

AFFIDAVIT

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

6/27/11
(DATE)

(NAME)

KIRSTEN MUMFORD
NOTARY PUBLIC - STATE OF UTAH
182 EAST 2225 SOUTH
CLEARFIELD, UT 84015
My Comm. Exp. 04/24/2012

(NOTARY)

Senator KLOBUCHAR. You are reminding me of when we had a Minnesota nominee, and the next group that was the happiest next to her family were those other Federal judges. They kept calling to say, "When is the hearing?"

Judge NUFFER. Exactly.

Senator KLOBUCHAR. Very good.

I am going to have Senator Hatch go first here, and please go ahead.

Senator HATCH. Let me just ask all of you this question. We will start with you, Justice Gerrard. I would just like your thoughts on the issue of impartiality. I know that in your particular case you have written and you have spoken about diversity and related issues, and I think that we can all agree that each of us individually is affected by our personal background and our personal experiences. And it is certainly true that every judicial decision impacts somebody, impacts people. So I am very interested in—and let me just say, judges do take an oath to be impartial, to decide cases without regard for the identity of the parties. If you would, please comment on the obligation of judges to be impartial. And do you believe that race, gender, or the impact of a decision may play a role in how judges decide cases or must judges apply the law impartially?

Justice GERRARD. Thank you for the question, Senator. It is a good question, a crucial one. I would say this about impartiality. I did take that oath over 16 years ago for the Nebraska Supreme Court, and I hope I have lived up to that oath every day. I think it is absolutely crucial that both sides be heard fully, that the arguments of both sides, whoever that might be, whether it be two individuals, whether it be the State, whether it be two corporations, that their arguments be considered fully and that decisions are based solely on the law.

As to the second part of your question, as far as whether race or gender or any other outside factor should impact a decision of a judge, the answer to that is no. I think it is important for judges to understand that real people are impacted by decisions, just as you have stated before. But it is the law and the evidence that judges must consider, and that is the only thing that judges should consider. And I hope I have done that for all of my years on the bench, and I would plan to continue to do that.

Senator HATCH. Well, thank you.

Ms. Phillips.

Ms. PHILLIPS. Thank you, Senator. I agree with my fellow nominee that the confidence in our system requires that judges approach all decisions from an impartial perspective, and that it is not appropriate for a judge to consider personal views or any biases that he or she may hold when making any decisions from the perspective of the bench.

I also agree with my fellow nominee that any decisions that are made must be made free of any regard for the person's race, gender, or any other factor, and I liken it to the approach that I have taken as a prosecutor. As a prosecutor, it is very important that you make decisions that are irrespective of the potential suspect or defendant's race, gender, or national origin, for example, and I

would fully expect to use that same approach if I was fortunate enough to be confirmed to the district court bench.

Senator HATCH. Well, thank you.

Mr. Rice.

Mr. RICE. Thank you, Senator. I agree with my colleagues wholeheartedly that bias, prejudice, and sympathy have no room in the courtroom in making a final decision. It is as simple as that.

Thank you.

Senator HATCH. Thank you.

Judge Nuffer.

Judge NUFFER. I recall the first time I took the judicial oath and I was a little surprised to hear that we took an oath to do justice regardless to the rich and to the poor. And I have thought of that to the powerful and the powerless as well. And I think I do try to reflect on that, as my colleagues have stated, and I appreciate the statements they make. We need to be careful that we are making the decisions based on the case, not on the personalities involved.

Senator HATCH. Well, you know, I might have some other questions, but I think that is one I was very concerned about. I am happy to finish with that.

Senator KLOBUCHAR. Very good.

Senator Lee.

Senator LEE. Judge Nuffer, is there anything about having raised seven children that makes you exceptionally well qualified to be a judge?

[Laughter.]

Judge NUFFER. I would say not only having raised seven children, but having learned from my wife as I raised those children. I was in a family of two children, and it seemed very busy sometimes in our family of seven children. And I think that the management skills, being able to listen to everyone and pay attention to everyone and their needs is something that she is very good at that I have tried to learn from and exercise in the courtroom to make sure people are fully heard.

Senator LEE. Now, it has been quite a while in Utah since we have had a magistrate judge become a Federal district judge. In fact, as I think about it, I cannot think of another example where it has happened. Is there any thought you have about how we ought to use Federal magistrates differently? Are we overutilizing them or underutilizing them?

Judge NUFFER. We have a wonderful environment in Utah, a great camaraderie between our district judges and our magistrate judges, and so that is pretty much the scope of my experience. And I think that we are moving in Utah to having district and magistrate judges share the civil caseload more. I think that is going to be helpful for everyone concerned.

We are very fortunate to have that camaraderie and that sharing of the load and frank discussions in our management meetings where all judges are present about that.

As you have noted, we have never had a magistrate judge become a district judge. I think that is a good thing. I do not think it is just because it is me, but I think it is a good thing. I think courts have more depth when they have that transition happen.

Senator LEE. Great. Thank you.

Senator KLOBUCHAR. Very good.

I was thinking all of you have had Federal experience—well, you, Judge Gerrard, have been in the State system but have certainly seen the Federal system. And I just wondered what you see as the biggest challenges facing the Federal bench right now. I was just over speaking at Justice Roberts' invitation to the Judicial Conference on some of the work that we are doing on the Committee, and I just was struck by some of the issues that they raised there with resources and certain districts having higher caseloads than others and just what your opinion is. I appreciate that I have been calling you "Judge"—sort of, you know, giving away what we think might happen—"Phillips." But it said "Honorable," and so I asked our staff how you get "Honorable." Poor Mr. Rice here does not have that on there. If you are Senate-confirmed, I guess, for any position, you are forever "Honorable." So this is a very interesting fact, and I do not know if it is true. But I guess we could start with you, Ms. Phillips, about just what you see as a U.S. Attorney.

Ms. PHILLIPS. Thank you, and, yes, I do not know who created that rule, but I am a definite fan of it.

[Laughter.]

Ms. PHILLIPS. I do think that you have hit on one of the most pressing issues that is confronting the judiciary in the near future, and that is—and probably all of Federal Government—the lack of resources that will be available to address what is inevitably going to be a growing caseload. And I think when you look at resources, it is important to not only look at the resources that the judges themselves have, but also probation and parole and other entities that work within the courts because those entities play a very important role in assisting the judges to perform their responsibilities.

I also think a second issue that we need to be mindful of which has been alluded to earlier today is the impact of the fact that the guidelines are no longer mandatory and ensuring that the judges take approaches which work to ensure that defendants who are similarly situated are sentenced in a similar manner regardless of what courtroom they are in or regardless of what region of the country they are in.

So I see those as two issues that the judiciary needs to be mindful of and needs to continue working on as we work toward the future.

Senator KLOBUCHAR. I think that is interesting, just your second part. I did not expect that answer, and I think that is true, having done the prosecutor job for 8 years. I know that we would always—we had guidelines, State guidelines, but there were always some deviations, and I just remember us trying to make—be so hard that we were asking for sentences that were in a certain box, looking at all the factors. So thank you for bringing that up.

Mr. Rice, do you want to add anything?

Mr. RICE. Senator, I think the challenge, the largest challenge from the Federal bench now, if I am not presumptuous, would be the technology, technology in the courtroom, both in trying cases and discovery. I think technology is the biggest challenge, and with that could come some more efficiency in the courtroom, hopefully,

that we would be more efficient with our resources and better able to process the cases more quickly and timely.

Senator KLOBUCHAR. Yes, I have had a number of lawyers and judges bring up the discovery issue and this need to do things more online. So thank you for that. You know, in the U.S. Senate we can only show charts right now, so maybe we need to change, too. I did not really mean that, to the senior Senators.

[Laughter.]

Senator KLOBUCHAR. Judge Nuffer.

Judge NUFFER. I have always seen our rising caseloads, at least in our district, as one of the big issues, and I appreciate the chance to address this here with this group because you actually have the ability to do some things about it. But in Utah, from 2009 to 2010, we had a 20-percent caseload increase in civil and criminal cases, and that is a lot of cases for a five-judge court. And we are not really sure what is driving that. It appears to be continuing. But I think it is something that needs to be watched so that we can still devote the resources that we need to adequately consider and resolve cases in a timely manner.

I think that that is true in many districts, especially border districts, that these increases occur, but I think with some issues in the economy we have actually seen more litigation rather than less. And the courts need to be able to respond to those things.

It has certainly been a challenge for us, so I relay that on to you.

Senator KLOBUCHAR. Yes, I have started to see that. I saw a story that there was more child abuse cases, and just so you know, the districts with the highest caseload average right now are, as you said, some of the border States—California and Arizona, and then the other ones are—what was the—Texas, another border—and guess what the fourth one is, Judge Nuffer? Minnesota, also a border State with Canada. It is true. We have a lot of Fortune 500 companies, a lot of civil litigation going on, and some very good judges. I do not know. But we have a high caseload, and they do incredibly well with a difficult job.

Judge Gerrard, did you want to add anything?

Justice GERRARD. The first thing, Senator Klobuchar, is that I hesitate to give advice to my Federal colleagues before I ever walk across the street. But I must say I have talked with them in some detail.

To answer your question, I think caseload management is one of the—and managing our dockets is one of the crucial issues not only in Nebraska but in the Federal courts. And one of the things that has not been mentioned is how that affects the access to justice. I think as cases are managed properly, obviously not only the criminal cases but the civil cases are able to get through on an efficient basis. So that would be one of my concerns.

But I think Nebraska, quite frankly, has done an admirable job with their caseload at this point in time. I know Nebraska is also participating in—they are one of the first district courts to participate in televising some of their proceedings, and that also, I think, is an improvement in the Federal courts for access to justice and to allow others to see how justice does work in their State.

Senator KLOBUCHAR. We actually opened up all our child protection hearings that had been closed—not to media. There are some

very strict rules about that. I mean, they can come in, but they cannot report on certain things. And it really had an effect on justice, I think, making things go faster because people were watching what was happening, and they had been closed off before that. They are not filmed, but they are open.

Justice GERRARD. It does make a difference.

Senator KLOBUCHAR. It does.

Does anyone want to add anything else? Senator Hatch, do you want to ask——

Senator HATCH. Let me just ask Judge Nuffer, I noted in my introduction of you that you have a real interest in technology and its impact on the law. I would just like you to take a minute or two and talk about that, because perhaps you could expand on the quote that I used from one of your articles about how technology can reduce the distance to the courthouse and leverage our abilities.

Judge NUFFER. You know, Utah is a very interesting population, Senator. As the other people in the room may not realize, we are so urban but we are so rural.

Senator HATCH. Yes.

Judge NUFFER. All of our urban population is within 100 miles, and I appreciate the chance to address this because I think that the ability to file electronically has made a huge difference for our rural lawyers and party litigants and the ability to see the file online at any time from any location through the Internet. And I think, if I remember the quote right, leveling the lawyer in Blanding is at the same disadvantage or advantage as the lawyer in Salt Lake now. They do not have to walk to the courthouse to see the court file. They can simply see it online.

One of the great protections of the judicial process is it is open to the public. Now all those dockets are open in a much larger way than they were when they were theoretically open for view.

I think it is also leveling—I think at the time I wrote that, I was in a fairly small firm in a rural city, and I felt like technology gave us the ability to create just as good a work product with electronic research and word processing and high-quality printing as a large Salt Lake City law firm. So I looked at it as a real advantage in a real changing era, and I think it has proven to be that way in business. We have seen in Utah small businesses thrive and grow into large businesses because of the technical leverages they have.

Senator HATCH. Well, I am very proud of you and your service and pleased with what you have done. I know you well, and I have a very high regard for you. And I can say I must have a high regard for all of you others as well. I want to commend you all for being willing to serve. In this day and age, there are lots of difficulties, and we all know that. But we are very pleased to have all four of you here. I intend to support all four of you and make sure that we get you confirmed as soon as we possibly can.

I want to personally thank the President for the work that he and his staff and the Justice Department have done to bring you all here.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you.

Senator Lee, did you have any additional questions.

Senator LEE. No. Thank you.

Senator KLOBUCHAR. OK, very good.

Well, I want to thank all of you for being here. We were just noting, Judge Gerrard, that it is too bad Senator Grassley is not here. He is a big supporter of televising hearings, so he would be very happy to hear that and would have probably seized on that answer for a good 5 to 10 minutes of questions.

[Laughter.]

Senator KLOBUCHAR. But we will pass that on, and I really did appreciate that you were willing to give us some ideas on the court system. To be honest, I have asked that question before, and this is the most interesting discussion we have had about it compared to other panels.

I want to thank you for being here today, for your service. We look forward to your confirmation, and we have been speeding up the confirmation of judges, just so you know. I was just doing the statistics for the Judicial Conference. We had 60 judges confirmed in the first 2 years of this administration, which would average 30 and 30 each year, right? And so far this year we have already done 36, and since many of them come at the end of the year, I would say that we are going at a much faster pace this year, something that this Committee was very interested in having happen. A lot of the nominees were coming through this Committee, but then they got stuck on the floor. So I am hopeful that this will be much speedier so that your families will know what you are doing for your jobs and so that Mr. Nuffer's potential fellow colleagues will be much happier.

Thank you so much. We are going to keep the record open for a week, and the hearing is now adjourned.

[Whereupon, at 3:34 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of John M. Gerrard
Nominee to be United States District Judge for the District of Nebraska
to the Written Questions of Senator Chuck Grassley

1. **Do you believe a Judge should ever rely on his or her own personal experiences when rendering a decision?**

Response: No. As I testified at the September 20, 2011, confirmation hearing, I firmly believe that a judge should rely on the admissible evidence and applicable law (and nothing else) when rendering a decision. My record as a judge confirms this belief.

a. **Could you explain to me what you meant by saying "Female and minority representation is crucial on the [Nebraska] Supreme Court ... This is a court that decides doctrine, and people of color and women look at some of those things differently"?**

Response: The above quotation was reported in an Omaha World-Herald newspaper article dated November 15, 1997. In November 1997, a legislative subcommittee was examining the representation of women and minorities in the state judiciary and in other areas of state government. In my role as chair of the court's Gender Fairness Implementation Committee, I was asked to address the subcommittee. Unfortunately, I did not keep my notes from the meeting and there is no transcript of my remarks before the informal study committee. But I do recall the tenor and context of my remarks. I did comment that diversity, and particularly diversity of legal training and prior legal experience, enriches and helps fully inform decisions on a collegial appellate body like the Nebraska Supreme Court. For example, a collegial appellate body that includes judges with a vast array of training and experience in many areas of civil, criminal, and administrative law, makes for a rich and informed bench. But I did not believe then, and I certainly do not believe now, that women judges or minority judges approach judicial decisiomaking, or view the law, in any substantively different way than their colleagues. I am not certain of the context of this lone quotation; however, I know that I said much more about the importance of diversity and richness of legal training and prior experience than I said about anything else. To the extent that I said or implied, in the abstract, that women or minorities view the law or judicial decisionmaking differently than their colleagues, I am sorry if this caused any misunderstanding. I did not believe that in 1997, and I do not believe that now.

b. **What are some of the things that you believe women and people of color look at differently?**

Response: Please see my response to Question 1(a). I do not believe that women judges or minority judges approach judicial decisionmaking, or view the law, in any substantively different way than their colleagues.

c. Do you agree it is important they make every effort to put their personal experiences behind them in order to live up to their responsibility to be a fair and impartial arbiter of the facts before them?

Response: I believe that all judges, regardless of gender or race, must set aside their personal experiences in order to be fair and impartial arbiters of the facts before them. This also is my personal responsibility as a judge; I have done so in the past, and I will continue to do so in the future.

2. In a 2008 speech before a Rotary club you stated that "One of the things that I think is important for judges at all levels is that each case affects human beings, and sometimes it affects many human beings ... The appellate bench sometimes gets caught up [on] the rules of law and I think it's important to remember that real human beings will be affected."

a. Do you believe judges should ever base their decisions on a desired outcome, or solely on the law and facts presented?

Response: A judge should always base his or her decision(s) solely on the applicable law and the properly admitted, or considered, facts. There are no circumstances under which a judge should base any decision on some preconceived desired outcome—and I have never done so in my 16 years as a judge on the Nebraska Supreme Court.

b. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?

Response: No, I do not believe a judge should consider his or her own values or policy preferences in determining what the law means--and I have never done so at any time in my judicial career.

c. If so, under what circumstances?

Response: None. Please see my response to Question 2(b).

3. Your statements regarding how a case affects human beings sounds a lot like statements made by then Senator Obama in opposing the confirmation of Justice Roberts where he argued, judges must base their rulings on "one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy." Justice Sotomayor rejected President Obama's so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor? Please explain your response.

Response: Yes, I agree with Justice Sotomayor. I have always believed and, more importantly, have rendered all of my rulings on the tenet that judges apply the law to the facts. I do not apply my feelings or personal preferences to the facts of any case.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: I believe two of the most important attributes of a judge are discipline and judicial humility. That is, a judge must have the discipline and commitment to adhere to, and fairly apply, the rule of law, regardless of one's personal views. Hopefully, my 16-year judicial record shows that I possess these attributes.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: Judges should be open minded, calm, patient, courteous, and respectful in their interactions with litigants, attorneys, jurors, and all staff. I believe these qualities should be reflected on and off the bench. I believe I meet that standard.

6. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If the question of first impression arose from a statute, I would look first to the language of the provision itself with the goal of determining the statutory purpose intended by the legislative branch. Consideration of the statutory language includes, of course, examination of how the provision contextually fits into the entire statutory scheme. If the text is clear, I will simply apply the provision as written. If an ambiguity exists after considering the language itself, I may consider the legislative history of the provision if it is helpful, putting the greatest weight on the history that provides a reliable indication of the intent of the legislative body as a whole. If the meaning of the statute is still unclear and no binding precedent exists, I will look for guidance from Supreme Court and Eighth Circuit precedent and decisions rendered by other circuit courts. In those circumstances, I would consider the most closely analogous controlling precedent and the reasoning of the circuit courts for guidance.

If the question of first impression involved a constitutional issue, I would start with the language of the constitutional provision, and then consider the most closely analogous controlling precedent and reasoning for guidance.

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: As a district court judge, I would be bound by the precedent of the Supreme Court and the Circuit in which I would sit as a judge. If confirmed, my role as a district court judge would be to apply that precedent irrespective of any personal views I might hold--and I would do so.

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Federal statutes are entitled to a presumption of constitutionality, but it is the role of federal courts to declare a federal statute unconstitutional if the statute violates a constitutional provision or if Congress exceeded its authority when it enacted the statute. Federal courts, and district courts in particular, are bound by the Constitution, and by Supreme Court precedent and controlling circuit court precedent when making this determination.

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?

Response: No. To interpret and apply the United States Constitution, a judge should first consider the language of the pertinent provision of the Constitution itself, and then consider controlling Supreme Court and Circuit precedent interpreting and applying the provision. Foreign law is not part of this analysis.

11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I intend to utilize rules for litigants (modeled on the most effective among the rules and practices developed by other judges in the District of Nebraska) that would provide litigants with clear guidance on my expectations for procedures and timeframes. To ensure the just, speedy, and inexpensive determination of each civil action, I would set meaningful deadlines for conducting discovery and filing motions, promptly set motions hearings and trials, and make myself available for resolution of discovery disputes. In criminal cases, I would set motions hearings, deadlines, status conferences, and trials in a manner that would ensure compliance with the Speedy Trial Act. I would render decisions on all matters as quickly as possible, consistent with fair and reasoned analysis. Finally, I would continue the District's current practice of fully utilizing magistrate judges in civil and criminal cases to ensure the District's many cases are timely heard and resolved.

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe that judges have an important role in controlling the pace and conduct of litigation. A judge must ensure that litigation is promptly resolved without undue expense. I would maintain a consistent pace toward the earliest possible resolution of matters by requiring litigants to comply with scheduling orders unless they present a compelling reason for alteration. And, if confirmed, I would employ the case management techniques discussed in my answer to Question 11.

13. Please describe with particularity the process by which these questions were answered.

Response: I carefully read the questions presented and then personally drafted the answers to these questions. After reviewing my answers for completeness and accuracy, I sent the answers to the Office of Legal Policy for submission to the Committee.

14. Do these answers reflect your true and personal views?

Response: Yes.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
400 NORTH MIAMI AVENUE, TENTH FLOOR
MIAMI, FLORIDA 33128
(305) 523-5560

CHAMBERS OF JUDGE ADALBERTO JORDAN

October 4, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Mr. Ranking Member:

Attached are my responses to written questions from Senator Grassley with a correction to answer 1(a) concerning Mr. Bollea's case. In answering question 1(a), I mistakenly relied on the 2010 Sentencing Guidelines in stating that Mr. Bollea was eligible for probation with eight months of home confinement. The 2004 Sentencing Guidelines, which applied to Mr. Bollea, provided that Mr. Bollea was eligible for a split sentence of four months in custody and four months of home confinement. Please accept my apology for the mistake.

Sincerely,

Adalberto J. Jordán
United States District Judge

Enclosure

Responses of Adalberto José Jordán
Nominee to the United States Circuit Court for the Eleventh Circuit
to the Written Questions of Senator Chuck Grassley

1. **According to your questionnaire, you had five cases remanded to you for resentencing in the wake of the Supreme Court's 2005 decision in *United States v. Booker*. In one of those cases, *U.S. v. Bollea*, you wrote, "there is a possibility that I would impose a sentence that did not require incarceration ... if the Guidelines were not applicable, and if I had complete and unfettered sentencing authority as it existed before the Guidelines came into being." *Booker* of course made the guidelines effectively advisory, rather than mandatory.**

   a. **On remand, do you recall if you departed downward from the Guidelines in *Bollea*, or any of the other remanded cases? If so, could you explain the circumstances that led you to believe a downward departure was warranted?**

   Response: In three of the five cases, I imposed a sentence within and in accord with the Sentencing Guidelines on remand (with one of them involving an authorized downward departure under the Guidelines on a government motion for substantial assistance). In two of the cases, I varied from the Guidelines on remand.

   In the *Joseph* and *Alvarez* cases, I imposed the same sentence within the Sentencing Guidelines on remand, and in the *McGriff* case I imposed a sentence in accord with the Sentencing Guidelines on remand after granting a government motion for a downward departure under USSG §5K1.1 based upon the defendant's cooperation and substantial assistance.

   In the *Bollea* case, I had sentenced the defendant to six months in custody, three years of supervised release with two months of home confinement, and a $2,000 fine. On remand, the defendant was eligible for a split sentence of four months in custody and four months of home confinement under the Sentencing Guidelines, as he was in Zone C of the Guidelines with a Total Offense Level of 11 and a Criminal History Category of I. I imposed a sentence of one month in custody, five years of supervised release with six months of home confinement, and a $2,000 fine. I varied because of the defendant's age (71), and because I did not believe a greater sentence was necessary for appropriate punishment and deterrence under 18 U.S.C. § 3553(a).

   In the *Vargas-Vazquez* case, I had sentenced the defendant to 41 months in custody and two years of supervised release. On remand, I sentenced the defendant to 24 months in custody and two years of supervised release. I varied from the Sentencing Guidelines under 18 U.S.C. § 3553(a) because the reason the defendant had attempted to re-enter the United States was to visit and attend to his mother, and he had not used a false name or fraudulent identification in the attempted re-entry.

b. In light of *U.S. v. Booker*, what do you see as the role of the Guidelines in making sentencing determinations?

Response: The Sentencing Guidelines remain critically important at sentencing, as they provide an objective framework for treating similarly-situated defendants in a similar manner.

c. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

Response: Yes.

2. In *Watts v. Florida International University*, a student enrolled in the University's Masters of Social Work (MSW) program was terminated according to a letter he received "based on inappropriate behavior related to patients, regarding religion." The incident in question involved the student informing a Catholic patient of several options for obtaining bereavement counseling, one of which was a church. Among the student's claims was that his First Amendment Freedom of Religion rights were violated. You granted the defendant's motion to dismiss this claim. You held that the student's professed belief that a patient who espouses a religion is entitled to be informed of a religious avenue for therapy was not a "central religious belief." In a 2 to 1 decision, the Eleventh Circuit reversed you, holding that you applied the wrong standard.

a. Do you believe the Eleventh Circuit was correct in overruling your initial decision? Why or why not?

Response: The Eleventh Circuit's decision in *Watts* constitutes binding precedent, and I do not believe that it would be appropriate for me to comment on whether the decision was correct.

I would like to explain, however, that I did not rule that Mr. Watts' belief was not a central religious belief. I dismissed the free exercise claim in part because I concluded that Mr. Watts had not alleged in his amended complaint that this belief was a central one. The Supreme Court had held that "the free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden." *Hernandez v. Commissioner,* 490 U.S. 680, 699 (1989). *See also Jimmy Swaggart Ministries v. Bd. of Equalization of California,* 493 U.S. 378, 384-85 (1990) (articulating same standard). Although I believed then, and believe now, that it is not appropriate for a court to "question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds," *see Hernandez,* 490 U.S. at 699, I understood *Hernandez* to at least require an allegation that the belief in question is a central one.

Had Mr. Watts alleged that the belief was a central one, then it would not have been appropriate to question or examine that allegation, as the Supreme Court explained in *Employment Division, Dept. of Human Resources v. Smith,* 494 U.S. 872, 886-87 (1990). I did not question the validity of Mr. Watt's belief. The problem, as I saw it, was that Mr. Watts had not alleged that the belief was a central one.

b. What is your understanding of the difference between a centrally held belief and a sincerely held belief?

Response: My understanding is that a sincerely held belief is one that is genuinely held by a person, while a centrally held belief is one that generally constitutes a main tenet of one's faith or beliefs.

3. A Judicial profile of you appeared in the September 2005 addition of the Federal Lawyer. In that article you were asked about life experiences that may provide you with a different perspective, in which you provided your immigrant background as an example saying, "I have a different sort of understanding of the issues immigrants encounter because I am an immigrant. But you're supposed to take a step back and judge cases without any reference to your personal views, and I try hard to do that."

a. As a district court judge do you believe you have been successful at taking a step back and putting your personal views aside?

Response: Yes.

b. Could you share with the Committee an example from your cases that required you to put your personal views aside?

Response: Our court has a substantial pro se docket. There are times when, based upon the allegations in the complaint -- which are initially accepted as true -- it appears to me that a pro se plaintiff may not have been treated properly and suffered some harm as a result. Nevertheless, that does not always mean that the plaintiff has a viable cause of action, and if the complaint fails to state a claim for relief under governing law, I will dismiss the complaint with leave to amend.

4. In your response to Senator Klobuchar's question about consensus building, you replied, in part of your answer, with the following statement: "But I think I understand what the process is like and what consensus building is about and how to be civil to your colleagues even when you might disagree with a position and how to try to reach middle ground on cases where that middle ground can be reached."

a. Please explain what you meant by "try to reach middle ground." Is it your view that judicial decision-making is one of negotiation and compromise?

Response: It is not my view that judicial decision-making is one of negotiation and compromise. A judge should not abandon his principles to reach a middle ground. If a judge concludes, based on the applicable law, that his view is principled and correct, he should adhere to that view.

Nevertheless, appellate decision-making is often a collective exercise, and it is important to be civil to one's colleagues even in times of disagreement. There may also be cases in which the members of an appellate panel agree on the appropriate result, but disagree on what issues can or should be addressed in arriving at that result, or on how broadly or narrowly an opinion should be written. In such cases, I believe it is appropriate to discuss various possible approaches with one's colleagues to see whether a principled consensus on the proper approach can be reached.

b. If so, what constrains a judge from engaging in policy-making rather than application of the law to the facts before the judge in order to decide the particular case or controversy before the judge?

Response: I do not believe that judges should engage in policy-making or decide cases based on their own personal views or preferences.

5. The judgeship for which you have been nominated has been listed as a Judicial Emergency due to the volume of cases being filed per panel. According to the 2005 judicial profile of you, one of the biggest challenges to you on the bench has been keeping up with the caseload. The article quotes you as admitting to being "not the fastest of judges."

a. Do you have any worries about your ability to keep up with the Eleventh Circuit's caseload?

Response: No.

b. What actions do you plan to take to help the Eleventh Circuit alleviate its judicial backlog?

Response: In the years since that judicial profile was published, I have improved my efficiency in handling cases. If confirmed, I will work as hard as possible to help the Eleventh Circuit with its caseload, keeping in mind that for most litigants the court of appeals is practically the court of last resort, and that there is a delicate balance between efficiency and accuracy.

6. **As an adjunct professor at the University of Miami School of law, you have taught a Death Penalty Seminar off and on since 1990. As such, I am interested in your views on the Supreme Court's jurisprudence in this area. The modern day jurisprudence of the Supreme Court determines whether a mode of execution offends the 8th Amendment's prohibition on cruel and unusual punishment by considering "the evolving standards of decency that mark the progress of a maturing society." Under your understanding of this precedent, what is a court to consider in determining our nation's "evolving standards of decency"?**

   Response: In determining the "evolving standards of decency that mark the progress of a maturing society," the Supreme Court has held that courts should consider "objective indicia" of society's standards, "as expressed in legislative enactments and state practice with respect to executions," as well as "the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose." *Kennedy v. Louisiana,* 534 U.S. 407, 421 (2008).

7. **Justice Scalia has been highly critical of this approach, warning in *Thompson v. Oklahoma* that "the risk of assessing evolving standards is that it is all too easy to believe that evolution has culminated in one's own views."**

   a. **Do you agree this is a valid concern of the evolving standards of decency approach?**

      Response: As a lower court judge, I am bound by Supreme Court precedent, and do not believe it would be appropriate for me to comment on Justice Scalia's views.

   b. **Do you believe this concern has borne out in any of the Supreme Court's death penalty decisions? Please explain.**

      Response: As a lower court judge, I am bound by Supreme Court precedent, and do not believe it would be appropriate for me to opine on whether Justice Scalia's concern has been borne out in any of the Supreme Court's death penalty decisions.

8. **In *Roper*, the Supreme Court relied on foreign law in holding that the execution of minors violated the Eighth Amendment. Do you believe that foreign law should be considered in determining the meaning of the Eighth Amendment?**

   Response: The Constitution should be interpreted with reference to its text and history and applicable Supreme Court precedent, and not with reference to foreign law. The Supreme Court, in Eighth Amendment cases like *Roper*, has sometimes referred to foreign law as instructive, and in that limited circumstance and to that limited degree lower court judges may consider foreign law.

9. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?

Response: No.

10. In your 1987 article, *Imagery, Humor, and the Judicial Opinion, 41 U. Miami L. Rev. 693*, you stated "The work of legal realists and critical legal theorists has demystified the images created by the formal view of law and the judiciary by pointing out what had been suspected all along: that judges have failings and that they necessarily make law because of the need to interpret and the indeterminacy of legal argument."

a. Do you believe that judges "necessarily make law" and if so, what are the limits on judges in this capacity?

Response: Federal judges are not in the business of making law, but there are some very limited and discrete areas in which, by necessity, they do develop and articulate substantive legal principles and norms. For example, in tort cases under general maritime law where Congress has not enacted governing legislation, courts are sometimes called upon to determine, on a common-law basis, what the contours of admiralty law are. *See, e.g., Atlantic Sounding Co., Inc. v. Townsend,* ___ U.S. ___, 129 S.Ct. 2561 (2009) (addressing whether seaman can seek punitive damages under general maritime law for employer's alleged willful and wanton disregard of maintenance and cure obligations). That does not mean, of course, that courts are free to do as they wish. To use the admiralty example, in trying to determine how a new admiralty issue should be resolved courts must look at the purposes of general maritime law, any relevant historical practice, how precedent in the area has evolved, and what sort of related statutory framework (if any) Congress has created.

b. Having served as a judge, do you have any current reflections on the use of imagery and humor in judicial opinions?

Response: As a general matter, I do not believe that humor is appropriate in judicial opinions. There are times, however, when historical, social, and literally allusions may be properly used in opinions.

11. What is the most important attribute of a judge, and do you possess it?

Response: The most important attributes of a judge are impartiality and fairness. I believe that I possess those attributes.

12. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should treat all litigants and attorneys with dignity and respect, be patient and even-tempered with all those who appear in court, and ensure that everyone's views are heard. These elements of proper judicial temperament usually go hand in hand.

Of these, I consider it most important to treat all litigants and attorneys with dignity and respect, and I believe that I have done that as a judge.

13. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

14. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In cases of first impression, if a constitutional or statutory provision is involved, I would first examine the relevant text. If the text was not clear, I would then consider precedent on similar or related issues for guidance, as well as precedent on the purpose of the provision or principle at issue. Where appropriate, I would consult legislative materials and historical materials, and in certain specific areas of law (e.g., state insurance law in a diversity case) I would also review authoritative treatises.

15. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would apply binding precedent even if I disagreed with it.

16. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: It is appropriate to declare a federal law unconstitutional only if it exceeds Congress' powers or contravenes a provision of the Constitution.

17. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: As set forth in Rule 35(b)(1)(A) of the Federal Rules of Appellate Procedure, a circuit court, sitting *en banc,* should overturn circuit precedent only where it conflicts with a decision of the Supreme Court or another decision within the circuit. Those are the factors I would consider.

18. Please describe with particularity the process by which these questions were answered.

Response: I personally drafted answers to these questions, and discussed those draft answers with an official at the Department of Justice. I then finalized the answers to the questions.

19. Do these answers reflect your true and personal views?

Response: Yes.

Responses of David Nuffer
Nominee to be United States District Judge for the District of Utah
to the Written Questions of Senator Chuck Grassley

1. **Do you believe that our federal government is one of limited and enumerated powers?**

   Response: Yes.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe diligence is the most important attribute of a judge. Many other attributes are vital, but without diligence the work will not get done. My parents taught me to work hard and I have not forgotten that lesson.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge's temperament must include patience, respect for others, and a disposition to learn. Because judges must deal with many people and many cases, the work may encourage a tendency to rush or be cursory or even abrupt. These pressures must be consciously resisted. No decision should be made without due consideration of the actual case, as presented by the parties. A judge's ability to listen is key because true listening demonstrates patience, due consideration for others, and willingness to learn. I believe I have the ability to listen patiently, respecting the parties and attorneys, and I have a genuine desire to learn.

4. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes, this is my oath as a judge. I have fulfilled this oath since first taking it in May 1995.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: I have not yet encountered a case of complete first impression. Features of a case may be unique but there are always guiding principles found first in the Constitution and statutes and then in regulatory and case law. Those principles may be in the precise field in which the dispute arises or in analogous or corollary circumstances. Thorough research to gather this applicable law and precedent enables a sound decision. I have not hesitated, when I have felt that counsel have not provided enough information on a legal principle, to request additional briefing and argument, which has often resulted in the clarification that was needed. To the extent that in the future I encounter issues in which

there is not a statute or case precisely on point, I would continue the practices I have described.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: It is not the place of a lower court judge to disregard binding precedent. I have not done so and would not do so in the future. Counsel may appeal to the body which has set precedent, and make arguments for changes in that court, but a lower court cannot evade binding precedent. I apply the precedent of the Supreme Court and Tenth Circuit Court of Appeals.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: In fifteen years of judicial experience I have never seen such a situation. Such a claim should be considered carefully, deliberately and with the participation of all parties affected by the claim. My duty as a judge is to construe and apply statutes to avoid interpretations that might render the statute unconstitutional.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

Response: The meaning of our Constitution is contained in the document itself. Where that language has been construed by the United States Supreme Court or the Tenth Circuit Court of Appeals, I would consider that construction to understand the meaning. Commentary or opinion of those outside the United States does not determine what our Constitution means.

9. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: Because the federal court dockets and documents are electronic, I have the ability to use management tools to track cases. I have worked with the Future Case Management design team in the U. S. Courts to develop even better management tools for judges and I have designed case and motion tracking tools that we use in our chambers. I personally review case status reports. I will continue to use the assistance of my designated case manager and law clerks to monitor and report on case progress and pending issues that can move cases forward.

10. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: For the last several years, I have handled civil case scheduling and schedule amendments for the active district judges in our court. I usually consider and enter over 500 scheduling orders each year. I am convinced that judicial intervention leads to case resolution. Parties come to court for a decision of a dispute they cannot resolve

themselves, so judicial management and availability is key to moving cases toward resolution. I will continue to make myself available on short notice, by telephone or otherwise for counsel to receive answers to questions as cases move forward. I will continue to give counsel firm trial dates within a short period after an answer is filed in civil cases, and I will promptly resolve pretrial motions in criminal cases.

11. Please describe with particularity the process by which these questions were answered.

Response: I received these questions Wednesday September 28, 2011, and began drafting answers that evening. I reviewed the answers again on Thursday September 29, 2011, and later that day sent them for review to staff at the Department of Justice with a cover letter for submission to the Senate Judiciary Committee.

12. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Mary Elizabeth Phillips
Nominee to be United States District Judge for the Western District of Missouri
to the Written Questions of Senator Chuck Grassley

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: A judge must be able to render a fair and impartial decision that is void of any bias, prejudice or preconceived ideas. Yes, I believe that I possess that ability.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should possess an even and calm temperament. I believe it is most important that a judge treat all individuals who appear in front of her with dignity, respect, patience and humility. Yes, I believe that I meet such a standard.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: If faced with a case of first impression, I would first look to analogous cases from the Supreme Court, the Eighth Circuit or other circuits. If no such precedent existed and the matter involved interpretation of a statute or a Constitutional provision, I would determine and apply the plain and ordinary meaning of the statute or provision.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

   Response: I fully recognize that a district court judge is bound by the precedent of the Court of Appeals and the Supreme Court. In all matters I would apply the precedent of the Eighth Circuit and the Supreme Court.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: I believe it is only under rare circumstances that a district court judge should declare a statute enacted by Congress unconstitutional. One such circumstance might be if the statute violated the plain and ordinary meaning of the Constitution.

7. **During your time in United States Attorney's Office, did you ever prosecute someone who was death penalty eligible? If so, have you ever sought the death penalty?**

Response: As U.S. Attorney for the Western District of Missouri I have requested permission from the Attorney General to seek the death penalty against two defendants. The Capital Committee of the Department of Justice and the Attorney General concurred with my request with respect to both defendants. As U.S. Attorney I have also responded to various habeas corpus motions of defendants who received the death penalty prior to my tenure as U.S. Attorney. In such habeas corpus proceedings, my office has argued that the ruling of the trial court and the imposition of the sentence of death should be upheld.

   a. **If you have ever elected not to seek the death penalty for a defendant who was eligible, please explain why you determined the death penalty was not appropriate in that instance.**

   Response: As U.S. Attorney I requested permission from the Attorney General to not seek the death penalty against one defendant. In deciding to request permission to not seek the death penalty, I considered the aggravating and mitigating factors outlined in 18 U.S.C. § 3592, any non-statutory aggravating and mitigating factors, and the recommendations of the Assistant U.S. Attorney handling the case. The Capital Committee of the Department of Justice and the Attorney General concurred with my request to not seek the death penalty against the defendant.

8. **Do you believe that the death penalty is an acceptable form of punishment?**

Response: I believe that within the framework established by Chapter 228 of the United States Code and the precedent of the Eighth Circuit and the Supreme Court the death penalty is an acceptable form of punishment.

9. **In *Roper*, the Supreme Court relied on foreign law in holding that the execution of minors violated the Eighth Amendment. Do you believe that foreign law should be considered in determining the meaning of the Eighth Amendment?**

Response: As a district court judge, I would be bound by and would follow all Supreme Court precedent.

10. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

Response: As a district court judge, I would only rely on foreign law or the views of the "world community" if directed to do so by the precedent of the Eighth Circuit or the Supreme Court.

11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: As a district court judge, I would be engaged in and knowledgeable about the cases on my caseload. I would work with the attorneys to set reasonable yet firm scheduling deadlines. I would rule on issues in a timely manner and would be available to attorneys to address unexpected issues that arise during the pendency of the case.

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I do believe that judges have a role in controlling the pace and conduct of litigation. As I described in my response to Question 11, I would work with the attorneys to set reasonable yet firm scheduling deadlines. I would be engaged in and knowledgeable about the issues of the case and would be responsive to requests of attorneys to address issues that arise during the pendency of the case.

13. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on September 28, 2011. I prepared my answers on September 29, 2011 and submitted them to the Department of Justice for submission to the Committee on September 30, 2011.

14. Do these answers reflect your true and personal views?

Response: Yes

Responses of Thomas O. Rice
Nominee to be United States District Judge for the Eastern District of Washington
to the Written Questions of Senator Chuck Grassley

1. **A minority of the ABA Standing Committee on the Federal Judiciary found you "Not Qualified" for this position.**

   a. **Do you have any insight as to why the ABA gave you a partial "Not Qualified" rating?**

      Response: No, the process the ABA uses to evaluate judicial candidates does not provide for the disclosure of the reason for the rating.

   b. **What can you tell the Committee about your background and experiences that make you qualified to sit as a federal district court judge?**

      Response: I have served the public for over 25 years in the Department of Justice. As you know, the United States is no ordinary litigant and as a lawyer for the Department of Justice my obligation and goal has been to see that justice was done and that the citizens of this country were treated fairly. Since I have represented the United States on both civil and criminal matters in the federal courts, I believe I have witnessed firsthand what it takes to be qualified to be a federal district court judge. As my Senate Judiciary Committee Questionnaire more fully reflects, I believe I possess the knowledge, skill, maturity, temperament, and qualities necessary to make me a successful judge.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is his or her integrity, which would include the firm adherence to seeking the factual truth and applying the rule of law to those facts. I believe I possess this attribute.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: I believe a judge should be patient, humble, respectful, courteous and fair. A judge should not be swayed by passion, sympathy or prejudice, but must decide cases on the rule of law. I believe these are the most important elements of judicial temperament and I possess these qualities.

4. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: I would first turn to the plain meaning of the words of the statute. If necessary, I would seek to determine the context and intent of Congress. I would also look to analogous cases from the Supreme Court and the Ninth Circuit Court of Appeals for guidance. If no other similar cases were available, I would consult other federal court decisions that considered the issue or like issues.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

   Response: I would apply binding Supreme Court and Court of Appeals precedent without regard to my personal judgment.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Absent controlling precedent holding otherwise and assuming the litigants presented the case with proper jurisdiction and standing, the court must first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided. Then, a federal court should declare a statute enacted by Congress unconstitutional only where it clearly violates the Constitution or where Congress has clearly exceeded its constitutional boundaries.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

   Response: No.

9. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

   Response: If confirmed, I would set reasonable and timely scheduling orders, adhere to the Speedy Trial Act, promptly resolve pending motions and continually monitor case aging reports.

10. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

    Response: I believe judges play a vital role in controlling the pace and conduct of litigation. I would set reasonable and timely scheduling orders in every case. I believe that one of the most important aspects of keeping cases moving is the prompt resolution of pending motions before the court. Litigants often cannot advance the discovery

process, settlement negotiations or trial preparation without rulings from the court on numerous pretrial issues.

11. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on September 28, 2011. I drafted my answers and forwarded them on September 29, 2011, to the Department of Justice for review and submission to the Senate Judiciary Committee.

12. Do these answers reflect your true and personal views?

Response: Yes.

SUBMISSIONS FOR THE RECORD

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VIA EMAIL AND FIRST CLASS MAIL

May 6, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of John M. Gerrard
To the United States District Court
for the District of Nebraska

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of John M. Gerrard who has been nominated for a position on the United States District Court for the District of Nebraska. As a result of our investigation, the Committee is of the unanimous opinion that Justice Gerrard is "Well Qualified" for the position.

A copy of this letter has been provided to John M. Gerrard.

Sincerely,

Benjamin H. Hill, III
Chair

cc: John M. Gerrard
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on May 6, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
Hon. Jon Kyl
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Hon. Mike Lee
Hon. Tom Coburn

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ELEVENTH CIRCUIT
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D.C. CIRCUIT

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VIA EMAIL AND FIRST CLASS MAIL

August 11, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Adalberto Jordan
To the United States Court of Appeals
for the Eleventh Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Adalberto Jordan who has been nominated for a position on the United States Court of Appeals for the Eleventh Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Judge Jordan is "Well Qualified" for the position.

A copy of this letter has been provided to Adalberto Jordan.

Sincerely,

Benjamin H. Hill, III
Chair

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on August 11, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
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Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member
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VIA EMAIL AND FIRST CLASS MAIL

July 6, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of David Nuffer
To the United States District Court
for the District of Utah

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of David Nuffer who has been nominated for a position on the United States District Court for the District of Utah. As a result of our investigation, the Committee is of the unanimous opinion that Magistrate Judge Nuffer is "Well Qualified" for the position.

A copy of this letter has been provided to David Nuffer.

Sincerely,

Benjamin H. Hill, III
Chair

cc: David Nuffer
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 6, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
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Hon. Tom Coburn

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VIA EMAIL AND FIRST CLASS MAIL

June 8, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Mary Elizabeth Phillips
To the United States District Court
for the Western District of Missouri

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Mary Elizabeth Phillips who has been nominated for a position on the United States District Court for the Western District of Missouri. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Phillips is "Well Qualified" for the position.

A copy of this letter has been provided to Mary Elizabeth Phillips.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Mary Elizabeth Phillips
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on June 8, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
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Hon. John Cornyn
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STAFF COUNSEL
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VIA EMAIL AND FIRST CLASS MAIL

June 30, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Thomas O. Rice
To the United States District Court
for the Eastern District of Washington

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Thomas O. Rice who has been nominated for a position on the United States District Court for the Eastern District of Washington. As a result of our investigation, a Substantial Majority of the Committee is of the opinion that Mr. Rice is "Qualified". A minority of the Committee is of the opinion that Mr. Rice is "Not Qualified" for the position.

A copy of this letter has been provided to Thomas O. Rice.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Thomas O. Rice
The Honorable Robert F. Bauer
Michael Zubrensky, Esq.(via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on June 30, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

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MARK GIULIANI †††
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†† ADMITTED IN NORTH CAROLINA
††† ADMITTED IN CONNECTICUT
≠ ADMITTED IN WASHINGTON
◊ ADMITTED IN MASSACHUSETTS

SEP 23 11 pm 4:49

September 15, 2011

Senator Patrick Leahy
437 Russell Senate Bldg
United States Senate
Washington, DC 20510

Dear Senator Leahy:

First, I would like to offer my condolences to the victims of Hurricane Irene in your wonderful State of Vermont. I know how devastating hurricanes can be having lived through quite a few of them. I am sure though that the great will of the people of Vermont will allow them to get by this bleep by nature and will make Vermont a better state.

If you do not remember me, I am John Campbell's brother in Florida. I am writing a letter on behalf of myself, the people I used to represent which were the citizens of the State of Florida, and more importantly, all citizens of the United States. I have recently read that one of our Federal District Judge, Adalberto Jordan, has received the nomination for an open position on the 11th US Court of Appeals. I believe that it is critical that our nation have the best legal talent available serving on the Appellate Courts in the United States. I am not going to get into specifics about Judge Jordan because I think his nomination speaks for itself.

I am though writing to request that a sooner-than-later hearing be held by the Senate Judiciary Committee so that you can meet Judge Jordan and hopefully have the Committee endorse his candidacy for the Federal Court of Appeals. I realize that there is a lot of political posturing occurring in Washington these days but, I do know that many of my republican friends also understand the significance of having Judges who are fair, neutral and competent. I would urge you to take up Judge Jordan's nomination as soon as possible.

Very truly yours,

WALTER G. CAMPBELL, ESQ.

cc: John Campbell



DIANA S. SEN
NATIONAL PRESIDENT

August 1, 2011

Via Electronic Mail
The Honorable Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Re: Hispanic National Bar Association Endorsement of the Hon. Adalberto Jordán for the U.S. Court of Appeals for the Eleventh Circuit

Dear Senator Leahy,

On Behalf of the Hispanic National Bar Association ("HNBA"), I write to highly recommend the confirmation of the Honorable Adalberto Jordán to the United States Court of Appeals for the Eleventh Circuit. The HNBA is a non-profit, non-partisan national membership organization that represents the interests of more than 100,000 Hispanic attorneys, judges, law professors, law students and paralegals in the United States and its territories.

The HNBA has conducted appropriate due diligence as required by the HNBA's *Policies and Procedures Governing Judicial Endorsements* (2008), and has voted to endorse Judge Jordan's candidacy for the Eleventh Circuit Court of Appeals. Based on our review, it is clearly evident that Judge Jordán is exceedingly qualified to join the bench of the Eleventh Circuit. He is exceptionally well regarded, respected, and admired as a Judge on the U.S. District Court in the Southern District of Florida.

Judge Jordán has a storied and highly respectable resume. Born in Cuba, he is a naturalized U.S. citizen. He graduated second in his class, moving on to clerkships with the Eleventh Judicial Circuit Court of Appeals Judge Thomas Alonzo and with Justice Sandra Day O'Connor at the U.S. Supreme Court. He then worked in private practice in Miami, where he made partner in five years.

Afterwards, he joined the U.S. Attorney's Office for the Southern District of Florida, where he was ultimately named Chief of the Appellate Division. Following his tenure at the U.S. Attorney's Office, he was nominated to a seat on the U.S. District Court for the Southern District of Florida by President Bill Clinton, and was confirmed by the Senate with an overwhelming vote of 93-1.

Our due diligence revealed that Judge Jordán is held in extremely high regard throughout the legal community. He is respected amongst his peers as a jurist, talented as a federal prosecutor, and committed to *pro bono* service and equal justice. He also serves as an adjunct professor at the University of Miami and Florida International University, and is active in his

local community. Additionally, he has been publically endorsed by the Cuban American Bar Association.

The HNBA has found Judge Jordán to be an exceedingly qualified candidate for the Eleventh Circuit Court of Appeals. His experience in the judiciary since his time as a federal clerk, in private practice, and his time spent as the Chief of the Appellate Division of the U.S. Attorney's Office, in addition to the consensus among his peers of his qualifications, make Judge Adalberto Jordán a highly qualified and experienced candidate.

Accordingly, the HNBA strongly encourages the prompt confirmation of Judge Adalberto Jordán for the U.S. Court of Appeals for the Eleventh Circuit. We stand ready to assist in your deliberations. Should there be any additional questions, please feel free to contact me through our national office at (202) 223-4777, or directly at (646) 320-8240. Thank you for your consideration.

Sincerely,

Diana S. Sen
HNBA National President

cc: Mr. Benny Agosto, Jr., HNBA President-Elect
Mr. Robert Raben, Chair, HNBA Committee on Judicial Endorsements
Ms. Teresita Chavez Pedrosa, Region VIII President
Ms. Zuraya Tapia, HNBA Executive Director

Shaun L Peck, P.C.
Marty E. Moore, P.C.
Bretton K. Hadfield, P.C.
Brandon J. Baxter, P.C.
Daniel K. Watkins, P.C.

Shawn P. Bailey
Keely Schneiter*
J. Aaron Jensen
Preston P. Frischknecht*

* *Registered Patent Attorney*

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July 13, 2011

The Honorable Patrick J. Leahy
Chair, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of David O. Nuffer
United States District Court for the District of Utah

Dear Senator Leahy:

I just learned that President Obama (on the recommendation of Senator Orrin Hatch and Senator Mike Lee) has recently nominated Magistrate Judge David O. Nuffer to the district bench for the District of Utah. I am writing to wholeheartedly endorse Judge Nuffer's nomination to the District of Utah bench.

I have been a lawyer for 31 years and have tried more than 50 criminal and civil jury trials in state and federal courts in multiple jurisdictions. On the political side, I am a die-hard independent, without any significant ties to either major political party. However, I care desperately about our judicial system because it is at the heart of my profession. In that vein, I am writing to support Judge Nuffer's nomination because he is among the best judges I have every had the pleasure to appear before. He is hardworking, prepared, courteous, and reasonable – with a well honed judicial demeanor. He is also a card-carrying geek who lives at the cutting edge of modern technology – which is fairly rare for a lawyer of our generation. Judge David Nuffer will make an excellent Article III judge. Thank you.

Very truly yours,

PECK HADFIELD BAXTER & MOORE, LLC

Marty E. Moore

SENATOR PATTY MURRAY

STATEMENT IN SUPPORT OF THE NOMINATION OF THOMAS O. RICE TO BE A FEDERAL DISTRICT COURT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON

Introduction

Thank you, Madam Chairman, Ranking Member Hatch, and Members of the Committee.

It's my pleasure to support the nomination of Thomas O. Rice. He is a distinguished attorney who has been nominated to serve as the next federal judge for the Eastern District of Washington.

Mr. Rice's Background

Mr. Chairman, I'm honored to recommend that the Senate confirm Thomas Rice as a District Court Judge for the Eastern District of Washington state.

Mr. Rice has strong bipartisan support -- and with good reason.

He has dedicated almost his entire professional career to serving the public as an Assistant U.S. Attorney in the Eastern District. In that time, he has earned the respect federal judges, opposing defense attorneys, his fellow prosecutors, and local law enforcement officials.

Mr. Rice has a deep connection to Eastern Washington and its legal community. He graduated cum laude from Gonzaga University with a degree in accounting while working full-time to support himself through school. He then returned to Gonzaga for law school on a full scholarship to earn his law degree magna cum laude.

From the beginning, Mr. Rice knew that he wanted to devote his life to public service and upon graduation took a position as a trial attorney with the Department of Justice in Washington, D.C.

Instead of moving on to a more lucrative practice in the private sector, he returned to the Eastern District to work in the U.S. Attorney's Office. His intelligence and integrity allowed him to climb the ranks to become the First Assistant U.S. Attorney, in which capacity he is responsible for the management of the Spokane Office. He is currently the highest ranking career DOJ official in the Eastern District.

Over his 23 years in practice, Mr. Rice has tried over one thousand criminal cases dealing with nearly every area of federal law from bank fraud to bank robberies, from drug conspiracies to bombings, from negligence to bribery. His experience in civil litigation is

equally expansive and he has consistently demonstrated his mastery of the myriad rules and procedures of the federal courts.

Mr. Rice went above and beyond his duties to volunteer additional hours at the office, taking on extra cases and establishing the Anti-Terrorism Advisory Council, consisting of representatives from every law enforcement agency in the Eastern District.

As an Assistant U.S. Attorney, his reputation as tough on crime was well earned. But so, too, was his reputation for the level-headed, fair conduct of his prosecutions.

Mr. Rice clearly meets the standards of fairness, even-handedness, and adherence to the law that we expect of our federal judges.

Outside of his many professional credentials, I've been able to speak with him, and I've been impressed by his professionalism and decency.

I know I speak on behalf of a large number of the Washington state legal community in supporting the nomination of Thomas Rice to be the next district judge for the Eastern District of Washington.

Selection Committee Work

I think it is also important to note for the Committee that Mr. Rice's nomination was the product of a bipartisan selection commission that we use in Washington state. We have continued to consult with Republicans in my state in selecting candidates because our bipartisan process works well and continues to produce strong candidates regardless of who occupies the White House.

I'm proud to have created the selection commission and believe that it is something that has served our state and our federal judiciary well.

Therefore, it is my pleasure to introduce a great lawyer and community leader who I believe will make an exceptional federal judge.

I urge this committee to approve his nomination, and I hope we can confirm Mr. Rice before the full Senate quickly.

Thank you.

PREPARED REMARKS BEFORE THE JUDICIARY COMMITTEE

Thank you very much, Mr. Chairman.

Thank you for allowing me to testify today. I am here to introduce Adalberto "Bert" Jose Jordan, who has been nominated by the President to serve as a judge on the 11th U.S. Circuit Court of Appeals.

Mr. Chairman, the judiciary committee plays the critical role of diligently evaluating each nominee. I know this committee will thoroughly examine the record and career of Judge Jordan. This committee is tasked with examining the record of each nominee to ensure that they have been properly vetted, that they respect the rule of law and the constitution.

I know each of you will have questions for Judge Jordan and will give his nomination to the 11th U.S. Circuit Court of Appeals the attention and consideration it deserves.

Judge Jordan certainly has extensive experience as an attorney and a judge in the state of Florida.

Judge Jordan's educational background speaks for itself. Judge Jordan earned both his bachelor's degree and his law degree from the University of Miami. ----A DOUBLE HURRICANE! Judge Jordan has been a U.S. District Court Judge for the Southern District of Florida for 12 years. At the time of his appointment to the bench he was only 37 years old. Since then, he has garnered a reputation as being a judge known for his intellect and abiding sense of fairness.

Judge Jordan remains an active and involved member of the Florida legal community. He continues to teach courses at the University of Miami School of Law and at Florida International University College of Law.

Judge Jordan's knowledge of the law is demonstrated, in part, by his work as chief of the appellate division in the Office

of the U.S. Attorney for the Southern District of Florida and his time as a practicing attorney. In 1987 Judge Jordan spent a year serving as a clerk to U.S. Supreme Court Justice Sandra Day O' Connor. In addition, he also served as a clerk to Judge Thomas Clark of the 11th Circuit Court of Appeals.

I am honored to introduce him today. Mr. Chairman, thank you for giving this nomination full consideration.

NOMINATION OF STEPHANIE DAWN THACKER, OF WEST VIRGINIA, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT; MICHAEL WALTER FITZGERALD, OF CALIFORNIA, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; RONNIE ABRAMS, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; RUDOLPH CONTRERAS, OF THE DISTRICT OF COLUMBIA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; AND MIRANDA DU, OF NEVADA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA

TUESDAY, OCTOBER 4, 2011

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

The Committee met, pursuant to notice, at 3:03 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Richard J. Durbin, presiding.

Present: Senators Durbin, Leahy, Coons, and Lee.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Good afternoon. This hearing of the Judiciary Committee will come to order.

Today we will consider five outstanding judicial nominees for the Federal bench: Stephanie Thacker, nominated to serve on the U.S. Court of Appeals for the Fourth Circuit; Ronnie Abrams, nominated to the Southern District of New York; Rudolph Contreras, nominated to the U.S. District Court Judge for the District of Columbia; Miranda Du, nominated to the District of Nevada; and Michael Fitzgerald, nominated to the Central District of California. Each of these nominees has the support of their home State Senators or, in the case of the District of Columbia nominee, the support of D.C. Delegate Eleanor Holmes Norton. I commend President Obama for

sending these nominees to the Senate, and I thank my colleague Senator Lee for joining me.

At these hearings it is traditional for nominees to be introduced to the Committee by Senators from their home States, and unless the Ranking Member has opening remarks, which I would invite him to make at this point, I am going to recognize our colleagues. So if you want to stay on their good side, please proceed.

STATEMENT OF HON. MIKE LEE, A U.S. SENATOR FROM THE STATE OF UTAH

Senator LEE. Thank you, Mr. Chairman. I join you in welcoming our nominees before us today.

Yesterday the Senate confirmed six Article III judicial nominees. This included the confirmation of Judge Jennifer Zipps, who will fill the seat held by the late Judge John Roll. The tragic and horrific events that took Judge Roll's life on January 8th of this year shook the judicial community and our Nation. I am pleased that Republicans and Democrats were able to come together to confirm her in an orderly and expeditious manner.

The Senate has confirmed 42 judicial nominees in this Congress alone so far. We have entered into a unanimous consent agreement to vote on four more judges next week. I applaud this progress, which I think demonstrates Ranking Member Grassley's commitment as well as that of the Republican members on this Committee to work with our Democratic colleagues in moving forward with consensus nominees.

Today marks the 15th nominations hearing held in the Judiciary Committee this year at which we have had the opportunity to speak with 65 judicial nominees. In total, 85 percent of President Obama's judicial nominees have received a hearing in this Congress. I think this speaks well both to President Obama's nomination process and to the ability of this Committee to work together on a bipartisan basis.

Today we will hear, among others, from Stephanie Thacker, who has been nominated by President Obama to the Fourth Circuit. Her hearing comes only 26 days after her nomination. I would note that none of President Bush's circuit court nominees were afforded a hearing that quickly, particularly those to the Fourth Circuit, where we had some issues with delay.

Yesterday marked the confirmation of President Obama's fifth nominee to serve on the Fourth Circuit. In 8 years only four of President Bush's Fourth Circuit nominees were confirmed. I hope my colleagues on the other side of the aisle are aware of the comparatively generous treatment afforded to President Obama's nominees, particularly those for the Fourth Circuit.

I welcome the nominees and their families to this Committee, and I realize that this is a very important day for all of them and look forward to hearing their testimony and responses to our questions.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Senator Lee. For the record, I believe that Senator Reid has filed cloture on 25 of President Obama's nominees that were on the calendar just a few days ago, but there has been remarkable signs of progress since, and I hope

that spirit continues with these nominees and those that are pending.

I was going to recognize Senator Reid first, and when he arrives, of course, he will be given precedence. But we will start in seniority, and I recognize my colleague and friend, Senator Jay Rockefeller.

PRESENTATION OF STEPHANIE DAWN THACKER, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, BY HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Senator Durbin and Senator Lee and Chairman Leahy, who was here, and all members of this Committee for having this very important hearing today.

My purpose is that I am deeply honored to put before you and introduce Stephanie Dawn Thacker, one of the finest judicial nominees I have ever known. I pay a lot of attention to this process. I am not a lawyer, but I pay a lot of attention.

She is joined by her husband, John Carr, also an esteemed lawyer; her sister, Samantha Sullivan, a teacher; and her nephew, Wade Sullivan, who has not picked his professional career yet.

Not present but I think watching very closely on television in West Virginia and surely beaming with pride is her mother, Katie Thacker, and her father, Rod Young.

Stephanie's family has many reasons to be proud of her, and she of them, and we are all fortunate for their dedication to their country and to Senator Manchin's and my home State.

For myself, I am impressed by Stephanie Thacker's superior intellect, her passion for the law, her unquestioned integrity, and her strong character. Another such person was my very dear friend, Judge M. Blane Michael, who served for more than 17 years in the very judicial seat on the Fourth Circuit to which Stephanie Thacker has been nominated. Like Judge Michael, Ms. Thacker will be a strong voice on the court, one who follows the law, defies pigeonholing; one who knows how to build consensus, often with a quick wit; always one who can couple deep legal analysis with an understanding of real-world impact.

Ms. Thacker graduated at the top of her undergraduate and law school classes, spent 12 years as a Federal prosecutor in working for the Department of Justice, fighting the most horrific crimes imaginable, and is now a top lawyer at one of West Virginia's most respected firms.

While at the Department of Justice, Ms. Thacker developed a unique expertise in the investigation and prosecution of child exploitation cases, winning difficult cases, helping to develop policy and initiatives, and as it turns out, training attorneys and law enforcement professionals around this country on that subject, and, indeed, around the world so as to prevent these terrible crimes.

One of her more lasting successes was working with the FBI and the National Center for Missing and Exploited Children to develop a nationwide initiative to combat child sex trafficking. As a result of this program, more than 1,600 children have been rescued, and more than 700 sex offenders have been convicted.

Ms. Thacker's accomplishments have earned her national recognition, including the very prestigious Attorney General's Distinguished Service Award. I have also brought copies of letters of commendation that she has received from Attorney General Gonzales, FBI Director Mueller, Senators Byrd, Chambliss, and Zell Miller, among others.

Ms. Thacker is striking to me for her groundedness. I am not sure if that is a word, but it has meaning to me. It is.

Senator DURBIN. When a Senator says it, it is a word.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

[Laughter.]

Senator ROCKEFELLER. She has never forgotten who she is or where she came from, and she calls upon that life experience every day. It is perhaps Ms. Thacker's upbringing—and I really believe this totally—that drove her to fight for justice every day and created in her an understanding that decisions that she made as a prosecutor and decisions, I hope, that she will make from the bench have a lasting impact on people's lives.

Like so many in our State, Ms. Thacker came from humble beginnings and went on by force of will, by force of intellectual heft, to chart a course of accomplishment for herself, her State, and her country. Stephanie Thacker is without doubt the perfect person for this vacancy on the Fourth Circuit Court of Appeals, and she has my unwavering support.

Senator DURBIN. Thank you, Senator Rockefeller.

I would like to recognize your colleague, Senator Manchin, regarding the same nominee.

PRESENTATION OF STEPHANIE DAWN THACKER, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, BY HON. JOE MANCHIN III, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator MANCHIN. Thank you, Mr. Chairman, and thank you, Senator Lee, and the Committee for inviting me here today. It is my privilege to join my senior Senator, Senator Rockefeller, in support of the nomination of Stephanie Dawn Thacker, a native of Hamlin, West Virginia, to the Fourth Circuit Court of Appeals.

I would first like to take a moment to recognize her husband, John Carr; her sister, Samantha; and her nephew, Wade. I am pleased that all of you were able to join us today for the very important hearing and also her family watching on television.

Stephanie Thacker's impressive background and extensive list of accomplishments in both the public and private sectors make her an exceptional candidate for the Fourth Circuit. She is renowned in our State for her mastery of the law and of the courtroom, and I have no doubt that she will make a highly successful Federal judge.

Ms. Thacker has dedicated much of her career to fighting some of the most reprehensible offenses, which Senator Rockefeller just mentioned, in our society. As a trial attorney, deputy chief of litigation, and principal deputy chief, she spent several years prosecuting cases on child exploitation and obscenity at the Department of Justice. Her outstanding work and leadership earned her a number of honors at DOJ, including four Meritorious Awards and two

Special Achievement Awards. Her impressive performance in prosecuting the case of *United States* v. *Dwight York* earned her the Attorney General's Distinguished Service Award, one of the Department's highest honors, and she was also a recipient of the Assistant Attorney General's Awards for Special Initiative and Outstanding Victim/Witness Service.

Prior to her service at the Department of Justice, Ms. Thacker worked with the U.S. Attorney's Office for the Southern District of West Virginia where she prosecuted a diversity of criminal cases, including money laundering and fraud. While at the U.S. Attorney's Office, Ms. Thacker also participated on the trial team prosecuting *United States* v. *Bailey*, the first case ever brought under the Violence Against Women Act.

Since 2006, Ms. Thacker has been a partner at the prestigious law firm of Guthrie & Thomas in Charleston. While at the firm, she has concentrated on cases involving product liability, environmental and toxic torts, complex commercial defense, and criminal defense. Ms. Thacker was a model student in both her undergraduate and legal studies. She earned her Bachelor's degree in business administration magna cum laude from Marshall University and her J.D. Order of the Coif from West Virginia University College of Law. While at WVU, she was the recipient of the Robert L. Griffin Memorial Scholarship and editor of West Virginia Law Review's Coal Issue. She has also recently been named Outstanding Female Attorney by WVU Law's Women's Caucus.

I believe that Ms. Thacker's wide-ranging expertise in civil and criminal matters, her impressive track record in the courtroom as both a prosecutor and a defense attorney, and her outstanding academic accomplishments will make her a first-rate addition to the Fourth Circuit. I am proud to call her a fellow West Virginian, and I hope that the Committee will move to confirm her for the vacancy quickly.

Along with Senator Rockefeller, I want to thank the Chairman and members of the Committee. I welcome the opportunity to work with all of you to confirm Ms. Thacker in a timely manner.

Thank you.

Senator DURBIN. Thank you, Senator Manchin and Senator Rockefeller. You are welcome to stay. I know you have busy schedules. The nominees certainly do appreciate the presence and testimony of each Senator, but if you would like to leave at this moment, you are certainly welcome to. Thank you again for coming to this Judiciary Committee hearing.

I now will recognize Senator Barbara Boxer, and she will address the nominee, Michael Fitzgerald, nominated to the Central District of California.

PRESENTATION OF MICHAEL WALTER FITZGERALD, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, BY HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Thank you so much, Senator Durbin, Senator Lee. It is an honor to appear before you, and it is an honor to support the nomination of Michael Fitzgerald. I would ask him to stand, if he would. And I want to also welcome his family. I believe

they are here. His dad, if he could stand. James, would you stand? James Fitzgerald, an army combat veteran of the Korean War and a retired mathematics teacher. His mom, Vivianne, a retired registered nurse. His twin brother, Patrick—let us see; yes, I see that—a Federal prosecutor who lives in Los Angeles. But before they sit down, I want to say that James and Vivianne recently celebrated their 57th wedding anniversary.

Senator DURBIN. Congratulations.

Senator BOXER. So we are thrilled that you are here so soon after that.

I had the privilege of recommending Michael to President Obama to serve on the Central District Court. A respected member of the Los Angeles legal community, he will make an excellent addition to the bench. He has deep roots in the city of Los Angeles. He and his brother are the fourth generation of their family to live in Los Angeles. Fourth generation to live in Los Angeles.

Michael received his Bachelor's degree from Harvard, graduating magna cum laude while working his way through school as a bus boy.

He went on to receive a law degree from the University of California at Berkeley, where he also graduated with honors.

After clerking on the Second Circuit Court of Appeals in New York, Michael worked for a year with a private law firm in L.A. before becoming a Federal prosecutor. As a Federal prosecutor, he served on the Organized Crime and Drug Enforcement Task Force within the Central District U.S. Attorney's Office where he prosecuted international drug rings and money laundering, including what was at the time the second largest cocaine seizure in California history.

After leaving the U.S. Attorney's Office in 1991, Michael has been in private practice where he handled complex criminal and civil cases as well as investigations by Federal agencies. Michael has remained committed to public service during his time in private practice. He has maintained an active pro bono practice. He served as counsel to the Board of Police Commissioners, which sets policy and oversees operations for the Los Angeles Police Department. He also served as deputy general counsel for the Rampart Independent Task Force which reviewed the operations of a section of the LAPD.

Now, during his career Michael has tried 26 cases to verdict, the overwhelming majority of them before a jury. Currently 60 percent of his practice is in Federal court, so he is very familiar with the Central District practices and procedures. His rating? He received a rating of unanimously well qualified by the ABA. Listen to what some respected members of the law enforcement and legal community say about him.

Veteran Anaheim police lieutenant John Quisano, who worked with Michael in prosecuting cocaine traffickers and money launderers, said the following: "Michael's knowledge of the law, his courtroom demeanor, his interpersonal skills, and his sense of fairness played a major role in the successful prosecution of our cases. He will be an outstanding Federal judge."

Former Republican-appointed U.S. Attorney and Federal Judge Robert Bonner said: "If confirmed, Mike would bring a background,

experience, and understanding of both the civil and criminal side of the work of a U.S. district judge. I believe Mike will make an outstanding Federal judge."

And the last reference I would read a bit of is from Representative Adam Schiff, who served with Michael as a Federal prosecutor, who said: "I believe he has the background, experience, integrity, intellect, and reputation in the community that will serve him well as a U.S. district court judge and reflect well on the judiciary." And with your permission, Senator Durbin, would it be all right to include letters from those three outstanding citizens into the record at this time?

Senator DURBIN. Without objection.

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

Senator BOXER. So, in closing, it is clear—and I hope it is clear to you both and will be to the Committee as a whole—that Michael's record in the public and private sector demonstrates that he is a brilliant lawyer. He is a distinguished member of the legal community, and I am very confident he will make an excellent judge.

I close by congratulating Michael for everything he has done up to now. I congratulate his family for obviously bringing up two sons very well. And I urge my colleagues in the Senate to move quickly to confirm Michael to the Federal bench.

I thank you very much.

Senator DURBIN. Thank you for joining us.

Senator BOXER. And I would ask to be excused at this time.

Senator DURBIN. Of course. I just want for the record to note that Senator Feinstein has also submitted a positive blue slip, which is the process used in this Committee, supporting this nominee, Michael Fitzgerald. Thank you very much, Senator Boxer.

Senator BOXER. Thank you, Senator.

Senator DURBIN. Senator Feinstein will be submitting a statement for the record.

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

Senator DURBIN. At this point I would like to recognize the Majority Leader of the U.S. Senate, Senator Harry Reid of Nevada.

PRESENTATION OF MIRANDA DU, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA, BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. I apologize to you and Senator Lee for being tardy, but I had a little debate with the Republican Leader on the floor that took quite a while on the legislation that is now before the Senate, so I apologize for not being here when I was supposed to be.

I am really happy to be able to introduce Miranda Du to the Judiciary Committee and to the U.S. Senate. I received her name from one of my boys who is a lawyer in Reno, Nevada. He is a trial lawyer. I am very proud of the work that he has done. And he said, "Dad, if you have an opening on the Federal bench of any kind, you should look at this woman called Miranda Du." He said, "She has a reputation that is really terrific." She comes from a law firm—we have a Federal judge, by the way, a Republican, who has done

an outstanding job on the bench, Larry Hicks, who came from the same law firm, a prestigious law firm, McDonald & Carano. It is a wonderful law firm. She has been with that law firm for the time basically that she has been out of law school.

I want to, before I give a little background of Miranda Du, introduce her, Miranda Du; her dad, Peter; her mom, Tina; her sister, Victoria; her brother-in-law, Andy; her nephew, Ethan; her brother, Joe; and the senior partner—well, nearly that way, the other people have all retired—John Frankovich, who is an outstanding lawyer who runs that law firm from which she comes, a very fine prominent lawyer, and it is wonderful that she brought these people with her, her family and John Frankovich.

Miranda Du's story is that is an American success story. This woman, who is going to become a fine judge, is an experienced litigator. She has a love and appreciation for the State of Nevada and a dedication to public service. This woman was born in Vietnam. She was a boat child. She and her family left Vietnam by boat when she was 8 years old. She spent a year in refugee camps in Malaysia before she came to America. They sent her and her family to Alabama.

When she arrived and started school as a third grader, she did not speak a word of English. She speaks fluent English, certainly better than mine. She is such a brilliant woman that overcoming this language barrier was child's play for her.

After arriving in Alabama, her dad worked on a dairy farm. Her family later moved to California. She received a Bachelor's degree with honors in history and economics from the University of California at David and then her law degree from the University of California at Berkeley, the famous Boalt Hall.

I am so happy that I was able to find this woman to become a Federal judge. And, by the way, my son who recommended her name is one of Dean Heller's very close personal friends, and it is a good thing Heller likes her or I would sic my son on him.

[Laughter.]

Senator DURBIN. Thank you very much, Majority Leader, Reid, and I know you have a busy schedule, but we thank you for being here.

Senator REID. I do not want to leave until I hear Heller.

[Laughter.]

Senator DURBIN. Senator Dean Heller.

PRESENTATION OF MIRANDA DU, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA, BY HON. DEAN HELLER, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator HELLER. Thank you very much. Thank you, Mr. Chairman, and to the Ranking Member and the members of the Committee, it is an honor to be here. Actually today is my first opportunity I have had to address the Committee, and it is a privilege to introduce a fellow Nevadan, Miranda Du, to you this afternoon. And it is an honor also to be here with Senator Reid and to be able to promote this candidate for judgeship, which I believe will work very well with this Committee. I want to welcome her husband. I want to thank John Frankovich for his support of her over the years. We are very privileged to have her with us today.

The Senate has a solemn responsibility to make sure that judicial vacancies and nominations are addressed in a timely manner. Having spoken to Federal judges in Nevada, I understand the significant workload facing our understaffed Federal judiciary and the need to fill vacancies with qualified candidates who will uphold America's principles of equal justice under the law. And I believe Miranda Du will make an outstanding district court judge in the great State of Nevada.

Ms. Du earned her B.A. of economics and history from UC-Davis in 1991, graduated from UC-Berkeley's law school in 1994, and she is currently employed as a partner at McDonald Carano Wilson, as Senator Reid mentioned, where she has chaired the firm's employment and labor law group since 2003.

Her experience covers every phase of litigation from discovery, motion practice, and trial through appeal before the Nevada Supreme Court and the Ninth Circuit Court of Appeals. Ms. Du has earned the respect of her colleagues within the legal community, particularly for involvement in employment law, and has successfully tried a number of jury trial cases to completion.

Her work has been featured in numerous professional publications, including Northern Nevada Business Weekly and educational materials for Lorman Education and the National Business Institute.

In addition to her professional background, Ms. Du is an active member of the broader northern Nevada community. She serves as a commissioner of the Nevada Commission on Economic Development, which focuses on developing and maintaining a diverse, healthy economic base in our State. Ms. Du is a board member of the Nevada's Women's Fund and has been recognized by Super Lawyers Magazine as a rising star and was featured as one of the Top 20 Under 40 Young Professionals in the Reno-Tahoe area.

Ms. Du comes before the Committee not just with the support of Nevada's Senators, myself and Senator Reid, but Governor Brian Sandoval, Lieutenant Governor Brian Krolicki, numerous mayors, as well as State and local organizations ranging from the Nevada Chapter of AGC to Nevada Committee to Aid Abused Women.

Again, I want to thank you for the chance to introduce this exceptional Nevadan to the Committee, and I look forward to her testimony as well as the Committee's consideration of her nomination. And, again, I am honored for the opportunity to present her before you with Senator Reid.

Thank you.

Senator DURBIN. Thank you very much, Senator Heller. And I might note that the Judiciary Committee has received six letters in support of Ms. Du's nomination, including from the Republican Governor of Nevada, Brian Sandoval; the Republican Lieutenant Governor, Brian Krolicki; and the Republican mayor of Reno, Robert Cashell—each of whom has personally worked with her.

Thank you again, Senator Heller.

I would like to turn to Senator Gillibrand and let her proceed.

PRESENTATION OF RONNIE ABRAMS, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, BY HON. KIRSTEN E. GILLIBRAND, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator GILLIBRAND. Thank you, Mr. Chairman, and thank you, Senator Lee. I am very honored to be here today to introduce Ronnie Abrams, and I am very pleased to offer my strong support for her nomination to the United States District Court for the Southern District of New York.

Ronnie was born to a family with a heart of service, advocacy, and dedication to human rights. I want to recognize her parents who are here and her brother. I also want to recognize her husband, Greg Andres, who is also a prosecutor at the Department of Justice, and her three beautiful daughters who are accompanying her here today.

I want to thank President Obama for acting on my recommendation and nominating another superbly qualified female jurist to the Federal bench. I have had the privilege of knowing Ms. Abrams for many years. I know her as a fair-minded, brilliant attorney of great integrity. Throughout her distinguished legal career, she has proven herself as an exceptional, well-respected attorney.

As Deputy Chief of the Criminal Division at the U.S. Attorney's Office in the Southern District of New York, she supervised 160 prosecutions of violent crime, organized crime, white-collar crime, public corruption, drug trafficking, and computer crime. She helped shape the policy and management of the U.S. Attorney's Office, guiding its success in a broad range of high-level, high-stakes cases.

Her record shows her commitment to justice, and I can tell you she has a deep and sincere commitment to public service. There is no question that Ms. Abrams is extremely well qualified and well suited to serve as a Federal court judge.

But beyond all her superb and outstanding legal qualifications, she also brings the unique perspective as a daughter, a wife, and a mother. I strongly believe this country needs more women like her serving in the Federal judiciary, an institution that I believe needs more exceptional and extraordinary women.

Over the last several years, the number of women in the Federal judiciary has stagnated, hovering at roughly 500, less than a third of the Federal bench. And while it is true that women have come a very long way in filling the ranks in the legal world, we still have a long way to go. I believe it is incredibly important that we do, because when we reach parity on the Federal bench, I believe that we will achieve greater fairness and justice throughout our legal system. I have no doubt that having Ms. Abrams serving in the Federal judiciary will bring us closer to that goal.

I was extraordinarily honored to recommend her for this position, and I urge a swift approval of her nomination. Thank you.

Senator DURBIN. Thank you very much, Senator Gillibrand. Let me note for the record that your colleague, Senator Charles Schumer, has also indicated his positive support of her nomination, and I understand that our colleague on the Committee, Senator Coons, would like to make a statement at this time.

STATEMENT OF HON. CHRISTOPHER COONS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator COONS. Thank you very much, Senator Durbin, Mr. Chairman, and thank you for the opportunity to add, if I can briefly, to Senator Gillibrand's eloquent advocacy on behalf of Ms. Abrams, whom I have known from our days together at law school and whom I also view as someone who is from a family with a heart for service, someone with the sort of stunning intellect that could have qualified her for service of any kind, but who instead chose to dedicate her adult life to public service, both as a prosecutor and as an Assistant U.S. Attorney, and then ultimately in a decade of service as chief of the crimes unit, as you heard Senator Gillibrand mention, but now in her current role with Davis Polk as someone leading pro bono cases and who has had really signal success in bringing a wide range of actions that did everything from ensuring that men and women of our armed forces received the benefits to which they were entitled, to making sure that working men and women received the pay to which they were entitled by virtue of having earned it.

I think her career at the bar suggests that we continue to have in this Nation women, and men—but in this case I think it is particularly important that we add to the women of the bar—who have an outstanding education, a great grounding in values and in a family tradition of service, and who are willing to step up and take on the very real challenges of serving on the bench in a way that respects our law and our Nation.

So I am grateful, Senator Durbin, for a chance to briefly add my voice to those who speak in strong support of the nominee from the State of New York. Thank you, sir.

Senator DURBIN. Thank you, Senator Coons, and thank you again, Senator Gillibrand.

I would now like to recognize the Delegate from the District of Columbia, Eleanor Holmes Norton, who is here to speak on behalf of Rudolph Contreras. Delegate Norton.

PRESENTATION OF RUDOLPH CONTRERAS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, BY HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Delegate NORTON. First, Senator Durbin, I want to thank you once again for the invaluable assistance you have been to the District of Columbia over the years.

As you are aware, President Obama gave me the courtesy to recommend Federal district court judges, and it is a very special experience and honor to recommend to you today Rudolph Contreras, a very accomplished lawyer of great intellect.

Mr. Contreras is another of these remarkable American success stories of first-generation Americans who become Federal judges. Mr. Contreras is the son of Cuban immigrants. He was born in New York and raised in Miami. I am pleased that his family is here: his mother, Amparo Contreras; his wife, Karen McSweeney; his two children, Brian Contreras and Claire Contreras.

Mr. Contreras went to the University of Pennsylvania Law School where he was cum laude Order of the Coif and a member

of the Law Review. He began his career as a corporate litigator at Jones Day. He was hired out of Jones Day by then-U.S. Attorney for the District of Columbia Eric Holder, now Attorney General of the United States, who calls Mr. Contreras one of his "best hires."

Mr. Contreras now heads the Civil Division of the Office of the U.S. Attorney for the District of Columbia, and I know that two judges on our district court also headed the Civil Division before becoming judges on that court, and I am pleased that one of them is here, the chief judge, Royce Lamberth. I don't know if this is a stepping stone to becoming a district court judge or not, but Mr. Contreras will be the third in this group.

After serving a number of years in a senior position at the U.S. Attorney's Office of the District of Columbia, Mr. Contreras was stolen away by the U.S. Attorney for the District of Delaware, and after serving there with accolades for 3 years, we were fortunate to attract him back to the District of Columbia, where he has been chief of the Civil Division.

Mr. Contreras has earned universal praise from all who have worked for him about his qualifications to sit on the court. I believe his confirmation will be assured should this Committee determine to approve him. I am pleased to recommend that you, in fact, approve Rudolph Contreras to be a judge on the United States District Court for the District of Columbia, and I thank you very much, Mr. Chairman.

Senator DURBIN. Delegate Norton, thank you for joining us again today, and thank you for your fine work for the people of the District of Columbia. My thanks as well to my colleagues Senator Rockefeller and Senator Gillibrand for being here with our other colleagues who had to step away.

We are going to bring the nominees before us, first the nominee for the circuit court, and ask a few questions of them for the record, and these introductions have certainly prepared the Committee to look in a positive way toward the backgrounds of each of the nominees.

As is the custom in the Committee, the first nominee will be the Fourth Circuit nominee, Stephanie Thacker, if she would please come to the witness table.

As is the custom of the Committee, I ask you to please raise your right hand. Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. THACKER. I do.

Senator DURBIN. Thank you. Let the record reflect that the witness answered in the affirmative.

Ms. Thacker, I now give you the floor for an opening statement or introduction of family and friends, whatever you would like to put before the Committee.

STATEMENT OF STEPHANIE DAWN THACKER, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

Ms. THACKER. Thank you, Senator Durbin.

First I want to express my appreciation to the President of the United States, President Obama, for nominating me to this important position. I also want to thank Senator Rockefeller for his

heartfelt recommendation and Senator Manchin for his strong support.

In addition to those members of my family that are here today and those that were recognized by Senator Manchin and Senator Rockefeller, I would also like to acknowledge my brother and sister back in West Virginia: my brother, Dr. Alan Young, and my sister, Stacey Young Issa.

Also, although she passed away several years ago now, I want to specifically recognize today my grandmother, Ruth Thacker, who was and remains an important force in my life, and I know she is with me in spirit today.

Senator, I am truly humbled to sit before you today, and I look forward to answering any questions you may have of me.

[The biographical information of Ms. Thacker follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Stephanie Dawn Thacker (since 1990)
   Stephanie Dawn Young

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

   United States Circuit Judge for the Fourth Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   500 Lee Street, East
   Suite 800
   Charleston, West Virginia 25301

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

   1965; Huntington, West Virginia

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1987 – 1990, West Virginia University College of Law; J.D., with honors, 1990

   1983 – 1987, Marshall University; B.A., *magna cum laude*, 1987

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2006 – present
Guthrie & Thomas (formerly known as Allen, Guthrie, McHugh & Thomas and Allen, Guthrie & Thomas)
500 Lee Street, East
Suite 800
Charleston, West Virginia 25301
Member

1999 – 2006
United States Department of Justice
Child Exploitation and Obscenity Section
1400 New York Avenue, Sixth Floor
Washington, D.C. 20530
Principal Deputy Chief (2004 – 2006)
Deputy Chief for Litigation (2002 – 2004)
Trial Attorney (1999 – 2002)

1994 – 1999
United States Attorney's Office for the Southern District of West Virginia
Robert C. Byrd United States Courthouse
300 Virginia Street, East
Suite 4000
Charleston, West Virginia 25301
Assistant United States Attorney

1992 – 1994
King, Betts & Allen (now Guthrie & Thomas)
1300 Bank One Center (now the Chase Building)
Charleston, West Virginia 25301
Associate

1992
West Virginia Office of the Attorney General
Environmental Division
West Virginia State Capitol Building 1
Room 26-E
Charleston, West Virginia 25305
Assistant Attorney General

1990 – 1992
Kirkpatrick & Lockhart (now K&L Gates)
K&L Gates Center
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222
Associate

Summers 1988 & 1989
Goodwin & Goodwin
300 Summers Street
Suite 1500
Charleston, West Virginia 25301
Summer Law Clerk

Summer 1987
US Food Service (formerly Standard Food Service)
2575 Virginia Avenue
Hurricane, West Virginia 25526
Summer Office Clerk

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I was not required to register for the selective service.

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

   Professional
   West Virginia University College of Law Women's Law Caucus Outstanding Female Attorney, Law Firm Division (2011)
   Assistant Attorney General's Award for Special Initiative (2005)
   United States Department of Justice Special Achievement Award (2005)
   Assistant Attorney General's Award for Outstanding Victim/Witness Service (2004)
   The Attorney General's Award for Distinguished Service (2004)
   United States Department of Justice Meritorious Award (2004)
   United States Department of Justice Special Achievement Award (2003)
   United States Department of Justice Meritorious Award (2002)
   United States Department of Justice Meritorious Award (2001)
   United States Department of Justice Meritorious Award (2000)
   Nomination for the Younger Federal Lawyer Award (2000)

   Law School
   Order of the Coif
   West Virginia Law Review (Volume 92 Coal Issue Editor)
   Robert L. Griffin Memorial Scholarship

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

   American Bar Association

   Defense Research Institute

   Governor's Family Violence Coordinating Council of West Virginia

   Judge John A. Field, Jr. American Inn of Court

   West Virginia Domestic Violence Protocol Review Committee

   West Virginia State Bar Association

10. **Bar and Court Admission**:

    a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

       Pennsylvania, 1990 (inactive since 1994)
       West Virginia, 1992

       There have been no lapses in membership.

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

       United States Court of Appeals for the Fourth Circuit, 1994
       United States District Court for the Northern District of West Virginia, 2010
       United States District Court for the Southern District of West Virginia, 1994
       United States District Court for the Western District of Pennsylvania, 1990
       Pennsylvania Supreme Court, 1990
       West Virginia Supreme Court, 1992

11. **Memberships**:

    a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Charleston Tennis Club (2008 – present)

Keep a Child in School Program (1997 – 1999)

Marshall University Alumni Association (2000 – present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

As far as I am aware, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Sexual Molestation Within America's Parishes and Congregations; Should the Church Be "Thy Priest's Keeper?" 91 W. Va. L. Rev. 1097 (1989). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Ann P. Dooley, Janis H. Kockritz & Stephanie D. Thacker, *Federal Child Support Prosecution Handbook*, United States Department of Justice. This Handbook constitutes attorney work product and is not supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

To the best of my recollection, I have not given any such testimony, official statements or other communications.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

March 17, 2011: West Virginia University College of Law, Child Protection and the Law course (Morgantown, WV). I gave a lecture on federal criminal statutes and case law applicable to child protection issues. Outline supplied.

March 14, 2011: West Virginia University College of Law Women's Law Caucus (Morgantown, WV). When accepting the Outstanding Female Attorney, Law Firm Division Award, I spoke about women in the law and the path of my legal career. I have no notes, transcripts or recordings. The address of the school is One Law Center Drive, Morgantown, West Virginia 26506.

February 28, 2011: I participated at a town hall meeting and answered questions from the public about the settlement in the Spelter smelter lawsuit that I handled. I have no notes, transcript or recording, but press coverage is supplied.

March 18, 2010: West Virginia University College of Law, Child Protection and the Law course (Morgantown, WV). I gave a lecture on federal criminal statutes and case law applicable to child protection issues. I used the same outline for this presentation as I supplied for the March 17, 2011 presentation.

November 2005: Department of Justice Overseas Prosecutorial Development Assistance and Training Section (Calverton, MD). I gave a presentation to a delegation of Russian government officials, law enforcement officials and prosecutors regarding the prosecution of federal child exploitation cases, including the various federal criminal statutes that can be brought to bear in such cases with an emphasis on international initiatives and cooperation. I have no notes, transcripts or recordings. The address of the organization is 1331 F Street, NW, 4th Floor, Washington, D.C. 20004.

September 13-15, 2005: Mountain State Victim Assistance Symposium sponsored by the United States Attorney's Office for the Southern District of

West Virginia (Charleston, WV). I gave a presentation entitled "Federal Tools to Combat Child Sexual Exploitation." I have no notes, transcripts or recordings. The address of the United States Attorney's Office is 300 Virginia Street, Suite 4000, Charleston, West Virginia 25301.

May 16-20, 2005: Bureau of Immigration and Customs Enforcement Cybercrimes Conference (Cluj, Romania). I gave a presentation entitled "Child Sexual Exploitation: An International Perspective." I have no notes, transcripts or recordings. The address of the Bureau of Immigration and Customs Enforcement, Child Exploitation Investigations Center is 11320 Random Hills Road, Suite 400, Fairfax, Virginia 22030.

October 18-21, 2004: Department of Justice Asset Forfeiture and Money Laundering Section Conference on Forfeiting the Proceeds of Human Trafficking (Prague, Czech Republic). I gave a presentation entitled "Sex Trafficking: A Discussion of International Efforts." I have no notes, transcripts or recordings. The address of the Department of Justice Asset Forfeiture and Money Laundering Section is 1400 New York Avenue, NW, Washington, D.C. 20005.

August 27, 2004: United States Postal Inspectors' In-Service Training (Dallas, TX). I gave a presentation entitled "Legal Issues in Child Exploitation and Obscenity Investigations," discussing the considerations and steps that should be taken during an investigation to assure evidence is properly obtained in order to avoid potential defenses that may be raised in child exploitation and obscenity cases. I have no notes, transcripts or recordings. The address of the organization is 14800 Trinity Boulevard, Suite 600, Fort Worth, Texas 76155.

August 26, 2004: National Crimes Against Children Conference (Dallas, TX). I spoke about the investigation and prosecution of Dwight York for various child exploitation and money laundering crimes in the Middle District of Georgia. I have no notes, transcripts or recordings. The address of the Dallas Children's Advocacy Center is P.O. Box 720338, Dallas, Texas 75372.

August 25, 2004: National Crimes Against Children Conference (Dallas, TX). I gave a presentation entitled "National Child Prostitution Initiative: Innocence Lost," discussing the statistical backdrop for commercial child exploitation crimes and the national initiative of the Department of Justice, the Federal Bureau of Investigation, and the National Center for Missing and Exploited Children, which I helped to develop and coordinate. I have no notes, transcripts or recordings. The address of the Dallas Children's Advocacy Center is P.O. Box 720338, Dallas, Texas 75372.

June 2-5, 2004: Kentucky Internet Crimes Against Children Conference, Eastern Kentucky University (Richmond, KY). I gave a presentation entitled "Child Exploitation and Obscenity: National Strategy." I have no notes, transcripts or

recordings. The address of the Kentucky Internet Crimes Against Children Task Force is 919 Versailles Road, Frankfurt, Kentucky 40601.

March 31, 2004: Federal Bureau of Investigation Advanced Crimes Against Children Course (Arlington, VA). I gave a presentation entitled "Overview of Child Exploitation Investigation and Prosecution Strategies." I have no notes, transcripts or recordings. The address of the FBI Violent Crime and Major Offenders Section, Crimes Against Children Unit is 935 Pennsylvania Avenue, NW, Room 11163, Washington, D.C. 20535.

March 15-19, 2004: Department of Justice Child Exploitation and Obscenity Section Advanced Child Exploitation Seminar, National Advocacy Center (Charleston, SC). I gave a presentation entitled "Dynamics of Child Prostitution and Sex Tourism." I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 28, 2003: Atlanta United States Secret Service Electronic Crimes Task Force (Atlanta, GA). I gave a presentation entitled "Investigative Techniques, Potential Defenses, and Relevant Case Law in Child Exploitation Investigations," discussing considerations and steps that should be taken during an investigation to assure evidence is properly obtained in order to avoid potential defenses that may be raised in child exploitation cases. I have no notes, transcripts or recordings. The address of the United States Secret Service Electronic Crimes Task Force is 401 West Peachtree Street, NW #2906, Atlanta, Georgia 30308.

July 14-18, 2003: Department of Justice Child Exploitation and Obscenity Section Advanced Child Exploitation Seminar, National Advocacy Center (Charleston, SC). I gave a presentation entitled "Overview of Federal Criminal Child Exploitation Statutes" and participated in a panel discussion on "Proof of 'Minor' Post-*Free Speech Coalition v. Ashcroft*." I discussed the various federal criminal statutes relevant to child sexual exploitation cases and the various methods of proving the 'minor' element in those cases following the Supreme Court's decision in *Free Speech Coalition v. Ashcroft*. I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 3-8, 2003: Department of Justice Criminal Trial Advocacy Course, National Advocacy Center (Charleston, SC). I served as an instructor during mock courtroom exercises. I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 21-23, 2003: California Independent Cities Association 15th Annual Winter Seminar (Santa Barbara, CA). I gave a keynote speech entitled "Security and Safety of Our Children" that discussed statistics regarding crimes against

children as well as various state, local, and federal law enforcement resources and tips for protecting children from sexual exploitation. I have no notes, transcripts or recordings. The address of the Association is 335-B Center Street, El Segundo, California 90245.

December 19, 2002: United States Customs Service Cybercrimes Investigation Course, Federal Law Enforcement Training Center (Glynco, GA). I gave a presentation entitled "Meeting Defenses in Child Exploitation Prosecutions." I have no notes, transcripts or recordings. The address of the Training Center is 1131 Chapel Crossing Road, Glynco, Georgia 31524.

December 6-10, 2002: International Law Society for the Reform of Criminal Law, 16th International Conference (Charleston, SC). I gave a presentation entitled "Criminal Responsibility for Child Pornography" discussing the various federal criminal child pornography statutes and sentencing schemes in the United States. I have no notes, transcripts or recordings. The address of the Society is 840 Howe Street, Suite 1000, Vancouver, British Columbia, Canada V6Z 2M1.

July 25, 2002: United States Secret Service Electronic Crimes Task Force Training (Miami, FL). I gave a presentation entitled "Meeting Defenses in Child Exploitation Prosecutions." I have no notes, transcripts or recordings. The address of the Task Force is 10350 NW 112th Avenue, Miami, Florida 33178.

July 8-12, 2002: Department of Justice Child Exploitation and Obscenity Section Advanced Child Exploitation Seminar, National Advocacy Center (Charleston, SC). I gave a presentation entitled "Sentencing Issues" that discussed sentencing guideline calculations with respect to child exploitation cases. I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 27, 2002: Department of Justice Computer Crimes and Intellectual Property Section Cybercrimes Seminar, National Advocacy Center (Charleston, SC). I gave a presentation entitled "Travel Statutes: Elements and Legal Issues" that discussed the prosecution of federal child exploitation cases in which the offender used the Internet to engage in travel to commit crimes against children. I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 12, 2002: United States Department of Health and Human Services and Department of Justice Project Save Our Children Task Force Kickoff (Boston, MA). I gave a presentation entitled "The Role of the Department of Justice in Federal Child Support Prosecutions." I have no notes, transcripts or recordings. The address of the United States Department of Health and Human Services, Office of Child Support Enforcement, Administration of Children and Families is 370 L'Enfant Promenade, SW, Washington, D.C. 20447.

May 20-23, 2002: Army Trial Counsel Assistance Program Conference (West Point, NY). I gave a presentation entitled "Investigation and Prosecution of Child Sexual Exploitation Cases." I have no notes, transcripts or recordings. The address of the Army Trial Counsel Assistance Program is 901 North Stuart Street, Suite 300, Arlington, Virginia 22203.

March 18-22, 2002: Federal Bureau of Investigation Crimes Against Children In-Service Agent Training (Alexandria, VA). I gave a presentation entitled "Legal Considerations in the Investigation of Child Pornography and Child Sexual Exploitation Cases." I have no notes, transcripts or recordings. The address of the FBI Violent Crime and Major Offenders Section, Crimes Against Children Unit is 935 Pennsylvania Avenue, NW, Room 11163, Washington, D.C. 20535.

March 11-14, 2002: Army Trial Counsel Assistance Program Conference (Chiemsee, Germany). I gave a presentation entitled "Investigation and Prosecution of Child Sexual Exploitation Cases." I have no notes, transcripts or recordings. The address of the Army Trial Counsel Assistance Program is 901 North Stuart Street, Suite 300, Arlington, Virginia 22203.

December 3-7, 2001: Armed Forces European Circuit Workshop (Chiemsee, Germany). I gave a presentation entitled "Investigation and Prosecution of Child Sexual Exploitation Cases." I have no notes, transcripts or recordings. The address of the United States Air Force Legal Operations, Government Trial and Appellate Counsel is 1500 West Perimeter Road, Suite 1190, Joint Base Andrews, Maryland 20762.

July 16-20, 2001: Department of Justice Child Exploitation and Obscenity Section Seminar, National Advocacy Center (Charleston, SC). I gave a presentation entitled "Travel Statutes: Elements, Legal Issues, and Proving the Case." I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 13-15, 2001: Department of Justice and United States Department of Health and Human Services Federal Child Support Enforcement Seminar, National Advocacy Center (Columbia, SC). I gave a presentation entitled "Federal Child Support Recovery Act: Elements and Legal Issues." I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 7, 2001: Department of Justice Computer Crimes and Intellectual Property Section Cybercrimes Seminar, National Advocacy Center (Columbia, SC). I gave a presentation entitled "Travel Statutes: Elements and Legal Issues" and participated in a panel discussion regarding evidentiary issues in computer crime cases. I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 12-15, 2001: Federal Bureau of Investigation Crimes Against Children Conference (Manila, Philippines). I gave a presentation entitled "Federal Statutes Used to Combat Child Pornography and Exploitation: Elements and Legal Issues." I have no notes, transcripts or recordings. The address of the FBI Violent Crime and Major Offenders Section, Crimes Against Children Unit is 935 Pennsylvania Avenue, NW, Room 11163, Washington, D.C. 20535.

October 24, 2000: United States Attorney's Office, Western District of Oklahoma, Internet Crimes Conference (Oklahoma City, OK). I gave a presentation entitled "Federal Criminal Child Pornography and Exploitation Statutes: Elements and Legal Issues." I have no notes, transcripts or recordings. The address of the United States Attorney's Office is 210 Park Avenue, Suite 400, Oklahoma City, Oklahoma 73102.

October 10-12, 2000: United States Attorney's Office, Western District of Kentucky Crimes Against Children Seminar (Louisville, KY). I gave a presentation entitled "Federal Criminal Child Pornography and Exploitation Statutes and Investigations: Elements and Legal Issues." I have no notes, transcripts or recordings. The address of the United States Attorney's Office is 510 West & Broadway, Louisville, Kentucky 40202.

September 13-15, 2000: West Virginia Division of Criminal Justice and United States Attorney's Offices, Northern and Southern Districts of West Virginia, Juvenile Justice Conference (Charleston, WV). I gave a presentation entitled "Federal Investigation and Prosecution of Crimes Against Children." I have no notes, transcripts or recordings. The address of the United States Attorney's Office is 300 Virginia Street, Suite 4000, Charleston, West Virginia 25301.

May 31 – June 2, 2000: Department of Justice and United States Department of Health and Human Services Federal Child Support Enforcement Seminar, National Advocacy Center (Columbia, SC). I gave a presentation entitled "Federal Child Support Recovery Act: Elements and Legal Issues." I have no notes, transcripts or recordings. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 3, 2000: United States Department of Health and Human Services Child Support Enforcement Best Practices Conference (San Antonio, TX). I gave a presentation entitled "Federal Child Support Recovery Act: Department of Justice Perspective." I have no notes, transcripts or recordings. The address of the Office of Child Support Enforcement, Administration of Children and Families is 370 L'Enfant Promenade, SW, Washington, D.C. 20447.

April 19-20, 2000: Federal Bureau of Investigation Internet Exploitation of Children Seminar (San Antonio, TX). I gave a presentation entitled "Federal Criminal Child Pornography and Exploitation Statutes and Investigations: Elements and Legal Issues." I have no notes, transcripts or recordings. The

address of the FBI office is 5740 University Heights Boulevard, San Antonio, Texas 78249.

March 13-15, 2000: Department of Justice Child Exploitation and Obscenity Section and United States Attorney's Office, Southern District of Georgia Crimes Against Children Seminar (Savannah, GA). I gave a presentation entitled "Federal Child Support Recovery Act: Elements and Legal Issues." I have no notes, transcripts or recordings. The address of the United States Attorney's Office for the Southern District of Georgia is 100 Bull Street, Second Floor, Savannah, Georgia 31401.

October 28-29, 1999: United States Department of Health and Human Services New England Child Support Enforcement Training Conference (Hyannis, MA). I gave a presentation entitled "Elements of Federal Child Support Recovery Act Prosecutions." I have no notes, transcripts or recordings. The address of the Office of Child Support Enforcement, Administration of Children and Families is 370 L'Enfant Promenade, SW, Washington, D.C. 20447.

October 13, 1999: West Virginia Department of Health and Human Services Statewide Videoconference (Charleston, WV). I gave a presentation entitled "Referral of Child Support Cases for Federal Prosecution." I have no notes, transcripts or recordings. The address of the West Virginia Department of Health and Human Services, Bureau for Child Support Enforcement is 231 Capitol Street, Suite 111, Charleston, West Virginia 25301.

September 15, 1999: United States Department of Health and Human Services Child Support Enforcement Conference (Arlington, VA). I gave a presentation entitled "Elements of Federal Child Support Recovery Act Prosecutions." I have no notes, transcripts or recordings. The address of the Office of Child Support Enforcement, Administration of Children and Families is 370 L'Enfant Promenade, SW, Washington, D.C. 20447.

May 19, 1999: United States Department of Health and Human Services Child Support Enforcement Conference (Ft. Lauderdale, FL). I gave a presentation entitled "Elements of Federal Child Support Recovery Act Prosecutions." I have no notes, transcripts or recordings. The address of the Office of Child Support Enforcement, Administration of Children and Families is 370 L'Enfant Promenade, SW, Washington, D.C. 20447.

May 13-14, 1999: West Virginia Coalition Against Domestic Violence Seminar, (Charleston, WV). I gave a presentation entitled "Federal Criminal Statutes Available to Combat Domestic Violence." I have no notes, transcripts or recordings. The address of the West Virginia Coalition Against Domestic Violence is 5004 Elk River Road, South, Elkview, West Virginia 25071.

October 21, 1998: United States Attorney's Office, Northern District of West Virginia, "An Interdisciplinary Approach to Domestic Violence" Conference (Wheeling, WV). I gave a presentation entitled "Federal Criminal Statutes Available to Combat Domestic Violence." I have no notes, transcripts or recordings. The address of the United States Attorney's Office is 1125 Chapline Street, Suite 3000, Wheeling, West Virginia 26003.

October 8, 1998: Mine Safety and Health Administration Special Investigators Seminar, National Mine Health & Safety Academy (Beckley, WV). I gave a presentation discussing the grand jury process and discovery. I have no notes, transcripts or recordings. The address of the National Mine Health & Safety Academy is 1301 Airport Road, Beaver, West Virginia 25813.

June 17, 1998: Department of Justice Violence Against Women Act Points of Contact Videoconference. I gave a presentation entitled "Issues Involved in Violence Against Women Act Prosecutions." I have no notes, transcripts or recordings. The address of the Office on Violence Against Women is 145 N Street, NE, Washington, D.C. 20530.

November 14, 1997: United States Attorney's Office, District of Maryland, "Fighting Domestic Violence: Federal, State, and Local Partnerships" Conference (Greenbelt, MD). I gave a presentation entitled "Violence Against Women Act Case Examples." I have no notes, transcripts or recordings. The address of the United States Attorney's Office is 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201.

Fall 1996: Department of Justice Violence Against Women Act Points of Contact Conference (Washington, D.C.). I gave a presentation discussing the Violence Against Women Act and the prosecution in *United States v. Bailey*. I have no notes, transcripts or recordings. The address of the Office on Violence Against Women is 145 N Street, NE, Washington, D.C. 20530.

July 22, 1996: Department of Justice Criminal Federal Practice Seminar (Salt Lake City, UT). I gave a presentation discussing the Violence Against Women Act and the prosecution in *United States v. Bailey*. I have no notes, transcripts or recordings. The address of the Department of Justice Office of Legal Education is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 10-11, 1996: United States Attorney's Office, Southern District of West Virginia, Environmental Crimes Seminar (Charleston, WV). I gave a presentation entitled "The Consideration of Other Criminal Statutes in the Environmental Crimes Investigation." I have no notes, transcripts or recordings. The address of the United States Attorney's Office is 300 Virginia Street, Suite 4000, Charleston, West Virginia 25301.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Matt Harvey, *Town Hall Brings Together DuPont, Spelter Residents*, Exponent Telegram, Mar. 2, 2011. Copy supplied.

Sara Busse, *Let's Go Out to the Movies*, Charleston Gazette, Aug. 1, 2010. Copy supplied.

Kevin DeMarrais, *Advice for N.J.'s Consumer Protector*, The Record (Bergen County, NJ), Feb. 3. 2008. Copy supplied.

Rosalie Earle, *House in the Hills*, Charleston Gazette, July 8, 2007. Copy supplied.

Cheryl Caswell, *Feds Now Hunting Deadbeat Parents*, Charleston Daily Mail, July 28, 1997. Copy supplied.

Patricia Lowry, *Architect Opposes Historic Designation for '84 House*, Pittsburgh Post-Gazette, Oct. 5, 1991. Copy supplied.

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

I have not held any judicial office.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___%
civil proceedings:	___%
criminal proceedings:	___%

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

14. Recusal: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office, either elected or appointed, nor have I ever been an unsuccessful candidate or nominee.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held membership or office in any political party or election committee nor have I played a role in any political campaign.

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

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

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

I have not served as a clerk to a judge.

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

I have not practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1990 – 1992
Kirkpatrick & Lockhart (now K&L Gates)
K&L Gates Center
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222
Associate

1992
West Virginia Office of the Attorney General, Environmental Division
West Virginia State Capitol Building 1
Room 26-E
Charleston, West Virginia 25305
Assistant Attorney General

1992 – 1994
King, Betts & Allen (now Guthrie & Thomas)
1300 Bank One Center (now the Chase Building)
Charleston, West Virginia, 25301
Associate

1994 – 1999
United States Attorney's Office for the Southern District of West Virginia
Robert C. Byrd United States Courthouse
300 Virginia Street, East
Suite 4000
Charleston, West Virginia 25301
Assistant United States Attorney

1999 – 2006
United States Department of Justice
Child Exploitation and Obscenity Section
1400 New York Avenue, Sixth Floor
Washington, D.C. 20530
Principal Deputy Chief (2004 – 2006)
Deputy Chief for Litigation (2002 – 2004)
Trial Attorney (1999 – 2002)

2006 – present
Guthrie & Thomas (formerly Allen, Guthrie, McHugh & Thomas and Allen, Guthrie & Thomas)
500 Lee Street, East
Suite 800
Charleston, West Virginia 25301
Member

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

In July, 2009, I was selected to serve as one of three arbitrators in Logan & Kanawha Coal Company v. South Carolina Electric & Gas (Case No. 31 198 Y 00294 09), which involved a UCC dispute over coal deliveries. The parties resolved the case prior to arbitration and without any substantive involvement on my part. I do not know how the case was resolved.

I have not otherwise served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

I began my legal career in 1990 in the Pittsburgh office of Kirkpatrick & Lockhart (now K&L Gates). From 1990 to 1992, I had a litigation practice that consisted of complex commercial and asbestos litigation. In that capacity, I conducted legal research, drafted memoranda of law, reviewed voluminous documents for relevance and privilege, and represented clients at depositions.

In 1992, I worked briefly as an Assistant Attorney General in the Environmental Division of the Office of the West Virginia Attorney General. My work there included representing the State of West Virginia on environmental issues involving permitting and compliance.

From 1992 through 1994, while with King, Betts & Allen (which changed its name to King, Allen & Arnold during my time there), I worked on cases involving commercial litigation defense, white collar criminal defense, and legal malpractice and professional responsibility defense. In this regard, I conducted research, drafted memoranda of law and pleadings, met with clients, and assisted with trial preparation and development.

In 1994, I joined the United States Attorney's Office for the Southern District of West Virginia and spent the next twelve years of my career as a federal prosecutor. I spent the first five years of this period as an Assistant United States Attorney in the General Criminal Division of the United States Attorney's Office. Eventually, I developed a niche in three areas: domestic violence, child support enforcement, and coal mine safety. For all cases I handled, I had responsibility from the investigation stage through trial and appeal.

In 1999, I joined the Department of Justice Child Exploitation and Obscenity Section as a Trial Attorney, where my work focused on prosecution and training in connection with child pornography, child sexual exploitation, sex trafficking, sex tourism, obscenity, and criminal non-support offenses. In 2002, I was promoted to Deputy Chief for Litigation and was responsible for supervision of approximately half of the Trial Attorneys in the Section and assisted in the development of programmatic activities and initiatives. In 2004, I became Principal Deputy Chief of the Section. In that role, I had primary responsibility for the entirety of the litigation work of the Section, including supervision of all Trial Attorneys. I oversaw the development and implementation of a nationwide program of significant prosecutions and developed policy and litigation strategies and initiatives to ensure that the Section was effectively keeping pace with the technologies employed in child exploitation and obscenity offenses.

In 2006, I became a partner at the law firm of Allen, Guthrie, McHugh & Thomas (now Guthrie & Thomas). For the past five years, I have specialized in complex litigation, environmental and toxic tort litigation, and criminal defense.

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

The general character of my 21 year law practice is one of litigation and trial work, the vast majority spent either as a federal prosecutor or as a defense attorney. My work has involved both civil and criminal matters.

From 1990 to 1994, my practice consisted of civil defense of corporate clients in complex commercial litigation as well as individuals in defense of legal malpractice claims or before the West Virginia State bar. I also had the opportunity to represent individuals in criminal matters during this time.

In 1994, I joined the Office of the United States Attorney for the Southern District of West Virginia and then spent the next twelve years of my

career as a federal prosecutor. I spent the first five years of this period as an Assistant United States Attorney in the General Criminal Division of the United States Attorney's Office. In this capacity, I was afforded the opportunity to gain comprehensive criminal prosecution experience. I prosecuted cases involving fraud, tax evasion, money laundering, gun violations, environmental crimes, coal mine safety violations, domestic violence, and child support enforcement. Eventually, I developed a niche in three areas: domestic violence, child support enforcement, and coal mine safety. I was charged with the responsibility for such prosecutions in the office, and, as a result of the work I did, I was regularly called upon by the Department of Justice, the Department of Health and Human Services, the West Virginia Coalition Against Domestic Violence, the Mine Safety and Health Administration, and Assistant United States Attorneys around the country to provide advice and guidance.

From 1999 to 2006, while in the Department of Justice Child Exploitation and Obscenity Section as a Trial Attorney, I prosecuted cases around the country involving child pornography, child sexual exploitation, sex trafficking, and obscenity. As Deputy Chief for Litigation and as Principal Deputy Chief, I was responsible for the management and professional development of the Section Trial Attorneys. Additionally, the Section is responsible for developing nationwide programmatic initiatives as well as for having input into legislation that impacts the subject matter expertise of the Section.

In 2006, I became a partner in the Allen, Guthrie, McHugh & Thomas (formerly King, Betts & Allen, Allen, Guthrie & Thomas, and now Guthrie & Thomas) law firm where I had begun my career years prior. Although Guthrie & Thomas is regularly called upon to represent some of the country's largest companies in high profile cases involving complex litigation, environmental and toxic tort litigation, the firm and I also represent individuals and white collar criminal defendants.

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

Since 1994, I have been in court on a frequent and regular basis.

i. Indicate the percentage of your practice in:
   1. federal courts: 60%
   2. state courts of record: 40%
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
1. civil proceedings: 60%
2. criminal proceedings: 40%

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

I estimate that I have tried approximately 23 cases to verdict, judgment, or final decision (other than settlement). Of these, I was sole counsel on three, chief counsel on eight and associate counsel on twelve.

i. What percentage of these trials were:
1. jury: 99%
2. non-jury: 1%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Bailey*, 112 F.3d 758 (4th Cir.), *cert. denied*, 522 U.S. 896 (1997) (on appeal from United States Chief District Judge Charles H. Haden of the Southern District of West Virginia (deceased))

This was the first case in the country prosecuted under the Violence Against Women Act. I served as co-counsel representing the United States, both during trial and on appeal, and actively participated in all phases of the case.

When the victim in the case left her abusive husband, he assaulted her, put her in the trunk of their car, and drove her from West Virginia to Kentucky, meandering from place to place for four days before finally depositing her, comatose and near death, at a hospital in Kentucky. The defendant was charged with federal domestic violence and kidnapping. After trial, he was convicted of all charges and sentenced to life imprisonment. The Fourth Circuit affirmed the conviction. The victim continued to live for 16 years in a vegetative state in a nursing home in West Virginia until she passed away in 2010.

Lead counsel:	Charles T. Miller Kanawha County Prosecuting Attorney's Office 301 Virginia Street, East Charleston, West Virginia 25301 (304) 357-0300
Co-counsel:	Philip J. Combs Guthrie & Thomas 500 Lee Street East Suite 800 Charleston, West Virginia 25301 (304) 720-4230
Opposing counsel:	Mychal Schultz Dinsmore & Shohl Huntington Square 900 Lee Street, East Suite 600 Charleston, West Virginia 25301 (304) 357-0906
	Gerry Kelly (deceased)

2. *United States v. Bostic*, 168 F.3d 718 (4th Cir. 1999), *cert. denied*, 527 U.S. 1029 (1999) (on appeal from United States Chief District Judge Charles H. Haden of the Southern District of West Virginia (deceased))

   The defendant in this case, while subject to a domestic violence protective order, lured his estranged wife to his home by claiming that their three year-old son was ill and needed to go to the hospital. When she arrived, the defendant barricaded the door and held both his estranged wife and child at gunpoint, threatening to kill them all. The victim was able to talk herself out of the situation and the defendant was arrested. I was sole counsel on this matter at the trial level and on appeal in the Fourth Circuit. The defendant entered into a conditional plea agreement and appealed to the Fourth Circuit, arguing that the statute (18 U.S.C. § 922(g)(8)) was unconstitutional because

it violated the notice and fair warning principles embodied in the Fifth Amendment and that Congress exceeded its authority under the Commerce Clause in enacting the statute. The Fourth Circuit affirmed the conviction.

Opposing counsel: Mary Lou Newberger
Federal Public Defender
Robert C. Byrd United States Courthouse
300 Virginia Street, East
Room 3400
Charleston, West Virginia 25301
(304) 347-3350

3. *United States v. Addair*, 168 F.3d 483 (4th Cir. 1998) (on appeal from United States District Judge Elizabeth V. Hallanan of the Southern District of West Virginia (deceased))

Working with the Mine Safety and Health Administration, I investigated the defendants after a miner was killed when he became caught in the augers of a continuous mining machine owned by the defendants that had been in disrepair for several weeks. The defendants were indicted for numerous violations of the Federal Mine Health and Safety Act, including willfully allowing the continued use of mining equipment that needed repair, falsifying entries in the electrical inspection book, falsifying entries in the ventilation inspection book, and falsifying training certificates. I tried the case with co-counsel, and both defendants were convicted. I drafted the Fourth Circuit brief, and the court affirmed the convictions without oral argument.

Co-counsel: Michael O. Callaghan
Neely & Callaghan
159 Summers Street
Charleston, West Virginia 25301
(304) 343-6500

Opposing counsel: Barbara H. Allen
1900 Kanawha Boulevard, East
Room E-26
Charleston, West Virginia 25305
(304) 558-2021

4. *United States v. Compton*, Case No. 98-CR-00084 (United States District Court for the Southern District of West Virginia, Senior District Judge Robert Staker presiding (deceased))

The defendant in this case was indicted on eight counts of federal mine safety violations and ultimately pled guilty to a mine safety violation for running two continuous mining machines on the same split of air, mail fraud for

defrauding the West Virginia Workers' Compensation Fund, and tax evasion for failing to report approximately $1.6 million of personal income from 1992 to 1995. I participated in the investigation of this case with the FBI, IRS and West Virginia State Police, drafted the indictment and presented it to the grand jury, and participated in the plea hearing and sentencing.

Co-counsel: John File
Assistant United States Attorney
United States Courthouse and IRS Complex
110 North Heber Street, Room 257
Beckley, West Virginia 25801
(304) 253-6722

Opposing counsel: Robert B. Allen
Kay, Casto & Chaney
1500 Chase Tower
707 Virginia Street, East
Charleston, West Virginia 25301
(304) 345-8900

5. *United States v. Hale*, Case Nos. 98-CR-00100, 98-CR-00103, and 98-CR-00193 (United States District Court for the Southern District of West Virginia, District Judge David A. Faber presiding)

The defendant was indicted for bank fraud, money laundering, tax evasion, and being a felon in possession of a firearm. The indictment was severed and the bank fraud and money laundering counts proceeded to trial in January 1999. The felon in possession of a firearm charge proceeded to trial in February 1999. The defendant was convicted following each trial. In March 1999, the defendant pleaded guilty to the tax evasion charge rather than proceed to a third trial. I conducted the investigation, was co-counsel at trial, and handled the sentencing.

Co-counsel: Michael O. Callaghan
Neely & Callaghan
159 Summers Street
Charleston, West Virginia 25301
(304) 343-6500

Opposing counsel: James B. Lees, Jr.
2306 Kanawha Boulevard, East
Charleston, West Virginia 25311
(304) 344-9651

6. Child Support Prosecutions, *e.g.*, *United States v. Giuffrida*, 213 F.3d 633 (4th Cir. 2000) (on appeal from United States Chief District Judge Charles H. Haden of the Southern District of West Virginia (deceased)); and *United States v. Deskins*, 20 Fed. Appx. 227 (4th Cir. 2001) (on appeal from United States District Judge Joseph R. Goodwin of the Southern District of West Virginia)

   These are but two of a number of federal child support enforcement cases I handled as an Assistant United States Attorney in the Southern District of West Virginia. When these cases were prosecuted, the federal Child Support Recovery Act, passed in 1996, had not been widely utilized either in West Virginia or nationally. I took over sole responsibility for spearheading such prosecutions in the Southern District of West Virginia in 1997, working closely with the Federal Bureau of Investigation and the West Virginia Child Advocate Office to develop a successful system for federal child support prosecutions. These trials were some of the first cases in the country under the applicable federal statute, and I was sole counsel in both. Following a bench trial, Mr. Giuffrida was convicted, sentenced to five years probation and ordered to pay restitution. The District Court affirmed. Mr. Giuffrida then appealed, arguing that the statute had retroactive effect and challenged the amount of the restitution. The Fourth Circuit affirmed. Mr. Deskins was also convicted following a bench trial, which the District Court affirmed. Mr. Deskins appealed arguing that the evidence was insufficient to support a conviction and that the amount of restitution was not properly calculated. The Fourth Circuit affirmed.

   Opposing counsel: Edward H. Weis
   Assistant Federal Public Defender
   Robert C. Byrd United States Courthouse
   300 Virginia Street, East
   Room 3400
   Charleston, West Virginia 25301
   (304) 347-3350

7. *United States v. Vogt*, 48 Fed. Appx. 740 (11th Cir. 2002); *cert. denied*, 538 U.S. 925 (2003) (on appeal from United States District Judge K. Michael Moore of the Southern District of Florida)

   The defendant in this case was a camp counselor at a sea camp located in the Florida Keys. He abused his position of trust and authority as camp counselor to gain access to and molest multiple adolescent boys, many of whom looked up to him. He also took pornographic pictures of the boys and maintained a large collection of child pornography. The defendant was convicted of twelve counts of possession and distribution of child pornography and sentenced to sixty-five years imprisonment. The Eleventh Circuit affirmed the conviction.

I drafted and argued pre-trial motions, was co-counsel at trial, and participated in sentencing.

Co-counsel: Michael L. Brown
Alston Bird
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 881-7589

Opposing counsel: Edward A. Carhart
5300 SW 76th Street
Miami, Florida 33143
(305) 567-1066

8. *United States v. York*, 428 F.3d 1325 (11th Cir. 2005), *rehearing and rehearing en banc denied*, 167 Fed. Appx. 169 (11th Cir. 2005), *cert. denied*, 548 U.S. 908 (2006) (on appeal from United States District Judge Ashley Royal of the Middle District of Georgia)

For many years in several states, including New York, Georgia, and Florida, the defendant used his power as leader of a pseudo-religious organization to systematically move children interstate for the purpose of engaging with them in sexual activities. From January 1988 through his arrest in May 2002, the defendant molested approximately 40 known child victims, forcing children as young as five to perform oral sex on him, and anally sodomizing boys and girls as young as ten. Many of his victims had been born into the organization. He wielded his power over the organization to gain access to the children, separating husbands and wives and parents and children. He also threatened to order the murders of several child victims if they disclosed the sexual abuse to law enforcement officers. The defendant was convicted of multiple racketeering counts as well as interstate transportation of minors for unlawful sexual activity and was sentenced to 135 years imprisonment. The Eleventh Circuit affirmed. I participated as co-counsel in all phases of this case, and the prosecution team was awarded the Attorney General's Distinguished Service Award.

Co-counsel: Richard Moultrie, Assistant United States Attorney
75 Spring Street, SW
Suite 600
Atlanta, Georgia 30303
(404) 581-6000

Opposing counsel: Ed Garland
Garland, Samuel & Loeb
3151 Maple Drive, NE
Atlanta, Georgia 30305
(404) 975-0459

Manny Arora
Arora & Lascala
75 West Wieuca Road, NE
Atlanta, Georgia 30342
(404) 881-8866

9. *Hill v. Stowers*, 680 S.E.2d 66 (W. Va. 2009) (on appeal from Circuit Court Judge Jay M. Hoke of the 25th Judicial Circuit)

Mr. Stowers pleaded guilty to a criminal election law violation (while represented by other attorneys). After serving his federal sentence Mr. Stowers was sued by Mr. Hill, who had lost an election to Mr. Stowers in 1996. Mr. Hill argued that because of Mr. Stowers' illegal conduct, he had divested Mr. Hill of the fair election process, and of the salary and other benefits Mr. Hill would have obtained had Mr. Hill won the election. On behalf of Mr. Stowers, I drafted and argued a motion to dismiss for failure to state a claim upon which relief could be granted. The motion was granted and the case was dismissed. I drafted the appellate brief and argued before the West Virginia Supreme Court of Appeals, which affirmed the dismissal.

Co-counsel: Robert B. Allen
Kay, Casto & Chaney
1500 Chase Tower
707 Virginia Street, East
Charleston, West Virginia 25301
(304) 345-8900

Opposing counsel: Larry G. Kopelman
9 Pennsylvania Avenue
Charleston, West Virginia 25302
(304) 345-2889

Robert A. Goldberg
9 Pennsylvania Avenue
Charleston, West Virginia 25302
(304) 347-0020

10. *Perrine v DuPont*, 694 S.E.2d 815 (W. Va. 2010) (on appeal from Circuit Court Judge Thomas A. Bedell of the 15th Judicial Circuit)

In 2007, I was part of the team that proceeded to trial in Harrison County, West Virginia on behalf of E. I. du Pont de Nemours and Company in the first class action property damage, medical monitoring case of its kind in West Virginia. Plaintiffs claimed property damage and increased risk of personal injury due to arsenic, cadmium and lead as the result of the operation of a zinc smelting plant. After a six–week trial, the jury found DuPont liable to the class for property remediation, medical monitoring, and punitive damages. On appeal, the West Virginia Supreme Court reduced the punitive damage award and remanded the case for trial of DuPont's statute of limitation defense. The case settled prior to re-trial. As part of the settlement, DuPont provided for both a remediation and a thirty-year medical monitoring program. I was actively involved in all phases of the litigation, including discovery, motion practice, trial, appeal, and settlement negotiations. I now serve as the representative for DuPont on the Finance Committee charged with working with the Claims Administrator to implement the medical monitoring program.

Co-counsel:

David B. Thomas
Guthrie & Thomas
500 Lee Street East
Suite 800
Charleston, West Virginia 25301
(304) 720-4231

Jeffrey Hall
Bartlit Beck Herman Palenchar & Scott
Courthouse Place
54 West Hubbard Street
Suite 300
Chicago, Illinois 60654
(312) 494-4424

John Phillips
Bartlit Beck Herman Palenchar & Scott
1899 Wynkoop Street
Suite 800
Denver, Colorado 80202
(303) 592-3199

James B. Lees, Jr.
2306 Kanawha Boulevard, East
Charleston, West Virginia 25311
(304) 344-9651

Opposing counsel:	Farrest Taylor The Cochran Firm 163 West Main Street Dothan, Alabama 36301 (334) 793-1555
	Mike Papantonio Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor 316 South Baylen Street Suite 600 Pensacola, Florida 32502 (850) 435-7000
	Virginia Buchanan Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor 316 South Baylen Street Suite 600 Pensacola, Florida 32502 (850) 435-7000
Claims Administrator:	Edgar C. Gentle, III Gentle, Turner & Sexton 501 Riverchase Parkway, East Suite 100 Hoover, Alabama 35244 (205) 716-3000

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activities I have pursued during the course of my career have been the initiatives I helped to develop and pursue while with the United States Attorney's Office and the Department of Justice. These include working with multiple organizations to combat some of the most difficult issues facing West Virginia as a state: domestic violence and coal mine safety. I continued my work developing programs of lasting impact while with the Department of Justice.

For example, in the domestic violence arena, I was the Department of Justice Violence Against Women Act point of contact for the Southern District of West Virginia. I served

as a member of the Domestic Violence Protocol Review Committee and worked with the West Virginia State Police to develop a protocol for law enforcement response to domestic violence. I was also a member of the Governor's Family Violence Coordinating Council of West Virginia and participated in reviewing and amending West Virginia's domestic violence laws. With regard to child support enforcement, I spearheaded the enforcement effort of the federal Child Support Recovery Act in the Southern District of West Virginia, and prosecuted to trial some of the first child support cases in the country under the Act. Additionally, while with the United States Attorney's Office, I coordinated and prosecuted a number of coal mine safety cases in which several coal mine operators were convicted for unsafe practices in their mines.

While with the Department of Justice, I focused on the problem of domestic child prostitution. Working together with the Federal Bureau of Investigation and the National Center for Missing and Exploited Children, I helped to develop a nationwide victim-centered initiative (the Innocence Lost Initiative) which targets the vast network of offenders and provides critical social services and assistance to child victims. For this initiative, I was awarded the 2004 Assistant Attorney General's Award for Outstanding Victim/Witness Service. At the time I left the Department of Justice in early 2006, the Innocence Lost Initiative had secured 505 arrests, 60 complaints, 70 indictments, and 67 convictions of individuals involved in the commercial exploitation of children, and approximately 200 child victims had been identified nationwide as a result of the initiative. Additionally, in 2005, I was also awarded the Assistant Attorney General's Award for Special Initiative as a result of my work with the Federal Bureau of Investigation to develop a nationwide sex tourism prosecution initiative.

I have never performed lobbying activities.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    In Fall 2010, I co-taught a Trial Advocacy course at West Virginia University College of Law, along with Professor Charles DiSalvo. I am teaching the same course this Fall along with Judge Larry Starcher. Syllabi supplied.

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

    Aside from my ongoing legal work for which I expect to be paid, I have no current anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts or other future benefits which I expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no such plans, commitments, or agreements.

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

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

My husband is an attorney and practices in West Virginia. If confirmed, I would be conflicted from any case in which he is involved. I would also initially be conflicted from any case in which my present law firm, or its partners, has an interest. Lastly, I have been friends for over twenty years with Assistant United States Attorney Susan Robinson, and would think it best to recuse myself from all cases in which she represents the United States. While I would carefully review each case for conflict or appearance of conflict, I do not anticipate any other conflicts if I am confirmed as a judge.

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

If confirmed, I would carefully follow the federal recusal statutes and Canon 3 of the Code of Conduct for United States Judges. I would also engage in a prompt and immediate review of the parties, their affiliates, and the issues in any litigated

matter to come before me so that I could make a prompt, informed decision regarding the propriety of my participation in the matter.

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

In addition to my twelve years of government service, I have remained a contributor to two charitable organizations: the West Virginia Coalition Against Domestic Violence and the West Virginia Fund for Law in the Public Interest. Additionally, in 2010, I completed training with the West Virginia Legal Aid Society in order to provide pro bono legal services for domestic violence orders of protection. Thus far, I have been called upon to so serve in one case in 2011. In that case, the client had obtained a protective order against her estranged husband and had child support and visitation orders in place. However, unbeknownst to her, the Court had also held a hearing on a petition for contempt against her which had been filed by her estranged husband. Because the client did not appear at the hearing, the Court drafted a proposed Order finding her in contempt. Pursuant to the proposed Order, the client had five days in which to object. I became involved on the fifth day of this objection time period, and worked with the client to draft and file objections to the proposed Order. The court found her in contempt but did not sanction her.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is not a selection commission in my jurisdiction. On May 6, 2011, I received a telephone call from Senator John D. Rockefeller's office asking whether I would be interested in being considered for a position on the Fourth Circuit. I met with Senator Rockefeller on May 10, 2011. Since July 18, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice regarding my candidacy. On August 5, 2011, I met with Senator Joe Manchin. On August 16, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On September 8, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2011

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Thacker, Stephanie D.	United States Court of Appeals for the Fourth Circuit	09/08/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge	☑ Nomination, Date 09/08/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 08/31/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Guthrie & Thomas 500 Lee Street, East Suite 800 Charleston, West Virginia 25301	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Guthrie & Thomas
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Thacker, Stephanie D.	Date of Report 09/08/2011

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2009	Allen, Guthrie & Thomas-work as a partner of the firm	$287,083.71
2. 2010	Allen, Guthrie & Thomas-work as a partner of the firm	$406,236.18
3. 2011	Guthrie & Thomas-work as a partner of the firm	$134,021.80
4. 2011	West Virginia University College of Law-teaching	$3,500.00

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

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

DATE	SOURCE AND TYPE
1. 2010	Employment with the law firm of Dinsmore & Shohl
2. 2010	Self Employed, Attorney
3. 2011	Self Employed, Attorney
4. 2010	Honorarium for leadership presentation at West Virginia University

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Thacker, Stephanie D.	Date of Report 09/08/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Thacker, Stephanie D.	09/08/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Am Century Moderate A	D	Int./Div.	M	T	Exempt				
2. Am Century Aggressive A	C	Int./Div.	K	T					
3. Fidelity Contrafund	B	Int./Div.	J	T					
4. BB&T Accts	B	Interest	M	T					
5. Fidelity Contrafund	B	Int./Div.	J	T					
6. Fidelity Freedom 2035	A	Int./Div.	J	T					
7. Fidelity Freedom 2035	C	Int./Div.	K	T					
8. Fidelity Contrafund	B	Int./Div.	J	T					
9. Guthrie & Thomas Capital Account		None	K	T					
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Thacker, Stephanie D.	Date of Report 09/08/2011

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

Part III-B. Spouse Non-investment income. 2011 Honorarium for leadership presentation at West Virginia University

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Thacker, Stephanie D.	Date of Report 09/08/2011

IX. CERTIFICATION.

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

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

Signature Stephanie D. Thacker 9/8/2011

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		176	317	Notes payable to banks-secured (auto)		32	294
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		289	095	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – personal residence		550	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		168	354				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plans		226	874				
Guthrie & Thomas Capital Account		20	309				
				Total liabilities		32	294
				Net Worth	1	398	655
Total Assets	1	430	949	Total liabilities and net worth	1	430	949
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax		98	200				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Century Strategic Allocation: Aggressive Fund	$41,302
American Century Strategic Allocation: Moderate Fund	165,114
Fidelity Contrafund	34,707
Fidelity Freedom 2035	47,972
Total Listed Securities	$289,095

AFFIDAVIT

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

9/8/2011
(DATE)

Stephanie D. Thacker
(NAME)

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
KELLI L. MUNDY
5310 WILSON AVE.
SOUTH CHARLESTON, WV 25309
My commission expires August 23, 2012

Kelli L. Mundy
(NOTARY)

Senator DURBIN. Thank you very much.

When you were introduced by Senators Rockefeller and Manchin, they pointed to one of the key developments in your legal career, and that was your work in the Justice Department's Innocence Lost Initiative which targeted those who exploited children and provided support services for the child victims. Can you give this Committee a little insight into the work that you put into this initiative and how it came from your practice of the law?

Ms. THACKER. That initiative was a part of my work with the Department of Justice, Child Exploitation and Obscenity Section. That section is tasked with pursuing crimes against children, exploitation, and obscenity.

At the time sex trafficking was an emerging and important issue that needed to be addressed. I worked together with the FBI's Crimes Against Children Unit as well as the National Center for Missing and Exploited Children to develop a nationwide initiative that would provide training, support services for victims, and also increase awareness of the issue and implement prosecutions and convictions through working groups around the country. And I understand there are now 43 working groups in the country today, and as the Senators mentioned, there have been over 700 convictions to date since it was implemented in June of 2003.

Thank you for your question.

Senator DURBIN. It is certainly good work, and it certainly speaks to your role as a prosecutor that developed into a special effort to help victims.

I would like to then move to a different part of your legal background, and that is your work in private practice where you took a slightly different role, and I would like you, if you could, to tell the Committee a little bit about the case involving Dupont, involving your class action medical monitoring case in West Virginia. It was brought on behalf of plaintiffs who alleged that they were exposed to arsenic, cadmium, and lead from Dupont's zinc smelting plant. You represented Dupont, I believe, in that action, and I would like for you to tell me how that case was tried, appealed, and the ultimate outcome.

Ms. THACKER. Thank you, Senator Durbin, for that question. Yes, I and my colleagues represented Dupont in a class action lawsuit in West Virginia that was one of the first of its kind there.

First, with respect to your question about my role in the case, I want to state first and foremost that I understand clearly the distinction between my role as an advocate currently and the role of a judge in which impartiality is critical. I recognize that.

With respect to the Dupont case, that case went to trial and resulted in a jury verdict against Dupont. The case was appealed to the West Virginia Supreme Court of Appeals, which did two things:

They reduced the damages verdict with respect to the medical monitoring punitive damages, given that there was no present personal injury alleged or proven.

They also provided a remittitur of the punitive damages due to Dupont's remediation of the site in issue. And they remanded the case back for retrial on the issue of Dupont's statute of limitations defense.

The decision of the West Virginia Supreme Court put the case then in a position where the parties were able to resolve the case prior to retrial and were able to achieve settlement.

Currently I serve as part of a three-person finance Committee together with the claims administrator and class counsel for the plaintiffs in that case, helping to carry out the settlement, which does include remediation and medical monitoring. And I am glad to be a part of that resolution and moving forward with the community in the spirit of reconciliation on behalf of the client.

Senator DURBIN. I am glad you made the point right near the end about the continued medical monitoring, which I thought was an interesting aspect of that case.

You also have the distinction of prosecuting the first case in the country under the Violence Against Women Act. That must have been a daunting undertaking since you were the first. Can you tell us what led you to the decision to try that case or to prosecute that case?

Ms. THACKER. Well, thank you, Senator Durbin, for the opportunity to address that case. Certainly I did not do it alone, so while it was daunting being the first case, I was part of a team of prosecutors.

The Violence Against Women Act had been passed in October, I believe, of 1994, and this case, the assault on the victim in the case, occurred in November 1994. Our U.S. Attorney at the time, and now my law partner, had been to a U.S. Attorneys conference in which that statute was discussed, so she recognized that the Violence Against Women Act may apply here. That case proceeded to trial, and the jury convicted the defendant and he was sentenced to life imprisonment. He was also charged with kidnapping, which provided a statutory maximum of life in prison.

A little bit about the facts underlying that life imprisonment——

Senator DURBIN. If I might, since I have gone over a bit in time.

Ms. THACKER. Certainly.

Senator DURBIN. I was particularly interested as to whether there was a challenge to the constitutionality of the law brought in that first case.

Ms. THACKER. There was a challenge to the Bailey case that was affirmed by the Fourth Circuit. The Violence Against Women Act, the criminal provisions in that part of the Violence Against Women Act specifically include a jurisdictional nexus; that is, there must be some crossing of State lines. And so contrary to or different from the Morrison section of the Violence Against Women Act that the Supreme Court held unconstitutional, the criminal provisions include enumerated jurisdictional elements.

Senator DURBIN. Thank you very much.

Ms. THACKER. Thank you.

Senator DURBIN. Senator Lee.

Senator LEE. Thank you, Mr. Chairman, and thank you, Ms. Thacker, for joining us. I welcome you and your family to the Committee.

You published a Law Review article years ago in the West Virginia Law Review in which you advocate a fairly aggressive view of vicarious liability for churches and priests, under which churches

and priests would be held liable for the improper actions of other priests within the same church.

Based on that article, I feel the need to ask: Do you disagree with laws or the need for laws and legal doctrines that offer special protections to religious institutions?

Ms. THACKER. I do not disagree with that.

Senator LEE. OK. One of the reasons I asked that is that in that article you refer to at one point—you suggest that many charitable organizations, including religious institutions, are "big business." Tell me what you meant by that and whether that means that charitable organizations, including religious institutions, should not be—whether that means they should not be offered some kind of special protections?

Ms. THACKER. Thank you, Senator Lee. I appreciate the opportunity to address that issue. The Law Review article was meant to address the emerging and novel legal issues at the time rather than to aggressively advocate. The term "big business" in the Law Review article was actually in reference to another article or case that I was citing for a particular principle in that. I don't recall what, but that was not my view but, rather, something I was referencing. And I certainly would recognize, were I fortunate enough to be confirmed to the Fourth Circuit Court of Appeals, the constitutional protections and would follow the law of the United States Supreme Court and the Constitution.

Senator LEE. OK. In that same article, you noted a case in which a court did not hold a bishop liable for the actions of one of his fellow clergy members because the non-offending bishop did not participate in or ratify or approve of the conduct. And you argue in that article, with disapproval, I think, that the result of the court's decision is that "heads of religious societies are not expected to be their brother's keeper."

So do you view the law as mandating a certain code of ecclesiastical conduct?

Ms. THACKER. I do not. My goal in that article was merely to assess the state of the law at that time on respondent superior and employer liability, and each of those cases, including the one you mentioned, turn of the specific facts, and I would, if such cases would come before me, review them on a case-by-case basis with a view toward controlling legal precedent. I was merely attempting to set forth the state of the law at the time.

Senator LEE. OK, and not to make a normative judgment as to the state of the law or what it should require.

Ms. THACKER. Absolutely not.

Senator LEE. So if I got that impression, that was not consistent with your intentions.

Now, in the conclusion of the article, you state that due to the "reprehensible factual situations involved in most of the sexual molestation cases," you easily reached the conclusion that, "The church should be thy priest's keeper in terms of civil liability." That does sound like a normative statement to me, a normative judgment of sorts. Tell us what you meant by that.

Ms. THACKER. Well, the goal of the Law Review article, which I wrote as a law student 22 years ago, was simply to make a statement or a review of the areas of the law and to address how that

may evolve, a sort of best guesstimate as to how that may evolve. Frankly, I have not looked at the state of the law in that area since, but I would follow the law and controlling legal precedent, depending on the facts of the cases that came before me. I certainly did not intend to make any overarching statement in that Law Review article.

Senator LEE. And you did not intend to make any statement to the effect that the legal standard to be applied when evaluating the liability vel non of a religious institution might be determined or influenced or altered in any way by the nature of the factual situation before it?

Ms. THACKER. Absolutely no, Senator.

Senator LEE. OK. Thank you.

Senator DURBIN. Thank you, Senator Lee.

I have no further questions to ask of this nominee. I thank you very much for being with us today. There may be additional questions sent to you by some other members of the Committee, and I hope you can answer them in a timely fashion, and we look forward to working with you after this hearing.

Thank you again for joining us.

Ms. THACKER. Thank you.

Senator DURBIN. We now welcome the second panel of district court nominees, all four: Ronnie Abrams of New York, Rudolph Contreras of the District of Columbia, Miranda Du of Nevada, and Michael Fitzgerald of California. When you reach your chair, please remain standing because I have a little work to do before you sit down.

If each of the district court nominees would please raise your right hand. Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FITZGERALD. I do.

Ms. ABRAMS. I do.

Mr. CONTRERAS. I do.

Ms. DU. I do.

Senator DURBIN. Thank you. Let the record reflect that all four of the witnesses have answered in the affirmative. And for the record, I wanted to let Senator Lee know that a recent movie that came out called "Contagion" originally contained a scene where I did just that, but it was lost on the cutting room floor.

[Laughter.]

Senator DURBIN. So Senator Leahy is the only movie star on the Senate Judiciary Committee to date, unless you have something to report.

Senator LEE. I saw that movie recently, and I agree, that would have been a much more compelling movie. I think I would have cried hot tears of joy and emotion had I seen that and you had been in it as well. I am going to write the producer a letter.

Senator DURBIN. It was one of my finest moments.

Thank you to the nominees for joining us today, and we are going to proceed with questions after you have an opportunity to say a few words in advance.

We will start with Michael Fitzgerald of California. If you would like to make a statement or introduce those who are with you, it is your floor. Take it away.

STATEMENT OF MICHAEL WALTER FITZGERALD, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Mr. FITZGERALD. Thank you, Mr. Chairman. I would like to thank you, Senator Durbin and Senator Lee, on behalf of the Committee for giving me the chance to testify today. I would like to thank the President for nominating me for the Central District of California. I would like to thank Senator Boxer for her recommendation to the President, and in turn the bipartisan Judicial Advisory Committee of Senator Boxer which forwarded my name to her for her consideration.

As you have heard, present with me today are my parents, Vivianne and Jim Fitzgerald, like my brother and I native born Angelenos. Also here is my twin brother, Patrick Fitzgerald, who serves as a Federal prosecutor in the Central District of California.

Joining us through the Committee's webcast are numerous colleagues and friends. I would particularly like to acknowledge my colleagues and staff at Corbin, Fitzgerald & Athey in Los Angeles.

Thank you.

[The biographical information of Mr. Fitzgerald follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Michael Walter Fitzgerald

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

   United States District Judge for the Central District of California

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Corbin, Fitzgerald & Athey LLP
   601 West Fifth Street, Suite 1150
   Los Angeles, California 90071

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

   1959; Los Angeles, California

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1982 – 1985, University of California, Berkeley School of Law (Boalt Hall); J.D., 1985
   1977 – 1981, Harvard University; A.B. (*magna cum laude*), 1981

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   1998 – present
   Corbin, Fitzgerald & Athey LLP/Corbin & Fitzgerald LLP
   601 West Fifth Street, Suite 1150
   Los Angeles, California 90071
   Partner

1995 – 1998
Law Offices of Robert L. Corbin, P.C.
601 West Fifth Street, 12th Floor
Los Angeles, California 90071
Associate

1991 – 1995
Heller, Ehrman, White & McAuliffe (no longer in existence)
601 South Figueroa Street, 40th Floor
Los Angeles, California 90017
Associate

1988 – 1991
United States Attorney's Office, Criminal Division
United States Courthouse
312 North Spring Street, 12th Floor
Los Angeles, California 90012
Assistant United States Attorney

1986 – 1987
O'Donnell & Gordon (later merged with Kaye Scholer)
601 West Fifth Street, 12th Floor
Los Angeles, California 90071
Associate

1985 – 1986
The Hon. Irving R. Kaufman
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, New York 10007
Law Clerk

1983 – 1984, 1984 – 1985
University of California, Berkeley School of Law
215 Boalt Hall
Berkeley, California 94720
Research Assistant to Professor Paul J. Mishkin

Summer 1984
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, New York 10019
Summer Associate

Summer 1983
Rogers & Wells (later merged with Clifford Chance)
201 North Figueroa Street
Los Angeles, California 90071
Summer Associate

1982
Anaheim High School
811 West Lincoln Avenue
Anaheim, California 92805
Teacher

1981 – 1982
ABC, Bellflower, Long Beach, Norwalk, Paramount School Districts
Substitute Teacher

Other Affiliations (uncompensated):

2007 – present
Federal Bar Association, Los Angeles Chapter
210 North Glenoaks Boulevard, Suite C
Burbank, California 91502
Board of Directors

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I did not register for selective service because men born between March 29, 1957 and December 31, 1959 were not required to register.

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

   Southern California "Super Lawyer," *Los Angeles Magazine* (2006 – 2011) (limited to 5% of Southern California lawyers, excluding San Diego)

   Richard E. Guggenhime Pro Bono Award from Heller, Ehrman, White & McAuliffe, (1994)

   Maynard Toll Pro Bono Associate Award from the Legal Aid Foundation of Los Angeles (1994)

   Order of the Coif, University of California, Berkeley School of Law (Boalt Hall) (1985)

American Jurisprudence Award, Criminal Law (1982)

Two fellowships from Harvard University for research in Spain for my senior honors thesis (1980)

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

American Bar Association
White Collar Crime Committee, Criminal Justice Section (1995 – present)
White Collar Crime Southern California Regional Subcommittee (1995 – present)

Association of Business Trial Lawyers

Federal Bar Association
Board of Directors, Los Angeles Chapter (2007 – present)

Irish-American Bar Association

Lawyer Representative for the Ninth Circuit (2006 – 2008)

Lesbian and Gay Lawyers Association of Los Angeles

Los Angeles County Bar Association
Advisory Committee for the Office of the District Attorney (1994)

Ninth Circuit Attorney Admission Fund Committee (2001 – 2003)

State Bar of California
Committee on Federal Courts (2002 – 2005)

Trial Practice Inn of Court for the Los Angeles Superior Court

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

California, 1987

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Ninth Circuit, 1988
United States District Court for the Central District of California, 1987
United States District Court for the Northern District of California, 1992
United States District Court for the Southern District of California, 2011

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

City Club on Bunker Hill (2008 – 2011)

Harvard Club of New York City (2005 – present)

Harvard-Radcliffe Gay and Lesbian Caucus (2006 – present)

Los Angeles Gay and Lesbian Center
Leadership Task Force of the Center (2007 – 2008)

Stonewall Democratic Club (approx. late-1990s)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Letter to the editor, "Worked with Schiff," San Gabriel Valley Tribune (Sept. 15, 2010). Copy supplied.

In 1984-85, I served as managing editor of the Industrial Relations Law Journal.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

During 2000, I served on a pro bono basis as a Deputy General Counsel for the Rampart Independent Review Panel, which examined the Los Angeles Police Department in the wake of the Rampart scandal, which involved a corrupt gang task force. Because of my work at the United States Attorney's Office, I examined the Narcotics Division. I drafted the section of the Report presented to the Police Commission in November 2000 that described the Narcotics Division, at pp. 185-92. Copy supplied.

In 1994, as a member of the Advisory Committee for the Office of the District Attorney for the Los Angeles County Bar Association, I conducted interviews and reviewed documents. The Committee released a report on the Los Angeles District Attorney's Office, and I drafted a small portion of it entitled "Computer Generated and Other Visual Aids," at pp. 81-84. A copy of the report is supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have not provided any such testimony, statements or other communications.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom

the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

On November 16, 1994, I made very brief remarks upon accepting the Maynard Toll Pro Bono Associates Award. The remarks were addressed to the annual luncheon of the Legal Aid Association of Los Angeles. I thanked the partners of Heller Ehrman for giving me the opportunity to work on the *Buttino* and *Wharton* cases. I have no notes, transcript or recording. The address of the Legal Aid Foundation is 1550 West Eighth Street, Los Angeles, California 90017.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Jean Eaglesham, "U.S. Sets 50 Bank Probes – FDIC Steps Up Investigations at Failed Lenders," Wall Street Journal (Nov. 17, 2010). Copy supplied.

Marcy Gordon, "FDIC Sues 4 Former IndyMac Execs," Associated Press (July 15, 2010) [re-printed in multiple outlets]. Copy supplied.

E. Scott Reckard, "FDIC Sues 4 IndyMac Executives," Los Angeles Times (July 14, 2010) [re-printed in multiple outlets]. Copy supplied.

Kevin Smith, "FDIC Sues Former IndyMac Executives," San Gabriel Valley Tribune (July 14, 2010) [re-printed in multiple outlets]. Copy supplied.

E. Scott Reckard, "FDIC Sues Former Executives at IndyMac's Homebuilding Loan Division," Los Angeles Times (July 12, 2010). Copy supplied.

Karen W. Arenson, "Columbia to Pay $1.1 Million to State Fund in Loan Scandal," New York Times (June 1, 2007). Copy supplied.

Jennifer English, "Witness in DWP Overbilling Trial Labeled Hostile," City News Service (Apr. 18, 2006). Copy supplied.

Matt Krasnowski, "A Bit of Drama at Fleishman Overbilling Trial as Witness Deemed Hostile," Copley News Service (Apr. 18, 2006). Copy supplied.

James Nash, "15 Face Fines in City Hall Corruption," The Daily News of Los Angeles (Oct. 15, 2004). Copy supplied.

Anna Gorman, "Casden Exec, Others Plead No Contest," Los Angeles Times (Oct. 15, 2004). Copy supplied.

Kim Nguyen and Peggy Lowe, "Fresh Face May Be Too Fresh: Walsh's Run for DA Requires Overcoming Overly Youthful Look," Rocky Mountain News (July 23, 2004). Copy supplied.

Leslie Wayne, "3rd Person Charged in Boeing-Lockheed Case," International Herald Tribune (May 13, 2004). Copy supplied.

Peter Pae, "Another Boeing Employee Charged," Los Angeles Times (May 12, 2004). Copy supplied.

Leslie Wayne, "More Charges in Theft of Lockheed Files," New York Times (May 12, 2004). Copy supplied.

Andrew Galvin, "Boeing Retiree Charged in Lockheed Theft," The Orange County Register (May 12, 2004). Copy supplied.

Jennifer English, "Untitled," City News Service (May 11, 2004). Copy supplied.

Jean Guccione, "Woman Gets Fine, Probation in Scam," Los Angeles Times (Dec. 17, 2003). Copy supplied.

"Sizemore's Sentencing in Abuse Case Postponed," Globe and Mail (Oct. 2, 2003). Copy supplied.

Linda Deutsch, "Sizemore in Rehab, Sentencing for Abusing Heidi Fleiss is Delayed," Associated Press (Sept. 30, 2003) [re-printed in multiple outlets]. Copy supplied.

"Tom Sizemore's Sentencing Postponed," City News Service (Sept. 30, 2003). Copy supplied.

David K. Li, "Blame the Accuser," New York Post (June 7, 2003). Copy supplied.

"Carson Plea," City News Service (Mar. 12, 2003). Copy supplied.

"Carson's Ex-Mayor Agrees to Plead Guilty to Corruption Charges," Associated Press (Jan. 29, 2003) [re-printed in multiple outlets]. Copy supplied.

Jennifer English, "Ex-Carson Mayor to Plead Guilty in Corruption Probe," City News Service (Jan. 29, 2003). Copy supplied.

E. Scott Reckard, "SEC Files Fraud Suit against Dealers," Los Angeles Times (Jan. 14, 2003). Copy supplied.

Sharon McNary, "Home Confinement Sentence in Bribery," Press Enterprise (Riverside, CA) (Feb. 22, 2002). Copy supplied.

Chris T. Nguyen, "No Federal Jurisdiction, Judge Rules," San Bernardino Sun (Jan. 29, 2002). Copy supplied.

Bob Page, "Two Businessman Pleaded Guilty to Federal Bribery Charges," San Bernardino Sun (Sept. 18, 2001). Copy supplied.

Sharon McNary, "Eaves Pleads Not Guilty 14 Times," Press Enterprise (Riverside, CA) (Sept. 18, 2001). Copy supplied.

Gina Piccalo, "Beverly Hills Off the Hook in Racial Profile Suit," Los Angeles Times (Oct. 12, 2000). Copy supplied.

Sanford Nax, "Is the End Near for Royal Management?," Fresno Bee (Aug. 11, 1996). Copy supplied.

"Profile: Saundra Brown Armstrong," Los Angeles Daily Journal (Sept. 8, 1995). Copy supplied.

Jesse Katz, "Few Get Rich, Most Struggle in Crack's Grim Economy," Los Angeles Times (Dec. 20, 1994). Copy supplied.

December 10, 1993: Following the settlement of *Buttino v. FBI, et al.*, which involved a certified class of gay and lesbian FBI special agents, employees and applicants, I issued a statement, spoke at a press conference, and perhaps spoke directly to a few reporters. A highly edited version of my remarks was broadcast on CNN and, perhaps, other networks. I do not have a copy of the broadcast, a transcript of my remarks, or a copy of my statement, but I am quoted in the following articles:

> "Gay Former FBI Agent Wins Settlement," 1994 Daily Labor Report (BNA) 17 (Jan. 27, 1994). Copy supplied.
>
> "Attorneys for FBI, Gay Former Agent To Present Settlement Details in January," 1993 Daily Labor Report (BNA) 238 (Dec. 14, 1993). Copy supplied.
>
> Dennis J. Opatrny, "FBI Ends Policy Banning Gay Agents," San Francisco Examiner (Dec. 11, 1993). Copy supplied.
>
> Jennifer Warren, "FBI Settles Gay Agent's Suit, Vows Reforms," Los Angeles Times (Dec. 11, 1993). Copy supplied.

Jim Doyle, "FBI Agrees to End Policy against Gays," San Francisco Chronicle (Dec. 11, 1993). Copy supplied.

Mark Sauer, "Gay FBI Agent's Suit to be Settled," San Diego Union-Tribune (Dec. 10, 1993). Copy supplied.

Dennis J. Opatrny, "FBI Won't Bar Gay Agents," San Francisco Examiner (Dec. 10, 1993). Copy supplied.

"Fired Gay Agent, FBI Settle Suit, Lawyers Say," San Jose Mercury News (Dec. 10, 1993). Copy supplied.

"Homosexual FBI Agent Fights for His Job in Court," NPR Weekend Edition (Dec. 4, 1993). Transcript supplied.

Maura Dolan, "FBI Policy on Homosexuals at Issue in Ex-Agent's Suit," Los Angeles Times (Nov. 26, 1993). Copy supplied.

Kristina Lindgren, "Drug Kingpin Draws Life in Prison," Los Angeles Times (June 5, 1991). Copy supplied.

"Convict Sentenced Again," Daily News of Los Angeles (May 7, 1991). Copy supplied.

Linda Deutsh, "Columbian Pair, Arrested at Sea, Held in Medellin Money Laundering Case," Associated Press (Feb. 22, 1991) [re-printed in multiple outlets]. Copy supplied.

John Polich, "Two Face Money-Laundering Charges," Daily News of Los Angeles (Feb. 21, 1991). Copy supplied.

John Polich, "Pair Facing Conspiracy, Tax Charges," Daily News of Los Angeles (Aug. 22, 1990). Copy supplied.

Staff, "Dade Men Indicted on Drug Charges," Miami Herald (Aug. 21, 1990). Copy supplied.

"Man Sentenced in Tax Case," Daily News of Los Angeles (Feb. 27, 1990). Copy supplied.

"Tax Preparer Indicted," Daily News of Los Angeles (May 10, 1989). Copy supplied.

Staff, "Guilty Plea Entered," Orange County Register (Mar. 15, 1988). Copy supplied.

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

I have not served as a judge, except as a Judge Pro Tem pursuant to the Temporary Judge Program of the Los Angeles Superior Court. This program allows experienced lawyers to assist the court by handling extremely low-level cases. After completing training and receiving certification as a Judge Pro Tem, I have presided over four calendars of small claims cases, for a total of between 30 to 40 cases. Pursuant to California law, small claims cases are limited to $7,500 in claimed damages, are not subject to the Evidence Code, and cannot involve lawyers. No opinions are written.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not been a judge, except on the extremely limited basis of the Temporary Judge Program. Pursuant to that program, I have volunteered to preside without pay over small claims calendars. I have presided over between 30 to 40 small claims cases, in which the damages are limited to $7,500 and lawyers are forbidden to participate. I have not recused myself from any small claims case.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held any such memberships or offices. I have not had any supervisory roles in any campaigns. As a volunteer, I have made telephone calls or knocked on doors for the following campaigns:

Jack Weiss's campaign for City Attorney of Los Angeles in 2009;

Then-Senator Obama's Presidential campaign in 2008;

"No on Proposition 8" campaign in 2008;

Adam Schiff's Congressional campaigns for the 27th California district in 2000 and the 29th California district in 2002;

Rick Zbur's Congressional campaign for the 38th California district in 1996.

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

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

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

From 1985 to 1986, I clerked for the Honorable Irving R. Kaufman of the United States Court of Appeals for the Second Circuit.

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

I have not practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1986 – 1987
O'Donnell & Gordon (later merged with Kaye Scholer)
601 West Fifth Street, 12th Floor
Los Angeles, California 90071
Associate

1988 – 1991
United States Attorney's Office, Criminal Division
United States Courthouse
312 North Spring Street, 12th Floor
Los Angeles, California 90012
Assistant United States Attorney

1991 – 1995
Heller, Ehrman, White & McAuliffe (no longer in existence)
601 South Figueroa Street, 40th Floor
Los Angeles, California 90017
Associate

1995 – 1998
Law Offices of Robert L. Corbin, P.C.
601 West Fifth Street, 12th Floor
Los Angeles, California 90071
Associate

1998 – present
Corbin, Fitzgerald & Athey LLP/Corbin & Fitzgerald LLP
601 West Fifth Street, Suite 1150
Los Angeles, California 90071
Partner

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

I have not served as a mediator or arbitrator.

b. Describe:

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

My practice has always consisted entirely of civil and criminal litigation, with "litigation" construed to include appeals, government investigations, and corporate internal investigations.

While an associate at O'Donnell & Gordon from 1986 to 1991, I worked on complex civil litigation, including serving as associate counsel at a two-week bench trial involving trade secrets.

From 1988 to 1991, as an Assistant United States Attorney, my practice consisted entirely of handling federal criminal trials, appeals and investigations. I served in the Organized Crime and Drug Enforcement Task Force/Major Narcotics Section. The focus of my practice was on prosecuting cocaine trucking rings. My cases included the seizure of over two tons of cocaine, at that time the second-largest seizure in California history; the lead defendant was sentenced to life in prison without parole. I also worked with a money-laundering task force of IRS criminal agents and narcotics officers from the Los Angeles Police Department. The task force investigated, prosecuted, and forfeited money-laundering fronts that posed as legitimate businesses.

From 1991 to 1995, while at Heller, Ehrman, White & McAuliffe LLP, my practice consisted of working as one of a team of lawyers handling extremely large and complicated commercial litigation.

At Corbin, Fitzgerald & Athey LLP, a four-lawyer firm, we handle criminal and civil cases in the federal and state courts, internal investigations, grand jury investigations, and investigations by the United States Securities and Exchange Commission ("SEC"). The majority of my firm's matters are federal cases and investigations.

For the last six years, the focus of my firm's practice has been the representation of clients during investigations by federal government agencies, such as the United States Attorney's Offices and the SEC. These investigations have been in the areas of securities, defense contracting, environmental law, health care, antitrust, tax, and the financial crisis. In these cases, our clients are individuals who are typically employees of corporations or financial institutions.

In addition to federal investigations, my firm also represents individuals and corporations in complicated federal civil litigation. My firm also conducts internal investigations into potential corporate wrongdoing; for example, I have been retained as counsel for the special litigation committee or audit committee of boards of directors.

Prior to six years ago, my practice also included numerous small-to-medium-sized civil cases and a variety of criminal cases in the Los Angeles Superior Court, in which the clients were individuals and small businesses. My practice also typically included more medium-sized federal civil cases and federal criminal cases in which an indictment had been returned.

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

At O'Donnell & Gordon from 1986 to 1987, my practice consisted of representing individuals and small companies in civil litigation.

As an Assistant United States Attorney from 1988 to 1991, my client was the United States of America. I handled solely criminal cases.

At Heller Ehrman from 1991 to 1995, my clients were typically large corporations or financial institutions in civil litigation, such as the Bank of America. I also represented individuals in pro bono matters, including *Buttino v. FBI* (involving a class action of gay and lesbian FBI employees and applicants) and *Wharton v. Calderon* (court-appointed counsel for a habeas corpus petition for a death row inmate).

At Corbin & Fitzgerald LLP/Corbin, Fitzgerald & Athey LLP, I have represented individuals and companies in criminal and administrative investigations. I have represented individuals who are defendants in criminal cases. I have also represented individuals and companies in civil litigation and I have conducted internal investigations on behalf of companies.

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

The entirety of my practice has always been in litigation. I have appeared frequently in court during the course of my practice. As an Assistant United States Attorney from 1988 to 1991, I appeared in court constantly. At Heller Ehrman from 1991 to 1995, I appeared less than once a month. At Corbin & Fitzgerald LLP/Corbin, Fitzgerald & Athey LLP through 2003, I typically appeared roughly once a month. From 2004 to the present, I have appeared occasionally.

i. Indicate the percentage of your practice in:
   1. federal courts: 60%
   2. state courts of record: 20%
   3. other courts: 0%
   4. administrative agencies: 20%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 40%
   2. criminal proceedings: 60%

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

I have tried 26 cases tried to verdict: 22 as sole counsel, 2 as chief counsel, and 2 as associate counsel.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury: 20%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Diaz-Sanchez*, No. CR 90-851-MRP (Central District of California); Hon. Mariana R. Pfaelzer

While serving as an Assistant United States Attorney, I investigated and tried several cases arising from the shipment of cocaine in produce trucks from Mexico to California and New York. In particular, I led an investigation arising from the seizure of 2,241 pounds of cocaine in 1989, at that time the second-largest seizure of cocaine in California. The investigation culminated in the identification, indictment, trial and conviction of Diaz-Sanchez, a trucking kingpin. I was the lead counsel at the jury trial of the defendant in 1991. The defendant was sentenced to life in prison.

Counsel for defendant Diaz-Sanchez:	Donald I. Bierman, Esq. Bierman, Shohat, Loewy & Klein, P.A. Penthouse Two Miami, FL 33131 (305) 358-7000
Counsel for defendant Espinosa:	Edward I. Gritz, Esq. (deceased)
Counsel for defendant Castillo:	Morton H. Boren, Esq. (deceased)
Co-counsel:	Peter S. Spivack, Esq. (former Assistant United States Attorney) Hogan Lovells 500 13th Street, N.W., Suite 800E Washington, D.C. 20004 (202) 637-5631

2. *United States v. Velasquez,* No. CR 90-772-JGD (Central District of California); Hon. John G. Davies

While serving as an Assistant United States Attorney, I provided leadership to a joint task force of IRS criminal agents and narcotics officers from the Los Angeles Police Department. The task force investigated several cases from 1989 to 1991. The most significant case was the seizure of Unimex, a money laundering front masquerading as a legitimate casa de cambio, i.e., a business for wiring money abroad. I was sole counsel at the trial of the principal of Unimex, defendant Velasquez, who was convicted on money-laundering and narcotics charges.

Counsel for defendant Velasquez:	Stanley I. Greenberg, Esq. 6080 Center Drive, Suite 800 Los Angeles, CA 90045 (310) 215-7509
Counsel for defendant Arias:	Richard A. Hamar, Esq. Hamar & Hamar 9454 Wilshire Boulevard, Penthouse Beverly Hills, CA 90212 (310) 550-0460
Counsel for defendant Bury:	Michael N. Pancer, Esq. 104 F Street, 4th Floor San Diego, CA 92101 (619) 236-1826

3. *United States v. Affinito*, 873 F.2d 1271 (9th Cir. 1989) (Circuit Judges Tang, Norris and Hall)

While serving as an Assistant United States Attorney, I handled numerous appeals. Some of these appeals were from convictions that I obtained in my own trials, but many were appeals in other cases for which I volunteered. One of these appeals was a rare government appeal in which the Ninth Circuit reversed the post-verdict granting of a motion for judgment of acquittal under Federal Rule of Criminal Procedure 29. The jury convicted the defendant in a government contracting case. Subsequent to the verdict, the Supreme Court handed down its decision in *McNally v. United States*, 482 U.S. 350 (1987). The district court granted a motion for judgment of acquittal and the government appealed on the ground that, despite the label used, the motion in fact should be understood as a motion for a new trial. The Ninth Circuit agreed with the government and held that the Double Jeopardy Clause did not prevent the retrial of the defendant.

Opposing counsel:	Bruce I. Hochman, Esq. (deceased)
Co-counsel:	Laurie L. Levenson, Esq. (former Assistant United States Attorney) William M. Rains Fellow Director, Center for Ethical Advocacy Loyola Law School 919 Albany Street Los Angeles, CA 90015 (213) 736-1149

4. *Buttino v. Federal Bureau of Investigation*, No. C-90-1639 (SBA) (Northern District of California); Hon. Saundra Brown Armstrong

Buttino was a gay FBI special agent who was anonymously "outed" to his Special Agent-in-Charge, which ultimately resulted in the removal of his security clearance and concomitant firing as an FBI special agent. Believing his firing was pretextual, Mr. Buttino filed a class action on behalf of all gay and lesbian FBI employees and applicants. At my request, Heller Ehrman decided to represent Mr. Buttino at trial on a pro bono basis. I obtained class certification and then represented Mr. Buttino and the class at trial. After several days of trial in December 1993, the case settled on the following basis: (a) the FBI renounced its prior policy of viewing homosexuality as a "negative factor" in regard to security clearances; (b) the FBI agreed to hire an openly lesbian special agent; and (c) Special Agent Buttino's pension was restored.

Opposing counsel:

John A. Rogovin, Esq. (former Deputy Assistant Attorney General, Civil Division)
Executive Vice President & General Counsel
Warner Bros.
4000 Warner Boulevard
Burbank, CA 91522
(818) 977-8700

Mr. Kevin M. Simpson (former Trial Attorney, Civil Division)
Principal Deputy General Counsel
United States Department of Transportation
451 Seventh Street, S.W.
Room 10110
Washington, DC 20410
(202) 708-2244

Co-counsel:

Richard L. Gayer, Esq.
525 West Wilshire Drive
Phoenix, AZ 85003
(602) 229-8954

5. *In re Student Loan Cases (Dai-Ichi Kangyo Bank, et al. v. Bank of America National Trust & Savings Association, et al.)*, No. CV 89-2286-HLH (Central District of California); Hon. Harry L. Hupp

In the late 1980s and early 1990s, there were defaults projected over $1 billion in federally guaranteed student loans. Certain loan servicers had allowed the federal guarantees to lapse. Therefore, a group of the world's leading banks had to make good on letters of credit that backed bonds collateralized by the student loans. The resulting litigation over this potential $1 billion loss was the largest civil case in the Central District of California. Raymond Fisher led a large team of Heller Ehrman lawyers in representing Bank of America, which was the trustee on the bonds. From 1991 to 1993, I assisted Mr. Fisher and other lawyers in drafting the many motions in the case, including analyzing the applicability of California contract law under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). In particular, I analyzed the role of the jury under California law in interpreting a written contract. The case settled before trial with an initial settlement between the plaintiff banks and Bank of America, and then a subsequent settlement between Bank of America and the accounting firm that had audited the loan servicers.

Opposing counsel:

Richard E. Drooyan, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071
(213) 683-9136

Katherine Chilton, Esq.
Senior Vice President & Litigation Counsel
Warner Brothers
4000 Warner Boulevard
Burbank, CA 91522
(818) 954-6845

Richard B. Kendall, Esq.
Kendall, Brill & Klieger LLP
10100 Santa Monica Boulevard, Suite 1725
Los Angeles, CA 90067
(310) 272-7900

Co-counsel:

The Honorable Raymond C. Fisher (formerly at Heller Ehrman)
U.S. Court of Appeals for the Ninth Circuit
Richard H. Chambers Courthouse
125 South Grand Avenue
Pasadena, CA 91109
(626) 229-7110

6. *Wharton v. Ayers*, No. SACV-92-3469-CJC (formerly *Wharton v. Calderon*) (Central District of California); Hon. David V. Kenyon, Hon. Gary L. Taylor

In 1991, Heller Ehrman decided to represent a capital habeas corpus petitioner as a pro bono project. Along with Roger Teich, I represented Mr. Wharton for over a decade, both while I was at Heller Ehrman and after I joined Robert Corbin in 1995. I handled extremely complex discovery disputes and wrote the voluminous pleadings that the case required, including opposing an interlocutory appeal to the Ninth Circuit filed by the Attorney General's Office. *Wharton v. Calderon*, 127 F.3d 1201 (9th Cir. 1996). Through diligent investigation, Mr. Teich and I obtained a memorandum in which the prosecutor admitted that there was little or no evidence to prove first-degree murder. On the basis of this memorandum, I obtained the right to depose the prosecutor. In 1997, I obtained summary judgment from Judge Kenyon in Mr. Wharton's favor. After Judge Kenyon retired, the case was assigned to Judge Taylor, who reversed the grant of summary judgment. I obtained a ruling from Judge Taylor that the Antiterrorism and Effective Death Penalty Act ("AEDPA") did not apply to Mr. Wharton's case. In 2003, I substituted out of the case in favor of Marcia Morrissey, a well-respected criminal defense attorney. The case is now before Judge Cormac J. Carney.

Opposing counsel:

Sonja K. Berndt, Esq.
Deputy Attorney General
300 South Spring Street
Los Angeles, CA 90013
(213) 897-2179

Richard S. Moskowitz, Esq.
Deputy Attorney General
300 South Spring Street
Los Angeles, CA 90013
(213) 897-2286

Co-counsel:

Roger Teich, Esq.
177 Pfeiffer Street, No. 7
San Francisco, CA 94133
(415) 948-0045

Marcia Ann Morrissey, Esq.
2115 Main Street
Santa Monica, CA 90405
(310) 399-3259

7. *EchoStar Satellite Corp. v. NDS Group PLC*, No. SACV 93-950-DOC (ANx) (Central District of California); Hon. David O. Carter

This case arose from a dispute between two satellite television providers, DISH Network and DIRECTV. Plaintiff EchoStar provided the security system for DISH Network for the purpose limiting the satellite signal to paying customers. EchoStar alleged that defendant NDS, the security provider for DIRECTV, hacked the EchoStar system with assistance from three individual defendants (Menard, Wilson and Main). The case involved interesting issues arising under the Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(1)(A), (a)(2), (b)(1), and civil RICO, 18 U.S.C. § 1962(c). In 2005, I successfully moved for dismissal of the case against Menard for failure to state a claim. I also successfully moved for dismissal of the case against Wilson and Main for lack of personal jurisdiction. I later represented Menard and Main as witnesses, including handling litigation in the Central District regarding letters rogatory and hiring counsel for them in Canada.

Opposing counsel:

Chad M. Hagan, Esq.
Joseph H. Boyle, Esq.
Hagan Noll & Boyle, LLC
820 Gessner, Suite 940
Houston, TX 77057
(713) 343-0478

T. Wade Welsh, Esq.
T. Wade Welsh & Associates
2401 Fountainview, Suite 700
Houston, TX 77057
(713) 952-4334

Counsel for co-defendant NDS:	Darin Snyder, Esq. David R. Eberhart, Esq. O'Melveny & Myers LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 (415) 984-8846 Nathaniel L. Dilger, Esq. One LLP 4000 MacArthur Boulevard West Tower, Suite 1100 Newport Beach, CA 92660 (949) 502-2870
Counsel for co-defendant Bruce:	Mark E. Beck, Esq. Anthony A. DeCorso, Esq. Eric A. Gressler, Esq. Orrick, Herrington & Sutcliffe 777 South Figueroa Street, Suite 3200 Los Angeles, CA 90017 (213) 629-2020
Counsel for Co-defendant Frost:	Anthony B. Gordon, Esq. Law Offices of Anthony B. Gordon 5550 Tponga Canyon Boulevard, Suite 200 Woodland Hills, CA 91367 (818) 887-5155

8. *Lockheed Martin Corp. v. The Boeing Co.*, No. 6:03-CV-0796-Orl-28 KRS (Middle District of Florida); Hon. John Antoon, II, Hon. Karla R. Spaulding; *United States v. Satchell*, No. 04-1067M (Central District of California)

Lockheed accused three Boeing employees of stealing valuable trade secrets that allegedly gave Boeing an unfair advantage in a competition for missile launches of Air Force satellites. Lockheed filed a civil action in the Middle District of Florida (Orlando). The claimed damages, after trebling pursuant to the antitrust laws and civil RICO statute, would have been over $3 billion. The United States Attorney's Office for the Central District of California launched a grand jury investigation into the alleged theft.

From 2003 to 2005, my law partner Robert Corbin and I represented Satchell, the most senior Boeing manager involved in the case and one of the employees accused of the theft. I prepared the pleadings in the civil case and participated in numerous depositions. The civil case against Mr. Satchell was dismissed as part of a global settlement between Lockheed and Boeing. Mr. Corbin and I also represented Mr. Satchell in the criminal investigation. The government filed a criminal complaint against Mr. Satchell, which the

government later dismissed. After additional investigation, the government decided not to seek an indictment against Mr. Satchell.

Opposing counsel (civil):	Terry C. Young, Esq. Lowndes, Drosdick, Doster, Kantor & Reed, P.A. P.O. Box 2809 Orlando, FL 32802 (407) 418-6347
Co-counsel (civil):	Darryl M. Bloodworth, Esq. Dean, Mead P.A. 800 North Magnolia Avenue Orlando, FL 32803 (407) 428-5131
Counsel for co-defendant Boeing:	Brad D. Brian, Esq. Munger, Tolles & Olson, LLP 355 South Grand Avenue, 35th Floor Los Angeles, CA 90071 (213) 683-9280 David B. King, Esq. Thomas A. Zehnder, Esq. King, Blackwell, Downs & Zehnder, P.A. 25 East Pine Street Orlando, FL 32801 (407) 422-2472
Counsel for co-defendant Branch:	Richard M. Steingard, Esq. Lightfoot, Steingard & Sadowsky LLP 800 Wilshire Boulevard, Suite 1050 Los Angeles, CA 90017 (213) 260-9449
Counsel for co-defendant Erskine:	Steven G. Madison, Esq. Quinn Emanuel Urquhart Oliver & Hedges, LLP 865 South Figueroa Street, 10th Floor Los Angeles, CA 90017 (213) 443-3000
Opposing counsel (criminal):	The Hon. Jacqueline Chooljian (former Assistant United States Attorney) United States Magistrate Judge 312 North Spring Street, 3rd Floor Los Angeles, CA 90012 (213) 894-2921

9. *United States v. Newman*, No. CR 00-974-DT (Central District of California); Hon. Dickran M. Tevrizian

In 2001, I handled the sentencing of Newman after his guilty plea to securities violations. I obtained a significant downward departure from the sentence suggested by the Sentencing Guidelines. Mr. Newman received a sentence of eight months in community confinement instead of the 18 to 36 months in prison mandated by the Sentencing Guidelines. This departure occurred before the Supreme Court's ruling in *United States v. Booker*, 543 U.S. 220 (2005).

Mr. Newman had been the CEO of a clothing company and was a respected figure in the garment industry. He pled guilty to conspiring with his CFO to manipulate the amount of revenues in a particular quarter, in violation of the securities laws. I persuaded the district court to depart downward for two reasons. First, I hired an expert economist to opine on the lack of loss arising from Mr. Newman's specific misconduct. Because I handle both civil and criminal cases, I realized that the measure of loss in this case was analogous to damages in a civil case, and that an economist familiar with civil securities class actions would be helpful. The expert persuasively testified that the loss to the company did not result directly from Mr. Newman's misconduct, but rather from the underlying business pressures that led Mr. Newman to manipulate the revenue. Second, I stressed that Mr. Newman's life apart from his conviction had been consistent with the highest ethics, both as a businessman and an officer in the United States Army.

Opposing counsel: Gregory J. Weingart, Esq. (former Assistant United States Attorney)
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071
(213) 683-9571

10. *City of Hawthorne ex rel. Wohlner v. H&C Disposal Co.*, No. BC 213338 (Los Angeles Superior Court); on appeal at 109 Cal. App. 4th 1668, 1 Cal. Rptr. 3d 312 (2003); Hon. Mel Red Recana

In addition to my federal cases, I have also handled a number of civil and criminal cases in the California courts, including trials, direct appeals and petitions for writ of prohibition or mandate. This was a case in which I represented a qui tam relator, former City Treasurer Wohlner, from 1991 to 1994. Wohlner alleged that certain payments by the City of Hawthorne were improper and resulted from a culture of corruption tolerated by the City Council. This case was one of the first cases under the California False Claims Act, Gov't Code §§ 12650-52, a statute patterned on the federal False Claims Act, 31 U.S.C. §§ 3729-33.

I was retained as trial counsel in the Los Angeles Superior Court. In preparation for trial, I conducted depositions and filed or opposed several motions. The defendants

successfully moved for judgment on the pleadings. On appeal, I obtained a reversal of that ruling, which resulted in a published opinion. On remand, I conducted more discovery and wrote additional motions and oppositions. Ultimately, the Superior Court granted summary judgment to the defendants. The client chose not to appeal a second time.

Opposing counsel: Jean-Paul Menard, Esq.
Law Offices of Jean-Paul Menard
904 Silver Spur Road, No. 502
Rolling Hills Estates, CA 90274
(424) 224-7620

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In 1992, I served as a counsel to the Special Advisor to the Board of Police Commissioners (the "Webster Commission"), which investigated the response of the Los Angeles Police Department to the 1992 civil unrest.

In 1994, I served on the Advisory Committee for the Office of the District Attorney of the Los Angeles County Bar Association. The Advisory Committee was formed at the request of District Attorney Gil Garcetti to provide an independent analysis of certain aspects of the District Attorney's Office. The Report of the Advisory Committee was presented in September 1994.

During 2000, I served as a Deputy General Counsel for the Rampart Independent Review Panel, which examined the Los Angeles Police Department in the wake of the Rampart scandal. Because of my work at the United States Attorney's Office, I examined the Narcotics Division.

During 2010 and 2011, I have participated in the Temporary Judge program of the Los Angeles County Superior Court. Volunteer lawyers who complete a training program are certified to serve without remuneration as Judges Pro Tem over small claims calendars. The program is viewed as a service to the Superior Court. I have presided over four small claims calendars. Small claims cases are civil matters that are limited to damages of $7,500. The California Evidence Code does not apply. Lawyers are not allowed to represent the parties and, as a Judge Pro Tem, I am not allowed to hear a case in which a lawyer appears as a party.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe

briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

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

    I have no deferred income or future benefits.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    No.

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

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        The family member who would present a potential conflict of interest would be my twin brother Patrick Raymond Fitzgerald, who is an Assistant United States Attorney for the Central District of California and Chief of the National Security Section. I would address this potential conflict by recusing myself from cases in which my brother had participated, and I would follow the established procedures in the Central District of California for family members of a district judge serving

as Assistant United States Attorneys. In that court, there currently are two district judges who have family members serving as Assistant United States Attorneys.

The other persons who would present a potential conflict of interest would be my law partners, Robert L. Corbin and Joel M. Athey, and a handful of other lawyers practicing in the Central District of California with whom I have close friendships. I would address these potential conflicts by recusing myself from cases in which they served as counsel.

I do not believe that other persons, parties, categories of litigation, or financial arrangements are likely to present any potential conflicts of interest

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

In regard to potential conflicts, I would (a) be alert to potential conflicts pursuant to 28 U.S.C. § 455 and the Code of Conduct for United States Judges, especially Canon 3(c); (b) consult the regulations and advisory opinions promulgated by the Judicial Conference of the United States and its Code of Conduct Committee; (c) rigorously examine my conscience to determine whether a case potentially presented a conflict, or whether there might reasonably appear to be a conflict to lawyers, parties, and the public; (d) consult with the Code of Conduct Committee, the Federal Judicial Center, and the Administrative Office of the United States Courts, as appropriate, if I were in doubt about a particular matter; (e) consult with the Chief Judge of the Central District of California; and (f) scrupulously obey the requirements of the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364.

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

From 1992 through 1994, I served pro bono as co-counsel and trial counsel to the plaintiffs and class members in *Buttino v. FBI, et al.*, in the Northern District of California. The case resulted in a settlement pursuant to which the FBI renounced its prior policy of viewing homosexuality as a security concern, which made it extremely unlikely that any openly gay or lesbian applicant would be hired. I spent hundreds of hours on this case.

While at Heller Ehrman, I served as court-appointed counsel to a death row inmate for his federal habeas corpus petition. *Wharton v. Ayers*, No. SACV-92-3469-CJC (formerly *Wharton v. Calderon*) (Central District of California). Although Heller Ehrman received remuneration pursuant to the Criminal Justice Act, it was far below the firm's usual rates,

and the firm's motivation in taking the case was to perform a pro bono service. I spent hundreds of hours on this case.

In 1997, I volunteered to handle an appeal in the Ninth Circuit as part of its pro bono program. I was asked to represent the appellant in *Marroquin v. Prunty*, No. 96-55996. An indigent prisoner had appealed the denial in the district court of his petition for writ of habeas corpus. The Ninth Circuit affirmed the denial of Mr. Marroquin's petition. I do not recall how much time I spent on this appeal, but I am sure it was at least 75 hours.

In 2004 and 2006, I served as an attorney advisor for the moot court of the Program for Law and Technology of the California Institute of Technology and Loyola Law School. The moot courts involved topics under the Digital Millennium Copyright Act. The moot court teams were comprised of a student at Loyola Law School and an undergraduate at Caltech. I twice volunteered to serve as the "coach" for one of the moot court teams.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

Senators Feinstein and Boxer have appointed bipartisan Judicial Advisory Committees for the Central District of California. For Senator Feinstein, I submitted an application to her Committee on February 9, 2009, and I was interviewed on March 17, 2009. For Senator Boxer, I submitted an application to her Committee on March 10, 2009, and was interviewed on June 19, 2009. It is my understanding that Senator Boxer's Committee recommended my name to her.

Since May 3, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 31, 2011, I met with representatives of the White House Counsel's Office and the Department of Justice in Washington, D.C. On July 20, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Fitzgerald, Michael W.	U.S. District Court, Central District of California	07/20/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
United States District Judge, Active	☑ Nomination, Date 07/20/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 07/15/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Corbin, Fitzgerald & Athey LLP 601 West Fifth Street, Suite 1150 Los Angeles, CA 90027-2024	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Corbin, Fitzgerald & Athey LLP
2.	Director	Federal Bar Association, Los Angeles Chapter
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Fitzgerald, Michael W.	Date of Report 07/20/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	self-employed lawyer	$580,265.00
2.	2010	self-employed lawyer	$428,929.00
3.	2011	self-employed lawyer	$160,002.27
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting	Date of Report
	Fitzgerald, Michael W.	07/20/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting Fitzgerald, Michael W.	Date of Report 07/20/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
1. Bank of America cash accounts	A	Interest	J	T	Exempt				
2. Brokerage account #1					Exempt				
3. -- Aberdeen Emrg Mkts Instl (ABEMX)	A	Dividend	K	T					
4. -- Allianz AGIC Opportunity Fund Instl CL (POFIX)		None	K	T					
5. -- Artisan Intl Fund (ARTIX)	A	Dividend	L	T					
6. -- Blackrock Equity Dividend (MADVX)	B	Dividend	L	T					
7. -- Dodge & Cox Intl Stock (DODFX)	A	Dividend	L	T					
8. -- Fidelity Contrafund (FCNTX)	A	Dividend	L	T					
9. -- ICM Smalll Cap Company Portfolio Inst CL (ICSCSX)	A	Dividend	K	T					
10. -- JPMorgan Mid Cap Value (FLMVX)	A	Dividend	K	T					
11. -- JPMorgan Strategic Incm SEL SHR (JSOSX)	B	Dividend	K	T					
12. -- Marketfield Fund (MFLDX)		None	K	T					
13. -- Morgan Stanley Mid Cap Growth CL I (MPEGX)	A	Dividend	K	T					
14. -- Oakmart Intl Small Cap Fund CL (OAKEX)	A	Dividend	K	T					
15. -- Permanent Portfolio (PRPFX)	A	Dividend	L	T					
16. -- RiverNorth Core Opportunity Fund (RNCOX)		None	L	T					
17. -- RS Emrg Mkts Fund CL Y (RSENX)	A	Dividend	L	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Fitzgerald, Michael W.	07/20/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. -- Schwab Govt Money Fund (SWGXX)	A	Dividend	J	T					
19. -- Selected American Shares CL S (SLASX)	A	Dividend	L	T					
20. -- UBS AB Jersey 2040F (MLPI)	A	Dividend	K	T					
21. Brokerage account #2					Exempt				
22. -- Aberdeen Emrg Mkets Instl (ABEMX)		None	J	T					
23. -- Allianz OCC Opportunity Fund Istl CL (POFIX)		None	J	T					
24. -- Artisan Intl Fund (ARTIX)	A	Dividend	J	T					
25. -- Blackrock Equity Dividend (MADVX)	A	Dividend	K	T					
26. -- Dodge & Cox Intl Stock (DODFX)	A	Dividend	K	T					
27. -- Fidelity Contrafund (FCNTX)	A	Dividend	K	T					
28. -- ICM Small Cap Company Portfolio Inst CL (ICSCX)	A	Dividend	J	T					
29. -- JPMorgan Mid Cap Value (FLMVX)	A	Dividend	J	T					
30. -- JPMorgan Strategic Incm SEL SHR (JSOSX)	A	Dividend	J	T					
31. -- Marketfield Fund (MFLDX)		None	J	T					
32. -- Merger Fund (MERFX)	A	Dividend							
33. -- Morgan Stanley Mid Cap Growth CL I (MPEGX)	A	Dividend							
34. -- Oakmark Intl Small Cap Fund CL (OAKEX)	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Fitzgerald, Michael W.	07/20/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. -- Permanent Portfolio (PRPFX)	A	Dividend	J	T					
36. -- RiverNorth Core Opportunity Fund (RNCOX)		None	J	T					
37. -- RS Emrg Mkts Fund CL Y (RSENX)	A	Dividend	J	T					
38. -- Schwab Amt Tf Mmf (SWFXX)	A	Dividend	K	T					
39. -- Selected American Shares CL S (SLASX)	A	Dividend	K	T					
40. -- Steelpath MLP Alpha Fund I (MLPOX)	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Fitzgerald, Michael W.	Date of Report 07/20/2011

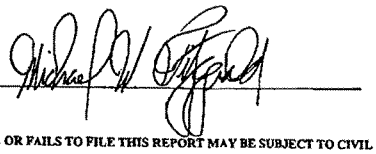
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Fitzgerald, Michael W.	Date of Report 07/20/2011

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		8	069	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	036	009	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends		38	449	Unpaid income tax			
Due from others		3	100	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		187	998
Real estate owned – personal residence	1	147	300	Chattel mortgages and other liens payable		-	
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		85	000	Car lease		8	395
Cash value-life insurance							
Other assets itemize:							
Tax Refunds for 2010		13	570				
				Total liabilities		196	393
				Net Worth	2	135	104
Total Assets	2	331	497	Total liabilities and net worth	2	331	497
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
ABEMX	$ 22,237
ARTIX	71,122
DODFX	70,974
FCNTX	102,399
FLMVX	36,509
ICSCX	35,060
JSOSX	57,138
MADVX	100,543
MFLDX	57,733
MLPI	44,673
MLPOX	5,511
MPEGX	35,617
OAKEX	56,765
POFIX	38,333
PRPFX	58,396
RNCOX	60,688
RSENX	61,963
SLASX	81,543
SWFXX	38,233
SWGXX	572
Total Listed Securities	$1,036,009

Real Estate Mortgages Payable	
Personal residence	$ 147,949
Home equity line of credit	40,049
Total Real Estate Mortgages Payable	$ 187,998

AFFIDAVIT

I, Michael Walter Fitzgerald, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 18, 2011
(DATE)

Michael Walter Fitzgerald
(NAME)

Sandra L. Laughon
(NOTARY)

CALIFORNIA JURAT WITH AFFIANT STATEMENT

☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

1
2
3
4
5
6

Signature of Document Signer No. 1 _____ Signature of Document Signer No. 2 (if any) _____

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 18TH day of JULY, 20 11, by

(1) MICHAEL WALTER FITZGERALD,
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and

(2) XXX,
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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Document Date: 7-18-11 Number of Pages: 1

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Item #5910

Senator DURBIN. Thank you very much. I imagine there are occasionally times when your brother's name is confused with another Patrick Fitzgerald.

[Laughter.]

Mr. FITZGERALD. Senator, I am told that the e-mails cross with an alarming degree of frequency.

Senator DURBIN. Thank you.

Ms. Ronnie Abrams, thank you for being here, and not only having the support of both of your Senators but also Senator Coons. Please proceed.

STATEMENT OF RONNIE ABRAMS, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Ms. ABRAMS. Thank you. I would like to thank first and foremost Senator Gillibrand for her support and encouragement throughout this process and her kind words today. I would like to thank Senator Coons as well for his generous words.

I would like to thank the Committee for its consideration and the President for the tremendous honor of this nomination.

As you heard, I do have with me my family. I would love to introduce them myself. First is my husband, Greg Andres, and my best friend. We have been married for over 10 years. He is a long-time Federal prosecutor, now a Deputy Assistant Attorney General in the Department of Justice.

My three daughters are here. I am hoping no one is sleeping, but that may be. This is Dylan, who is 8; Teddi, who is 6; and Finley, my 2-year-old. We are very proud of all three of them.

My parents, Floyd and Efrat Abrams, are here. I owe so much to both of them, but I would be remiss if I did not note in particular that my father has been my inspiration for my life and love of the law.

My brother, Dan Abrams, with whom I am very close, is also here, as well as a few very close friends.

Thanks very much.

[The biographical information of Ms. Abrams follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Ronnie Abrams

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

   United States District Judge for the Southern District of New York

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Davis Polk & Wardwell LLP
   450 Lexington Avenue
   New York, New York 10017

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

   1968; New York, New York

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1991 – 1993, Yale Law School; J.D., 1993

   1990 – 1991, Duke Law School and Graduate School; no degree due to transfer to Yale Law School

   1986 – 1990, Cornell University; B.A. (*cum laude*), 1990

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2008 – Present
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Special Counsel for Pro Bono

2008 – Present
Columbia University School of Law
435 West 116th Street
New York, New York 10027
Lecturer-in-Law

1998 – 2008
United States Attorney's Office for the Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
Deputy Chief, Criminal Division (2007 – 2008)
Chief, General Crimes Unit (2005 – 2007)
Acting Chief, General Crimes Unit (2004 – 2005)
Assistant United States Attorney (1998 – 2008)

1994 – 1998
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Associate

1993 – 1994
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007
Law Clerk to the Honorable Thomas P. Griesa

Summer 1992
Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Summer Associate

Summer 1991
New York County District Attorney's Office
One Hogan Place
New York, New York 10013
Summer Law Intern

Other Affiliations (uncompensated):

2008 – 2009
The Exoneration Initiative
350 Broadway
Suite 1207
New York, New York 10013
Board Member

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I have not registered for selective service.

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

   Commendations in recognition of outstanding performance, dedicated service and/or successful prosecutions from numerous law enforcement and government agencies, including the following:

   Bureau of Alcohol, Tobacco, Firearms and Explosives (2008)
   Triggerlock Unit, New York City Police Department (2008)
   U.S. Immigration and Customs Enforcement (2008)
   U.S. Marshals Service (2008)
   Social Security Administration (2004)
   U.S. Immigration and Naturalization Service (2000, 2003)
   Bronx Homicide Task Force, New York City Police Department (2002)
   Bronx Gang Squad, New York City Police Department (2002)
   U.S. Drug Enforcement Administration/Drug Enforcement Task Force (2001, 2002)
   Federal Bureau of Investigation (2000, 2002)

   Department of Justice Director's Award For Superior Performance as an Assistant United States Attorney (2003) (for two cases)

   Federal Law Enforcement Officers Association Group Achievement Award (2003)

   Editor, Yale Law & Policy Review (1992)

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

American Bar Association
Federal Bar Council
Public Service Committee (2008 – Present)
New York City Bar Association (formerly Association of the Bar of the City of New York)
Pro Bono and Legal Services Committee (2008 – 2011)
Government Ethics Committee (2004 – 2005)
New York State Bar Association

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 1994

There has been no lapse in membership.

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

United States Court of Appeals for the Second Circuit, 2001
United States District Court for the Southern District of New York, 1996
United States District Court for the Eastern District of New York, 1998

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Local Preschool Parents Association
Chair/Co-Chair, New Parent Committee (2006 – 2008)

The Dalton School Alumni Council (2005 – Present)
Vice-President for Career Services (2006 – 2010)

The Exoneration Initiative
Board Member (2008 – 2009)

New York State Justice Task Force
Counsel (2009 – Present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

The only item that I can recall having written or edited for publication is a piece on my 20th year high school reunion for Connections, a Dalton Alumni Magazine (Fall 2006). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

New York State Justice Task Force: As Counsel to the New York State Justice Task Force, I have contributed to the preparation of the following reports on behalf of the Task Force, both of which were issued in February 2011:

Recommendations for Improving Eyewitness Identifications (Feb. 2011). Copy supplied.

Recommendations Regarding Forensics and Expansion of the New York State DNA Database (Feb. 2011). Copy supplied.

During my service on the Pro Bono and Legal Services Committee of the New York City Bar Association, the Committee issued the following reports and/or public statements. The only ones that I recall personally contributing in the preparation of are the ones on International Pro Bono Representations.

Response to the November 2010 Report of the Task Force to Expand Access to Civil Legal Services in the Areas of ADR/Mediation and Simplification of Forms and Processes (June 2011). Copy Supplied.

Recommendations from the Committee on Pro Bono and Legal Services Regarding the RFP Process for Judiciary Funding for the Provision of Legal Services to Low-Income New Yorkers (Apr. 2011). Copy supplied.

Top 10 Best Practices for Integrating Law Firm Fellows (Mar. 2011). Copy supplied.

Report in Support of the Judiciary's 2011-2012 Budget Request (Jan. 2011). Copy supplied.

International Pro Bono Representations: Tips for Clearinghouses and Intermediaries Working with NGOs and Other Organizational Clients (2009). Copy supplied.

International Pro Bono Representations: Tips for Volunteer Lawyers (2009). Copy supplied.

International Pro Bono Representations: Tips for Organizational Pro Bono Clients (2009). Copy supplied.

Pro Bono Representations: Tips for Volunteer Lawyers (revised Mar. 26, 2009). Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

The following letters were sent by the Pro Bono and Legal Services Committee of the New York City Bar Association during my service on the Committee. I do not recall personally contributing to the preparation of either letter.

Letter to IOLA Regarding Proposed Amendment to Section 7000.9(b)(1) of Title 21, NYCRR (Jan. 8, 2010). Copy supplied.

Letter to the New York State Senate and Assembly Regarding Funding of Interest on Lawyer Account Fund of the State of New York (Oct. 30, 2009). Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

March 29, 2011 – Panelist at Columbia Law School Externship Expo, at which I described the nature of the Columbia Law School Prosecution Externship for which I co-teach the seminar. I have no notes, transcript or recording. The address of the Columbia Law School is 435 West 116th Street, New York, New York 10027.

March 3, 2011 – Speaker at the 2011 Pro Bono Institute Annual Seminar/Forum on In-House Pro Bono, entitled "Maintaining Momentum." The topic of the panel for which I was a co-facilitator was entitled "Lifelong Pro Bono: Shaping Opportunities for Every Stage of Legal Careers." I have no notes, transcript or recording. The address of the Institute is 1025 Connecticut Avenue, NW, Suite 205, Washington, D.C. 20036.

March 18, 2010 – Speaker at the 2010 Pro Bono Institute Annual Seminar. The session for which I was a co-facilitator was entitled "Peer to Peer P2P: Pro Bono Counsel/Special Counsel." I have no notes, transcript or recording. The address of the Institute is 1025 Connecticut Avenue, NW, Suite 205, Washington, D.C. 20036.

March 25, 2009 – Panelist at Columbia Law School Externship Expo, at which I described the nature of the Columbia Law School Prosecution Externship for which I co-teach the seminar. I have no notes, transcript or recording. The address of the Columbia Law School is 435 West 116th Street, New York, New York 10027.

February 20, 2009 – Panelist at the Third Annual Women's Law Association Conference at Harvard Law School. The conference was entitled "From Public Office to Office Politics, Women Lawyers Navigating a Political World," and my panel was entitled "Tapped On the Shoulder: the Politics of Public Service." I have no notes, transcript or recording. The address of the Association is Harvard Law School, Cambridge, Massachusetts 02138.

January 30, 2009 – Panelist on Law Firm/Public Interest Panel at the New York State Bar Association Pro Bono Coordinators' Network Meeting. The topic was "Pro Bono in Challenging Times." I have no notes, transcript or recording. The address of the Association is One Elk Street, Albany, New York 12207.

April 6, 2008 – Introduction of my father Floyd Abrams and brother Dan Abrams at the Dalton School Conversation Series. I have no notes, transcript or recording. The address of Dalton School is 53 East 91st Street, New York, New York 10128.

I have spoken at in-house events not open to the public, including orientations to incoming Davis Polk associates on the firm's pro bono program. I have no notes, transcripts or recordings of these events. The address of Davis Polk is 450 Lexington Avenue, New York, New York 10017. My records indicate that I spoke at in-house orientations on the following dates:

Pro Bono Overview, 11/23/10
Pro Bono Overview, 10/27/10
Pro Bono Overview, 9/22/10
Pro Bono Overview, 11/18/09
Pro Bono Overview, 9/16/09
Pro Bono Overview, 11/10/08
Pro Bono Overview, 10/8/08
Pro Bono Overview, 9/10/08

While I was a student at Yale Law School, I taught aspects of law to high school students as part of a "Street Law" program. I cannot recall the precise dates of my participation in this program. I have no notes, transcripts or recordings of any of the classes. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

The following is a list of articles I have compiled that followed from all the interviews that I gave to newspapers, magazines or other publications. Although I have attempted to create a list that is as complete as possible, there may be other interviews that I have been unable to recall or identify.

City Bar Justice Center, "Davis Polk & Wardwell LLP Partners with the CBJC to Help Disabled Veterans," City Bar Justice Center Winter Newsletter (Mar. 2011). Copy supplied.

Michael Virtanen, "NY Lawyers Log Thousands of Pro Bono Hours," Associated Press (Jan. 16, 2011) [re-printed in multiple outlets]. Copy Supplied.

Peter Stevenson, "The Dan and Dave Show," The New York Times (Dec. 10, 2010). Copy supplied.

Julie Triedman, "The Am Law Pro Bono 100: Davis Polk & Wardwell," American Lawyer (July 1, 2009). Copy supplied.

The only television or radio interview I can recall giving was a brief interview on the street in New York with CNN's Susan Candiotti and my daughters about a snow storm on March 2, 2009. Although I am not in possession of the clip, I have supplied a copy of a description of the piece, "Never a Snow Day in News," from TV Newser.

Q & A on Pro Bono with Ronnie Abrams, Davis Polk Website at http://www.davispolk.com/meet-ronnie-pro-bono-web-pages/. I gave this interview in or about late 2008 or early 2009. Copy supplied.

Thomas Adcock, "Pro Bono Team Wins $4.6 Million for Aggrieved Food Deliveryman," New York Law Journal (Oct. 31, 2008). Copy supplied.

Press release, "Davis Polk Wins $4.6 Million Judgment for Delivery Workers at Popular Restaurant," Davis Polk & Wardwell (Oct. 21, 2008) [re-printed in multiple outlets]. Copy Supplied.

Anthony Lin, "Davis Polk Hires Ex-Prosecutor as Pro Bono Coordinator," New York Law Journal (May 8, 2008). Copy supplied.

Press release, "Federal Prosecutor Ronnie Abrams Joins Davis Polk – Will Lead Firm's Pro Bono Campaign," Davis Polk & Wardwell (May 5, 2008) [re-printed in multiple outlets]. Copy supplied.

Karen Donovan, "From Making the Cases to Challenging Them," The New York Times (May 2, 2008). Copy supplied.

Stevenson Swanson, "Floyd Abrams: From the Pentagon Papers to the CIA Leak Case, the Nation's Top 1st Amendment Lawyer Has Championed Freedom of the Press," Chicago Tribune (July 13, 2005). Copy supplied.

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

I have not held a judicial office.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have

come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never been a judge.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 2010, I served as one of many co-hosts for a fundraising breakfast for U.S. Senator Michael Bennet of Colorado.

In 2009, I was a member of the Women for Cy Committee of the Cy Vance for Manhattan District Attorney Campaign. I served as one of many co-hosts for a fundraiser.

I was one of many co-hosts for two fundraisers for U.S. Senator Kirsten Gillibrand of New York in 2009.

In 1992, when I was in law school, I did limited volunteer campaign work for then presidential candidate Bill Clinton but had no title or official responsibilities.

I do not have a recollection of playing a role in any other political campaign or election committee, although it is possible that I did limited volunteer campaign work in either high school or college.

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

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

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

From 1993 to 1994, I served as a law clerk to the Honorable Thomas P. Griesa, (then Chief) Judge of the United States District Court for the Southern District of New York.

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

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1994 –1998
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Associate

1998 – 2008
United States Attorney's Office for the Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
Deputy Chief, Criminal Division (2007 – 2008)
Chief, General Crimes Unit (2005 – 2007)
Acting Chief, General Crimes Unit (2004 – 2005)
Assistant United States Attorney (1998 – 2008)

2008 – Present
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Special Counsel for Pro Bono

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

I have never served as a mediator or arbitrator.

b. Describe:

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

As an associate in Davis Polk's Litigation Department from 1994 to 1998, I worked on civil matters including ones involving copyright, trademark, false advertising, libel, contract, securities fraud and antitrust claims, as well as criminal matters, in which I assisted in the representation of clients in investigations, at trial and on appeal.

I joined the United States Attorney's Office for the Southern District of New York as an Assistant United States Attorney in the Office's Criminal Division in fall 1998. In that capacity, I represented the United States in a wide range of criminal prosecutions during the investigatory stage, at trial and on appeal. I spent my first year in the General Crimes Unit, where I handled a variety of cases, including ones involving sexual exploitation of children, bank robbery, alien smuggling, immigration, identity theft and money laundering. I then served in the Narcotics, Violent Crime and Public Corruption Units, prosecuting complex cases involving narcotics trafficking organizations, violent gangs and public officials.

Between 2004 and my departure in 2008, I served in a supervisory role at the United States Attorney's Office, as either a Deputy Chief of the Criminal Division or as a Chief (and before that, Acting Chief) of the General Crimes Unit. In overseeing the General Crimes Unit, I (along with a co-chief) was responsible for the supervision and training of all new federal prosecutors and oversaw hundreds of investigations and prosecutions. As a Deputy Chief of the Criminal Division, I participated in policy-making and management of the Office, and was involved in the oversight of various units. I also served as the Department of Justice and New York City Police Department liaison and supervisor for various initiatives, including ones involving crimes against children.

In 2008, I returned to Davis Polk in the newly created position of Special Counsel for Pro Bono. In this role, I litigate and supervise civil and criminal pro bono matters, in addition to overseeing the firm's pro bono program. Among other things, I am a member of the Criminal Justice Act Panel in the Southern District of New York, through which I represent indigent defendants in federal criminal actions. I have also worked on a variety of civil matters, ranging from Fair Labor Standards Act and other federal litigations to family court proceedings. In addition to actively participating in particular matters, I also assist in supervising many more, by, among other things, editing briefs and other court documents, mooting lawyers for upcoming arguments and helping prepare witnesses and lawyers for hearings or trial.

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

As an associate at Davis Polk & Wardwell, my clients were primarily large financial institutions, media and other corporate entities. In addition to working on civil matters, I helped represent various entities that were being investigated by U.S. Attorneys' Offices.

As an Assistant United States Attorney and supervisor in the U.S. Attorney's Office, I represented the federal government exclusively in criminal prosecutions. In so doing, I worked with various federal law enforcement agencies such as the Federal Bureau of Investigation, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Marshals Service, the United States Secret Service and United States Immigration and Customs Enforcement, as well as various state and local law enforcement agencies, including the New York City Police Department. At times, I specialized in violent crime, crimes against children, public corruption and narcotics prosecutions and at other times, my caseload was more varied.

In my capacity as Special Counsel for Pro Bono, my clients have included workers seeking to enforce the minimum wage laws, battered women seeking orders of protection, veterans seeking benefits, wrongfully convicted individuals, criminal defendants and others without the means to represent themselves in federal and state actions, in addition to charitable, civic and governmental organizations, including but not limited to non-profit organizations and local District Attorneys' Offices.

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

The vast majority of my practice has been in litigation. As a litigation associate, I was in court on occasion; I tried a murder case in state court, argued an appeal in the appellate division, handled proceedings in family court and either handled or assisted others in handling civil proceedings in federal court, including a hearing in a trademark case and motion to dismiss a libel case.

Over the course of my tenure at the United States Attorney's Office, I appeared in district court frequently, often ranging from once to several times a week, handling arraignments, pre-trial conferences, pleas, sentencing proceedings and hearings. During my trials there (all of which lasted between one and ten weeks), I appeared in court on a daily basis. I also argued appeals in the Court of Appeals for the Second Circuit. After I became a supervisor at the U.S. Attorney's Office in 2004, I appeared in court as the attorney of record less frequently, although I was regularly in court advising the more junior lawyers I supervised.

Since I became Special Counsel for Pro Bono in 2008, I have appeared in court from time to time. Among others things, I am now on the Criminal Justice Act Panel for the Southern District of New York and assigned clients in federal criminal actions. I have also overseen two trials – one civil case in the Southern District of New York and another in Bronx Family Court – as well as numerous appeals in state court.

i. Indicate the percentage of your practice in:
   1. federal courts: 75%
   2. state courts of record: 20%
   3. other courts: 0%
   4. administrative agencies: 5%

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

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

I have tried thirteen cases to verdict. In an additional trial (my fourteenth), the defendant pleaded guilty just prior to summations. Of those trials, one lasted two and a half months and another a month and a half. In nine of those cases, I fully shared all responsibilities preparing for and putting the case before the jury with my trial partner(s), including addressing the jury, examining witnesses and arguing motions. On five occasions, I served as a "second seat," closely supervising more junior attorneys at trial.

i. What percentage of these trials were:
   1. jury: 85%
   2. non-jury: 15%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Restrepo, 99 Cr. 1113 (SAS), 05 Civ. 2680 (SAS), and Related Cases

These cases involved the investigation and prosecution of a Colombian racketeering organization that engaged in robbery, murder and narcotics trafficking in New York, New Jersey and elsewhere. The organization, which included gang leader Restrepo and more than 10 others, targeted jewelers and other legitimate businesses as well as drug dealers for robberies. The defendants committed approximately 100 armed robberies. They also committed numerous murders and among their victims was Donald Pagani, a retired detective from the New York City Police Department who was killed during the course of a robbery of a meat company in the Bronx.

After Pagani's murder, Restrepo and numerous co-conspirators fled from the United States. Restrepo and others were later arrested in Colombia and extradited. After most of his co-defendants pleaded guilty, Restrepo proceeded to trial in February 2002. At trial, the government proved Restrepo's guilt through voluminous evidence, including the testimony of more than 75 witnesses and more than 400 items of physical evidence. At the conclusion of the jury trial before the Honorable Shira A. Scheindlin in the

United States District Court for the Southern District of New York, Restrepo was convicted on March 25, 2002 of all counts. He was sentenced to life imprisonment. His conviction was affirmed in United States v. Baez, 349 F.3d 90 (2d Cir. 2003) and a subsequent motion to vacate his sentence was denied in Restrepo v. United States, 533 F. Supp. 2d 359 (S.D.N.Y. Jan. 22, 2008).

I prosecuted this case and related cases on behalf of the government and was involved in the investigation and all phases of the prosecution from motions to trial, sentencing, appeal and collateral review. I received the Department of Justice Director's Award For Superior Performance as an Assistant United States Attorney for my work on this matter.

Co-counsel:

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Marc L. Mukasey, Esq. (then Assistant United States Attorney)
Bracewell & Giuliani
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Dan Himmelfarb, Esq. (then Assistant United States Attorney)
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Defendant's Counsel:

Gregory G. Smith, Esq.
I have been unable to locate current contact information for Gregory G. Smith.

Anthony L. Ricco, Esq.
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2. United States v. Portee, 01 Cr. 450 (NRB) and Related Cases

This matter involved the investigation and prosecution of the leadership of the United Blood Nation, a violent street gang based on the East Coast of the United States and commonly known as the "Bloods." The investigation, which began in 1999, resulted in a multi-defendant racketeering prosecution, as well as other related federal and state prosecutions, and ended with convictions of the Bloods' founder, top lieutenants and other gang members. This investigation and prosecution solved hundreds of crimes committed along the Eastern seaboard, including attempted murders, assaults, firearms violations, prostitution-related offenses, narcotics trafficking, credit card fraud and identity theft.

After over a dozen defendants pleaded guilty, four defendants, including the Bloods leader and founder Portee and three high-ranking gang members (Jackson, Andrews and Foster) proceeded to trial before the Honorable Naomi Reice Buchwald in the United States District Court for the Southern District of New York. Each of the defendants was charged in various counts of a 39 count indictment. The evidence at trial included the testimony of six cooperating witnesses (five of them former members of the Bloods gang), recorded conversations capturing defendants discussing their respective roles in the Bloods and various crimes, the testimony of numerous victims, law enforcement officers and other witnesses, as well as a host of physical and documentary evidence. Trial commenced on June 19, 2002 and ended on August 27 and 28, 2002, when the jury returned guilty verdicts against Portee, Jackson and Andrews on multiple (but not all) counts. Portee was convicted of, among other things, racketeering, assault, violations of the narcotics and firearms laws and identity theft. (The jury was deadlocked as to Foster but he was ultimately convicted in a subsequent trial.) The convictions of the three defendants were affirmed in United States v. Portee, 123 Fed. Appx. 432 (2d Cir. 2005). Portee was sentenced to 50 years' imprisonment, Jackson to 28 years and Andrews to 29 years.

I represented the government throughout this matter, investigating, charging, litigating motions and trying the case, as well as working on the post-trial litigation and appeal. I received the Department of Justice Director's Award For Superior Performance as an Assistant United States Attorney for my work on this matter.

Co-counsel:

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(212) 921-8399

Elizabeth Maringer, Esq.
Deputy Chief, Criminal Division
United States Attorney's Office
Southern District of New York
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(212) 637-2402

Defendants' Counsel:

Robert S. Dunn (for Defendant Portee)
(now deceased)

Phillip R. Edelbaum (for Defendant Foster)
(now deceased)

David Cooper, Esq. (for Defendant Jackson)
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(212) 966-7819

Robert Koppelman, Esq. (for Defendant Andrews)
585 West End Avenue
New York, New York 10024
(212) 577-6580

3. United States v. Griffith, 99 Cr. 786 (HB)

This was a criminal case involving two brothers who recruited underage girls and young women from schools in the Bronx and elsewhere into prostitution. They also videotaped the minors and adult women engaging in a host of sexual acts. Following a jury trial, at which numerous underage girls testified, the Griffiths were convicted on September 22, 2000 of transporting an individual in interstate commerce with the intent that she engage in prostitution, of using a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and of conspiracy to violate each of the aforementioned laws. The Honorable Harold Baer, United

States District Judge for the Southern District of New York, sentenced the brothers to 126 and 120 months' imprisonment, respectively.

On appeal, the Court of Appeals for the Second Circuit upheld the Griffiths' convictions and ruled for the first time that under 18 U.S.C. § 2423(a), a person who "knowingly" transports a minor in interstate commerce for the purpose of prostitution is guilty of a crime, even if he does not have knowledge that the victim was a minor. The Court also rejected a host of other defense claims including various constitutional challenges to their convictions. United States v. Griffith, 284 F.3d 338 (2d Cir. 2002). The District Court opinion can be found at United States v. Griffith, 2000 WL 1253265 (S.D.N.Y. Sept. 5, 2000).

I handled this case on behalf of the government from beginning to end, investigating, charging, litigating motions and trying the case, as well as briefing and arguing the appeal before the Court of Appeals for the Second Circuit and handling the extensive post-trial litigation.

Co-counsel:

Aitan D. Goelman, Esq. (then Assistant United States Attorney)
Zuckerman Spaeder, LLP
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(202) 778-1800

Defendants' Counsel:

Sam Braverman, Esq. (for Defendant A. Griffith)
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Roger B. Adler, Esq. (for Defendant C. Griffith)
Roger Bennet Adler, P.C.
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4. People v. Roche, Ind. No. 14851/91

The defendant in this case was charged and convicted of second degree murder in Supreme Court, New York County before the Honorable Richard Lowe. While an associate at Davis Polk, I handled Mr. Roche's appeal, pro bono, together with the Office of the Appellate Defender. My representation of Mr. Roche began in November 1995 and ended in October 1998. I

appeared before the Appellate Division, First Department, and argued that the *Allen* charge that the trial court gave during jury deliberations violated the Due Process Clauses of both the New York and United States Constitutions. The Appellate Division agreed, reversed the conviction and remanded for a new trial. People v. Roche, 239 A.D.2d 270, 658 N.Y.S.2d 16 (1st Div., May 22, 1997).

With colleagues from Davis Polk, I then tried the case in Supreme Court, New York County before the Honorable Renee White in October 1998. The defendant was again convicted after trial. Although I left Davis Polk shortly after Mr. Roche's trial and did not handle his subsequent appeal, the Appellate Division reversed Mr. Roche's conviction for a second time due to the trial court's refusal to charge the jury on the affirmative defense of extreme emotional distress, as we had requested. People v. Roche, 286 A.D.2d 290, 729 N.Y.S.2d 722 (1st Dept. Aug. 30, 2001). The New York Court of Appeals ultimately reversed the order of the Appellate Division and reinstated the conviction. People v. Roche, 98 N.Y.2d 70 (2002).

Appellate Co-counsel:

Daniel Warshawsky, Esq. (then Deputy Attorney-in-Charge of the Office of the Appellate Defender)
Associate Professor of Law
New York Law School
185 West Broadway
New York, New York 10013
(212) 431-2100

Trial Co-counsel:

Carey Dunne, Esq.
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4158

Gretchen A. Wagner, Esq.
General Counsel, Secretary and Director of Administration
ARTstor
151 East 61st Street
New York, New York 10065
(212) 500-2400

Government's Counsel:

The principal counsel for the New York County District Attorney's Office was then Assistant District Attorney Alberto Roig. I have been unable to obtain current contact information for him.

5. Ke v. Saigon Grill, Inc., 07 Civ. 2329 (MHD)

This case involved a lawsuit brought by 36 restaurant workers at the Saigon Grill, a popular Vietnamese restaurant with two Manhattan locations, for failure to pay minimum wage and overtime under the Fair Labor Standards Act (FLSA) and New York labor law. The defendants paid their delivery workers well below the minimum wage, in some cases less than two dollars an hour, and further failed to pay overtime compensation for work weeks that lasted as long as 80 hours. The plaintiffs were unaware of their rights to be paid the minimum wage and overtime for years as a direct result of the Saigon Grill ignoring its legal obligation to provide its employees with notice of the labor laws.

After a bench trial held in June 2008, the Honorable Michael H. Dolinger, United States Magistrate Judge in the Southern District of New York, awarded the 36 plaintiffs approximately $4.6 million in compensatory and liquidated damages. Ke v. Saigon Grill, Inc., 595 F. Supp. 2d 240 (S.D.N.Y. 2008). The Court found that defendants violated the FLSA and New York labor law by failing to pay plaintiffs the minimum wage and overtime compensation, and that defendants unlawfully reduced plaintiffs' wages by fining plaintiffs for perceived infractions of restaurant rules and by requiring plaintiffs to pay for expenses associated with the purchase and maintenance of bicycles and motor scooters. The Court also found that twenty-two of the plaintiffs were fired in March 2007 in retaliation for planning to bring suit.

I joined the Saigon Grill team upon my return to Davis Polk approximately two months prior to trial, and actively supervised four associates in representing plaintiffs prior to and at trial. I oversaw everything from witness preparation and trial strategy to pre- and post-trial briefing.

Co-counsel:

William R. Miller, Jr., Esq.
Matteo J. Rosselli, Esq.
Edward Sherwin, Esq.
Brian S. Weinstein, Esq.
Davis Polk & Wardwell
450 Lexington Avenue
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Jonathan L. Adler, Esq. (formerly with Davis Polk)
Herrick, Feinstein LLP
2 Park Avenue
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212) 592-5936

Kenneth Kimerling, Esq.
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Defendants' Counsel:

S. Michael Weisberg, Esq.
Weisberg & Weisberg
2463 Broadway
New York, New York 10025
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6. United States v. Li, 99 Cr. 846 (SAS)

This case stemmed from the investigation and prosecution of alien smugglers – or "snakeheads" – involved in a scheme to smuggle Chinese aliens into the United States through Canada and hold them hostage until their smuggling fees were paid. In June 1999, approximately 100 of these aliens were hidden in an old fishing boat that sailed from the People's Republic of China to Western Canada. Prior to boarding the vessel, the aliens were held in various locations by individuals with sticks and guns. In Canada, the snakeheads took custody of the aliens, eventually transporting them to New York City, beating some along the way. The aliens were released upon paying their smuggling fees; aliens who did not have the money to pay the smuggling fees were held in various locations throughout the city and beaten. Defendant Li was the snakehead responsible for guarding the aliens once they arrived in New York City.

Co-defendant Zhang pleaded guilty prior to trial and testified as a cooperating witness in defendant Li's trial; ultimately, Li pleaded guilty prior to summations and entered into a cooperation agreement pursuant to which he provided evidence against other defendants in subsequent hostage taking and alien smuggling cases, including one involving the New York boss of the smuggling scheme.

I handled this case on behalf of the government from the beginning, investigating, charging, litigating motions and trying the case before the Honorable Shira A. Scheindlin in the United States District Court for the

Southern District of New York in December 1999. There were no reported decisions in this case.

Co-counsel:

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Defendant's Counsel:

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7. United States v. Danson, 02 Cr. 1052 (CPS)

This case involves the investigation and prosecution of a defendant for using a fraudulent passport, making false statements to the Immigration and Naturalization Service ("INS") and committing perjury in an INS proceeding as part of a successful effort to obtain asylum in the United States. To support her fraudulent asylum claim, Danson claimed: (1) that her name was Adelaide Abankwah; (2) that her mother was the Queen of her village in Ghana and that she was to succeed her in that role; (3) that in the course of becoming Queen Mother, she would be subject to female genital mutilation ("FGM"); (4) that if she declined to serve as Queen Mother, she would be subject to FGM or killed; and (5) that if she returned to her village, she would be killed.

Through an investigation that spanned from New York to the village in Ghana that Danson said she came from, the government proved Danson's story false at trial. Numerous witnesses from Ghana, among others, testified at a trial before the Honorable Charles P. Sifton in the United States District Court for the Eastern District of New York in January 2003. These witnesses included: (1) an employer for whom the defendant worked for five years under the name Danson; (2) the chief of the defendant's village who testified that neither Danson nor her mother ever were or were supposed to be Queen Mother and that FGM was not practiced by members of their tribe; and (3) an expert on FGM in Ghana who testified that members of Danson's tribe did not practice FGM and that those who do practice FGM in Ghana do not use it as punishment, as Danson had claimed. The defendant was convicted of all

counts after trial, and the convictions were affirmed on appeal. United States v. Danson, 115 Fed. Appx. 486 (2d Cir. 2004).

I handled this case on behalf of the government as a Special Assistant United States Attorney for the United States Attorney's Office for the Eastern District of New York from beginning to end, investigating, charging, litigating motions and trying the case, as well as handling the sentencing and arguing the appeal.

Co-counsel:

Aitan D. Goelman, Esq. (then Assistant United States Attorney)
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Defendant's Counsel:

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8. United States v. Marte, 99 Cr. 868 (MBM)

This case involved seven defendants charged with conspiracy to distribute and possess with intent to distribute five or more kilograms of cocaine. All defendants pleaded guilty prior to trial except for defendant Minaya. At trial before the Honorable Michael B. Mukasey in the United States District Court for the Southern District of New York in August 2000, the government proved Minaya's participation in the attempted delivery of approximately 242 kilograms of cocaine to Minaya's place of business, where it was scheduled to be off-loaded and transported for distribution. Minaya's conviction was affirmed in United States v. Marte, 52 Fed. Appx. 531 (2d Cir. 2002).

I represented the government in this matter in pre-trial litigation, at trial and at sentencing.

Co-counsel:

Aitan D. Goelman, Esq. (then Assistant United States Attorney)
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Defendant's Counsel:

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9. United States v. Ahmed, S4 99 Cr. 395 (TPG)

This case involved five defendants charged with conspiracy to import and distribute heroin from Pakistan. Four defendants pleaded guilty prior to trial and the fifth, Ahmed, was convicted in August 2001 of all counts after trial before the Honorable Thomas P. Griesa in the United States District Court for the Southern District of New York. Ahmed's conviction was affirmed in United States v. Ahmed, 67 Fed. Appx. 648, 2003 WL 21369261 (2d Cir. 2003).

I represented the government in this matter in pre-trial litigation, at trial and on the appeal.

Co-counsel:

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Defendant's Counsel:

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10. United States v. Percan, 00 Cr. 1232 (AGS)

This matter involved a conspiracy to steal thousands of airbags from automobiles parked on the streets of New York and resell them to customers throughout the country. Four defendants pleaded guilty prior to trial, but defendant Percan, the owner of All in One Auto, proceeded to trial before the Honorable Allen G. Schwartz in the United States District Court for the Southern District of New York. Percan was convicted on September 24, 1999 on each of the seventeen counts with which he was charged. The evidence at trial demonstrated that Percan purchased over one million dollars worth of automobile airbags from four co-defendants who stole them directly from cars and resold the airbags to customers in each of the fifty states. The evidence also showed that Percan laundered the proceeds of his sales through bank accounts of All in One Auto and that the money from the airbag sales was used to promote the ongoing conspiracy. Percan's conviction was affirmed in United States v. Kalust, 249 F.3d 106 (2d Cir. 2001).

I represented the government in this matter at trial and on the appeal.

Co-counsel:

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Defendant's Counsel:

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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

United States Attorney's Office: During my nine and a half years at the U.S. Attorney's Office, I investigated and prosecuted numerous cases that never proceeded to trial or that are otherwise not detailed above, including ones involving public corruption, bribery,

extortion, white-collar crime, perjury, violent crime, bank robbery, kidnapping, racketeering, crimes against children, identity theft and immigration. Among many other cases that resulted in dispositions, I worked extensively on the investigation of a former New York State Assemblyman and labor organization leader who pleaded guilty in March 2008 to racketeering charges that included using embezzlement, fraud and bribes to take money from taxpayers, labor unions and contractors. I stopped working on the matter after I had full-time supervisory duties and prior to the time that he was formally charged.

My most significant legal activities as Chief of the General Crimes Unit entailed supervising and training the Assistant United States Attorneys in the Unit, all of whom were fairly new to the Office. In so doing, I, together with my co-chief, oversaw hundreds of investigations and prosecutions, including grand jury proceedings, trial advocacy, brief writing, discovery practices, plea negotiations, sentencing and pre-trial and post-conviction litigation. As Deputy Chief of the Criminal Division, in addition to helping oversee the work of numerous units, I participated in policy-making and management of the Office, while also serving as Department of Justice and New York City Police Department liaison and supervisor for various initiatives.

Davis Polk: Although the vast majority of my practice is in litigation, as Special Counsel for Pro Bono, I also oversee the pro bono program as a whole and am responsible for particular initiatives and certain relationships that the firm maintains with legal services organizations. As an associate at Davis Polk, I was also involved in representing clients of the firm – generally financial institutions and other large corporations – in various potential criminal and civil matters that did not proceed to litigation or trial.

The New York State Justice Task Force: I presently serve as Counsel to the New York State Justice Task Force, one of the first permanent task forces on wrongful convictions in the United States. The Justice Task Force was created by New York State Chief Judge Jonathan Lippman in May 2009 and its mission is to eradicate the systemic and individual harms caused by wrongful convictions and to promote public safety by examining the causes of wrongful convictions and recommending reforms to safeguard against them in the future. The Task Force's members include judges, district attorneys, police chiefs, defense attorneys, academics, legislators, forensic laboratory directors and victims' advocates from around the state. As Counsel, I run weekly or bi-weekly meetings of various subcommittees on issues ranging from forensics to false confessions and identification procedures. I also help draft the Task Force reports, as well as establish meeting agendas, identify speakers and review cases, academic studies and a host of other materials.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Columbia Law School (Fall 2008 – Present): In 2008, I created a Prosecution Externship at the United States Attorney's Office for the Southern District of New York and related seminar for Columbia Law School. The externship offers students the opportunity to learn about investigating and prosecuting federal criminal cases in United States District Court. In light of the fact that I left the United States Attorney's Office before the course began, I never oversaw the externship aspect of the course but have been co-teaching the seminar since its inception in September 2008. The seminar provides an overview of the federal criminal justice system, from the investigation and decision to charge a case through trial and sentencing. Bonnie Jonas, Senior Litigation Counsel in the U.S. Attorney's Office, co-taught the course with me in 2008 and Elizabeth Maringer, Deputy Chief of the Criminal Division in the U.S. Attorney's Office, has done so since 2009. A copy of the course syllabus is provided.

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

    I will receive payments, upon retirement, from the Federal Employees Retirement System.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    No.

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

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Statement of Net Worth.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest

when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Cases in which my current law firm, Davis Polk & Wardwell LLP, represented a party or appeared would present a potential conflict of interest. To avoid such a conflict or the appearance of one, I would recuse myself for a period of time from cases in which Davis Polk represented a party or appeared.

My husband is a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice and my father is a partner in the law firm of Cahill Gordon & Reindel LLP. If confirmed, I would recuse myself from matters involving those entities where appropriate, in a manner consistent with the recusal statutes and the Code of Conduct for United States Judges.

At the present time, I cannot think of any category of litigation which, by its nature, would present a conflict of interest for me.

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

If confirmed, I would handle all matters involving actual or potential conflicts of interest through careful application of the Code of Conduct for United States Judges, as well as other relevant canons and statutory provisions. I would consult my judicial colleagues on these issues as appropriate as well.

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

As Davis Polk's Special Counsel for Pro Bono, virtually all of the work I do is designed to serve the disadvantaged. I not only work on and supervise particular pro bono matters but I oversee the program as a whole. Included among the many pro bono matters I have participated in or supervised are ones involving criminal matters in federal and state court; litigations brought by workers seeking to enforce the Fair Labor Standards Act; family court actions, primarily involving battered women; disability claims for veterans; and wrongful conviction cases. Among other things, in 2008, I supervised a trial in the Southern District of New York in which 36 delivery workers were awarded over $4.6 million from a restaurant for violations of the minimum wage and overtime laws and last year, I supervised a trial in which we represented a battered woman seeking an order of protection from her abuser in Bronx Family Court. As an associate at Davis Polk, I also did a substantial amount of pro bono work, including representing indigent defendants in criminal cases and battered women in family court.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In the fall of 2009, I had a conversation with Senator Kirsten Gillibrand, in which she encouraged me to apply for a federal judgeship. In November 2009, I submitted materials to Senator Gillibrand's office, including a resume. In December 2009, I submitted a completed questionnaire to Senator Charles E. Schumer's judicial selection committee and was interviewed by that committee on March 1, 2010. In March 2011, I was asked by a member of Senator Gillibrand's staff to forward the questionnaire I submitted to Senator Schumer's committee and some more recent information to her office, which I did. I was informed in April 2011 that Senator Gillibrand intended to recommend to the President that I be nominated for a judgeship in the Southern District of New York. Since April 8, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 9, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 28, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Abrams, Ronnie	Southern District of New York	07/28/11
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination, Date 07/28/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 07/26/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
500 Pearl Street New York, N.Y. 10007-1312	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Special Counsel for Pro Bono	Davis Polk & Wardwell LLP
2.	Lecturer-in-Law	Columbia Law School
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Abrams, Ronnie	Date of Report 07/28/11

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2011	Davis Polk & Wardwell LLP - salary	$200,409.46
2.	2010	Davis Polk & Wardwell LLP - salary	$366,195.32
3.	2009	Davis Polk & Wardwell LLP - salary	$367,836.54
4.	2010	Columbia Law School - teaching	$6,000.00
5.	2009	Columbia Law School - teaching	$6,000.00
6.			

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

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

	DATE	SOURCE AND TYPE
1.	2010	New York University School of Law - teaching
2.		
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Abrams, Ronnie	Date of Report 07/28/11

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-33 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Abrams, Ronnie	07/28/11

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Andres Family Partnership (no control)	C	Int./Div.	M	U	Exempt				
2. Rosbar Corporation (no control)	D	Dividend	M	U					
3. First Manhattan Co. Equity Mutual Funds	A	Dividend	J	T					
4. Citibank Cash Accounts	A	Interest	L	T					
5. American Funds Growth Fund of America		None	K	T					
6. Fidelity Spartan 500 Index Fund		None	M	T					
7. Morgan Stanley Core Plus Fixed Income Port.		None	J	T					
8. Oakmark Equity & Income Fund		None	L	T					
9. NYS 529 College Savings Plans:									
10. - Vanguard Mid Cap Stock Index Portfolio		None	J	T					
11. - Vanguard Growth Stock Index Portfolio		None	J	T					
12. - Vanguard Value Stock Index Portfolio		None	J	T					
13. - Vanguard Bond Market Portfolio		None	J	T					
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Abrams, Ronnie	Date of Report 07/28/11

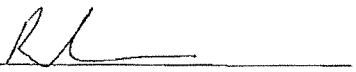
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Abrams, Ronnie	Date of Report 07/28/11

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		50	035	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		252	914	Notes payable to relatives		231	988
Unlisted securities – see schedule		315	814	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		693	750
Real estate owned – personal residence	4	700	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		540	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		925	738
				Net Worth	4	933	025
Total Assets	5	858	763	Total liabilities and net worth	5	858	763
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds Growth Fund of America	$19,614
Fidelity Spartan 500 Index Fund	140,440
First Manhattan Co. Equity Mutual Funds	5,372
Morgan Stanley Core Plus Fixed Income Port.	10,446
Oakmark Equity & Income Fund	62,434
New York State 529 College Savings Plans	
Vanguard Mid Cap Stock Index Portfolio	4,511
Vanguard Growth Stock Index Portfolio	4,476
Vanguard Value Stock Index Portfolio	2,462
Vanguard Bond Market Portfolio	3,159
Total Listed Securities	$252,914

Unlisted Securities	
Andres Family Partnership (9.75% interest)	$140,000
Rosbur Corporation (16.32% interest)	175,814
Total Unlisted Securities	$315,814

AFFIDAVIT

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

July 26, 2011
(DATE)

(NAME)

Margaret M. Kratochvil
(NOTARY)

MARGARET M. KRATOCHVIL
NOTARY PUBLIC, State of New York
No. 01KR4687007
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Dec. 31, 2013

Senator DURBIN. Thank you very much.

Rudolph Contreras from the District of Columbia, the floor is yours.

STATEMENT OF RUDOLPH CONTRERAS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Mr. CONTRERAS. Thank you. I would like to thank the Committee for considering my nomination and scheduling this hearing. I would also like to thank the President for nominating me and giving me this great honor.

I would like to thank Congresswoman Norton for recommending me to the President and her selection Committee for recommending me to her.

And I would like to acknowledge the folks that came with me here today: my mother, Amparo, who flew up from Miami for this hearing; my wife, Karen McSweeney, who is a joint partner in everything I do; my children, Brian and Claire; and also here with me today are two of my long-time mentors and hopefully future colleagues: Chief Judge Royce Lamberth and Judge Ricardo Urbina, who, after taking senior status, is the slot for whom I have been nominated.

Thank you.

[The biographical information of Mr. Contreras follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Rudolph Contreras

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

   United States District Judge for the District of Columbia

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   United States Attorney's Office for the District of Columbia
   555 Fourth Street, N.W.
   Washington, D.C. 20530

   Residence: Fairfax, Virginia

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

   1962; Staten Island, New York

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1988 – 1991, University of Pennsylvania Law School; J.D. (*cum laude*), 1991
   1982 – 1984, Florida State University; B.S., 1984
   1980 – 1982, University of Miami; no degree

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2006 – present
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
Chief, Civil Division

2003 – 2006
United States Attorney's Office for the District of Delaware
1007 Orange Street, Suite 700
Wilmington, Delaware 19899
Assistant United States Attorney
Chief, Civil Division

1994 – 2003
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
Assistant United States Attorney

Summer 1990, 1991 – 1994
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Associate (1991 – 1994)
Summer Associate (Summer 1990)

Fall 1990
United States Attorney's Office for the Eastern District of Philadelphia
615 Chestnut Street, Suite 1250
Philadelphia, Pennsylvania 19106
Extern

Summer 1989
United States District Court for the District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
Fourth & Cooper Streets
Camden, New Jersey 08101
Student Intern for the Honorable Stanley S. Brotman

1985 – 1988
Miami Herald
One Herald Plaza
Miami, Florida 33132
Account Executive

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I did not serve in the military. I registered for selective service upon turning 18.

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

   Silver Medal for Superior Service, Environmental Protection Agency (2006)

   Executive Office for United States Attorneys Director's Award for Superior Performance as an Assistant United States Attorney (1999)

   Order of the Coif, University of Pennsylvania Law School (1991)

   Presidential Scholarship, University of Miami (1980 – 1982)

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

   Department of Justice Associate Attorney General's Electronic Discovery Task Force

   Hispanic Bar Association of the District of Columbia

   United States Attorneys' Offices Civil Chiefs' Working Group

   United States District Court for the District of Columbia Civil Rules Committee

10. **Bar and Court Admission**:

    a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

       District of Columbia, 1992
       Florida, 1991
       Pennsylvania, 2005

       I retired from the Pennsylvania bar in 2006 and am currently in inactive status in the Florida bar. Otherwise, there have been no lapses in membership.

    b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the District of Columbia Circuit, 1994
United States Court of Appeals for the Third Circuit, 2003 – 2006
United States District Court for the District of Columbia, 1994
United States District Court for the District of Delaware, 2003 – 2006

In each of these courts, I was admitted as a government attorney. My admission to practice before the Third Circuit and the District Court for the District of Delaware coincided with my time working in the United States Attorney's Office for the District of Delaware. During that same time, my admissions before the District of Columbia Circuit and the District Court for the District of Columbia lapsed.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Boy Scouts of America (2009 – present)

Jewish Community Center (Summer Pool) (2004)

Mantua Swim & Tennis Club (2006 – present)

Mentors, Inc. (1992 – 1995)

Timber Lane Swim Club (2005)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or

national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have not published any books, articles, reports, or letters.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

In 2009, I was a member of the Department of Justice Associate Attorney General's Electronic Discovery Task Force, which prepared an internal report. That report is privileged, and thus is not supplied.

In 2006, I participated in an effort to revise the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware. In particular, I focused on Rule 83.5(f)(1), which governs the admission of federal government attorneys to practice in that court. In addition, I reviewed other sections of the rules and participated in a number of meetings. I left the U.S. Attorney's Office in Delaware before the revision was finalized. The current version of the rules, which were revised again in 2010, is available at http://www.ded.uscourts.gov/.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have not provided any such testimony, official statements, or other communications.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom

the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

June 2, 2011: I participated on a luncheon panel for the Federal Judicial Center's Civil Case Management Seminar: Achieving the Promise of Rule 1. I have no notes, transcript or recording. The FJC's address is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20002.

March 7, 2011: I spoke at the Attorney Admission Ceremony for the United States District & Bankruptcy Courts for the District of Columbia. Notes supplied.

April 12, 2007: I participated in a panel discussion at George Mason University School of Law sponsored by the Hispanic Bar Association of the District of Columbia. I have no notes, transcript or recording. The address of the Hispanic Bar Association of the District of Columbia is P.O. Box 1011, Washington, D.C. 20013.

March 8, 2007, December 7, 2006, and Spring 2006: I gave lectures on E-Discovery. The March 2007 and Spring 2006 lectures were for U.S. Attorney's Offices, and the December 2006 presentation was to the General Services Administration, one of our client agencies. I prepared Powerpoint presentations for these events, but they were prepared in anticipation of litigation, contain attorney work product, and are considered privileged.

July 10, 2006: I spoke at the Attorney Admission Ceremony for the United States District & Bankruptcy Courts for the District of Columbia. Notes supplied.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Bill Myers, *Blowing Whistle Pays Off Big for Fortunate Few*, Washington Examiner, May 27, 2009. Copy supplied.

Bill Myers, *'Ringer' of a Lawyer Wins Millions*, Washington Examiner, Oct. 25, 2008. Copy supplied.

John McArdle, *First Lawsuit Filed against Chief Morse Dismissed*, Roll Call, July 16, 2007. Copy supplied.

Lee Williams and Esteban Parra, *U.S. Marshals Question Care of Federal Inmates in State Prison*, Wilmington News Journal, Oct. 28, 2005. Copy supplied.

On September 20, 2005, I made remarks as part of a press conference to announce the settlement of an environmental enforcement action against Motiva. The press conference was covered by the local and national press. Press coverage of the event is listed below, and my notes are supplied:

> Josh Cable, *$23.7 Million Motiva Settlement Brings 'Tragic Chapter' to Close*, EHS Today, Oct. 28, 2005. Copy supplied.
>
> *Motiva, Premcor to Settle for $23.7 Million*, U.S. Environmental Protection Agency Oil Program Update, Oct. 2005. Copy supplied.
>
> Randall Chase, *Motiva Settles Lawsuit Stemming from Tank Explosion*, Associated Press, Sept. 20, 2005. Copy supplied.

Press release, *Motiva Enterprises Settles Federal-State Lawsuit Resulting from Explosion at Delaware City Refinery*, U.S. Department of Justice Environment & Natural Resources Division, Sept. 20, 2005 [quotes re-printed in multiple outlets]. Copy supplied.

Randall Chase, *Motiva to Pay $12 Million to Settle Government Lawsuit over 2001 Fatal Explosion*, Associated Press, Sept. 19, 2005. Copy supplied.

Jeff Montgomery, *Heavy Polluter Settles Lawsuit*, Wilmington News Journal, June 29, 2005. Copy supplied.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices. I have not been a candidate for public office or a nominee for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not been a member of or held office in a political party or election committee. In or around 1980, I volunteered to help with the campaign of Xavier Suarez, who unsuccessfully ran for a position as Miami City Commissioner. As a volunteer, I canvassed door-to-door on behalf of the candidate.

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

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

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

I did not serve as a clerk to a judge after law school.

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

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1991 – 1994
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Associate

1994 – 2003
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
Assistant United States Attorney

2003 – 2006
United States Attorney's Office for the District of Delaware
1007 Orange Street, Suite 700
Wilmington, Delaware 19899
Assistant United States Attorney
Chief, Civil Division

2006 – present
United States Attorney's Office for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
Chief, Civil Division

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

I have never served as a mediator or arbitrator in alternative dispute proceedings.

b. Describe:

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

After graduation from law school, I worked as an associate in the General Litigation group at the law firm of Jones Day. I worked extensively on discovery issues, including a series of toxic tort cases involving dioxin emanated from paper mills.

Since 1994, I have spent my entire legal career as an Assistant United States Attorney in the Civil Division of the offices in the Districts of the District of Columbia and Delaware. In that capacity, I have represented the United States and its departments and agencies at both the trial and

appellate levels in civil actions filed in both the District of Columbia and Delaware. During the first four years of my tenure as Assistant United States Attorney in the District of Columbia, from 1994 to 1998, I handled cases in which the government was the defendant. From 1998 to 2003, I handled affirmative litigation wherein the government was the plaintiff, primarily pursuant to the False Claims Act.

As Chief of the Civil Division in the District of Delaware from 2003 to 2006, I supervised the litigation of a small staff of attorneys and additionally maintained a case load focusing on False Claims Act cases and environmental enforcement.

Since 2006, when I became the Chief of the Civil Division in the District of Columbia, my practice has been almost exclusively supervisory in nature. I supervise and manage a Division of 40 Assistant United States Attorneys, 6 Special Assistant United States Attorneys (agency detailees), and 31 support staff. The Civil Division of the United States Attorney's Office represents the United States and its departments and agencies at both the trial and appellate levels in civil actions filed in the District of Columbia. The activities of the Civil Division primarily involve defensive civil actions in the United States District Court and United States Court of Appeals. The types of cases handled by the Civil Division include employment cases involving allegations of discrimination; common law tort suits under the Federal Tort Claims Act; challenges to agency actions under the Administrative Procedure Act; requests for records under the Freedom of Information Act and/or Privacy Act; and the defense of government officials sued in their individual capacities for alleged Constitutional violations (*Bivens*). The Division also brings civil actions under the False Claims Act to recover money owed to the United States Government by those who submit false claims or commit fraud against the government.

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

While in private practice at the beginning of my career, most of the work I did was for International Paper Co., defending a series of toxic tort cases involving dioxin emanated from paper mills. Since 1994, my only client has been the United States government.

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

My entire legal career has been spent in litigation. As an associate at Jones Day, I did not appear in court at all. As an Assistant United States Attorney in the

District of Columbia from 1994 to 2003, I frequently appeared before the United States District Court for the District of Columbia and occasionally before the United States Court of Appeals for the District of Columbia Circuit. As Chief of the Civil Division in the District of Delaware from 2003 to 2006, I occasionally appeared before the United States District Court for the District of Delaware and once before the United States Court of Appeals for the Third Circuit. As Chief of the Civil Division in the District of Columbia, I rarely, if ever, appear in court.

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

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

Not counting cases that were resolved on the pleadings or by summary judgment, I tried four civil cases to verdict, judgment or final decision. For one of these trials, the only contested issue was damages, as the liability phase had been handled by someone else. I served as lead counsel in three of the trials and as second-chair in the other.

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

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States ex rel. Perkins v. Centennial Healthcare Corp.*, Civ. No. 02-203 (D.D.C.) (Kollar-Kotelly, J.)

This matter involved allegations of substandard care at the Grant Park nursing home and was resolved through settlement in 2008. Although the matter was referred to us pursuant to the False Claims Act, the focus of our investigation involved resident/patient care. Accordingly, although the resolution of the matter resulted in a financial recovery, the focus of the settlement agreement was the complementary Corporate Integrity Agreement, implemented through HHS, which required significant reporting on, and third-party monitoring of, the care provided to the vulnerable nursing home patients. I began this case as the lead attorney and completed it as a supervisory attorney supervising the work of former AUSA Paul Mussenden.

Co-counsel: AUSA Paul Mussenden, Deputy Chief of Staff and Senior Advisor to the Assistant Secretary, United States Department of the Interior, 1849 C Street, N.W., Washington D.C. 20240, (202) 208-3038.

Opposing Counsel: Eric A. Dubelier, Esq., Reed Smith LLP, 11301 K Street, N.W., Suite 1100 – East Tower, Washington, D.C. 20005, (202) 414-9291.

Relator's Counsel: Steven Pavsner, Joseph, Greenwald & Laake, 6404 Ivy Lane, Greenbelt, Maryland 20770, (240) 553-1211.

2. *Evans v. Atwood (USAID)*, Civ. No. 96-2746 (D.D.C.) (Urbina, J.) (177 F.R.D. 1; 1999 WL 1032811, 38 F. Supp. 2d 25)

This was an age discrimination class action brought by Foreign Service Officers who had been subjected to a reduction in force at the United States Agency for International Development. The case went through multiple rounds of briefing on the merits and class certification, through lengthy and voluminous discovery, and through a bench trial in the fall of 1999. After trial, the case settled. The settlement agreement contained several provisions providing preferential re-hiring treatment to the employees who had been let go because of budgetary necessities, rather than poor performance, allowing these unfortunate employees a measure of substantive assistance that was otherwise not available to them. I was the sole

lead attorney until just short of trial, at which point AUSA Humphreys was added to the trial team.

Co-counsel: Michael Humphreys, Assistant United States Attorney, United States Attorney's Office for the District of Nevada, 333 Las Vegas Boulevard South, Suite 5000, Las Vegas, Nevada 89101, (702) 388-6336.

Opposing counsel: Raymond C. Fay; Mehri & Skalet, 1250 Connecticut Avenue, N.W., Washington, D.C. 20036, (202) 822-5100.

3. *United States v. Motiva Enterprises*, Civ. No. 02-1292 (D. Del.) (Robinson, J.)

In this environmental case under the Clean Air and Clean Water Acts, the government sued owners of an oil refinery at which an explosion occurred, killing one individual, injuring others, and spilling thousands of gallons of sulfuric acid into the Delaware River and the atmosphere. I was involved as part of a sizable team in the factual investigation and lengthy settlement discussions from 2003 through 2006. In this capacity, I reviewed thousands of documents and created a detailed fact chronology that would have formed the basis of much of the subsequent litigation if the case had gone forward. I was also involved as an active member of the negotiation team. The case ultimately settled, resulting in significant injunctive relief in the form of changes in how the refinery was operated that resulted in increased safety for the refinery workers.

Co-counsel: Robert Klotz and John Sither, Senior Attorneys, Environment and Natural Resources Division, 601 D Street, N.W., Washington, D.C. 20530, (202) 514-5516.

Opposing Counsel: Charles Swinburn (departed firm), Morgan Lewis, 1111 Pennsylvania Avenue, Washington, D.C. 20004, (202) 739-3000.

4. *United States ex rel. Fletcher v. Pacificare*, Civ. No. 98-2709 (D.D.C.) (Robertson, J.)

This matter was a False Claims Act *qui tam* case in which a provider of health benefit plans to federal workers was alleged to have overcharged the government by not giving the government its best price as required by contract. I was part of a team that settled the matter in 2002 for $87 million which, at the time, was the largest recovery ever for the office. In this capacity, I was centrally involved in the settlement negotiations and helped develop the theory on which a "knowing" violation of the False Claims Act was established.

Co-counsel: Doris Coles-Huff, Assistant United States Attorney, United States Attorney's Office for the District of Columbia, 555 Fourth Street, N.W., Washington, D.C. 20530, (202) 514-7170; Sondra Mills, Consumer Litigation,

450 Fifth Street, N.W., Washington, D.C. 20530, (202) 616-2375; Daniel Spiro, Civil Frauds, 601 D Street, N.W., Washington, D.C. 20530, (202) 616-3898.

Opposing Counsel: Joel Michaels, McDermott Will & Emery, 600 13th Street, N.W., Washington, D.C., 20005, (202) 756- 8000; John C. Dwyer, Cooley Godward, LLP, Five Palo Alto Square, 3000 El Camino Real, Palo Alto, California 94036, (650) 843-5228.

Relator's Counsel: Bradley S. Weiss, 513 Central Avenue, 4th Floor, Highland Park, Illinois 60035, (847) 681-9090.

5. *Doyle v. United States*, Civ. No. 96-0275 (D.D.C.) (Sullivan, J.)

In this medical malpractice case, a retired admiral suffered loss of sensation in his saddle area and incontinence allegedly due to an epidural administered during vein stripping procedure. The plaintiff alleged that the epidural, an extraordinarily safe procedure, was negligently administered. The defense of the claims required extensive work with multiple experts. The matter was settled in 1997 after extensive fact and expert discovery. I was the sole attorney on this matter.

Co-counsel: None.

Opposing Counsel: Gary Freeman (deceased), Harlow Case, Jack Olender & Associates, 888 17th Street N.W., 4th Floor, Washington, D.C. 20006, (202) 879-7777.

6. *Polsdorfer v. Gearan (Peace Corps)*, Civ. No. 96-0078 (D.D.C.) (Flannery, J.).

A Peace Corps physician in Africa brought suit claiming that he had been illegally terminated for exercising his First Amendment rights by refusing to advocate condom usage for the prevention of HIV/AIDS. Because of the high incidence of HIV/AIDS in Africa and the high level of sexual activity by Peace Corps volunteers, the Peace Corps thought it was extremely important that the volunteers be taught about condom usage. But plaintiff believed otherwise and would only advocate abstinence. When plaintiff was terminated based on budget reductions, he sued claiming that it was due to his protected speech on the topic. The government's dispositive motion was granted in 1997 after extensive discovery. Dismissal was affirmed on appeal in 1998. I was the sole attorney on this matter.

Co-counsel: None.

Opposing Counsel: Craig Parshall, 32 Waterloo Street, Suite 19, Warrenton, Virginia 20196, (540) 341-1997.

7. *Tomasello v. Rubin*, Civ. No. 93-1326 (D.D.C) (Greene, J.), 67 F.3d 612 (D.C. Cir. 1999).

In this case, a Special Agent filed an employment discrimination suit against his employer, the ATF, alleging retaliation and discrimination based on national origin and age. Plaintiff claimed that his Irish-American boss had discriminated against him based on his Italian-American ancestry when he *inter alia* failed to select him for a number of positions, denied him awards, and transferred him to another office. He also claimed that a number of these actions were also done in retaliation for his EEO activity. Additionally, he also raised a number of Privacy Act claims. I became part of the trial team shortly before trial, was responsible for half of the pretrial pleadings and trial, and was solely responsible for the post-trial pleadings and appeal. Although the plaintiff had alleged about ten years worth of claims involving dozens of allegedly discriminatory acts, the government was only found liable for a single Privacy Act violation and damages were awarded in the amount of $2,000.

Co-counsel: June Jeffries (retired AUSA), 10307 Green Holly Terrace, Silver Spring, Maryland 20902.

Opposing Counsel: Prather Randle (deceased) and John Davis, 1111 14th Street N.W., Washington, D.C. 20005, (202) 408-1952; John F. Karl, Jr., 1090 Vermont Avenue, N.W., Suite 500, Washington, D.C. 20005, (202) 293-3200.

8. *Varicon Int'l v. OPM*, Civ. No. 96-1124 (D.D.C) (Urbina, J.), 934 F. Supp. 440 (D.D.C. 1996).

This matter involved a challenge by a contractor to the award of a sole source contract. As part of the Clinton Administration's "Reinventing Government" initiative, OPM decided to privatize and spin off its investigation services. To do so, OPM created an employee-owned company and then awarded its investigation contract to that company on a sole source no competition basis. Private companies that already provided investigation services to the government, but were not allowed to compete for the contracts, brought suit. The court denied the motion for preliminary injunction and the parties settled on terms very favorable to the government. I was the sole attorney on this matter.

Co-counsel: None.

Opposing Counsel: Richard Donald Lieberman, 5814 Cheshire Drive, Bethesda, Maryland 20814, (301) 530-8123.

9. *Miller v. United States*, Civ. No. 01-0551 (D.Del.) (Robinson, J.), 2008 WL 2932161 (3d Cir. 2008).

This case was a personal injury negligence case involving a claim that a postal truck cut off a public bus, requiring it to stop short and injuring the bus's passengers. The government lost the liability phase of the trial, tried by another AUSA. I was counsel for the damages phase and was solely responsible for pre-trial pleadings and trial. After a bench trial in 2006, the court awarded zero damages to the plaintiff. The matter was later affirmed on appeal (handled by another AUSA).

Co-counsel: None.

Counsel for Co-Defendant (DART): Daniel Griffith, Whiteford, Taylor & Preston, 1220 North Market Street, Suite 608, Wilmington, Delaware 19801, (302) 357-3254.

Opposing Counsel: L. Vincent Ramunno, Ramunno & Ramunno, 903 French Street, Wilmington, Delaware 19801, (302) 482-4825.

10. *Everett v. United States*, Civ. No. 95-0769 (D.D.C.) (Sullivan, J.), 980 F. Supp. 490 (D.D.C. 1997), 158 F.3d 1364 (D.C. Cir. 1998).

This case involved a landowner whose property abutted a national forest who claimed that the government could not prevent him from landing his private helicopter on the federal land. The Forest Service claimed that he could not land his helicopter without a permit and refused to grant a permit because the area at issue was frequented by fisherman and picnickers and, thus, not suitable for helicopter usage. After extensive briefing, summary judgment was entered for the government. The judgment was affirmed on appeal. I was the sole attorney on this matter.

Co-counsel: None.

Opposing Counsel: Roger Marzulla, Marzulla Law, 1150 Connecticut Avenue, N.W., Suite 1050, Washington, D.C. 20036, (202) 822-6760.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As an Assistant United States Attorney, I participated in many fraud investigations that were resolved short of litigation. The following four matters are examples of these.

1. *In re: First Health*: False Claims Act investigation involving the contractor responsible for processing Medicaid claims for the District of Columbia. The allegation was that the lack of appropriate controls in the contractor's computer systems resulted in the systematic payment of claims for ineligible beneficiaries, thus, squandering limited government funds. The investigation took place throughout 2002 and was resolved through a $13 million settlement in early 2003. This matter was significant because it returned a significant amount of money to the District's overburdened Medicaid program.

2. *In re: Bell Atlantic*: False Claims Act investigation involving the contractor responsible for providing telecommunications services to the Department of Education. Bell Atlantic's employees were involved in an elaborate conspiracy with a key agency employee. The agency employee would approve the contractors' fictitious overtime and the contractor would supply the agency employee with telecommunications equipment that would be falsely billed to the agency. The contract employees and the agency attorney were criminally prosecuted and convicted. I pursued Bell Atlantic under a theory of vicarious liability for its employees' illegal acts based on the company's deliberate ignorance of their activities despite obvious red flags. The matter was settled for $2 million in 2003. This matter was significant because it returned a significant amount of money to the defrauded agency.

3. *In re: Harbor Health Healthcare & Rehabilitation Ctr.*: This matter involved a skilled nursing facility for severely impaired juveniles in Delaware and the allegation that Harbor billed the Medicaid program (paid for by the State and the United States) for substandard care given to its patients (many who died while in its care). The matter was settled in 2005 for a modest financial payment and extensive Corporate Integrity Agreement designed to improve patient care on an ongoing basis. Like the Grant Park case described above, the matter involved creative use of the False Claims Act to indirectly improve patient care for some of Delaware's most vulnerable citizens.

4. *In re: Professional Services Industries, Inc.*: This matter involved allegations that PSI billed the Delaware Department of Transportation, which in turn billed the Federal Highway Administration, for consulting services that were not provided. Specifically, evidence was developed that indicated that PSI's inspectors were not inspecting the bridges and other highway structures for the length of time or with the thoroughness they claimed. The matter was settled in 2005 for a significant monetary recovery. The matter was significant because it returned a significant amount of money to a defrauded agency, but also because certain fraudulent practices had become widespread in the industry and the investigation and settlement served as a deterrent to other inspection companies (a companion case was also settled with Pennoni, Inc.).

I have never performed lobbying activities or registered as a lobbyist.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    I have never taught a course at an educational institution.

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

    None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    I have no plans, commitments, or agreements to pursue outside employment, with or without compensation.

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

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My wife is a regulatory attorney at the Office of the Comptroller of Currency. I would recuse myself from cases involving that agency generally and regulations she helped draft specifically. My brother is Chief Financial Officer for Del Monte

Fresh. I would recuse myself from cases involving that company. I would recuse myself from all civil cases handled by the United States Attorney's Office for the District of Columbia which were filed before my appointment and over which I had supervisory responsibility. I would use existing court procedures to identify the cases in which the conflicts arise and take action accordingly.

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

It is my understanding that the District Court has procedures in place to identify conflicts based on financial holdings and other concerns. I would, of course, use these existing court procedures to identify the cases in which the conflicts arise and take action accordingly. For example, with respect to the cases handled by the United States Attorney's Office for the District of Columbia, this identical issue has already been confronted with the appointments of the Hon. Royce Lamberth and Hon. John Bates and the court was able to effectively deal with the conflicts. I am also familiar with 28 U.S.C. sections 144 and 455. I would resolve any potential conflict of interest by applying these statutes and the Code of Conduct for United States Judges.

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

Because of the actual and positional conflicts that frequently arise as a government attorney providing pro bono services, I have not provided traditional pro bono services since becoming a government attorney. However, while I was in private practice, I provided pro bono services: to an individual who sought Social Security Disability benefits because of her inability to work; an individual who sought political asylum based on persecution she would suffer if returned to El Salvador; an elderly couple who faced eviction from their long-held public housing unit based on the illegal acts of their grandson; and a grandmother who sought to legally adopt her grandkids after the untimely death of her daughter. Moreover, I have served the disadvantaged by serving as a mentor to Hispanic high school students in the District of Columbia and Hispanic law students from area law schools.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or

communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In December 2010, I submitted an application to the 17-member Federal Law Enforcement Nominating Commission established by D.C. Delegate Eleanor Holmes Norton to screen applicants for federal judgeships in the District of Columbia, and I was interviewed by the Commission on January 25, 2011. As I understand it, the Commission forwarded at least three names to Delegate Norton. On April 29, 2011, I was interviewed by the Delegate.

Since May 10, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 10, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On July 28, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Contreras, Rudolph -.	U.S. District Court, District of Columbia	07/29/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. District Judge	☑ Nomination, Date 07/28/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 06/30/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
United States Attorney's Office for D.C. Civil Division 555 Fourth Street, N.W. Room E-4226 Washington, DC 20530	Reviewing Officer_____ Date_____	

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

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Contreras, Rudolph -.	Date of Report 07/29/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2010	State of Virginia, George Mason University (Fairfax, VA) - Spouse Salary
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting	Date of Report
	Contreras, Rudolph -.	07/29/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Contreras, Rudolph -.	07/29/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. 401(k) Account #1	A	Dividend	J	T	Exempt				
2. - American Funds Fundamental Investor	A	Dividend	J	T					
3. - Harbor Capital Appreciation Instl	A	Dividend	J	T					
4. - Hartford Dividend & Growth	A	Dividend	J	T					
5. - Schwab S&P 500 Index	A	Dividend	J	T					
6. - Vanguard Mid-Cap Growth Index Inv	A	Dividend	J	T					
7. - Vanguard Small Cap Value Index	A	Dividend	J	T					
8. - American Funds EuroPacific Gr R4	A	Dividend	J	T					
9. - Oppenheimer Developing Markets Y	A	Dividend	J	T					
10. - PIMCO Total Return Instl	A	Dividend	J	T					
11. - Vanguard GNMA Adm	A	Dividend	J	T					
12. - Vanguard Inflation-Protected Secs A	A	Dividend	J	T					
13. Citibank (Cash Account)	A	Interest	K	T					
14. Bank of America (Cash Account)		None	J	T					
15. ING Direct (Cash Account)	A	Interest	K	T					
16. Treasury Department Federal Credit Union (Cash Account)	A	Interest	J	T					
17. IRA Account #1	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
2. Value Codes (See Columns C1 and D3)
Q =Appraisal
U =Book Value
B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,000 - $50,000
O =$500,001 - $1,000,000
R =Cash (Real Estate Only)
V =Other
C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
S =Assessment
W =Estimated
D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000
T =Cash Market
E =$15,001 - $50,000
3. Value Method Codes (See Column C3)

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Contreras, Rudolph -.	07/29/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. - Insured Money Market (Charles Schwab Bank)	A	Interest	J	T					
19. - Baron Asset Fund	A	Dividend	J	T					
20. - Schwab Intl Index Fund	A	Dividend	J	T					
21. IRA Account #2	A	Int./Div.	K	T					
22. - Insured Money Market (Charles Schwab Bank)	A	Interest	J	T					
23. - Baron Asset Fund	A	Dividend	J	T					
24. - Dodge & Cox Stock Fund	A	Dividend	J	T					
25. - Schwab Intl Fund	A	Dividend	J	T					
26. Virginia College Savings Plan (529) - Southside	A	Dividend	L	T					
27. Virginia College Savings Plan (529) - Potomac	A	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 V3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessed W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Contreras, Rudolph -.	Date of Report 07/29/2011

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Contreras, Rudolph -.	Date of Report 07/29/2011

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		53	393	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities-add schedule		211	601	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		388	830
Real estate owned – personal residence		541	750	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		16	425				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		492	460				
				Total liabilities		388	830
				Net Worth		926	799
Total Assets	1	315	629	Total liabilities and net worth	1	315	629
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds EuroPacific Growth Fund	$1,695
American Funds Fundamental Investor	2,101
Baron Asset Fund	9,538
Dodge & Cox Stock Fund	7,497
Harbor Capital Appreciation Inst'l	1,349
Hartford Dividend & Growth Fund	1,166
Oppenheimer Developing Markets Fund	499
PIMCO Total Return Fund	1,897
Schwab International Index Fund	10,074
Schwab S&P 500 Index Fund	529
Vanguard GNMA Fund	883
Vanguard Inflation-Protected Securities Fund	900
Vanguard Mid-Cap Growth Index Fund	529
Vanguard Small Cap Growth Index Fund	1,466
Virginia 529 (VEST): Southside	80,436
Virginia 529 (VEST): Potomac	81,041
Roth IRA cash	10,001
Total Listed Securities	$211,601

AFFIDAVIT

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

July 29, 2011
(DATE)

(NAME)

Patricia A. Gilbert
Notary of Public
District of Columbia
Commission Expires: December 14, 2011

(NOTARY)

Senator DURBIN. Thank you very much.

Ms. Miranda Du, thank you for joining us from Nevada. You have been introduced by the Majority Leader and the other Senator from your State, and the floor is yours.

STATEMENT OF MIRANDA DU, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEVADA

Ms. DU. Thank you, Senator, and I too would like to thank the Committee for giving me the opportunity to appear before you today.

I want to also thank Senator Reid for recommending me to the President. I want to express my appreciation to the President for nominating me, and, of course, I want to also thank both the Senators from my State, Senators Reid and Heller, for introducing me earlier today.

This is an incredibly proud moment for my family. They wanted to come here. I have a large group of family members, 16, in fact, from California and Arizona, and I would briefly like to introduce them.

My parents, Tina and Peter, and my brother, Joe, flew in from Orange County, California. My sister, Vicki, and her husband, Andy, and their 8-year-old son, Ethan, came in from Scottsdale, Arizona. I have two uncles, two aunts, five cousins, and another relative who all flew in from the Bay Area of California.

The managing partner of my firm, John Frankovich, also joined us here today. He is probably a little stressed out about the length of the hearing because work at my firm has stopped while everyone is convening in the conference room to watch this webcast. Laughter.]

Ms. DU. I also wanted to acknowledge many family members and friends and colleagues who are also watching on the webcast.

Thank you.

[The biographical information of Ms. Du follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Miranda Mai Du

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

   United States District Judge for the District of Nevada

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   McDonald Carano Wilson LLP
   100 West Liberty Street, 10th Floor
   Reno, Nevada 89501

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

   1969; Ca Mau, Viet Nam

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1991 – 1994, University of California, Berkeley (Boalt Hall); J.D., 1994
   1987 – 1991, University of California, Davis; B.A. (honors), 1991

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   1994 – Present
   McDonald Carano Wilson LLP
   100 West Liberty Street, 10th Floor
   Reno, Nevada 89501
   Associate (1994 – 2001)
   Partner (2002 – Present)

2005 – Present
Eclipse Pizza/Kori LLC
3950 Mayberry Drive
Reno, Nevada 89519
Member, Kori LLC

1993 – 1994
M.Cubed
1020 Ventura Avenue
Albany, California 94706
Research Assistant

Summer 1993
California Public Utilities Commission
500 Van Ness Avenue
San Francisco, California 94102
Law Clerk

Summer 1993
U.S. Attorney's Office
Environmental and Natural Resources Division
450 Golden Gate Avenue
San Francisco, California 94102
Law Intern

Spring 1993
U.S. Environmental Protection Agency, Region IX
Office of Regional Counsel
75 Hawthorne Street
San Francisco, California 94105
Law Intern

Summer 1992
Boelter & Gale
1001 Fourth Avenue, Suite 4111
Seattle, Washington 98154
Law Clerk

Spring 1992
Caffe Strada
2300 College Avenue
Berkeley, California 94704
File Clerk

Summer 1991
American President Lines
1111 Broadway Street
Oakland, California 94607
Summer Intern

Other Affiliations:

2010 – Present
Nevada Women's Fund
770 Smithridge Drive, Suite 300
Reno, Nevada 89502
Member, Board of Directors

2008 – 2011
Nevada Commission on Economic Development
808 West Nye Lane
Carson City, Nevada 89703
Commissioner

1999 – 2006
Step 2
3695 Kings Row
Reno, Nevada 89503
Member, Board of Directors

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I was not required to register for selective service.

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

   Selected for inclusion in Mountain States Rising Stars, Super Lawyers (2009)

   Selected as a "Top 20 Under 40" Young Professionals in the Reno-Tahoe Area (2008)

   Nominated for Women of Achievement, Nevada Women's Fund by client (2007)

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

American Bar Association
American Inns of Court, Bruce R. Thompson Chapter (Reno, Nevada)
Barrister (1998 – 2003)
Member, Membership Committee (1999)
Bench/Bar Committee, Second Judicial District Court of the State of Nevada in and for Washoe County (2006)
California Bar Association
CM/ECF Attorney Advisory Committee, United States District Court for the District of Nevada (2004)
Nevada Bar Association
Northern Nevada Women Lawyers Association
Washoe County Bar Association

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Nevada, 1994
California, 1995

There have been no lapses in membership.

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

United States Court of Appeals for the Ninth Circuit, 1997
United States District Court for the District of Nevada, 1994
Nevada state courts, 1994

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Court Appointed Special Advocate, Second Judicial District Court of the State of Nevada in and for Washoe County (approx. 1995 – 1998)

Nevada Commission on Economic Development
Commissioner (2008 – 2011)
Nevada Museum of Art (approx. 2008 – Present)
Nevada Women's Fund
Member, Board of Directors (2010 – Present)
New Nevada Task Force
Chair, International Business Development Subcommittee (2010 – 2011)
Northern Nevada Human Resources Association (approx. 1999 – 2004)
Pack PAWS
Advisory Board (2005 – 2010)
Plumas Sierra Bicycle Club (approx. 2008 – Present)
Step 2
Member, Board of Directors (1999 – 2006)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to 11(a) above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Based on my recollection and thorough searches of my files and electronic databases, I have compiled the following list of published material.

With Ryan Bellows, *Employment Law*, Northern Nevada Business Weekly, Nov. 19, 2007. Copy supplied.

Hug High School Mentoring Program Series, Northern Nevada Women Lawyers Association Scoop, June 2007. Copy supplied.

With Ryan Bellows, *Not Just a Dollar Raise*, Northern Nevada Business Weekly, Jan. 22, 2007. Copy supplied.

With Ryan Bellows, *How Employers Can Address Employee Use of Internet and E-mail*, Northern Nevada Business Weekly, July 3, 2006. Copy supplied.

With Michael S. Kimmel, *An Ounce of Prevention: Understanding NERC and EEOC Trends Will Help to Protect Your Business*, Northern Nevada Business Weekly, Feb. 28, 2005. Copy supplied.

With Paul C. Deyhle, *The Employee Handbook: There's Nothing More Important. Especially for Small Employers*, Northern Nevada Business Weekly, Sept. 20, 2004. Copy supplied.

Seek Counsel at First Union Contact, Northern Nevada Business Weekly, May 17, 2004. Copy supplied.

How to Stay Out of Court, Northern Nevada Business Weekly, March 2004. Copy supplied.

Know Your Rights as an Employer, Northern Nevada Business Weekly, Nov. 17, 2003. Copy supplied.

Legal Dangers of Cell Phones, Northern Nevada Business Weekly, May 26, 2003. Copy supplied.

CERCLA Amendments, 5 Nevada Lawyer 23, Jan. 1997. Copy supplied.

From 1992 to 1993, I served as the Notes & Comments Editor of the Berkeley Technology Law Journal.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

March 18, 2011: The New Nevada Task Force, International Business Development Sub-Committee Report. The report was submitted as part of the final New Nevada Taskforce Report on Initiatives. Copy supplied. The interim report, dated February 2011, is also supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

From July 2008 to June 2011, as a member of the Nevada Commission on Economic Development, I have occasionally commented during meetings and participated in voting on motions before the Commission. Meeting minutes supplied.

February 2009: As Chairman of the Nevada Commission on Economic Development, and on behalf of the Commissioners (including myself), the Nevada Lieutenant Governor sent a letter to the Nevada Legislature relating to the Governor's proposed merger of the Nevada Commission on Economic Development with the Nevada Commission on Tourism. A copy of the letter is supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The list below includes seminars, presentations and talks I have identified from my files, a search of Internet databases and my personal recollection. Despite my best efforts to compile a complete list, there may be other presentations or talks I have been unable to identify, locate, or recall.

February 10-12, 2011: I was a faculty member for a deposition seminar presented by NITA. Las Vegas, Nevada. I have no notes, transcript or recording, but the syllabus is supplied.

March 18-19, 2010: I was a faculty member for the Nevada Water Law 4th Annual Conference. Reno, Nevada. My talk was entitled "Geothermal Resources: What Are They and What Laws Apply?" Written material and PowerPoint presentation supplied.

March 25, 2009: I participated in a panel discussion on changes to federal statutes affecting employment relationships for the Reno-Sparks Chamber of Commerce. Reno, Nevada. PowerPoint presentation supplied.

December 12, 2007: I was a faculty member for a seminar entitled "EEOC Compliance." Reno, Nevada. The written materials that I authored and my PowerPoint presentation are supplied.

September 13, 2007: I conducted a training on human resources law for members of the Associated General Contractors, Reno, Nevada Chapter. Outline supplied.

July 23, 2007: I participated in a discussion with other professional women about our careers for the Girl Scouts of the Sierra Nevada. I have no notes, transcript or recording, but press coverage is supplied. The address of the Girl Scouts is 605 Washington Street, Reno, Nevada 89503.

February 17, 2006 and July 21, 2006: At the request of United States Magistrate Judge Valerie P. Cooke (District of Nevada), I spoke at two naturalization ceremonies in her courtroom. My remarks involved my family's immigration to this country and my parents' naturalization ceremony. I have no notes, transcripts or recordings. The address of the District Court is 400 South Virginia Street, Reno, Nevada 89501.

February 27, 2004: I was a faculty member for a seminar entitled "HIPAA for Employers in Nevada." Reno, Nevada. PowerPoint presentation supplied.

February 10, 2004 and February 12, 2003: I gave a presentation entitled "Human Resource and Personnel Law" at a conference on Legal Aspects of the Gaming Industry. Reno, Nevada. Written materials for the 2003 presentation, which I also used in 2004, are supplied.

October 15, 2003: I served as a panelist for the Biz Talk Blender, a workshop on "Climbing the Corporate Ladder – Keys to Success," sponsored by Women Executives Accelerating Change Today. I have no notes, transcript or recording. I have been unable to identify a current address for WEACT.

September 30, 2003: I participated in a panel discussion on pursuing a successful career. Reno, Nevada. I have no notes, transcript or recording and do not recall the sponsoring organization.

August 13, 2003: I participated in a staging of "12 Angry Jurors," an adaptation of the play, "12 Angry Men." It was presented first for the Inns of Court (but I do not recall the date) and later at the Prim Theater in the Nevada Museum of Art. I have no notes, transcript or recording. The address of the Bruce Thompson Chapter of the Inns of Court is 400 South Virginia Street, Suite 401, Reno, Nevada 89501.

March 18, 2003: I was a faculty member for a seminar entitled "Overtime Requirements and Exemptions in Nevada." Reno, Nevada. The written materials that I authored and my PowerPoint presentation are supplied.

February 19, 2003: I was a faculty member for a seminar entitled "Nevada Payroll Basics." Reno, Nevada. The written materials that I authored and my PowerPoint presentation are supplied.

March 26, 2002: I was a faculty member for a seminar entitled "Overtime Requirements and Exemptions in Nevada " Reno, Nevada. The written materials that I authored are supplied.

February 21, 2002: I was a faculty member for a seminar entitled "Nevada Payroll Basics." Reno, Nevada. The written materials that I authored and my PowerPoint presentation are supplied.

September 18, 2001: I was a faculty member for a seminar entitled "Payroll Management in Nevada." Reno, Nevada. The written materials that I authored are supplied.

June 1, 2001, and June 29, 2000: I was a faculty member for a seminar entitled "Strategies for Effective Employee Recordkeeping in Nevada." Reno, Nevada. I have no notes, transcript or recording. The seminar was sponsored by Lorman Education Services, 2510 Alpine Road, Eau Claire, Wisconsin 54703.

Since approximately 2000, I have conducted trainings on employment law for various clients about once a year. I do not recall the specific dates. My presentations covered topics including employment discrimination, retaliation and harassment. Any materials I have are not public and are subject to attorney-client privilege.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Based on my recollection and searches of my files and Internet databases, below is a list of interviews I have given to newspapers, magazines or other publications.

Nicole Lucht, *Workplace Transparency Helps Ease Pain of Employee Layoff*, Las Vegas In Business, Nov. 27, 2009. Copy supplied.

Ray Hagar, *Past Winners: Youth Isn't Always an Advantage*, Reno Gazette Journal, Nov. 8, 2009. Copy supplied.

Ray Hagar, *Immigrant Rises Through the Ranks to Top Law Position*, Reno Gazette Journal, Nov. 8, 2009 [quotes re-printed in multiple outlets]. Copy supplied.

State Places Emphasis on Global Activities, Nevada Commission on Economic Development Global Trade Newsletter, Oct./Nov. 2009. Copy supplied.

Erin Gulden, *An Ocean of Experience*, Mountain States Super Lawyers, July 2009. Copy supplied.

Marian Bond, *Specialty Shoe Stores Perfect Fit for Runners*, Reno Gazette Journal, Nov. 25, 2008. Copy supplied.

John Seelmeyer, *Pink Slip*, Northern Nevada Business Weekly, June 2, 2008. Copy supplied.

Press release, *Gibbons Appoints Executive Director, Two Commissioners for Economic Development*, Office of the Governor of Nevada, May 12, 2008. Copy supplied.

Martha Bellisle, *Legal Eagles*, Reno Magazine, Sept./Oct. 2006, at 65-72. Copy supplied.

Linda Kay Hardie and Leslie A. Mix, *2005 A Look Back*, Reno Gazette Journal, Dec. 25, 2005. Copy supplied.

Leslie A. Mix, *Miranda Du: From Vietnamese Immigrant to Prominent Lawyer*, Reno Gazette Journal, Aug. 7, 2005. Copy supplied.

Michael Vitt, *As Workplace Religious Diversity Increases, Accommodation Issues Mount for Employers*, Metropolitan Corporate Counsel, Nov. 2002. Copy supplied.

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

I have not served as a judge.

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

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

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

c For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

2008 – 2011; Commissioner, Nevada Commission on Economic Development; appointed by Nevada Governor Jim Gibbons

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held any position in a political party or election committee. I volunteered for the Democratic Party to register voters and drop off flyers for registered voters in my neighborhood during the 2008 general election. I also volunteered to serve as Precinct Captain for my precinct during the Democratic Caucus in the 2008 primary. I did limited volunteer work for the campaign of my law partner, Thomas Wilson, for the United States House of Representatives in 1995.

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

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

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

I have not served as a clerk to a judge.

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

I have not practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1994 – Present
McDonald Carano Wilson LLP
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
Associate (1994 – 2001)
Partner (2002 – Present)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

I joined my firm, McDonald Carano Wilson LLP, as an associate in September 1994. My primary area of practice was environmental and water law. I developed an interest in litigation and began to handle litigation matters about a year later. My experience covers every phase of litigation in federal and state courts, from discovery, motion practice and jury trial through appeal before the Nevada Supreme Court and the Court of Appeals for the Ninth Circuit. I have also handled numerous matters, including employment claims, in administrative proceedings before various federal and state agencies. I was appointed as the Chair of my firm's Employment & Labor Law Group in approximately 2003 and have held that position since. In that role, I take the lead in overseeing employment litigation matters and assisting in the development and mentoring of associates in the practice group.

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

My typical clients in terms of my civil litigation practice are businesses involved in disputes in federal and state courts. Claims that I have handled include breach of contract, tortious interference, misappropriation, Lanham Act violations, breach of fiduciary duties, unfair lending practices, corporate dissolution, defamation, condemnation and quiet title. My typical clients with respect to my employment law practice are employers.

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

Approximately 90% of my practice involves litigation. Leading up to a trial, I appeared in court more frequently, and during trials, I appeared in court daily. In general, I appear in court more than occasionally to participate in hearings or conferences.

i. Indicate the percentage of your practice in:
   1. federal courts: 80%
   2. state courts of record: 15%
   3. other courts: 0%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

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

I have been involved in four jury trials, three of which occurred in federal court. I served as the second chair in my first trial and in the role of first chair in my second trial. I assisted in the pre-trial preparation, including motion practice and jury instructions, in the other two trials.

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

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe

in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Marconi v. Eldorado Resorts LLC*, Case No. CV-N-97-00543-HDM (RAM); reversed and remanded, 2000 WL 1171133, No. 99-15073 (9th Cir. Aug. 17, 2000) (unpublished opinion); United States District Court for District of Nevada; Hon. Howard D. McKibben; 1997 – 2002

This was one of the first employment cases that I worked on early in my career. The case involved claims for sexual harassment and retaliation. Plaintiff had a consensual romantic relationship with her supervisor. After their breakup and after she was disciplined for performance reasons, she complained to her employer that her supervisor engaged in sexual harassment, and later claimed she suffered retaliation because of her complaint. Part of the evidence consisted of voluminous email communications between plaintiff and the alleged harasser. I became involved after completion of discovery. I helped draft a motion for summary judgment which the court granted. I then took the debtor's examination of the plaintiff before the United States Magistrate Judge. Plaintiff appealed pro se, and I drafted the answering brief. The Ninth Circuit Court of Appeals reversed and remanded for trial on her claims for sexual harassment and retaliation. I assisted in the trial preparation, including drafting jury instructions. The jury returned a defense verdict.

Co-counsel:

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Opposing counsel.

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775-588-5138

Kenneth J. McKenna
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775-329-6373

2. *Palmer v. Pioneer Inn Assocs., Ltd.*, CV-N-97-00399-DHW; certification to Nevada Supreme Court, 257 F.3d 999 (9th Cir. 2001); order by Nevada Supreme Court, 59 P.3d 1237 (Nev. 2002); reversed and remanded, 338 F.3d 981 (9th Cir. 2003); United States District Court for District of Nevada; Hon. David Warner Hagen; 1997 – 2004

This case offered a range of experience, including my first jury trial, oral argument to the Ninth Circuit Court of Appeals and briefing to the Nevada Supreme Court. Plaintiff sued our client, Pioneer Hotel, claiming pregnancy discrimination. Plaintiff claimed she was hired to two different positions and then was discharged on the first day of her employment when her employer discovered she was pregnant. During the course of the litigation, we moved for disqualification and sanctions as a result of ex parte communications by plaintiff's counsel with our client's management employees. The court imposed monetary sanctions against counsel and excluded certain evidence based on those contacts. The court also granted partial summary judgment on three of plaintiff's claims – those based on her termination and failure to hire to two other positions. We obtained a jury verdict on the remaining claim for failure to hire to a third position. Plaintiff appealed to the Ninth Circuit. That court certified the issue of ex parte communications to the Nevada Supreme Court, which published a decision establishing a new test on the issue of ex parte communications with a party representative. Based on that new test, the Ninth Circuit reversed the sanctions order; it also reversed the partial summary judgment ruling. Following remand, the case was ultimately dismissed. During the course of the case, I defended depositions and conducted written discovery. I drafted discovery motions, a motion for summary judgment, motions in limine and jury instructions. I drafted the appellate briefs and handled oral argument before the Ninth Circuit Court of Appeals. I also assisted in drafting the brief to the Nevada Supreme Court on ex parte communications with a party representative and assisted with oral argument before the Nevada Supreme Court.

Co-counsel:

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775-788-2000

Opposing counsel:

Ian Silverberg
Hardy Law Group
96 Winter Street
Reno, NV 89503
775-786-5800

3. *Villicana v. AIC America*, Case No. CV-N-97-00494-DWH (PHA); United States District Court for District of Nevada; Hon. David Warner Hagen; 1997 – 1998

This was the first case that gave me the opportunity to personally handle all aspects of litigation, albeit under the direction of my co-counsel. The case involved discrimination, harassment and retaliation claims against my client based in part on events at a Christmas Party. Plaintiff claimed a guest of an upper management employee made inappropriate comments to her at the company Christmas Party. She complained about the incident and claimed the company not only failed to address her complaint, but terminated her employment in retaliation. I took the plaintiff's deposition, and I took and defended other depositions. I also prepared the motion for summary judgment, which was granted.

Co-counsel:

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Opposing Counsel:

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775-325-6505

4. *Barnes v. Scolari's Warehouse Markets Inc.*, CV-N-98-00158-ECR (PHA); United States District Court for District of Nevada; Hon. Edward C. Reed Jr.; 1998 – 2001

I served as first chair in this jury trial. The dispute involved employment discrimination and retaliation claims. Plaintiff was employed as a janitor. He

falsified his timesheets and failed to offer a credible explanation for his conduct during the employer's investigation. His employment was terminated under the employer's zero tolerance policy, but plaintiff claimed he was terminated because of his race and in retaliation for having complained about alleged discrimination. I conducted written discovery, took and defended depositions, and drafted a motion for summary judgment, motions in limine and jury instructions. The jury returned a defense verdict.

Co-counsel:

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Opposing counsel:

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5. *Thomas v. Eldorado Resorts LLC*, Case No. CV99-04727; affirmed on appeal, Case No. 38300 (Nev. 2003); Second Judicial District Court of the State of Nevada in and for Washoe County; Hon. Jerome Polaha; 1999 – 2003

Plaintiff sued our client for wrongful termination in violation of Nevada's public policy. She claimed she was discharged for filing a worker's compensation claim. I deposed plaintiff and terminated her deposition after obtaining favorable testimony relating to the reason for termination – she admitted that the employer relied on the physician's determination during the administration of the worker's compensation claim in terminating her employment. I drafted the motion for summary judgment, which the court granted. Plaintiff then appealed to the Nevada Supreme Court. I moved to dismiss for lack of jurisdiction because the appeal was not timely filed. Plaintiff's attorney claimed he did not receive the Notice of Entry of Order. The Nevada Supreme Court remanded and directed an evidentiary hearing on the issue of when the Notice of Entry of the Order granting summary judgment, which triggered the thirty day deadline to appeal, was served. The district court held an evidentiary hearing, at which I testified on the issue of service. The district court found we demonstrated service by mail. The Nevada Supreme Court dismissed the appeal.

Co-counsel:

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775-788-2000

Opposing counsel:

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American Legal Services
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775-432-7089

6. *Longfellow v Corroon and Black Mgmt., Inc.*, Case No. CV00-01995; Second Judicial District Court of the State of Nevada in and for Washoe County; Hon. James Hardesty; 2000 – 2002

This case involved claims for breach of contract and discrimination based on sexual orientation by a former employee. Our client, an insurance company, maintained that plaintiff's employment was terminated for performance reasons. During discovery, I obtained evidence of plaintiff's breach of her employment agreement. I then moved to assert a counterclaim against plaintiff. I did the primary work in the case, including conducting discovery and motion practice. The court granted our motion for summary judgment on plaintiff's claims and our motion for summary judgment on the issue of liability on our client's counterclaim for breach of contract. The case was ultimately dismissed.

Co-counsel:

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775-788-2000

Opposing counsel:

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7. *Reg'l Transp. Comm'n v. Sierra Crossroads RV*, Case No. CV03-00189; Second Judicial District Court of the State of Nevada in and for Washoe County; Hon. Steven Kosach; 2003 – 2004

The Regional Transportation Commission sought to condemn our client's property for expansion of a freeway interchange. The primary issue involved valuation of the property, which the parties offered through expert testimony. I worked with my co-counsel and handled the written discovery, motion practice and the defense of the deposition of our client's expert witness and representative. The case was ultimately dismissed.

Co-counsel:

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Opposing counsel:

Stanyan Peck
Regional Transportation Commission
Chief Legal Counsel
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775-332-2151

8. *Cole v. Circus & Eldorado Joint Venture*, CV-N-04-0648-DWH-VPC; United States District Court for District of Nevada; Hon. David Warner Hagen and Hon. Kent J. Dawson (who was assigned the case after Judge Hagen's retirement); 2004 – 2006

I was the lead attorney in charge of defending this employment case. Plaintiff claimed national origin discrimination and retaliation after her employment was terminated for violation of employment policies. I took plaintiff's deposition and prepared the motion for summary judgment, which was granted. The Court found plaintiff failed to establish the essential elements of her claim and the employer had legitimate, non-discriminatory business reasons supporting its decision to terminate her employment.

Co-counsel:
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803-345-8011

Opposing counsel:

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9. *Mischel v. Caithness Operating Co., LLC*, Case No. 3:05-cv-00674-BES-VPC; affirmed on appeal, 2009 WL 1204928, No. 07-16786 (9th Cir. May 5, 2009) (unpublished opinion); United States District Court for District of Nevada; Hon. Brian Sandoval; 2005 – 2009

My client acquired a geothermal plant and hired employees from the former owner. One of the employees subsequently sued both my client and her former employer for gender discrimination, harassment and retaliation. Plaintiff essentially claimed her male co-employees treated her differently because of her gender and management failed to take adequate remedial measures to address her complaints. Plaintiff continued to work for my client from the initiation of the lawsuit through discovery. Both defendants moved for summary judgment I conducted discovery, including written discovery, and took and defended depositions. I drafted the motion to dismiss and was involved in drafting the motion for summary judgment and handled the oral argument on the summary judgment motion. The court granted summary judgment for both defendants. Plaintiff appealed, and I was involved in drafting the answering brief. The Ninth Circuit affirmed.

Co-counsel:

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Dan Bowen
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Opposing counsel:

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10. *Quixtar Inc. v. Signature Mgmt. Team, LLC*, Case No. 3:07-cv-00505-RAM-ECR; United States District Court for District of Nevada; Hon. Edward C. Reed Jr.; 2007 – 2010

This business dispute involved claims by Quixtar Inc. against its former independent business owners, who were seeking to compete with Quixtar. The claims asserted included misappropriation of trade secrets and tortious interference. My firm was involved as local counsel for Quixtar and I was one of the primary attorneys at my firm directly involved in working with co-counsel from three other firms. The nature of the dispute was such that the case was prosecuted and defended with a sense of urgency and was highly contentious. The case spanned nearly three years, and involved countless motions and numerous hearings. For a period of almost two years, motions were filed virtually every few weeks and hearings on multiple motions were held every other month. Discovery disputes covered a range of interesting issues, including discovery into the identity of anonymous bloggers in a commercial context, discovery of communications between a party and its media consultant, subpoenas of electronic documents from third parties and a *writ* appeal to the Ninth Circuit. I assisted in the review and editing of all motions, the majority of which were drafted by co-counsel, and I handled several of the oral arguments on these motions. The case was ultimately dismissed.

Co-counsel:

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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I supervise litigation and administrative proceedings handled by local counsel in other jurisdictions for a client who has operations in ten other states. I assumed the role of corporate counsel for this client approximately ten years ago and began to manage outside litigation for them for about the last six years. I manage an average of about ten to fifteen active matters, including several lawsuits and arbitrations. In this role, I have had the opportunity to be indirectly involved in litigation before courts and arbitrators in other jurisdictions, but also the privilege to view these matters from the perspective of the receiver of legal services provided by outside counsel.

In 2004, I volunteered to serve on the CM/ECF Attorney Advisory Committee established by the United States District Court for the District of Nevada to assist with the Court's implementation of electronic filings. In 2006, I served on a similar Bench/Bar Committee tasked with the job of helping our local state district court (Second Judicial District Court) to review court rules and procedures for implementation of electronic filings. Participation in these committees gave me the opportunity to participate and provide input into the rules and procedures governing electronic filings before both courts.

I have not performed lobbying activities for any client or organization.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or

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

I do not anticipate receiving any payment from deferred income arrangements other than a 401(k) retirement plan.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If I am confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

Cases in which my law firm, McDonald Carano Wilson LLP, represented a party or appeared as a party would present a potential conflict of interest. To avoid such a conflict or the appearance of one, I would recuse myself for a period of at least several years from all such cases. In addition, cases involving my former clients as parties may present a potential conflict of interest. I would follow the guidance of the recusal statutes and the Code of Conduct for United States Judges to recuse myself where appropriate to avoid even an appearance of a conflict of interest.

I do not believe any family members are likely to have cases in the United States District Court for the District of Nevada, either in the capacity of a party or counsel. I would, of course, recuse myself from such cases to avoid an appearance of a conflict of interest.

I cannot think of a category of litigation, which by its nature, would present a conflict of interest for me. I do not have any financial arrangements that would likely present a potential conflict of interest.

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

I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges and all relevant Canons and statutes.

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

From 1999 to 2006, while serving on the Board of Directors of Step 2, a non-profit organization devoted to helping women and families through drug and alcohol treatment, I handled legal matters for Step 2 on a pro bono basis. I have also handled several minor matters for other non-profit organizations on a pro bono basis, as well as at a reduced hourly rate. These matters primarily involved employee counseling and termination issues. I volunteered for the All Students College Educated in Nevada Today ("ASCENT") program, which required a three year commitment to mentor a student who aspires to attend college. I volunteered to coach a high school moot court team to participate in the Washoe County Bar Association Moot Court Competition (although the team ultimately was not able to participate because we did not have enough participants).

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On February 18, 2011, I received a telephone call from Senator Harry Reid's staff to schedule a meeting with Senator Reid. On February 21, 2011, I met with Senator Reid about an anticipated vacancy on the United States District Court for the District of Nevada. On March 2, 2011, Senator Reid informed me that he would submit my name to the White House for consideration Since March 4,

2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 8, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On August 2, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10*
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Do, Miranda M.	U.S. District Court, Nevada	08/02/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
U.S. District Judge	☑ Nomination. Date 08/02/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 7/24/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
100 West Liberty Street 10th Floor Reno, NV 89501	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	McDonald Carano Wilson LLP
2.	Director	Nevada Women's Fund
3.	Commissioner	Nevada Commission on Economic Development
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting	Date of Report
	Du, Miranda M.	08/02/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1	2011	McDonald Carano Wilson LLP	$128,000.00
2.	2010	McDonald Carano Wilson LLP; Net Income	$426,500.00
3.	2009	McDonald Carano Wilson LLP; Net Income	$353,000.00
4.	2011	State of Nevada	$480.00
5.	2010	State of Nevada	$800.00
6.	2009	State of Nevada	$720.00

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

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

	DATE	SOURCE AND TYPE
1.	2011	Self-employed Business
2.	2010	Self-employed Business
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting	Date of Report
	Du, Miranda M.	08/02/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Green Tree	Mortgage on Rental Property # 1	P4
2.	PNC Mortgage	Mortgage on Rental Property # 2	P4
3.	Sallie Mae	Student Loan	K
4.			
5.			

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Name of Person Reporting	Date of Report
Do, Miranda M.	08/02/2011

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

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

A. Description of Assets (including trust assets) Place "OO" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Rental Property # 1, Reno, NV	D	Rent	M	W	Exempt				
2. Rental Property # 2, Reno, NV	D	Rent	M	W	Exempt				
3. Kori LLC	D	Distribution	J	W	Exempt				
4. Eclipse Running		None	M	W	Exempt				
5 Ford Stock		None	J	T	Exempt				
6. Citi Stock		None	J	T	Exempt				
7. Southwest Stock		None	J	T	Exempt				
8. Note from McDonald Carano		None	K	T	Exempt				
9. M&I Stable Principal Fund		None	K	T	Exempt				
10. PIMCO Total Return Fund		None	K	T	Exempt				
11. Oakmark Equity & Income Fund		None	K	T	Exempt				
12. Allianz NFJ Dividend Value		None	L	T	Exempt				
13. Growth Fund of America		None	L	T	Exempt				
14. Goldman Sachs Mid Cap Value		None	M	T	Exempt				
15. Allianz Agic Opportunity		None	L	T	Exempt				
16. Invesco U.S. Government Fund		None	J	T	Exempt				
17. Invesco European Growth Fund		None	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Du, Miranda M.	08/02/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Invesco Van Kampen American Franchise		None	J	T	Exempt				
19. Invesco Van Kampen Value Opportunities		None	J	T	Exempt				
20. Invesco Van Kampen Growth & Income Fund		None	K	T	Exempt				
21 LM CBA Equity Income Builder Fund		None	J	T	Exempt				
22. Legg Mason Global Currents International All Cap Opp Fund		None	J	T	Exempt				
23. Legg Mason Clearbridge Small Cap Growth Fund		None	J	T	Exempt				
24. MTB Small Cap Growth Fund		None	J	T	Exempt				
25. Templeton Developing Markets Trust Class A		None	J	T	Exempt				
26. Citibank Bank Deposit Program		None	J	T	Exempt				
27. DWS Blue Chip A		None	J	T	Exempt				
28. DWS Global Small Cap Growth A		None	J	T	Exempt				
29. DWS Strategic Value A		None	J	T	Exempt				
30. Nevada State Bank		None	K	T	Exempt				
31. Wells Fargo Bank		None	J	T	Exempt				

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Du, Miranda M.	Date of Report 08/02/2011

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

My husband operates Eclipse Running as a sole proprietorship. The value listed for Eclipse Running is the estimated value. The income earned from Eclipse Running is disclosed under Part III-B.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Du, Miranda M.	Date of Report 08/02/2011

IX. CERTIFICATION.

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

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

Signature

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		35	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		534	462	Notes payable to relatives			
Unlisted securities – see schedule		380	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		10	000
Due from relatives and friends				Unpaid income tax			
Due from others:		34	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	1	373	350
Real estate owned – see schedule	1	590	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable (rental)				Other debts-itemize:			
Autos and other personal property		37	000	401(k) Loan		14	000
Cash value-life insurance				Eclipse Running –payables		50	000
Other assets itemize:							
				Total liabilities	1	447	350
				Net Worth	1	163	112
Total Assets	2	610	462	Total liabilities and net worth	2	610	462
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		16	500	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Ford stock	$4,073
Citi stock	1,877
Southwest stock	2,401
M&I Stable Principal Fund	21,271
PIMCO Total Return Fund	44,047
Oakmark Equity & Income Fund	22,385
Allianz NFJ Dividend Value	67,932
Growth Fund of America R-5	82,464
Goldman Sachs Mid Cap Value	130,019
Allianz Agic Opportunity	78,550
Invesco U.S. Government Fund	5,217
Invesco European Growth Fund	4,243
Invesco Van Kampen American Franchise	1,763
Invesco Van Kampen Value Opportunities	1,736
Invesco Van Kampen Growth & Income Fund	16,245
LM CBA Equity Income Builder Fund	3,657
Legg Mason Glb Currents Int'l All Cap Opp Fd	4,880
Legg Mason Clearbridge Small Cap Growth Fd	12,090
MTB Small Cap Growth Fund	7,327
Templeton Developing Markets Trust Class A	8,814
Citibank Bank Deposit Program	6,043
DWS Blue Chip A	1,809
DWS Global Small Cap Growth A	2,220
DWS Strategic Value A	2,663
Total Listed Securities	$534,462

Unlisted Securities	
McDonald Carano Wilson LLP	$144,000
Kori LLC	36,000
Eclipse Running	200,000
Total Unlisted Securities	$380,000

Real Estate Owned	
Personal residence	$550,000
Vacation property	650,000
Rental property #1	200,000
Rental property #2	190,000
Total Real Estate Owned	$1,590,000

Real Estate Mortgages Payable	
Personal residence	432,000
Vacation property	492,700
Rental property #1	247,650
Rental property #2	201,000
Total Real Estate Mortgages Payable	$1,373,350

AFFIDAVIT

I, Miranda Mai Du, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 3, 2011
(DATE)

(NAME)

(NOTARY)

KATHLEEN E. RYD
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 84-5329-2 - Expires August 25, 2014

Senator DURBIN. Thank you.

I would like to ask a general question based on my shadowy memories of the days when I appeared before Federal court judges in Springfield, Illinois, and in Chicago. And I had my favorites based not so much on their intelligence but on their temperament. This is a lifetime appointment, and it has been my observation that it goes straight to the head of some of the nominees once they put the robe on and they forget that they are still human beings with a background in the law and have before them attorneys who are doing their best for their clients.

I would like each of you, if you would, to just spend a brief moment talking about that issue of judicial temperament and what you have learned appearing before judges and what you would bring to the bench given that opportunity. Ms. Du, would you start?

Ms. DU. Thank you, Your Honor. Your Honor? Thank you, Senator. I think that is a very good question. I am used to appearing before the court.

One of the judges I admire the most on our Federal bench is somebody who exudes civility in the courtroom, and he conducts his courtroom with dignity and respect and is very humble. That is one of the qualities I admire. I think that the judges should exemplify our judicial system and should exhibit great temperament and in that way command respect.

Senator DURBIN. Mr. Contreras.

Mr. CONTRERAS. Yes, thank you for the question. I have practiced in the very court for which I have been nominated for the better part of 17 years, and I have appeared before many, many of the judges, and it makes a huge difference, the temperament of the judge. There were a number of judges—no longer on the bench—who even when I won it was less than a pleasant experience to appear. So I will make it a center point of my tenure, if I am so fortunate to be confirmed, to make sure that every party that appears is treated with respect and also is given the opportunity to have their claims heard fairly, regardless of walk of life or position in life.

Senator DURBIN. Thank you.

Ms. Abrams.

Ms. ABRAMS. I think judicial temperament is critically important. It is important for a judge to be patient and to be a good listener and to be humble and to be courteous to all those before him or her, no matter if they are rich or poor, no matter where they come from. I think it is important for a judge to remember that the courtroom can be an intimidating place for people, and it is important to treat everyone with respect and courtesy.

I recall that at a prior hearing one nominee said that people remember being mistreated much longer than they remember if they won or lost. And I think that that is true, and I think that a calm and decent and respectful temperament is critical for just confidence in the system overall.

Senator DURBIN. Mr. Fitzgerald.

Mr. FITZGERALD. As Ms. Abrams said, I think that being a calm and patient and good listener is very much a part of the judicial temperament. It is very important that the parties feel not only

that their case was not prejudged, but that they were treated with respect and that their case was seen as important to them. And I would certainly endeavor to project that and to display that to everyone who came into my courtroom.

Senator DURBIN. Thank you. It seems like a very obvious question, I know, and the answers are anticipated. But I believe it is one of the most important elements in being a successful Federal judge, and I hope that—and I know that each of you feel as I do, that temperament is a critical element.

Let me ask you, Ms. Abrams, you served on a task force that the chief judge of New York State created to propose reforms to help safeguard against wrongful convictions. That topic is always in the news: eyewitnesses that get it all wrong, people in jail for decades when it turns out they did not commit the crime. What did you learn in this process that you would bring to the bench?

Ms. ABRAMS. Well, a wrongful conviction is just a grave failure of our criminal justice system. It destroys the life of the person convicted. It lets the actual perpetrator go free. It should never happen, and yet on occasion it does. And I think that it is important for judges to understand the causes of wrongful convictions and be vigilant in every case in ensuring that the case is handled properly and that such a grave injustice does not happen in that judge's courtroom.

Senator DURBIN. Ms. Du, you have an amazing, compelling life story of how you made it to the United States despite great adversity, and your family stuck together and I think virtually all of them are here today, which is a good thing for you. What has that experience being first-generation American meant to you in terms of your work as an attorney? And what would it mean on the bench?

Ms. DU. Having been born and raised initially in a country where the rule of law is not respected helped give me the appreciation for the rule of law and our judicial system. And that was one of the reasons why I decided to go into the law. I wanted to show my family that in this country we can be a part of the system and do well, because they did not get a sense of trust from the Government having lived in Vietnam.

Senator DURBIN. Mr. Contreras, there are so many things I can ask you about. You have an amazing background in the law, working in the U.S. Attorney's Office and the like. But the one thing I have noticed that just jumped off the page was your mentoring of disadvantaged Hispanic students in the District of Columbia as well as Hispanic law students.

Tell me why you felt the need to do that and what you have brought from that experience.

Mr. CONTRERAS. Thank you for that question, Senator. It is something as a first-generation attorney—I did not have a lot of guidance, through no fault of my parents. They just had never gone to college themselves or gone to law school, and knowing how to maneuver the very difficult paperwork or financial aid and all those things that are involved, it is a very complicated process nowadays. I have just felt that having been through it myself and hopefully learned something from those events, that it is my duty

to help others that are in the position I was and hopefully can get some help going through the process.

Senator DURBIN. Thanks.

Mr. Fitzgerald, at one point in your career, you represented an FBI special agent named Frank Buttino in a matter in the early 1990's. Mr. Buttino was gay. He had his security clearance revoked and was fired after his superiors at the FBI learned of his sexual orientation. Mr. Buttino filed a lawsuit and was joined by a certified class of gay and lesbian FBI employees.

I understand there was a settlement of this case that contained some important FBI policy changes regarding the treatment of gay and lesbian employees and applicants. Can you discuss the outcome of this matter and your role in the case?

Mr. FITZGERALD. Thank you, Senator. I was approached by Heller Ehrman, the former law firm in San Francisco—I was then working in its Los Angeles office—to work on that case as a pro bono matter, and because of my trial background in the U.S. Attorney's Office and my familiarity with the FBI, I was asked to work on it, which, again, because of that background I was pleased to do so.

Mr. Buttino was the named representative. We brought the case to trial. During trial we, I am pleased to say, reached a mutually agreeable accommodation with the administration and with the FBI. The FBI agreed to no longer use security concerns as a means to keep gays and lesbians from being hired as special agents, and Mr. Buttino's pension was restored.

Senator DURBIN. Thank you.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

Mr. Fitzgerald, as the father of twin boys, I am worried about Patrick. You are not going to use this, are you, in order to generate the perception that you are the favorite of your parents?

[Laughter.]

Mr. FITZGERALD. No, Senator, though I did ask him to hold my BlackBerry while I was here in the hearing room, and he told me that he would, but it would not become a habit.

Senator LEE. And I am sure you will return the favor for him at some point whenever he needs you to hold his BlackBerry.

Like some other nominees that we have before our Committee from time to time, you have worked personally and professionally as an activist in various political and legal causes. I do not subscribe to the view that having been an activist in one area or another ought to disqualify anyone from ascending to the bench, and I certainly do not think that is the case in any instance where I have seen someone come before this Committee.

It is our duty, of course, as Senators, especially those of us who were privileged enough to serve on this Committee, to make sure that individuals who have been nominated to a lifetime tenured vacancy in the U.S. court system will uphold the rule of law and make sure that they understand the difference between advocacy and jurisprudence and that they will not engage in any kind of political activism while on the bench. So I feel it is my responsibility to just ask a couple of questions about that.

How would your prior political activities as an advocate and as an activist influence the work that you might do as a Federal judge?

Mr. FITZGERALD. Sir, I do not believe that it would have any influence on my service as a Federal judge. The great bulk of my time since leaving the U.S. Attorney's Office has been as a businessman in Los Angeles representing clients, hoping my firm would do well, and while we have done pro bono work—and I think that is important for lawyers, and I have served on a number of committees dealing with the Federal court system—as I said, the bulk of my practice has been very much as a litigator for clients who have retained us for our expertise. And as a judge, then I would respect the rule of law; I would respect the court system as a system which is trying to do justice for the litigants in front of it pursuant to the facts as they were found, without any reference to the background of the litigants—that is what is required by the judicial oath—and, of course, pursuant to the binding precedent of the Supreme Court and of our circuit court. And that is what the job requires, and it is what I would do. And I would not bring any personal or political views to bear on any of the cases that I determined as a United States district judge.

Senator LEE. And I suppose there are recusal standards that apply to Federal judges that also provide some protection in that regard. You are familiar with those, and you are comfortable with them?

Mr. FITZGERALD. I am, sir, and I certainly would recuse myself from any case where I felt that was required and would certainly give a strong examination of conscience to make sure that my views would not influence any decision I would make as a judge. And I would also be cognizant of the fact that recusal is required not only when I felt that it might be necessary, but when a reasonable onlooker would believe it was necessary as well.

Senator LEE. Thank you. Thank you very much.

Ms. Du, I have a couple questions for you as well. First of all, let me say you have apparently garnered the support of Leif Reid, who I have known for years, and if you can impress Leif, you must be very good. So that is a credential worth having.

Now, you were the lead counsel for the defendant in a civil case years ago, *Truckee Meadows Water Authority*, in a case that was ultimately dismissed for lack of subject matter jurisdiction in the U.S. District Court for the District of Nevada. You filed a motion to dismiss that did not argue the issue of subject matter jurisdiction, notwithstanding the fact that there was no subject matter jurisdiction in that case.

So I thought I would ask, Why did you not raise the defense of lack of subject matter jurisdiction in that dispute?

Ms. DU. We did not realize that that was a matter that we could raise. We raised the subject matter jurisdiction that the district court disagreed with, but we did not raise that particular issue.

Senator LEE. OK. In that case you filed a third-party complaint against the TMWA's union, the Truckee Meadows Water Authority union. The union notified you in a letter that the Federal subject matter jurisdiction was lacking in that case over either it or your client. You agreed that there was no subject matter jurisdiction,

but you, nonetheless, elected to proceed against the union, and the case was dismissed by the court only after the union moved to dismiss for lack of subject matter jurisdiction.

Did you consider filing a second motion to dismiss on that basis?

Ms. DU. I did not. What happened was the union filed a motion to dismiss that the court had not decided, and the plaintiff then dismissed the entire lawsuit.

Senator LEE. The district court, as I understand it in that case, characterized your position to proceed with your third-party complaint against the union as reckless and imposed sanctions for attorneys' fees and costs pursuant to Section 1927 of 28 U.S.C. I was wondering: Do you agree with the district court's assessment in that case that your conduct was reckless?

Ms. DU. I agree with the district judge's analysis in that case that the more prudent course would have been for us to either approach the plaintiff's attorney and ask them to dismiss a second time or file a second motion on our own. And in hindsight, that probably was the course of conduct we should have taken instead of bringing the union.

Senator LEE. You do not agree with the recklessness conclusion?

Ms. DU. I do not believe that I was reckless in that case. We certainly made a mistake and did not pick the best course of action, but I do not believe it was reckless.

Senator LEE. As a judge, you would be careful to look out for subject matter jurisdiction defects in any case, keeping in mind the importance of our limited Federal judiciary?

Ms. DU. Absolutely.

Senator LEE. Thank you, Mr. Chairman.

Senator DURBIN. Thanks a lot.

Let me ask you, Ms. Du, in 17 years with this McDonald Carano Wilson law firm, it appears that most of your work has been civil litigation and most of it has been in a defense capacity, civil defense. Is that a fair summary of most of your practice?

Ms. DU. Most of my practice has been on the defense side. That is correct.

Senator DURBIN. So the question that usually arises when nominees are considered is whether there is a bias based on life experience or legal experience. What could you point to in terms of your own legal career where you were on the other side of the table, perhaps representing a plaintiff or a petitioner in a case against a major corporation or a major interest?

Ms. DU. I believe that a good litigator should be able to look at both sides, both the plaintiff and the defendant sides, to assess each side's strengths and weaknesses. I do not believe I have that bias for one side or the other, and if I was fortunate to be nominated, I believe that a judge's role is to be impartial and to look at both sides.

Senator DURBIN. So if I were a criminal defendant coming before you on the bench, the obvious question, and I think I know the answer, but for the record: What would your feelings be toward a prosecution? Would you take a look at it from the viewpoint of the facts and the law without any bias based on your own personal experience?

Ms. DU. I would. I believe a judge's role is to look at the facts and apply the law and be fair and open to everyone who appeared before the court.

Senator DURBIN. And tell me about your pro bono work as an attorney.

Ms. DU. I have represented several nonprofit organizations in helping them through some of their employment issues, both from the defense and the plaintiff side.

Senator DURBIN. Thank you.

Mr. Contreras, a similar question. Most of your background has been representing the U.S. Government either prosecuting cases against individuals or representing the Government's interest in contractual relationships. And so the same question: What would a criminal defense lawyer think if he drew Judge Contreras in an important case?

Mr. CONTRERAS. Thank you for that question. I do not think anyone would feel like they were not getting a fair shot because, despite the fact that I have defended the Government for the better part of my career, a large part of my job is not just to serve justice with a capital "J" but also served justice with a small "J." And a large part of my job is convincing agencies to do what the law requires, and a lot of that is behind the scenes. Neither the parties nor the court ever see it. But my job is to enforce the law, and regardless of who I represented before assuming the bench, I will have no problem if the Government has not acted according to the law, that it will be held accountable the same way.

Senator DURBIN. Tell me about your own pro bono experience.

Mr. CONTRERAS. Given that I represent—before I worked for U.S. Attorney's Office, I did a lot of pro bono helping folks with Social Security matters and with immigration matters. Representing the United States, I am conflicted now from doing all that sort of work. So I have focused, as you mentioned earlier, on mentoring and dealing with individuals more so than pro bono work in my current tenure. Before I joined the U.S. Attorney's Office, I did a lot of work helping immigration, asylum cases, Social Security cases. I helped someone that was getting evicted from a D.C. housing unit. I helped a grandmother who was trying to adopt their grandchild because of problems with the child's mother.

Senator DURBIN. Thank you.

Ms. Abrams, I know you are sitting there saying, "I hope he asks me about the pro bono part."

[Laughter.]

Senator DURBIN. Please proceed and tell me about your experience.

Ms. ABRAMS. Well, I think I have been on all sides of the aisle, to a certain extent. I was a prosecutor for a long time, for 9½ years at the U.S. Attorney's Office for the Southern District of New York. But I have also represented criminal defendants in Federal and State actions. I am on the Criminal Justice Act Panel now in the Southern District of New York.

On the civil side, I have represented both plaintiffs and defendants ranging from very large corporations to individuals seeking to enforce their rights. So I think in terms of impartiality, I do not think it would be questioned because I have been on all sides.

In terms of pro bono work, thank you for the question. Virtually all of the work I do not, is designed to serve the disadvantaged. I am special counsel for pro bono at my law firm now. I litigate cases. I supervise cases. I represent battered women and veterans and criminal defendants and unpaid workers. And then I oversee the program as a whole. So I have done a good deal of pro bono work. I do it now and I did it before I was a prosecutor as well, and I think it is critically important for all lawyers to do.

Senator DURBIN. Thank you.

Mr. Fitzgerald, same question in terms of your balance as you would approach the bench based on your own personal experience, and then, again, any pro bono work that you have done. I cited a case. I believe you already have, but if you could expand on that a bit.

Mr. FITZGERALD. Yes, Senator, I am pleased that my legal career has given me the opportunity to handle both criminal and civil cases and to be on the criminal side and represent both the United States of America and defendants, on the civil side to represent plaintiffs and defendants, individuals and corporations.

Certainly most of the cases I have handled have settled and not gone to trial, and that obviously requires a certain ability to see things from the opposing party's point of view to reach a mutually agreeable settlement.

In terms of pro bono, in addition to the case that you mentioned, I have handled other court-appointed work in both the district court and the court of appeals. I have served, as Senator Boxer mentioned, as a volunteer counsel to two commissions that were investigating the Los Angeles Police Department. And I have also volunteered to be a moot court coach for a local law school that is in partnership with the California Institute of Technology for a high-tech new court program.

Senator DURBIN. Thank you.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

Since I have spent my first 5 minutes talking to Mr. Fitzgerald and Ms. Du, I will direct my next question to Ms. Abrams and Mr. Contreras. I would like to ask both of you the same question in that order, starting with you, Ms. Abrams. If you are confirmed as Federal judges, you will be called on constantly to interpret, to offer up a judicial construction of various provisions of Federal law and of the U.S. Constitution. So what I would like to know is: What sources would you consult, would you draw upon in arriving at your construction of a particular provision?

Ms. ABRAMS. Well, the first thing you would do is look at the text of the provision at issue and the structure of that. You would look to the precedent of the Supreme Court and of the court of appeals in the circuit in which you sit, and that is the first two and most important things you do.

If it is a case of first impression and there is no precedent on point, you would look to precedent of the Supreme Court and the relevant court of appeals for analogous provisions. You would look at precedent from other circuits as well as legislative history.

Senator LEE. What ought to drive it? What the legislative body intended or what the language actually says?

Ms. ABRAMS. I think the first thing and most important thing you want to look at is what the language says, and that is your starting point always.

Senator LEE. Mr. Contreras.

Mr. CONTRERAS. Thank you for that question. This issue is actually something I practice on a nearly daily basis in my current capacity as interpreting statutes and defending statutes on behalf of the United States. I follow *Chevron* from the Supreme Court very clearly. If the statute is clear on its face, that is the end of the story. If it is not, if there is ambiguity, you go to *Chevron* step two and you see what the administrative agency's reasonable interpretation is of the statute, filling in the gaps. There is no step three about what I think about the statute, and that is where it is. If the agency's interpretation is arbitrary and capricious, then the plaintiff wins. But using the teachings of the Supreme Court and the D.C. Circuit, which has a myriad of cases on this issue, I would have lots of sources of guidance.

Senator LEE. Sure. Well, and on your court *Chevron* will be of enormous importance. You will, of course, be called upon from time to time to construe statutory provisions outside the unique context of *Chevron* and its progeny.

What about there? What do you do there? And what specifically do you think about, for instance, legislative history and what role it ought to play?

Mr. CONTRERAS. Well, if the statute is unclear—again, I go to the clear face of the statute. If the language of the statute is clear, even if legislative history is contrary to the clear language of the statute, you do what the statute says. In the end that is the statute that Congress issued.

If it is not, depending on the circumstances, one can look to see if the legislative history is clear, but that is treacherous work. You know, what various folks got into the legislative history may not be why the statute was voted into place. So if the legislative history is very clear and it seems that it clearly was the reason for the statute, I would give it some weight. But it is very hard to do, to decipher legislative history, especially long afterwards.

Senator LEE. Thank you very much to all of you. Thanks for coming today.

Thank you, Mr. Chairman.

Senator DURBIN. Thanks, Senator Lee, for being here today, and I want to thank all of our nominees who have appeared before us, and certainly the Senators and Delegate who came to speak on your behalf.

We will keep the record open for a week. If there are questions that come in either from us or other members of the Committee, I hope you will respond to them on a very timely basis. And I want to thank everyone for being here today.

This Committee will stand adjourned.

[Whereupon, at 4:25 p.m., the Committee was adjourned.]

[Questions and answers and submissions follow.]

QUESTIONS AND ANSWERS

Responses of Ronnie Abrams
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Chuck Grassley

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe that the most important attributes of a judge are fidelity to the law, independence, integrity, fairness, good judgment, an appropriate temperament and a commitment to treating all those before her with dignity and respect. I believe that I possess these attributes.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: I believe that having an appropriate judicial temperament is critical to a judge's ability to administer justice faithfully and to the public's confidence in the judicial system. It is especially important that a judge be consistently fair, respectful, courteous, patient, humble, open-minded, evenhanded and decisive. I believe that, if confirmed as a district judge, my conduct will meet that standard.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: If confirmed and faced with a case of first impression, I would start with the text of the provision at issue. If the plain language and structure of the text did not yield a clear answer, I would look to precedents of the Supreme Court and the Court of Appeals for the Second Circuit interpreting analogous provisions, as well as precedent from other federal courts, for guidance.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: If confirmed, I would faithfully apply any relevant Supreme Court or Second Circuit precedent, regardless of my personal judgment or views of the precedent.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional if it violates a provision clearly set out in the U.S. Constitution, or if Congress has exceed its constitutional authority. In considering a constitutional challenge to a statute, a district judge must apply any applicable precedent of the Supreme Court and the Court of Appeals for the circuit in which it sits.

7. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed as a district judge, I would establish rules for litigants in an effort to provide clear guidance about my expectations. Among other things, I would set and adhere to firm deadlines for pretrial discovery, motions and trial. In addition, I would monitor my docket closely; encourage mediation or settlement when possible; make productive use of the magistrate judges when appropriate; and strive to decide all matters promptly. To manage my caseload effectively, I would also endeavor to learn more about and use the best practices of fellow judges in my district.

8. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. A critical aspect of the due administration of justice is ensuring that matters are resolved fairly and efficiently and judges play an important role in accomplishing that goal by controlling the pace and conduct of litigation. If confirmed as a district judge, I would take the steps described in my response to Question 7 to control my docket.

9. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on Tuesday, October 11, 2011. Over the course of the next day, I drafted responses to the questions. I discussed my responses with a representative of the Department of Justice and authorized the Department of Justice to transmit them to the Committee.

10. **Do these answers reflect your true and personal views?**

Response: Yes.

Responses of Ronnie Abrams
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: In my view, the role a district judge plays is a very important but limited one. That role is to decide the case or controversy before the court based on the facts before the court and the law as determined by the decisions of the United States Supreme Court and Court of Appeals for the circuit in which the court sits.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: All parties are entitled to equal justice under the law, regardless of their economic status, political beliefs, or social status. I believe that my career in the law – in which I have represented both the federal government and defendants in criminal cases, as well as plaintiffs and defendants in civil cases, ranging from large corporations to individuals seeking to enforce their rights – demonstrates my firm commitment to that principle. Throughout my career, including as a federal prosecutor and pro bono attorney, I have endeavored to treat everyone fairly, and with dignity and respect, and if confirmed as a district judge, I would be faithful to the judicial oath and continue to do so.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: The doctrine of stare decisis applies to all courts and if confirmed as a district judge, I would firmly adhere to the doctrine.

Responses of Rudolph Contreras
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Chuck Grassley

1. **Although you have had significant experience in a courtroom trying cases, in your Senate Questionnaire you indicated that 100% of your experience has been civil. Do you believe you are prepared to preside over criminal trials? If not, how do you plan prepare yourself to handle criminal cases?**

   Response: Yes, I believe I will be prepared by the time I preside over my first criminal trial. Although I have not been a prosecutor, I have had significant exposure to criminal law through: 1) my defense of numerous cases brought against prosecutors and federal agents alleging constitutional violations (*e.g.*, due process, excessive force, warrantless searches, etc.); 2) my handling of civil fraud cases in which I worked side-by-side with criminal prosecutors, developing parallel civil and criminal fraud cases (including issuing non-grand jury subpoenas, obtaining search warrants, interviewing witnesses, etc.); and 3) my eight years on the senior staff of two U.S. Attorney's offices, in which I was exposed to a wide variety of complex issues that arise in criminal cases. Additionally, the same rules of evidence apply to both civil and criminal trials. With that said, I will need to work hard to prepare for my first criminal trial. I will consult extensively with my judicial colleagues, with whom I have developed excellent relationships over the last seventeen years. Additionally, I will avail myself of all of the resources available through the Administrative Office of the United States Courts. Finally, I will spend long hours in the library, educating myself about the issues that will arise.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe the most important attribute of a judge is fairness/impartiality. I believe I possess that attribute. I also believe that patience, even-temperedness, diligence, and intellectual curiosity are important attributes that I possess.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: The Code of Conduct for United States Judges, Canon 3, describes an appropriate judicial temperament as follows: "A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity." I concur and add that, as a role model for the community in which one serves, a judge should also exhibit these characteristics toward those with whom he deals in an unofficial capacity. I believe I meet this standard and believe others (colleagues, judges, opposing counsel) concur with this assessment of me.

4. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: When faced with a matter of first impression that requires an interpretation of the Constitution, a statute, a regulation, or a rule, if unambiguous, I would rely upon the plain language of the provision. If the plain language is unclear, I would deferentially look at the relevant administrative agency's reasonable interpretation of the provision. I would also look at authority from the United States Supreme Court and Court of Appeals for the District of Columbia Circuit in analogous situations. Next, I would look at precedent from other United States Courts of Appeal and District Courts. If ambiguity remains, I would look at relevant legislative or regulatory history, cognizant that such history is difficult to discern and sometimes inaccurate.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: I would apply the binding precedent of the United States Supreme Court and the D.C. Circuit, regardless of my personal opinions about the wisdom of the decision.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A statute enacted by Congress should be declared unconstitutional only if Congress has clearly exceeded its authority under the Constitution or if controlling United States Supreme Court precedent makes it clear that the statute is unconstitutional.

8. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: The hallmark of my career to date has been my hard work. I expect the same from all of the attorneys I currently supervise. If confirmed, the first principle of my chambers will be continued hard work by me and my staff. I will also work to triage cases to identify those that can be disposed of quickly and those that will require more thorough consideration and complex decision-making. Additionally, I would manage my civil cases with a very hands-on approach that would include: an early scheduling conference to discuss, *inter alia,* the parties' respective plans for discovery and potential for settlement or referral to mediation; a mid-discovery status conference designed to identify and solve problems before discovery ends and to ensure that the parties are making progress; my availability for a telephone conference to quickly resolve discovery disputes without the need for an extensive motions practice; a post-discovery status conference to set a trial date and substantively discuss potential dispositive motions; and a mandatory post-discovery referral to mediation. Because of the Speedy Trial Act and the much smaller criminal docket in the District of Columbia, less intense management is required in criminal cases in order to control one's docket. Nevertheless, in criminal cases too, after a defendant has had some time to consider his/her plea options, I would issue clear scheduling orders with fixed deadlines for discovery and motions practice. I feel strongly that in both civil and criminal cases, it is imperative that the significant issues be decided by the judge substantially in advance of trial so that the parties can make intelligent decisions about settlement or pleas based on a clear understanding of what evidence will be admitted, witnesses will be heard, and law applied. Such early decision-making by a court provides the clearest route to resolving cases and managing one's docket.

9. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe that a judge must play an active role in controlling the pace and conduct of litigation and, if confirmed, I intend to use all of the mechanisms at my disposal to manage my docket, including those described above in my response to question number eight.

10. Please describe with particularity the process by which these questions were answered.

Response: I carefully reviewed and considered the questions sent to me. I also visited the Senate Judiciary Committee's website and reviewed responses to questions submitted by prior nominees who have been confirmed. After I prepared and edited my responses to the questions, I submitted them to Department of Justice representatives. After a conversation with these representatives, I authorized them to forward my responses to the Committee.

11. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Rudolph Contreras
Nominee to be United States District Judge for the District of Columbia
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: I would not characterize myself as having a particular judicial philosophy. I simply view the role of a judge as treating all parties fairly and with respect, regardless of their identity or claims, approaching each case impartially and with an open mind, and faithfully applying the laws enacted by Congress and interpreted by the United States Supreme Court and the United States Courts of Appeals.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: If I am confirmed, all litigants that appear before me can be confident that I will treat them fairly regardless of wealth or station in life. I grew up in very modest surroundings and was exposed to a great number of people of limited means. In contrast, in law school (at the University of Pennsylvania) and at my former law firm (Jones Day), I was exposed to many people of great privilege. I harbor no unfair biases in favor of or against either group. And, of course, in representing the United States for the last seventeen years, I have worked diligently on behalf of all its citizens -- rich and poor. Similarly, although the greater part of my career has been spent representing defendants, I have also represented plaintiffs, both on behalf of the United States, as well as individuals in *pro bono* matters. Thus, litigants should be assured that I hold no bias for a particular side of a case.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: I believe that District Court judges are strongly bound by the doctrine of *stare decisis*. To ensure predictability and stability in the law, so that citizens can consistently order their lives and affairs, it is paramount that cases with similar facts are decided in a similar fashion and criminal convicts who commit similar offenses are sentenced in a similar fashion. Although I believe that the United States Supreme Court has greater latitude to depart from the doctrine of *stare decisis*, for these same reasons, it should not depart from the doctrine absent unusual circumstances.

Responses of Miranda Du
Nominee to be United States District Judge for the District of Nevada
to the Written Questions of Senator Chuck Grassley

1. **In your article published May 17, 2004 in the Northern Nevada Business Weekly titled "Seek Counsel at First Union Contact" you wrote the following:**

> **"If your employees were trying to unionize, you would probably want to know about it. And, you most likely wouldn't want to "accidentally" help them organize. Unfortunately, some unions may engage in certain tactics to try to get you to inadvertently recognize the union."**

If you are confirmed as a United States District Judge, would labor unions or others be concerned about your impartiality?

Response: No. The target audience for the article referenced in this question was businesses who may encounter union organization. The article was written from an advocate's perspective to offer general legal advice to businesses about training and educating their employees on union organization in light of a decision from the Seventh Circuit Court of Appeals. I believe that in our judicial system, an advocate's role is different than that of a judge. I believe that an advocate's role is to zealously represent her clients while a judge's role is to be zealous in applying the laws to the facts of the case before the judge in a fair and impartial manner.

2. **In another article profiling members of your law firm, *Legal Eagles*. Reno Magazine, Sept./Oct. 2006, you were identified as working for a firm that represents large businesses – casinos, grocery chains, and manufacturing companies – that have been sued for discrimination, including age, race, gender, national origin, and disabilities. You were quoted as saying, "Our approach is you have to be aggressive; otherwise you're sending the message to employees that you're an easy target to civil claims."**

   a. **If confirmed, again I have concerns about the appearance of impartiality in these types of cases.**

   Response: As stated above, I believe the role of an advocate is different than that of a judge. I believe that as an advocate, I have a duty to represent my clients zealously. In contrast, I believe a judge must be zealous in applying the laws and must do so fairly and impartially without regards to the status of the parties who appear before the court. As an advocate, I have tremendous respect for judges who are fair and impartial. I would aspire to be the kind of judge that I would respect as an advocate.

   b. **Can you please explain how you would make the transition from advocate to being a fair and neutral forum to decide and hear cases and controversies?**

Response: An advocate's role is to present the best arguments for the client and to anticipate responses to arguments from the opposing party and address them accordingly. A judge's role is to consider arguments presented by all parties and to make a decision about the facts presented based on the applicable laws. I think I can make the transition from an advocate to a judge by being mindful of a judge's role to be fair, impartial and open-minded to the arguments of all parties appearing before the court. I would think of the kind of judge who I would want to appear before – one who would give all parties a fair chance to be heard -- and strive to be that judge.

c. Do you believe most companies are an easy target for frivolous claims?

Response: No. I have handled cases that I believe involve frivolous claims, but I have also handled cases where the claims asserted are not frivolous.

3. **I would like to give you an opportunity to address your role in the case of *Woods v. Truckee Meadows Water Authority*, a 2007 case in the court to which you are now nominated.**

a. Were you involved in that case, and if so, what was your role?

Response: I was the partner in charge of handling the case and supervising the work of an associate attorney.

b. As I understand the case, there came a point in the case where a decision was made to pursue a third-party complaint against the local union of the International Brotherhood of Electrical Workers. Who made that decision?

Response: The case was filed by our client's employee. The lawsuit asserted claims that were settled during the union grievance process where the Union, International Brotherhood of Electrical Workers, advocated on behalf of plaintiff. In response to the lawsuit, we filed a motion to dismiss plaintiff's claims. The District Court denied our motion, allowing the lawsuit to proceed against our client. At that point, after consultation with the client, we decided to file a third party complaint against the Union for indemnification and contribution. I was involved in making that decision.

c. My further understanding is that the Union's counsel advised in a letter to the Water Authority, that the claims had no basis in law and fact, and further advised that the court lacked subject matter jurisdiction. The letter went on to warn that it (the Union) would seek sanctions if the Water Authority did not withdraw its complaint. Is this accurate, and were you aware of this letter?

Response: The summary of the letter is accurate. The letter was addressed to me and I was aware of it. At that point in time, the District Court had denied our motion to

dismiss so the lawsuit was proceeding against our client. Because the Union had represented plaintiff during the union grievance process to resolve the claims that plaintiff sought to challenge in the lawsuit, we believed the Union was a necessary party to the lawsuit.

d. After additional back and forth between the Union and the Water Authority's counsel, the Union filed its motion to dismiss and the Water Authority did not oppose the motion but agreed the court lacked subject matter jurisdiction. The District Court dismissed the action. Do you agree that dismissal of the action was appropriate?

Response: The District Court dismissed the entire action for lack of subject matter jurisdiction, including both plaintiff's original lawsuit against our client and our client's third party complaint against the Union. I agree that dismissal of the action was appropriate and it was a remedy that our client had sought from the District Court although we did not raise the same issues that the Union raised in its motion to dismiss. In response to the Union's motion to dismiss, plaintiff did not oppose the motion but offered to stipulate to voluntary dismissal of the lawsuit. All parties involved filed a stipulation to dismiss and the District Court entered the order dismissing the entire action. The District Court did not rule on the Union's motion to dismiss our client's third party complaint.

e. In addressing the sanctions issue, the court stated "Having reviewed the record and considered arguments of counsel at the hearing on this motion, the court finds that although TMWA's counsel acted recklessly ... it did not do so with the intention to harass the union or to proceed for an improper purpose." Accordingly, the court concluded sanctions were warranted against the Water Authority pursuant to 28 U.S.C. 1927. Again, to clarify, you were counsel for the TMWA, correct? At your hearing, you stated you do not believe that you were reckless in that case. Do you have any explanation for what the court described as a reckless action?

Response: I was counsel of record for TMWA. Although I disagree with the Magistrate Judge's finding of recklessness, I think that having the benefit of hindsight, there were more prudent actions that could have been taken to defend plaintiff's lawsuit against our client after the Union raised the jurisdiction issue. But at that time, I believed we pursued the best course of action for our client. After the District Court denied our client's motion to dismiss, we had to defend the claims asserted against our client. Because plaintiff's claims were based on conduct that occurred during the union grievance process, we believed the Union was a necessary party. Our client was seeking indemnification and contribution from the Union in the event plaintiff succeeded in his claims against our client.

f. The finding of reckless action was not a mere observation of the court, but a legal finding allowing awarding of sanctions pursuant to 28 U.S.C. 1927. If you were not reckless, under what authority did the judge state the sanctions were warranted?

Response: The Magistrate Judge based her finding of reckless action on the fact that in response to the Union's motion to dismiss, our client agreed that the District Court should dismiss the lawsuit because of the jurisdictional defect raised by the Union. The Magistrate Judge found that by doing so, we implicitly admitted that the third party complaint that we brought against the Union was reckless. The Magistrate Judge also reasoned that "[a] more prudent course would have been to raise these very same issues with the plaintiff or to file a second motion to dismiss." While I agree that it would have been more prudent to pursue these other options, I disagree that not pursuing them was reckless.

g. Is there anything further you would like to add with regard to this case?

Response: As noted above, in hindsight, there were more prudent actions that could have been taken to defend the lawsuit against our client after the Union raised the jurisdiction issue. Specifically, we could have filed a second motion to dismiss with the District Court and waited for a decision before deciding how to proceed against the Union. We also could have approached plaintiff's counsel to ask him to stipulate to dismissal, and based on the fact that plaintiff did offer to dismiss the lawsuit in response to the Union's motion to dismiss, this approach probably would have yielded success. Although we ultimately resolved the sanctions issue with the Union and the District Court entered an order to strike the Union's motion for sanctions as moot, I have learned a great deal from this experience and it has helped me become a better lawyer and if confirmed, a better judge.

4. **Given that you received a partial "Not Qualified" rating from the ABA's Standing Committee on the Federal Judiciary, I wanted to give you an opportunity to outline your qualifications and experience. I note from your questionnaire that you have no criminal law experience and you state you were "involved in" four jury trials. Would you please explain to the Committee why you are qualified to set as a United States District Judge?**

Response: I have been a litigator in federal court for the past seventeen years and I have appeared in federal court on a regular basis. I have represented both plaintiffs and defendants. I was the Chair of a major practice group at a prominent Nevada law firm for over seven years. I have significant litigation experience, including participating in four jury trials. In addition to the jury trials, I have handled a number of preliminary injunction hearings, which are essentially mini-bench trials. I have successfully handled a labor arbitration hearing. I have conducted oral argument before the Ninth Circuit Court of Appeals on three occasions. I have drafted a number of appellate briefs to both the Ninth

Circuit Court of Appeals and the Nevada Supreme Court. I have argued and drafted dozens of motions before the federal court. I have taken and defended over fifty depositions and interviews. In addition, I have supervised numerous litigation and arbitration matters in my role as corporate counsel for one of my clients. I think these experiences will help me be successful as a judge if confirmed.

5. **Based on your limited experience, are there any skills or experiences you don't have that you think are necessary for a federal judge, and how you do you plan to make up for this lack of experience?**

Response: I realize that I lack criminal law experience. I believe that I can make up for my lack of experience by being especially studious and diligent in learning this area of the law. In the hope that I would be fortunate enough to be confirmed, I have started by observing a sentencing hearing and gathering general information on our district's criminal docket through conversations with some of our federal district court judges. I also have been monitoring our court's criminal docket for a criminal trial that I can observe. I believe I will have the opportunity to consult with fellow judges in the District of Nevada should I have general questions about the criminal docket. I plan to take full advantage of other available resources, including education programs offered by the Federal Judicial Center and other written publications. I also believe that the knowledge and skills that I have acquired through my civil litigation experience can be applied to criminal matters. For example, the rules of evidence are the same for criminal and civil trials. Deciding criminal cases requires the same reading, analytical and writing skills as in civil cases. I will make it my priority to become proficient in criminal law to ensure that parties who appear before the court have their matters be decided by a well informed judge.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: I think there are many attributes that are important for a judge to possess, but the most important attribute is integrity. A judge who has integrity will command respect even where the judge rules against a party. I believe I possess the integrity necessary to be a good judge.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I think a judge should be fair, impartial, open-minded, civil and humble. As an advocate, I respect judges who exhibit these elements of judicial temperament. They give litigants faith in our judicial process. I would aspire to meet the standard for what I believe to be the appropriate judicial temperament.

8. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes. I believe a district court judge's role is to apply binding precedents to the facts of each case before the court. I am committed to following precedents of the United States Supreme Court and the Ninth Circuit Court of Appeals even where I may personally disagree with such precedents.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I think there are general principles that guide a district court judge in deciding cases of first impression and I would follow such principles. I would look to decisions issued by the United States Supreme Court and the Ninth Circuit Court of Appeals for analogous situations. If no such cases exist, I would expand my search to other federal court of appeals and district court cases for guidance. If the question involves interpretation of a statute, I would first review the express language of the statute and apply the plain meaning of the words used in the statute. If the statute is not clear, I would examine the legislative intent and reach a decision that is narrowed to the facts of the case presented.

10. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: I would apply the United States Supreme Court decision or the decision of the Ninth Circuit Court of Appeals and not use my own judgment of the merits.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: I believe it is appropriate for a district court judge to find that a statute is unconstitutional only if the statute clearly violates the United States Constitution or if Congress has clearly exceeded its Constitutional authorities.

12. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: I will do what I have always done -- work diligently and studiously. I plan to prioritize the cases assigned to me and work to ensure they are decided in a timely manner. For cases that have been pending the longest, I would determine whether trial should be scheduled, whether it would be appropriate to order the parties to participate in a settlement conference or whether pending motions need to be decided. I will also work diligently to review pending motions and decide them in a timely manner. I will also utilize Magistrate Judges to help decide pre-trial, non-dispositive motions and preside over settlement conferences as appropriate. I plan to utilize other tools available for judges to help move

cases to resolution, including getting updates through status conferences and setting firm deadlines.

13. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. I believe that a judge should be involved in controlling the pace and conduct of litigation. If confirmed, I will hold attorneys accountable for moving their cases along. I will follow Rule 1 of the Federal Rules of Civil Procedure to ensure that parties "secure the just, speedy, and inexpensive determination of every action and proceeding."

14. **Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on the afternoon of October 11, 2011. I read through the questions and thought about the issues raised. I also reviewed the materials referenced in some of the questions. I prepared my responses over the course of a couple of days. After I discussed my responses with an official at the Department of Justice, I forwarded my responses to the Department of Justice for review and submission to the Senate Judiciary Committee.

15. **Do these answers reflect your true and personal views?**

Response: Yes.

Responses of Miranda Du
Nominee to be United States District Judge for the District of Nevada
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy and belief as to the role of the district court judge are the same. The district court judge should be open-minded, fair and impartial and should make decisions based solely on the merits of the case. In doing so, the district court judge should apply the laws to the facts of the case as presented to the court.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: I can give absolute assurance that litigants appearing in my courtroom, if I was fortunate to be confirmed, will be treated fairly and equally regardless of their political beliefs or wealth. I think everyone should have equal access to our judicial system. I also think a judge's impartiality affects how advocates and litigants view our legal system. As an advocate, I appreciate and respect judges who are fair and impartial even when they may rule against my clients. I also think litigants are more accepting of a ruling from a judge who gave them a fair chance to be heard.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: I believe that district court judges must follow and apply binding precedents established by the United States Supreme Court and the court of appeals with jurisdiction over the circuit. District court judges must commit to the principles of *stare decisis* and this commitment should not vary depending on the court.

Responses of Michael Walter Fitzgerald
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Chuck Grassley

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is integrity, which includes impartiality between the parties and making rulings solely on the basis of the law and the facts. I possess this attribute.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: My view is that the appropriate temperament conveys to the parties that their case is being fairly and fully heard. The elements of this appropriate temperament are patience, modesty, civility, diligence and punctuality. It is also important to be well-prepared and knowledgeable about the matters before the court, which conveys to the parties that their case is viewed as important and allows a judge to maintain control over his or her calendar. I believe that I meet this standard.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: I would first look to cases by the Supreme Court or the Court of Appeals for the Ninth Circuit in analogous areas. If there were no such cases, I would look to cases of other Courts of Appeals for their persuasive authority. In a case involving a statute or rule, I would look to the plain meaning of the text. In the absence of a plain meaning, I would examine the structure of the statute or rule and attempt to ascertain its purpose.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or**

would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would apply the decision of the Supreme Court or the Court of Appeals.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court should, if possible, interpret the statute in a way that avoids the constitutional question. If the constitutional question cannot properly be avoided, it is appropriate to declare a statute unconstitutional if Congress has exceeded its enumerated powers or if the statute contravenes a provision of the Constitution.

7. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I would establish firm deadlines, especially for trial. I would also issue rulings promptly after hearings. In civil cases, I would actively use the magistrate judges in my District. I would insist that the parties make the required initial disclosures (Fed. R. Civ. P. 26) and comply with the required pretrial procedures (Fed. R. Civ. P. 16). I would also insist that the parties attempt to settle their case by using one of the three procedures set forth in the Local Rules of the Central District of California. In criminal cases, I would obey the Speedy Trial Act. I would also establish a firm motion schedule so that all motions were made and decided early in the case.

8. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, a district judge has a role in controlling the pace and conduct of litigation. If confirmed, I would take the specific steps that I mention in response to Question 7.

9. **Please describe with particularity the process by which these questions were answered.**

Response: On October 11, 2011, I received these questions from the Department of Justice. On October 12, 2011, I drafted these responses. I then discussed the responses with an official of the Department of the Justice. I finalized my responses and sent them to the Department of Justice on October 14, 2011, to be conveyed to the Committee.

10. **Do these answers reflect your true and personal views?**

Response: Yes.

Responses of Michael Walter Fitzgerald
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: The role of a district judge is to decide the questions of facts and law arising from the cases before the court. In our constitutional system, this narrow role requires a district judge to show respect for the elected branches. A district judge should not legislate; he or she should only interpret the statutes enacted by Congress. District judges should confine themselves to this important but narrow role.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: If confirmed, I would decide all matters only on the basis of the law (as established by Supreme Court and Court of Appeals for the Ninth Circuit) and the facts (determined without respect to the background of the parties). I believe that my extensive litigation experience is consistent with this commitment. I have handled criminal cases on behalf of both the United States and individual defendants. I have handled a wide variety of civil cases on behalf of both plaintiffs and defendants and on behalf of both individuals and companies.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: Judges should firmly bind themselves to the doctrine of stare decisis. This commitment should be followed by all judges.

Responses of Stephanie Thacker
Nominee to be United States Circuit Judge for the Fourth Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: No. I do not agree with this statement.

2. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: I do not. Such policy considerations are reserved to the province of the legislature to the extent the legislature wishes to consider them, and are not to be entered into by the judiciary unless instructed to do so by binding Supreme Court precedent.

3. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

   Response: No. That would be an overly broad interpretation of the limited powers enumerated via the Commerce Clause. Such a broad interpretation would not be consistent with binding Supreme Court precedent found in *United v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000).

4. **The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the *McDonald v. Chicago* decision, do you personally believe the right to bear arms is a fundamental right?**

   Response: I respect and would adhere to the individual right to bear arms as set forth in *Heller*. I would follow binding Supreme Court precedent in this regard.

   a. **Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

Response: Yes. The Supreme Court has held in *McDonald* v. *City of Chicago* that certain of the rights guaranteed in the Bill of Rights are, in fact, fundamental having been "deeply rooted in this Nation's history and tradition." I respect and would adhere to Supreme Court precedent with regard to these fundamental rights, including their application against the States.

b. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.

Response: Please see response to Question 4a above.

c. The *Heller* Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.

Response: If confirmed, I would follow Supreme Court precedent that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right.

5. Some have criticized the Supreme Court's decision in *Heller* saying it "discovered a constitutional right to own guns that the Court had not previously noticed in 220 years." Do you believe that *Heller* "discovered" a new right, or merely applied a fair reading of the plain text of the Second Amendment?

Response: The *Heller* decision itself indicates that it was based upon the plain text of the Second Amendment. If confirmed, I would follow this binding Supreme Court precedent.

a. Similarly, during his State of the Union address, the President said the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. ___ (2010), "reversed a century of law" and others have stated that it abandoned "100 years of precedent." Do you agree that the Court reversed a century of law or 100 years of precedent in the *Citizens United* decision? Please explain why or why not.

Response: If confirmed, I would faithfully follow the rule of law as set forth by the Supreme Court in *Citizens United.* Otherwise, I do not have an opinion on this issue.

6. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: As recognized by the Supreme Court, there are limitations placed on the individual right to bear arms in the context of certain criminal statutes (18 U.S.C. 922(g)), for example. Otherwise, although the *Heller* and *McDonald* opinions recognize that there are limitations on the constitutional right to individual gun possession, the Supreme Court

did not fully resolve the extent or legality of any such limitations. If confirmed, I would follow binding Supreme Court precedent in this regard.

a. In *McDonald v. Chicago*, the majority wrote: "We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill,' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.'"

What if a state passed a law imposing a $2,000 registration fee as a condition for the commercial sale of a firearm? Without stating how you would rule in such a case, please explain how you would conduct your analysis to determine whether the fee violated the Second Amendment right to keep arms?

Response: If I am confirmed, I would confront this issue in the same manner in which I would confront any issue that came before the Court. I would review the text of the statute as well as the text of the Second Amendment and the binding Supreme Court precedent set forth in *Heller* and *McDonald* as well as any other binding Supreme Court or Fourth Circuit precedent that may exist at the time. I would then make a decision consistent with such precedent.

i. To what cases or authorities would you refer? Please be specific.

Response: Please see response to Question 6a above.

b. What if a state outlawed the carrying and possession of firearms on the grounds of hospitals that have psychiatric wards, regardless of whether they are private? Without stating how you would rule in such a case, please explain how you would conduct your analysis to determine whether that regulation complied with the Second Amendment's guarantee of the right to bear arms.

Response: Please see response to Question 6a above.

i. Could a hospital qualify as a "sensitive place?"

Response: This is not something I have heretofore considered, and on which I do not have an opinion without a full and thorough analysis of the context and the law.

ii. To what cases or authorities would you refer? Please be specific.

Response: Please see response to Question 6a above.

c. Is the Second Amendment limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?

Response: Per the Supreme Court decisions in *Heller* and *McDonald,* there is an individual and fundamental constitutional right to keep and bear arms. Although the Supreme Court recognized there are limits to this right, it has not specifically addressed the issue raised by this question. However, if confirmed, I would review and follow binding Supreme Court and Fourth Circuit precedent in this regard.

7. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?

Response: The decision of the Supreme Court in *Roper*, and the analysis therein, is binding precedent, and I would follow it, if confirmed.

a. Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"

Response: If confirmed, I would be required to follow binding Supreme Court precedent in this regard, and I would do so.

b. How would you determine what the evolving standards of decency are?

Response: I would follow the analytic framework of binding Supreme Court decisions.

c. Do you think that a judge could ever find that the "evolving standards of decency" dictated that the death penalty is unconstitutional in all cases?

Response: If confirmed, I would follow binding Supreme Court precedent. In this instance, the Supreme Court has ruled that the death penalty is constitutional except in limited circumstances. I would follow such precedent.

d. What factors do you believe would be relevant to the judge's analysis?

Response: The factors relevant to a judicial analysis on this issue are the same factors which are to be applied in judicial analysis of any issue, that is, a review of Supreme Court precedent. In this instance, Supreme Court precedence is clear. The death penalty is constitutional except in limited circumstances.

e. When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states,[1] in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries.[2] Do you believe either standard has merit when interpreting the text of the Constitution?

Response: Both standards have some merit, but only to the extent directed by, and limited by, the Supreme Court. Specifically, with respect to the Eighth Amendment, the Supreme Court has held that both state laws and foreign laws are relevant in determining "evolving standards of decency." *Roper* v. *Simmons*, 543 U.S. 551 (2005), at 564, 575. Foreign laws are not controlling, however, in interpreting the Constitution. *Roper* at 575. If confirmed, I would not consider state laws or foreign law in interpreting the Constitution unless directed to do so by the Supreme Court.

i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.

Response: Please see my response to Question 7e.

8. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No. It is not proper to rely on foreign or international laws or decisions in determining the meaning of the Constitution, unless directed by the Supreme Court to do so. First and foremost, the interpretation of the Constitution should be based upon the text of the Constitution itself.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: No.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: I do not believe it is appropriate to consider foreign law when interpreting the United States Constitution, unless directed by the Supreme Court to do so.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

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[1] *Roper v. Simmons*, 543 U.S. 551, 564-65.
[2] *Graham v. Florida*, 130 S.Ct. 2011, 2033-34.

Response: I do not believe it is appropriate to consider foreign law when interpreting the United States Constitution, unless directed by the Supreme Court to do so. The narrow circumstances when the Supreme Court may so direct may include treaty obligations.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, unless I was required by binding Supreme Court precedent to do so.

9. You have spent much of your career fighting child pornography and child sexual exploitation. Under current law, what factors can a judge consider to support his or her decision to depart downward from the sentencing guidelines when issuing a sentence?

Response: Although the Sentencing Guidelines are now advisory rather than mandatory, they should be accorded deference and are an important component to achieving fairness, uniformity, and justice in sentencing. The Guidelines themselves provide the standards applicable for various grounds for departure. Typically, these grounds are limited in nature and include factual scenarios that are well outside the norm for a given offense. There is also a body of Fourth Circuit precedent applying the various limited grounds for departure to a variety of factual scenarios. Additionally, a judge must also take into account the sentencing factors set forth in 18 USC 3553(a).

Responses of Stephanie Thacker
Nominee to be United States Circuit Judge for the Fourth Circuit
to the Written Questions of Senator Chuck Grassley

1. **While your Senate Questionnaire indicates litigation experience, there is less evidence of your experience in appellate practice. Could you please describe your appellate experience for the Committee? In doing so, please inform the Committee how many cases you have argued at the appellate level and how many appellate briefs you have written.**

Response: Given the nature of the practice at the United States Attorney's Office for the Southern District of West Virginia as well as the nature of private practice with my law firm, appellate work has been part and parcel of nearly the entire breadth of my 21 year litigation career. While with the United States Attorney's Office for the Southern District of West Virginia, I was in the General Criminal Division. There was not a separate appellate section in that office. Therefore, as an Assistant United States Attorney, I was responsible for each case I handled from the investigation stage through appeal. As a result, I wrote a number of appellate briefs during my tenure with that office and also argued an appeal before the Fourth Circuit Court of Appeals. While with the Department of Justice Child Exploitation and Obscenity Section, I also assisted in appellate brief writing in a number of prosecutions I handled around the country. Additionally, part of my role with the Child Exploitation and Obscenity Section included review and analysis of the *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), *Ashcroft* v. *Free Speech Coalition*, 535 U.S. 234 (2002), and *United States* v. *Booker*, 543 U.S. 220 (2005) Supreme Court decisions in order to help draft appellate and prosecution guidance for the United States Attorney's Offices around the country. The size and nature of my firm is also such that we do not have a separate appellate section within the firm, but, rather, each handle our cases through discovery, trial, and appeal. Therefore, I have drafted a number of appellate briefs in private practice as well and have argued one case before the West Virginia Supreme Court of Appeals (West Virginia's highest court). In total, I have drafted approximately 25 appellate briefs.

2. **What additional experience do you have that leads you to believe you are prepared to be an appellate court judge?**

Response: My career has afforded me a breadth of legal experience which I believe would serve me well if confirmed. I have practiced both civil and criminal law; both prosecution and defense; both trial work and appellate work, and in both public service and private practice. While with the United States Attorney's Office and the Department of Justice, I gained experience in a wide cross section of criminal cases, including prosecutions for domestic violence, child support, coal mine safety violations, environmental violations, firearms violations, child exploitation, child pornography, human trafficking, obscenity, tax evasion, fraud, asset forfeiture, money laundering, conspiracy and RICO. While with the United States Attorney's Office, I was responsible for coordinating a number of prosecution initiatives. Likewise, with the Department of Justice Child Exploitation and Obscenity Section, I was responsible for the development and implementation of a nationwide program

of significant prosecutions. I also assisted in developing policy and litigation strategies and initiatives to ensure that the Section was effectively keeping pace with the technologies employed in child exploitation and obscenity offenses and to fill niches where areas ripe for prosecution were not being pursued otherwise. Additionally, while with the Department of Justice, I traveled both nationally and internationally providing training to law enforcement and prosecutors on the investigation and prosecution of child sexual exploitation and human trafficking crimes. For the past two years, I have served as an adjunct professor at the West Virginia University College of Law teaching classes on trial advocacy and child abuse and neglect. In my private practice work, my law firm and I are regularly called on to defend some of the country's largest companies in high-profile trials. As a result, throughout the course of my career in civil litigation, I have worked on large, complex, document intensive cases, including commercial, product liability and toxic tort litigation. I have also represented individuals and white-collar criminal defendants. I do, then, have a wealth of experience in many facets of the law, and from several perspectives that I believe has helped prepare me for the appellate bench (in addition to the appellate experience described in response to Question 1).

3. **A key component of the ABA's criteria for evaluating appellate nominees is writing ability. As stated by the ABA Committee on the Federal Judiciary, "The ability to write clearly and persuasively, to harmonize a body of law, and to give meaningful guidance to the trial courts and the bar for future cases are particularly important skills for prospective nominees to the appellate courts." Aside from a law review article you wrote in 1989, your Senate Questionnaire provided very little in the way of examples of your legal writing and analytical skills. What further information could you provide to the Committee that would help us evaluate whether your writing skills meet the high standards expected of an appellate court judge?**

Response: The ability to write well and to analyze issues is paramount to a successful academic and legal career. In this regard, I have excelled at every level of both my academic and professional careers. I achieved success at the West Virginia University College of Law due to my ability to reason, analyze, and write. I was a member of the West Virginia Law Review, and also served as the editor for the national coal issue of the West Virginia Law Review. I graduated among the top 10% of my class Order of the Coif. Given the nature of my practice throughout the course of my career, the ability to write effectively has been critical in my representation of the United States and of my clients in state and federal courts around the country. My litigation work has required that I frequently engage in brief writing and legal analysis. I have drafted a number of appellate briefs and have been engaged in frequent and robust motions practice in the litigation in which I have been involved. I am confident that the Courts before which I have appeared would universally give me high marks for my writing ability. In fact, after conducting a background investigation, including the evaluation of my writing ability, a substantial majority of the members of the American Bar Association Committee on the Federal Judiciary gave me their highest rating of "well qualified."

4. **How would you describe your judicial philosophy?**

Response: My judicial philosophy would be characterized first and foremost by impartiality and respect for the law and binding legal precedent. My judicial philosophy would also include a respect for all parties that appear before the Court.

5. **Can you identify for the Committee which Supreme Court Justice you would most admire, and why?**

Response: I cannot identify a singular Supreme Court Justice I would most admire. Rather, my admiration is placed upon a respect for the legal process itself and for the United States Supreme Court as an institution.

6. **Could you please inform me of a Supreme Court decision you believe was poorly reasoned, without regard to whether you agreed or disagreed with the outcome, and explain why?**

Response: I believe *Plessy* v. *Ferguson*, 163 U.S. 537 (1896) was poorly reasoned in that the Fourteenth Amendment guarantees equality under the law, but separation by its very nature cannot be equal. The *Plessy* decision favored public policy and perceived public good at the time over the protections afforded by the Constitution. This is an end justifies the means type of analysis that did not, of course, withstand the test of time. *Brown* v. *Board of Education*, 347 U.S. 483 (1954) ultimately overruled *Plessy* holding that separate facilities were inherently unequal and, thus, denied equal protection of the law.

7. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No. I do not agree with this statement.

8. **As an Assistant United States Attorney, did you ever prosecute someone who was death penalty eligible? If so, have you ever sought the death penalty?**

Response: I did not have any case as an Assistant United States Attorney that was death penalty eligible.

   a. **Have you ever elected not to seek the death penalty for a defendant who was eligible? If so, please explain why you determined the death penalty was not appropriate in that instance.**

      Response: No. There has never been an occasion where I elected not to seek the death penalty for a defendant who was eligible.

9. Do you believe that the death penalty is an acceptable form of punishment?

Response: The death penalty is constitutional except in limited circumstances and I would follow Supreme Court precedent in that regard.

10. In *Roper v. Simmons*, the Supreme Court relied on foreign law in holding that the execution of minors violated the Eighth Amendment. Do you think it is proper to look to foreign law to determine the meaning of the Eighth Amendment to the United States Constitution?

Response: No, I do not, unless directed to do so by the Supreme Court.

11. Do you believe it ever appropriate for a judge to consult foreign law, when determining the meaning of the United States Constitution?

Response: The United States Constitution is appropriately interpreted by reference to the text of the Constitution itself and United States legal sources, specifically the United States Supreme Court. As a result, if confirmed, I would not consult foreign law in order to interpret the Constitution unless directed to do so by the Supreme Court.

12. A recent Time magazine article said that "If the Constitution was intended to limit the federal government, it sure doesn't say so." Do you agree with this statement? Please explain your answer.

Response: I am not familiar with the Time magazine article or its context. However, I do not agree with this statement. Pursuant to the Tenth Amendment, the federal government is one of limited and enumerated powers and the United States Supreme Court has repeatedly said so.

13. Do you believe that the Second Amendment is an individual right or a collective right?

Response: The Supreme Court has held in *District of Columbia* v. *Heller,* 554 U.S. 570 (2008) that the Second Amendment confers an individual right to bear arms. If confirmed, I would follow binding Supreme Court precedent in this regard.

14. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: If confirmed and presented with a case involving a Second Amendment challenge, I would closely review binding Supreme Court precedent in this regard, including *Heller* and *McDonald*, and would follow applicable precedent in determining the constitutionality of the particular issue presented at the time. The Supreme Court has held that there is an individual and fundamental constitutional right to keep and bear arms. Therefore, a heightened level of scrutiny should be applied in such circumstances.

15. What is the most important attribute of a judge, and do you possess it?

Response: Impartiality is the most important attribute of a judge. I do believe I possess this quality and that, if confirmed, I would fairly and impartially rule.

16. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: The appropriate temperament of a judge is one that is respectful. A judge should exhibit respect for the law, the process, and the parties. In this regard, a judge should be well prepared, open minded, attentive, patient, impartial, fair, and prompt in decision making. Some of these qualities are also referenced in Canon 3(A)(3) of the Code of Conduct for United States Judges. I believe I do meet this standard.

17. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes. I am committed to faithfully following all binding precedent without regard to personal views.

18. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In a matter of first impression, I would look first to the text of the statute, regulation, or other legal provision at issue. If the text is clear and unambiguous, I would apply it to the facts presented. If the text is ambiguous, I would then look to analogous Supreme Court and Fourth Circuit precedent for analytical and legal guidance. If there was no sufficient guidance to be found in those resources, I would look to analogous cases in other federal appellate courts.

19. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would follow binding precedent of the Supreme Court and the Fourth Circuit Court of Appeals. I would not seek to inject my own judgment.

20. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional upon a plain showing that Congress has exceeded its powers or constitutional bounds.

21. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: Only an appellate court sitting *en banc* may overturn precedent within the circuit. And, then, the court is constrained to overturn precedent only in the limited circumstance in which it is in conflict with Supreme Court precedent or with another decision within the circuit.

22. Please describe with particularity the process by which these questions were answered.

Response: I received this set of questions on the evening of October 11, 2011 from the Department of Justice. I reflected on the questions and drafted responses on October 13 and 14, 2011, which I then discussed with Department of Justice staff, and requested that my responses be forwarded to the Senate Judiciary Committee.

23. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Stephanie Thacker
Nominee to be United States Circuit Judge for the Fourth Circuit
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy would be characterized first and foremost by impartiality and respect for the law and binding legal precedent. My judicial philosophy would also include a respect for all parties that appear before the Court. A judge's role in our constitutional system is as a neutral arbiter of the law.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: Judicial fairness and impartiality are paramount in our legal system. I have a deep and abiding respect for the legal process and the importance of judicial impartiality. My legal career thus far has afforded me the opportunity to see all sides of the courtroom; civil and criminal, prosecution and defense, trial and appeal. In particular, my role as a prosecutor was also one in which impartiality and a fair assessment of the evidence was critical. I feel confident that those with whom I have worked during the course of my career—whether colleagues or opposing counsel, criminal defendants, or other parties against whom I have been engaged in litigation, or judges before whom I have appeared—would assess me as fair, professional and above-board.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: The doctrine of stare decisis is a bedrock principle and one to which I would strongly adhere if confirmed. I would follow binding precedent of the United States Supreme Court and of the Fourth Circuit Court of Appeals.

Responses of Stephanie Thacker
Nominee to be United States Circuit Judge for the Fourth Circuit
to the Written Questions of Senator Jeff Sessions

1. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

   Response: The Supreme Court has held in *District of Columbia* v. *Heller,* 554 U.S. 570 (2008) that the Second Amendment confers an individual right to keep and bear arms.

   a. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

      Response: If confirmed and presented with a case involving a Second Amendment challenge, I would closely review binding Supreme Court precedent in this regard, including *Heller* and *McDonald*, and would follow applicable precedent in determining the constitutionality of the particular issue presented at the time. The Supreme Court has held that there is an individual fundamental constitutional right to keep and bear arms. Therefore, a heightened level of scrutiny should be applied in such circumstances.

2. **What is your view of the role of a judge?**

   Response: The role of a judge is to exercise restraint, impartiality, and fairness in reviewing the legal issues that come before the Court, and to rule promptly within the confines of controlling legal precedent.

3. **Do you think it is ever proper for judges to indulge their own values in determining what the law means? If so, under what circumstances?**

   Response: No.

4. **Do you think it is ever proper for judges to indulge their own policy preferences in determining what the law means? If so, under what circumstances?**

   Response: No.

5. **As you may know, President Obama has described the types of judges that he will nominate to the federal bench as follows:**

   "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. Do you believe that you fit President Obama's criteria for federal judges, as described in his quote?

Response: While I would exhibit respect for all parties who come before the court, I do not believe that empathy for any particular party or issue should play any role in judicial decision making. Rather, the role of a judge is to hear and decide cases based upon an impartial application of the law to the facts, and not based on empathy. Empathy would not play a role in my decision making process if I am confirmed.

b. During her confirmation hearing, Justice Sotomayor rejected this so-called "empathy standard" stating, "We apply the law to facts. We don't apply feelings to facts." Do you agree with Justice Sotomayor?

Response: Yes.

c. What role do you believe that empathy should play in a judge's consideration of a case?

Response: I do not believe that empathy should play any role in a judge's consideration of a case.

d. Do you think that it is proper for judges to consider their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: Not applicable.

ii. Please provide an example of a case in which you have considered your own subjective sense of empathy in determining what the law means.

Response: I do not have any example of a case where I have used such a standard to determine what the law means. I have not done so.

iii. Please provide an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: Since I have not previously served as a judge, and, therefore, have not issued rulings, I cannot identify any such examples.

6. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory. It seems to me that as long as the sentencing judge (1) correctly calculates the guidelines, and (2) appropriately considers factors set forth therein, the judge may impose any sentence ranging from probation to the statutory maximum. Following the Supreme Court's decision in *Gall v. United States*, appellate courts must apply the highly deferential "abuse of discretion" standard when reviewing these sentencing decisions. As a result, district court judges may impose virtually any sentence, and as long as the decision is procedurally sound, there is virtually no substantive review on appeal.**

   a. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

      Response: Yes. I agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw.

   b. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

      Response: Although the Sentencing Guidelines are now advisory rather than mandatory, they should be accorded deference and are an important component to achieving fairness, uniformity, and justice in sentencing. The Guidelines themselves provide the standards applicable for various grounds for departure. Typically, these grounds are limited in nature and include factual scenarios that are well outside the norm for a given offense. There is also a body of Fourth Circuit precedent applying the various limited grounds for departure to a variety of factual scenarios. Additionally, a judge must also take into account the sentencing factors set forth in 18 USC 3553(a).

7. **Do you believe it is ever appropriate for American judges to rely on foreign law when interpreting the U.S. Constitution? If so, under what circumstances?**

   Response: No. The United States Constitution is appropriately interpreted by reference to the text of the Constitution itself and United States legal sources, specifically the United States Supreme Court. As a result, if confirmed, I would not consult foreign law in order to interpret the Constitution unless directed to do so by the Supreme Court.

8. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution?**

   Response: The Supreme Court has ruled that the death penalty is constitutional and does not constitute cruel and unusual punishment. I would follow Supreme Court precedent in this regard, if confirmed.

   a. **Do you hold any personal views that would not permit you to enforce the death penalty?**

Response: No.

b. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has ruled that the death penalty is an acceptable form of punishment and I would follow Supreme Court precedent in this regard, if confirmed.

9. Given the greater availability of legislative history in the federal system, do you think it is proper for federal judges to look to legislative history when construing an otherwise unambiguous statute?

Response: If a statute is clear and unambiguous, then the language of the statute controls without regard to the legislative history.

a. Would it ever be proper for a court to determine that the meaning of a seemingly unambiguous statute is ambiguous based on the legislative history of that statute?

Response: No.

b. To what extent do you think a court should look to legislative history when a statute is ambiguous on its face?

Response: If a statute is ambiguous, a court should turn first to available analogous Supreme Court and appellate court precedent in order to seek guidance in interpreting the statute. However, on occasion, when there is no other controlling court authority, courts may look to other sources, including official legislative history.

10. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation? Please explain your answer.

Response: No. I do not agree with this statement.

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VIA EMAIL AND FIRST CLASS MAIL

July 29, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Ronnie Abrams
To the United States District Court
for the Southern District of New York

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Ronnie Abrams who has been nominated for a position on the United States District Court for the Southern District of New York. As a result of our investigation, a substantial majority of the Committee is of the opinion that Ms. Abrams is "Qualified". A minority of the Committee is of the opinion that Ms. Abrams is "Well Qualified" for the position. There was one recusal.

A copy of this letter has been provided to Ronnie Abrams.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Ronnie Abrams
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq.(via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 29, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon. Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
Hon. Jon Kyl
Hon. Lindsey O. Graham
Hon. John Cornyn
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VIA EMAIL AND FIRST CLASS MAIL

August 6, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Miranda Du
To the United States District Court
for the District of Nevada

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Miranda Du who has been nominated for a position on the United States District Court for the District of Nevada. As a result of our investigation, a substantial majority of the Committee is of the opinion that Ms. Du is "Qualified". A minority of the Committee is of the opinion that Ms. Du is "Not Qualified" for the position.

A copy of this letter has been provided to Miranda Du.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Miranda Du
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq.(via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on August 6, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
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Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
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VIA EMAIL AND FIRST CLASS MAIL

July 21, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Michael W. Fitzgerald
To the United States District Court
for the Central District of California

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Michael W. Fitzgerald who has been nominated for a position on the United States District Court for the Central District of California. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Fitzgerald is "Well Qualified" for the position.

A copy of this letter has been provided to Michael W. Fitzgerald.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Michael W. Fitzgerald
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 21, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
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September 8, 2011

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Stephanie Thacker
To the United States Court of Appeals for the Fourth Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Stephanie Thacker who has been nominated to the United States Court of Appeals for the Fourth Circuit. As a result of our investigation, a Substantial Majority of the Committee is of the opinion that Ms. Thacker is "Well Qualified." A Minority of the Committee is of the opinion that Ms. Thacker is "Qualified" for this position.

A copy of this letter has been provided to Stephanie Thacker.

Sincerely,

Allan J. Joseph
Chair

cc: Stephanie Thacker, Esq.
The Honorable Kathyryn Ruemmler
Michael Zubrensky, Esq.(via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

306633 1

Hon. Lourdes G. Baird (Retired)
United States District Court
360 California Terrace
Pasadena, CA 91105

September 27, 2011

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, D.C., 20510

Re: Michael Fitzgerald, Esq., Nominee for U. S. District Judge in the Central District of California

Dear Senator Leahy,

I write to in support of Michael Fitzgerald, a nominee for appointment as a District Judge in the Central District of California. In the summer of 1990 when I was appointed the United States Attorney in the Central District of California, I met Mike who was an Assistant United States Attorney in the Organized Crime and Drug Enforcement Section of that office.

During the year and a half that Mike was in the office during my tenure, I had the privilege of working with him and

overseeing his work. He is very intelligent and able to work successfully with diverse investigators and colleagues to achieve excellent results. One particular assignment I recall was the management of a joint task force of criminal investigators from the DEA, FBI and IRS together with LAPD narcotics officers which led to the successful prosecution of drug trafficking and money laundering operations. He earned the highest respect from the members of the group as well as his own colleagues in the office. After he left the office and entered private practice, he soon earned the reputation as a highly skilled lawyer and advocate and was recognized as such by the legal community.

In my opinion, he has all the attributes required of a successful U.S. District Judge. He is intelligent, articulate and works well under pressure. He is unbiased, patient, and respectful of others. It is my opinion that he would be an excellent U.S. District Judge and an excellent choice to join the Central District of California bench.

If you have any questions or seek other information, please feel free to contact me at lbaird@jamsadr.com or my home office at (626) 844-8732.

Best regards,

Hon. Lourdes G. Baird

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September 12, 2011

VIA FIRST CLASS MAIL

The Honorable Patrick Leahy
Chairman
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Senate Dirksen Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary United States Senat
Senate Dirksen Office Building
Washington, D.C. 20510

Re: Michael W. Fitzgerald -- Nominee for Judge of the U.S. District Court for the Central District of California

Dear Chairman Leahy and Ranking Member Grassley:

I write to register my support for the confirmation of Michael Fitzgerald for the U.S. District Court for the Central District of California.

I have known Mike Fitzgerald for nearly twenty-five years. Back in 1987, when I was the U.S. Attorney for the Central District of California, I interviewed and hired Mike as an Assistant U.S. Attorney. It was one of my best decisions, as Mike went on to serve with distinction as a federal prosecutor in the Criminal Division of the office. As an Assistant U.S. Attorney, he tried many federal criminal cases to verdict and represented the government in numerous appeals to the Ninth Circuit.

After leaving the U.S. Attorney's Office, Mike entered the private practice of law, initially at a large firm, and for the last fifteen years, as a partner at an excellent boutique firm in Los Angeles. In private practice, Mike has expanded his skills regarding civil litigation, having handled many civil matters, including complex civil cases, in addition to white collar defense work. He has an outstanding reputation in our community as a knowledgeable and skillful litigator, and is known as a lawyer of impeccable integrity.

As you can see, by virtue of his background and experience, if confirmed, Mike would bring a background, experience and understanding of both the civil and criminal side of the work of a U.S. District Judge. As a former federal judge myself, I can assure you that this is an enormous benefit that shortens considerably the learning curve for new judges. Moreover, Mike is a good-hearted

person and a good listener, which gives me confidence that Mike will treat all who appear before him with courtesy, dignity and respect.

In sum, I believe Mike will make an outstanding federal district judge, and I urge you and the Judiciary Committee to act favorably respecting his nomination.

Please do not hesitate to contact me at (703) 635-9492 if you or your staff have any question or if I can be of further assistance.

Sincerely,

Robert Bonner

RCB/jem

cc: Senator Diane Feinstein
Senator Barbara Boxer

U.S. Senator Barbara Boxer

Statement for Senate Judiciary Committee Confirmation Hearing of Michael Fitzgerald to the U.S. District Court for the Central District of California

October 4, 2011

It is my honor to be here to support the nomination of Michael Fitzgerald, and

I want to welcome him and his family.

- His father, James Fitzgerald, an Army combat veteran of the Korean War and a retired mathematics teacher.
- His mother, Vivian Fitzgerald, a retired registered nurse.
- His twin brother, Patrick Fitzgerald, who is a federal prosecutor in Los Angeles.

In addition to welcoming them, I would like to congratulate James and Vivian, who recently celebrated their 57th wedding anniversary.

I had the privilege of recommending Michael to President Obama to serve on the Central District Court. A respected member of the Los Angeles legal community, he will make an excellent addition to the bench.

Michael has deep roots in the city of Los Angeles. He and his brother are the fourth generation of their family to live in Los Angeles.

Michael received his bachelor's degree from Harvard University, graduating *magna cum laude* while working his way through school as a busboy.

He went on to receive a law degree from the University of California-Berkeley, where he also graduated with honors.

After clerking on the Second Circuit Court of Appeals in New York, Michael worked for a year with a private law firm in Los Angeles before becoming a federal prosecutor.

As a federal prosecutor, he served on the Organized Crime and Drug Enforcement Task Force within the Central District U.S. Attorney's Office, where he prosecuted international drug rings and money-laundering – including what was at that time the second largest cocaine seizure in California history.

Since leaving the U.S Attorney's Office in 1991, Michael has been in private practice, handling complex criminal and civil cases, as well as investigations by federal agencies.

Michael has remained committed to public service during his time in private practice. He has maintained an active pro bono practice, and served as Counsel to the Board of Police Commissioners, which sets policy and oversees operations for the Los Angeles Police Department.

He also served as Deputy General Counsel for the Rampart Independent Task Force, which reviewed the operations of a section of the LAPD.

During his career, Michael has tried 26 cases to verdict, the overwhelming majority of them before a jury. Currently, 60 percent of his practice is in federal court, so he is very familiar with the Central District's practices and procedures.

He received a rating of "unanimously well-qualified" by the ABA.

Listen to what some respected members of the law enforcement and legal community say about him:

Veteran Anaheim Police Lieutenant John Michael Quinzio, who worked with Michael in prosecuting cocaine traffickers and money launderers, said:

"His knowledge of the law, his courtroom demeanor, his interpersonal skills, and his sense of fairness played a major role in the successful prosecution of our cases… He will be an outstanding Federal Judge."

Former Republican-appointed U.S. Attorney and federal judge Robert Bonner said:

"If confirmed, Mike would bring a background, experience and understanding of both the civil and criminal side of the work of a U.S. District Judge… I believe Mike will make an outstanding federal judge."

And Representative Adam Schiff, who served with Michael as a federal prosecutor, said:

"… I believe he has the background, experience, integrity, intellect, and reputation in the community that will serve him well as a U.S. District Court Judge, and reflect well on the Judiciary."

I would like to submit the letters of recommendation from Lt. Quinzio, Judge Bonner and Rep. Schiff into the record.

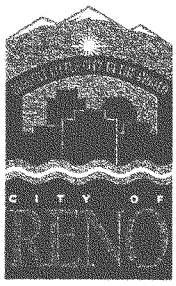
In short, Michael's record in the public and private sector demonstrates that he is a brilliant lawyer and a distinguished member of the legal community, and I am confident he will make an excellent judge.

I close by congratulating Michael and his family on this momentous day, and I urge my colleagues in the Senate to move swiftly to confirm him to the federal bench. Thank you.

###

Robert A. Cashell, Sr.
Mayor

(775) 334-2001
(775) 334-2097 Fax
cashellr@reno.gov
Web site: Reno.gov



"The most livable of Nevada cities; the focus of culture, commerce and tourism in northern Nevada."

August 12, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
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Washington, DC 20510
Fax: 202-224-9516
Bruce_cohen@judiciary-dem.senate.gov
Jeremy_Paris@judiciary-dem.senate.gov

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510
Fax: 202-224-9012
Kolan_davis@judiciary-rep.senate.gov
David_best@judiciary-rep.senate.gov

Dear Senators Leahy and Grassley:

I am writing in support of the nomination of Nevada Attorney Miranda Du to the United States District Court for the District of Nevada.

I have known Ms. Du for quite some time. For the last eight years, I have had the opportunity to observe her legal skills and temperament primarily in my role as a member of the Board of Directors of the Truckee Meadows Water Authority ("TMWA"), which is partly owned by the City of Reno. Ms. Du has represented TMWA on several matters, and she has been both effective and professional in that representation. Ms. Du is intelligent, articulate and even-tempered. She is direct and always seems prepared in responding to questions from the TMWA Board. I believe she will be a great addition to our federal bench. I strongly recommend her for confirmation.

Sincerely,

Robert A. Cashell, Sr.
Mayor

CC: Senator Harry Reid, 202-224-7327 fax
Senator Dean Heller, 202-228-6753 fax

Statement of U.S. Senator Dianne Feinstein
on the Nomination of Michael Fitzgerald to be a U.S. District Judge for the Central District of California

October 4, 2011

Mr. Chairman, I regret that I am unable to attend today's hearing. I am pleased, however, to submit this statement regarding the nomination of Michael Fitzgerald to sit on the U.S. District Court for the Central District of California.

Background

Mr. Fitzgerald was born in Los Angeles in 1959. He is 52 years old, and a fourth-generation Angeleno. He is also the first openly gay nominee to the Federal bench in California.

He attended California's public schools, and then received a scholarship to attend Harvard College, from which he graduated *magna cum laude* in 1981.

After graduating from Harvard, Mr. Fitzgerald taught at Anaheim High School. He then attended Boalt Hall Law School at the University of California, Berkeley, where he was managing editor of the *Industrial Relations Law Journal* and graduated Order of the Coif in 1985.

Following law school, he clerked for the Honorable Irving R. Kaufman on the U.S. Court of Appeals for the Second Circuit.

25 Years of Legal Experience

For over 25 years, Mr. Fitzgerald has practiced law in virtually every area of practice.

After one year in private practice, he served as an Assistant United States Attorney in the Central District of California from 1988 through 1991. During that time, he served on the Organized Crime and Drug Enforcement Task Force and with the Major Narcotics Section. He led an investigation that resulted in the seizure of 2,241 pounds of cocaine and the conviction of a major drug trafficking kingpin.

Since he left the U.S. Attorney's Office, Mr. Fitzgerald has worked as an attorney in private practice, first at the law firm Heller Ehrman White & McAuliffe and now at Corbin, Fitzgerald, and Athey LLP.

He has represented plaintiffs and defendants in civil cases, as well as criminal defendants. He also has represented major corporations and corporate officials in investigations by the Securities and Exchange Commission and the Department of Justice. For example, he represented a senior Boeing manager in a Federal grand jury investigation, as well as Bank of America.

He also has been active in *pro bono* work. For example, Mr. Fitzgerald represented an FBI special agent, Frank Buttino, who had his security clearance revoked after his sexual orientation was revealed to his FBI superiors. The case resulted in a settlement, in which the FBI revoked its policy of treating sexual orientation as a negative factor in security clearance determinations.

Mr. Fitzgerald was a deputy counsel on the Rampart Independent Review Panel, which was appointed by the Los Angeles Police Commission to investigate a major corruption scandal in the Rampart Division of the Los Angeles Police Department. He also served as a counsel to the Special Advisor to the Webster Commission, which investigated the response of the L.A.P.D. to the L.A. riots in 1992.

Mr. Fitzgerald has tried 26 cases to verdict, including 22 as sole counsel. Over the course of his career, his caseload has been balanced between civil and criminal practice, primarily in the federal courts.

Mr. Fitzgerald is well regarded among his colleagues in the bar. *Los Angeles Magazine* named him a Southern California "Super Lawyer" from 2006 through 2011. He also won the Maynard Toll Pro Bono Associate Award from the Legal Aid Foundation of Los Angeles in 1994, as well as an American Jurisprudence Award in Criminal Law in 1982. The American Bar Association Committee on the Federal Judiciary unanimously rated Mr. Fitzgerald "well qualified."

In short, Mr. Fitzgerald has had comprehensive experiences in private practice and public service that will serve him extraordinarily well on the District Court. I am pleased to support his nomination, and I encourage my colleagues to work with Senator Boxer and myself to move his nomination forward.

Thank you, Mr. Chairman.

Statement of Senator Dean Heller
Judiciary Committee on the Nomination of Miranda Du to be
United States District Judge for the District of Nevada
October 4, 2011

Thank you Senator Durbin, Senator Lee, members of the Committee. Today marks the first time I have had the opportunity to address the Committee, and it is a privilege to introduce fellow Nevadan Miranda Du to you this afternoon.

The Senate has a solemn responsibility to make sure that judicial vacancies and nominations are addressed in a timely manner. Having spoken to federal judges in Nevada, I understand the significant workload facing our understaffed federal judiciary and the need to fill vacancies with qualified candidates who will uphold America's principles of equal justice under law.

I believe Miranda Du will make an outstanding District Court judge in the great State of Nevada. Ms. Du earned her BA in Economics and History from UC Davis in 1991 and graduated from UC Berkeley's Law School in 1994.

She is currently a partner at McDonald Carano Wilson LLP, where she has chaired the firm's Employment & Labor Law Group since 2003. Her experience covers every phase of litigation, from discovery, motion practice and jury trial through appeal before the Nevada Supreme Court and the Ninth Circuit Court of Appeals.

Ms. Du has earned the respect of her colleagues within the legal community, particularly for her involvement in employment law, and has successfully tried a number of jury trial cases to completion.

Her work has been featured in numerous professional publications, including *Northern Nevada Business Weekly* and educational materials for Lorman Education and the National Business Institute.

In addition to her professional background, Ms. Du is an active member of the broader Northern Nevada community. She serves as a commissioner of the Nevada Commission on Economic Development, which is focused on developing and maintaining a diverse, healthy economic base in our State.

Ms. Du is a Board Member of the Nevada Women's Fund, has been recognized by Super Lawyers magazine as a "Rising Star," and was featured one of the top "20 under 40" young professionals in the Reno-Tahoe area.
Ms. Du comes before the Committee not just with the support of Nevada's Senators, but Governor Brian Sandoval, Lieutenant Governor Krolicki, numerous Nevada mayors, as well as state and local organizations ranging from the Nevada Chapter of the Associated General Contractors to the Nevada Committee to Aid Abused Women.

Again, thank you for the chance to introduce this exceptional Nevadan to the Committee. I look forward to her testimony as well as the Committee's consideration of her nomination.

Thank you, Mr. Chairman.

caaw AN ORGANIZATION FOR FAMILIES

August 15, 2011

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510

Fax: 202-224-9516

Dear Senator Leahy,

I write on behalf of the Committee to Aid Abused Women to endorse Miranda Du to serve as a federal judge for the U.S. District Court, District of Nevada, in Las Vegas.

The mission of CAAW is "Changing Lives – Ending Family Violence"; we were founded in Reno in 1977 and provide temporary shelter, transitional housing, protection orders, and support services to victims of domestic violence who are escaping from abusive relationships.

Our board enthusiastically endorses Miranda's nomination. Miranda recently assisted the CAAW Board of Directors with a difficult legal matter. Her advice to us was based on a thorough review and weighing of both sides of the situation. She ably provided options for our consideration and guided us through the pros and cons of each option. Her approach gave the Board a solid foundation for discussion and decision making. Miranda was generous with her time, her knowledge and her innate sense of fairness.

Based on our experience, we know that Miranda will be a fine and fair judge. Her even-tempered nature, her amazing knowledge base and her ability to see both sides of an issue as she reaches a decision will all serve the court well.

Sincerely,

Sharon Gibbons

Sharon Gibbons
CAAW Board of Directors - Chairperson

Brian K. Krolicki
Lieutenant Governor

Office Of The Lieutenant Governor
State Of Nevada

August 23, 2011

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510

Dear Senator Leahy:

I am writing in enthusiastic support of Miranda Du's nomination to the United States District Court for the District of Nevada.

As Nevada's Lieutenant Governor, I have the privilege of serving as Chairman of the Nevada Commission on Economic Development (NCED), whose mission is to promote a robust, diversified and prosperous economy for Nevada. In this capacity, I have served with Ms. Du since she was appointed to the Commission in July 2008.

As a NCED commissioner, Ms. Du has demonstrated many qualities that will make her an ideal Federal District Court Judge. She is intelligent, inquisitive, reliable and dedicated. She is an active and involved commissioner, always prepared and informed, and she is not afraid to ask tough questions. She conducts herself in a professional and dignified manner. I think that both Nevada and the United States will benefit from Ms. Du's appointment to the Federal Bench and I strongly encourage the Senate to confirm Ms. Du.

Best regards,

Brian K. Krolicki
Nevada Lieutenant Governor

cc: The Honorable Chuck Grassley, Ranking Member, Committee on the Judiciary

One Hundred One North Carson Street
Carson City, Nevada 89701
(775) 684-7111 • Fax (775) 684-7110



NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

October 3, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support for Miranda M. Du (D. Nev.)

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the National Asian Pacific American Bar Association ("NAPABA"), we proudly endorse and urge the prompt confirmation of Miranda M. Du for the United States District Court for the District of Nevada. Ms. Du has the qualifications necessary to make a positive contribution as a United States District Court judge.

NAPABA is a national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. Now in its 23rd year, NAPABA represents the interests of over 60 affiliate organizations and over 40,000 Asian Pacific American attorneys. NAPABA is deeply committed to supporting the appointment of qualified Asian Pacific Americans to the federal bench, especially where Asian Pacific Americans are woefully underrepresented.

Notably, Ms. Du would be the first-ever Asian Pacific American Article III judge in the District of Nevada. Given that Asian Pacific Americans represent approximately 9 percent of the population of Nevada, the confirmation of an Asian Pacific American federal judge in that jurisdiction would be significant.

Ms. Du is a partner with the prominent Nevada law firm of McDonald Carano Wilson LLP, where she has practiced for over 17 years. She leads the firm's employment and labor law group, where she has litigated employment and complex civil cases, including cases involving misappropriation, Lanham Act violations, breach of fiduciary duties, unfair lending practices, corporate dissolution, defamation, and condemnation. She has also served as a court-appointed special advocate for abused and neglected children, and often teaches continuing legal education

courses on litigation and employment law.

Ms. Du has received support from a variety of individuals for this nomination. Current Governor Brian Sandoval has stated that: "In all the years that I have known Miranda, she has exhibited great character and is well respected in the legal community. During my tenure as a U.S. District Judge, each time Miranda appeared before me, she was always well prepared and represented her clients with integrity and distinction." Reno Mayor Robert Cashell has described Ms. Du as "effective and professional" in representing clients, and that she is "intelligent, articulate, and even-tempered." The Association of General Contractors of America has commended Ms. Du for her "personal integrity, excellent judgment, a strong legal background and the ability to understand both sides of an issue."

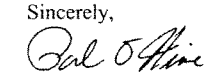
Given these comments, it is unsurprising that Ms. Du has received several awards from the Nevada legal community. These recognitions include selection as a Mountain States Rising Star by Super Lawyers in 2009, a "Top 20 Under 40" young professional in the Reno-Tahoe area in 2008, and a Woman of Achievement by the Nevada Women's Fund in 2007.

Ms. Du has demonstrated a strong commitment to community service. She has served on the board of directors for the Nevada Women's Fund (a group dedicated to strengthening the Nevada community through empowering women to improve their lives and the lives of their families), Step 2 Inc. (an organization dedicated to helping women and families through substance abuse recovery and treatment), and as a Commissioner on the Nevada Commission on Economic Development.

Miranda Du's personal story reflects strength in the American system. She is an immigrant, having left Vietnam with her parents, two siblings and extended family by boat when she was eight years old. After a year in two refugee camps in Malaysia, Ms. Du and her family were sponsored by a family in Winfield, Alabama. Ms. Du attended public schools throughout, starting in the third grade, and after the family moved to Tuscaloosa, Alabama to reunite with relatives, she and her siblings quickly learned English and assimilated with the help of caring teachers and a volunteer tutor. The Du family eventually moved to Oakland, California, where Ms. Du attended junior high and high school. Ms. Du went on to obtain a Bachelor's degree in history and economics at the University of California, Davis, and a J.D. degree from the University of California, at Berkeley. After law school, she moved to Nevada, and has practiced there ever since. In addition to the community service listed above, Ms. Du and her husband are actively involved in the Reno running community and frequently volunteer at local racing events.

Based on her qualifications, intellect, integrity, and commitment to justice, NAPABA extends an enthusiastic endorsement to Miranda M. Du to serve as a District Judge for the United States District Court for Nevada. NAPABA urges that the Senate confirm her promptly.

Sincerely,



Paul O. Hirose
President



Tina R. Matsuoka
Executive Director

Nevada Association of Mechanical Contractors

P.O. Box 7578
Reno, NV 89510
775-329-7638

August 22, 2011

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510
Fax: 202-224-9516
bruce_cohen@judiciary-dem.senate.gov
Jeremy_Paris@Judiciary-dem.senate.gov

Dear Chairman Leahy:

The Nevada Association of Mechanical Contractors is proud to announce their support of the nomination of Reno Attorney Miranda Du for appointment to a Federal Judgeship in Las Vegas Nevada.

Ms. Du has worked closely with our association on a number of issues. She has demonstrated a commanding knowledge of the law, a steady demeanor and compassion that would make her an excellent judge. She also has a keen ability to understand both sides of an issue so that a proper settlement could be reached.

The appointment of Ms. Du would serve the best interests of the citizens and the Federal Court System in the State of Nevada.

We would respectfully urge your support of Miranda Du for the Federal Judgeship in Las Vegas Nevada.

Sincerely,

Rusty Humes

Rusty Humes
President

Nevada Association of Mechanical Contractors

P.O. Box 7578
Reno, NV 89510
775-329-7638

August 22, 2011

The Honorable Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510
Fax: 202-224-9102
kolan_davis@judiciary-rep.senate.gov
David_best@judiciary-rep.senate.gov

Dear Senator Grassley:

The Nevada Association of Mechanical Contractors is proud to announce their support of the nomination of Reno Attorney Miranda Du for appointment to a Federal Judgeship in Las Vegas Nevada.

Ms. Du has worked closely with our association on a number of issues. She has demonstrated a commanding knowledge of the law, a steady demeanor and compassion that would make her an excellent judge. She also has a keen ability to understand both sides of an issue so that a proper settlement could be reached.

The appointment of Ms. Du would serve the best interests of the citizens and the Federal Court System in the State of Nevada.

We would respectfully urge your support of Miranda Du for the Federal Judgeship in Las Vegas Nevada.

Sincerely,

Rusty Humes

Rusty Humes
President

NEVADA CHAPTER
associated general contractors

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Craig Willcox

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Fred Reeder

August 22, 2011

The Honorable Patrick Leahy, Chairman
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United States Senate
Senate Dirksen Office Building
Washington, DC 20510
Fax: 202-224-9516
bruce_cohen@judiciary-dem.senate.gov
Jeremy_Paris@Judiciary-dem.senate.gov

Dear Chairman Leahy:

The Nevada Chapter, Associated General Contractors, is privileged to support the nomination of Reno Attorney Miranda Du for appointment to a Federal Judgeship in Las Vegas Nevada.

Ms. Du has worked closely with our association on a number of issues over more than a decade that required personal integrity, excellent judgment, a strong legal background and the ability to understand both sides of an issue so that a proper settlement could be reached.

Ms. Du possesses the qualities that we feel would serve the best interests of the citizens and the Federal Court System in the State of Nevada.

We would respectfully urge your support of Miranda Du for the Federal Judgeship in Las Vegas Nevada.

Sincerely,

Dave Backman
President

Building a Better Nevada

NEW YORK
CITY BAR

COMMITTEE ON THE JUDICIARY

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September 27, 2011

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

We are pleased to inform you that the Committee on the Judiciary of the New York City Bar has found Ronnie Abrams, Esq., APPROVED for appointment to the United States District Court for the Southern District of New York.

Very truly yours,

Elizabeth Donoghue
Chair

Dear Senator Graham,

President Obama has nominated Michael W. Fitzgerald to serve as a District Judge on the United States District Court for the Central District of California.

I am a retired Police Lieutenant having served 30 years, most of that time in the field of narcotics investigations. From 1988 to 1991 I headed an Organized Crime and Drug Enforcement Task Force (OCDEFT) which successfully prosecuted twenty-two high level cocaine traffickers and money launders.

Michael Fitzgerald was at the time an Assistant US Attorney in the Los Angeles Office of the Central District of California. Mr. Fitzgerald worked along side my team during the investigations and then successfully prosecuted the drug traffickers. During our time working together I came to know Mr. Fitzgerald as dedicated, hardworking and talented prosecutor. His knowledge of the law; his courtroom demeanor; his interpersonal skills; and his sense of fairness played a major role in the successful prosecution of our cases. Mr. Fitzgerald's personal and professional ethics were shown to be beyond reproach. He has earned the respect of every member of my team as well as that of other prosecutors and defense attorneys.

I have worked alongside many prosecutors and only a few have impressed me as Mr. Fitzgerald has. He will be an outstanding Federal Judge. I encourage you to vote yes and confirm Mr. Fitzgerald as a District Judge on the United States District Court for the Central District of California.

John Michael Quinzio
Police Lieutenant (Ret.)
Anaheim Police Department

6051 Chippewa Drive
Westminster, CA 92683
714 357 1466

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555 EAST WASHINGTON AVENUE, SUITE 5100
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Office of the Governor

August 22, 2011

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510

Re: Recommendation of Miranda Du

Dear Senator Leahy:

It is with great pleasure that I recommend Miranda Du for United States District Court Judge, District of Nevada.

As long as I have known Miranda, she has exhibited great character and is well respected in the legal community During my tenure as a U.S. District Judge, each time Miranda appeared before me, she was always well prepared and represented her clients with integrity and distinction.

Miranda Du will make a fine U.S. District Judge and therefore has my full support Please feel free to contact me if you have any questions. Thank you for your consideration.

Sincere regards,

BRIAN SANDOVAL
Governor

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SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

ADAM B. SCHIFF
29TH DISTRICT, CALIFORNIA

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PASADENA, CA 91103
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FAX: (626) 304-0572

E-MAIL VIA WEB ACCESS AT:
www.house.gov/schiff

March 5, 2009

The Honorable Barbara Boxer
United States Senator
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Boxer:

I would like to strongly support Michael W. Fitzgerald's application for the position of U.S. District Court Judge.

I served in the U.S. Attorney's Office in Los Angeles for over six years, overlapping with Michael for almost four of those years, and I believe he has the background, experience, integrity, intellect, and reputation in the community that will serve him well as a U.S. District Court Judge, and reflect well on the Judiciary.

Michael is a veteran attorney with substantial and diverse experience in the legal field. After graduating from the University of California, Berkeley School of Law (Boalt Hall), he clerked for the Honorable Irving R. Kaufman, U.S. Court of Appeals for the Second Circuit. Later, he served in the U.S. Attorney's office in the Central District of California for almost four years, serving as the sole or lead counsel in 20 federal criminal trials and representing the government in approximately 28 appeals before the U.S. Court of Appeals for the Ninth Circuit.

In private practice he has handled numerous civil and criminal cases in both the federal and states courts, and he has been recognized for his *pro bono* service on more than one occasion. Both inside the workplace and beyond it in the broader legal community, Michael is known for being a superb lawyer and a dedicated professional.

I believe the country will be very well-served by Michael. I urge you and your judicial advisory committee to give him your fullest consideration and am happy to discuss his candidacy with you or any of the members of the committee.

Sincerely,

ADAM B. SCHIFF
Member of Congress

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

He's a great lawyer - would be an excellent judge



SEP 28 '11 PM 2:05

September 21, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510

Re: *Michael Walter Fitzgerald, Nominee for United States District Judge for the Central District of California*

Dear Senator Leahy and Senator Grassley:

I am writing to support the confirmation of Michael Walter Fitzgerald as a United States District Judge for the Central District of California. Mike has served as a prosecutor, a white-collar defense attorney, and as a civil litigator. Mike is well-liked and well-respected here in Los Angeles, as is the law firm where he is a named partner. As a retired District Judge, I care about this bench having served for 21 years in this federal court. Therefore, I'm pleased that, if Mike is confirmed, this vacancy would be filled with a strong nominee.

While I was on the district court bench, Mike appeared before me in both civil and criminal cases. He was well-prepared and effective in court without being brash. In particular, I remember his appearance in *United States v. Maurice Newman*. Mr. Newman, the former CEO of a small company, had pleaded guilty to securities fraud. In both the papers and oral argument, Mike made one of the most thorough and persuasive sentencing presentations that I saw as a District Judge. He highlighted the personal qualities of the defendant and explained the business

realities that suggested that the defendant's wrongful actions didn't cause the collapse of the company. At the same time, he didn't downplay the wrongfulness of the defendant's conduct.

As a retired judge, I am with the JAMS alternative-dispute resolution service. By appointment of the bankruptcy court, I serve as the Monitor in regard to all the litigations and investigations arising from a failed bank because a large number of insureds and lawyers are drawing on the same set of Directors and Officers insurance policies. Among other duties, I have the obligation to review all invoices before they are presented to the insurance carriers. Mike's firm represents numerous clients in a variety of cases. Each month, I review the billings of Mike and his firm and I have the opportunity to compare them against those of other prominent lawyers and firms. Mike authors the report each month that accompanies the billings of his firm.

I have consistently found the work of Mike and his firm to be excellent. I have virtually never cut any of their bills, and I have never done so because I have found them to be excessive. Mike's firm is always the first firm to submit their billings and monthly report to me. His reports are always clearly written. In fact, I finally just directed the other firms to use the same template that Mike created for their own reports. Out of this group of prominent attorneys, Mike has shown leadership in resolving disputes with the insurance carriers, even when his firm was not being paid for that work. Based on my experiences with him as Monitor, now extending over more than two years, I'm confident that he'll handle the tough workload that goes along with a federal district judgeship in the Central District of California.

In general, I think that being a partner at a small firm gives a good overview of the Los Angeles business community and requires common sense. These traits, along with Mike's temperament and demeanor, would be very helpful on the bench, if Mike is confirmed.

Based on my first-hand experiences with Mike, I hope that the Judiciary Committee will report him favorably to the Senate. Please contact me if I can assist you or your staff further.

Very truly yours,

Dickran M. Tevrizian
United States District Judge (Ret.)

cc: Senator Dianne Feinstein
Senator Barbara Boxer

Congressional Hispanic Caucus
United States Congress
Washington, DC 20515
CHAIRMAN
CHARLES A. GONZALEZ
20TH DISTRICT, TEXAS

October 18, 2011

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Congressional Hispanic Caucus, we write to express our strong support for the nomination of Rudolph Contreras to the United States District Court for the District of Columbia.

Mr. Contreras is extraordinarily well qualified for the position. As the current Chief of the Civil Division in the U.S. Attorney's Office for the District of Columbia, Mr. Contreras would follow in the footsteps of two of his predecessors who are now judges on the United States District Court for the District of Columbia, Chief Judge Royce C. Lamberth and John D. Bates.

After working his way through college and graduating from the University of Pennsylvania Law School, *cum laude*, Order of the Coif and law review, Mr. Contreras was an associate in the litigation department of the Jones Day law firm in Washington, DC. He then served for eight years as an assistant U.S. attorney in the Civil Division in the U.S. Attorney's Office for the District of Columbia. Previous to that, Mr. Contreras served as the Chief of the Civil Division in the U.S. Attorney's Office, District of Delaware, for three years. In 2006, he assumed his current position as head of the Civil Division in the U.S. Attorney's Office for the District of Columbia, where he oversees almost eighty employees, including 40 assistant U.S. attorneys.

Mr. Contreras has the temperament, judgment, intellect and work ethic needed to serve with distinction on the bench. We wholeheartedly endorse his nomination and urge you to support his appointment. If we can provide you any further information about our endorsement or his qualifications, do not hesitate to contact us.

Sincerely,

Charles A. Gonzalez
Chair
Congressional Hispanic Caucus

Rubén Hinojosa
First Vice Chair
Congressional Hispanic Caucus

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Tammy Riddle

EXECUTIVE DIRECTOR
Linda A. Chiavernu

October 4, 2011

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Ronnie Abrams, Esq. to the United States District Court for the Southern District of New York

Dear Senator Leahy:

On behalf of the more than 3,800 members of the Women's Bar Association of the State of New York ("WBASNY"), I have the honor to support the nomination of Ronnie Abrams, Esq. as a United States District Judge for the Southern District of New York. Ms. Abrams is clearly very well qualified to become a United States District Judge. WBASNY believes that Ms. Abrams will serve with great distinction, that her nomination should be promptly approved by the Senate Judiciary Committee and that she should be confirmed quickly by the full Senate. Throughout New York State, there are eminently qualified women lawyers and judges who are ready to serve on the Federal courts with distinction. WBASNY remains concerned that we not lose the progress made in the Southern District of New York to include women on the court in meaningful numbers. Ms. Abrams' confirmation, which should and will proceed on its merits, will further that important goal.

Ms. Abrams is the first nominee of our respected Senator Kirsten Gillibrand to the Federal courts in the State of New York. WBASNY applauds Senator Gillibrand for her thoughtful, excellent choice. Not only is Ms. Abrams well qualified by reason of her professional background, as we detail below, but her personal qualities and her own efforts to increase the diversity of the legal profession add further depth to a career marked by stellar accomplishment and devotion to public service.

After winning a clerkship for the Honorable Thomas P. Griesa, then Chief Judge of the District Court for the Southern District of New York, Ms. Abrams joined Davis Polk & Wardwell as a litigation associate. There she not only represented a wide variety of corporate clients in matters involving legal theories ranging from the Lanham Act to the Securities Act to libel, but she also handled a number of pro bono cases, including representation of battered women. From 1998 to 2008, Ms. Abrams served as an Assistant United States Attorney in the Southern District of New York in a number of units where she gained experience in a broad range of cases. Her abilities were recognized by promotions to the positions of Deputy Chief of the Criminal Division and Chief of the General Crimes Unit. In those roles, she oversaw and was responsible for the training of hundreds of prosecutors, and participated in policy-making and management decisions. In both positions, Ms. Abrams supervised cases involving crimes against children, in addition to the cases involving violent crime and financial fraud of all types that are the most typical workload of a United States Attorney's office.

WBASNY is particularly impressed by Ms. Abrams' decision, on leaving her position at the US Attorney's office, to change the focus of her legal work entirely to pro bono work. Her commitment to public service is extraordinary evidence of a fundamental belief in the need to do justice, and, we believe, is an important reason why the Judiciary Committee should look favorably on her nomination. As Special Counsel for Pro Bono at Davis Polk, Ms. Abrams has personally handled and also supervised pro bono matters ranging from criminal cases to Fair Labor Standards Act litigations to veterans' disability claims and matters for battered women. Among other things, she has supervised trials in Family Court on behalf of women seeking orders of protection and FLSA cases brought by workers seeking to enforce the minimum wage and overtime laws. In addition, she has been an adjunct professor at Columbia Law School since 2008.

Ms. Abrams serves as counsel to New York's Justice Task Force, a permanent task force created by the Honorable Jonathan Lippman, Chief Judge of the State of New York, to examine the causes of wrongful convictions and recommend reforms to safeguard against any such convictions in the future. Because a representative of WBASNY serves on the Task Force, we have had an opportunity to observe and to form a very favorable view of Ms. Abram's professionalism and skill. Ms. Abrams' work on the Task Force demonstrates that she cares very much about getting the right answer. Participants in the work of the Task Force have told us that she has even-handedly given thoughtful attention to the multiple, often conflicting viewpoints held by members of the Task Force and has skillfully reconciled those views to enable the Task Force to achieve meaningful recommendations.

Finally, in all of her senior positions, Ms. Abrams has made it a priority to mentor young lawyers. She has personally mentored both men and women, and has been sensitive to the particular issues that women lawyers face and the differences in men's and women's strengths and weaknesses. Women lawyers who benefited from her mentoring have said that Ms. Abrams never stints on the time and advice that she offers to her younger colleagues, and that her support has been of great assistance in their ability to navigate the legal profession and rise to positions of responsibility themselves. She empowers young lawyers who work with her to speak on those matters and to get credit for their contributions. WBASNY holds mentoring in the highest regard as a means of improving the diversity of our legal profession, and we know that women lawyers still face a lack of mentors and role models. She is conscious of the need for female role models. Her efforts in this regard reflect very favorably on Ms. Abrams and further evidence her professionalism and commitment to justice.

WBASNY urges the members of the Judiciary Committee to act favorably and quickly to send the nomination of Ronnie Abrams to the full Senate for prompt action.

Sincerely yours,

Karen Richardson

Karen Richardson
President, WBASNY

GIBSON DUNN

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October 3, 2011

Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510

Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510

Re: Michael W. Fitzgerald/United States District Judge for the Central District of California

Dear Senator Leahy and Senator Grassley:

I have known Michael W. Fitzgerald for over twenty years. During that time, I have served as an Assistant United States Attorney, a Municipal and Superior Court Judge, and the United States Attorney for the Central District of California (2002-2006). Since 2006, I have been in private practice in Los Angeles, California. I have professionally interacted with Mike in throughout the years. I confidently support his nomination to be a United States District Judge in the Central District of California.

I first met Mike when we served together as Assistant United States Attorneys. Mike was in the Narcotics Division. He was well liked in the office and always eager to try a case or write an appellate brief. His reputation was one of being a clear and logical thinker. I know that he particularly enjoyed working as a federal prosecutor and enjoyed advocating for the rights of victims. He also enjoyed investigating and trying serious and complex drug cases. At the time he was in the office, the "best and the brightest" prosecutors were in the Narcotics section. After I became a Municipal and Superior Court judge, Mike appeared before me in criminal and civil cases. When I became United States Attorney, I learned that Mike and his law partner Robert Corbin enjoyed a strong reputation throughout my office for honesty and ability. Both Mike and his firm were known as "straight shooters."

GIBSON DUNN

Mike has the intelligence, integrity, work ethic, and disposition to be an excellent district judge. He will treat counsel and the parties with dignity; at the same time, he will manage his courtroom with the efficiency and decisiveness that the workloads in this district demand. His nomination was enthusiastically received by prosecutors, defense attorneys, and the legal community generally. The litigation partners here and at similar firms hold Mike in high regard and I wouldn't hesitate to refer any criminal or civil case to his law firm.

I recommend Mike without reservation for confirmation as a United States District Judge. Please let me know if I can assist you and the Judiciary Committee in any way.

Very truly yours,

Debra Wong Yang

cc: Senator Dianne Feinstein
Senator Barbara Boxer

101160746.1

NEVADA WOMEN'S FUND

770 Smithridge Drive, Suite 300 | Reno, Nevada 89502
Telephone: 775 786-2335 | Fax: 775 786-8152

August 9, 2011

The Honorable Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510

Dear Senator Grassley:

I write in support of the nomination of Miranda Du to serve as a federal judge for the U.S. District Court, District of Nevada in Las Vegas. I am the President and Chief Executive Officer of the Nevada Women's Fund (NWF), a not-for-profit local organization that aims to strengthen the community by educating and empowering women and families.

I have known Miranda since 2008, and she has served as a member of the Nevada Women's Fund's board of directors since 2009. During her tenure on the board Miranda has proven to be an astute and generous director. She participates fully in all NWF activities and initiatives, and her insights and questions inspire broad and thoughtful discussions at both the committee and board levels.

Miranda also advances the work of the Fund by connecting our organization with other organizations and individuals that demonstrate shared missions and/or synergistic programs and activities. Her strategic work in this regard is helping the Fund broaden its reach in terms of community support, ultimately increasing our resources and growing the numbers of women and families that we can benefit.

I have every confidence that Miranda will be an effective and fair judge, and I appreciate the opportunity to share my thoughts about her skills and abilities. If I can be of any further assistance, please do not hesitate to let me know.

Sincerely,

Denise Yoxsimer
President & CEO

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August 9, 2011

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Senate Dirksen Office Building
Washington, DC 20510

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Sincerely,

Denise Yoxsimer

Denise Yoxsimer
President & CEO

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