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S. HRG. 112–72, pt7

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

MARCH 14, MARCH 28, AND MAY 9, 2012

Serial No. J–112–4

PART 7

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WEDNESDAY, MARCH 14, 2012

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

The Committee met, pursuant to notice, at 2:50 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Amy Klobuchar presiding.

Present: Senators Franken, Grassley, and Lee.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. (Off microphone) welcome the family and friends that have accompanied all of you today. It looks like a full crowd out there, and I know that you are going to—the nominees will be able to introduce their friends and family shortly.

We are considering, as you know, five judicial nominees today. And, first, I would like to call upon my colleagues, who are all gathered here, excited to introduce the nominees from their home State.

So I think we will start here with Senator Snowe, and then Senator Collins, Senator Menendez, and Senator Harkin.

So, Senator Snowe, please begin.

PRESENTATION OF WILLIAM J. KAYATTA, JR., NOMINEE TO BE U.S. CIRCUIT JUDGE BY THE HON. OLYMPIA SNOWE, A U.S. SENATOR FROM THE STATE OF MAINE

Senator SNOWE. Thank you, Chair Klobuchar and Ranking Member Grassley, for holding this hearing today to consider the nomination of Mr. William J. Kayatta, Jr., to succeed the honorable Kermit Lipez on the United States Court of Appeals for the First Circuit.

I join my colleague, Senator Collins, in enthusiastically endorsing this nomination, and I urge the Committee to recommend confirmation of Bill Kayatta to this critical position on the Federal bench.

Today is certainly one the Kayatta family will always remember. So I also want to welcome Bill's wife, Anne Swift-Kayatta, and their daughter, Katherine. And I know their younger daughter, Elizabeth, could not be here today due to a job interview, which is sort of what her father is doing today, as well.

Let me begin with a story Bill's family likely knows well. When Bill held his first hearing with counsel at the Special Master for the U.S. Supreme Court, a distinguished assignment, he assumed the bench and asked 20 or so lawyers to identify themselves for the record.

When they were finished, Bill began to explain the order of proceeding, only to be interrupted by the court reporter, who asked, "And who are you?"

So with that, let me tell you more about who this stellar nominee is.

First, I want to commend President Obama for his decision to nominate Bill Kayatta for a seat on the first circuit. This is a case of the President selecting a superbly qualified nominee who can and should attract strong bipartisan support in the Committee.

Educated at Amherst College and Harvard Law School, Bill has now practiced law for 32 years. Before beginning his career as a litigator, he clerked for former first circuit court of appeals Judge Frank Coffin, a true pillar of the law and a former Congressman from Maine who became Bill's lifelong mentor, as well.

There is ample evidence of the professional respect for Bill's intellectual acumen and legal accomplishments for the Committee to consider. To name just a few, he is an elected member of the American Law Institute, a fellow and regent of the American College of Trial Lawyers, a member of the American Bar Foundation, and past president of the Maine Bar Foundation.

He was also asked to co-edit the first, entirely new edition of the treatise Maine Civil Practice, led by the late Charles Harvey, Jr., one of Maine's most respected legal practitioners.

Through his reputation for excellence in handling complicated matters, Bill Kayatta has developed a law practice national in scope. He is admitted to practice in no fewer than five Federal circuits and has been lead counsel in sophisticated class action liability cases from Maine to Florida to Delaware to California, involving both major corporations, as well as individuals.

Bill has prevailed in every trial but two in the last 32 years of his practice and has won 31 of 37 appellate arguments. He has litigated $43 billion in energy contracts, handled 23 State class ac-

tions against the world's largest car manufacturers, and certified a class of 500 to 800 disabled children seeking in-home mental health services.

He also has experience in the U.S. Supreme Court, where he has argued two cases, submitted merit briefs on three cases, and worked on cert briefs in six additional cases.

But nothing stands out more than Bill's current honor which I mentioned earlier, to serve as a Special Master for the U.S. Supreme Court in a dispute among the States of Kansas, Nebraska and Colorado. Selected by the Supreme Court from the approximately one million lawyers in the country, Bill was chosen for his keen intellect, experience and integrity to hear and recommend a decision to the Court. In short, there is no higher tribute for a practicing lawyer in America.

A tremendous steward of the common good, especially the cause of access to justice for all, Bill has been bestowed with many well earned accolades, such as a Champion of Children by the Maine Children's Alliance. Moreover, he has garnered the Maine Equal Justice Partners Appreciation Award, and received a Disability Rights Center special recognition award.

For all of these reasons I have discussed, Bill Kayatta has rightly earned the American Bar Association's highest rating of unanimous well qualified.

As you know, this is the gold standard of ABA ratings, reflecting the highest level of intellect, character, and judicial temperament. It is a rating reserved only for those who warrant the ABA's strongest endorsement.

So thank you, again, Madam Chair and members of the Committee, for this privilege and opportunity to recommend a candidate of Bill Kayatta's caliber.

Upon your consideration and review of his exceptional merits, his record and qualifications, I would hope that you would review and report out his nomination favorably.

Thank you.

Senator KLOBUCHAR. Well, thank you very much, Senator Snowe.

Mr. Kayatta is lucky to have not one, but two Senators here on his behalf today. We have Senator Collins of Maine.

PRESENTATION OF WILLIAM J. KAYATTA, JR., NOMINEE TO BE U.S. CIRCUIT JUDGE BY THE HON. SUSAN M. COLLINS, A U.S. SENATOR FROM THE STATE OF MAINE

Senator COLLINS. Thank you very much, Madam Chairman, Senator Grassley, Senator Franken. I am extremely pleased to join Senator Snowe before this distinguished Committee today to wholeheartedly recommend to you William Kayatta of Cape Willow Smith, Maine, who has been nominated to serve in the U.S. Court of Appeals for the First Circuit.

Bill is an attorney of exceptional intelligence, extensive experience, and demonstrated integrity. He is very highly respected in Maine's legal community.

While I know that the Committee is already familiar with his many qualifications and Senator Snowe has already outlined many of them, let me just emphasize a few.

In 1980, Bill joined the firm of Pierce Atwood in Portland, Maine, where, over the subsequent 32 years, he has specialized in complex civil litigation at both the trial and the appellate level. He has served as chairman of both the Maine Professional Ethics Commission and the Maine Board of Bar Examiners, as well as president of the Maine Bar Association.

In 2002, Bill was inducted into the American College of Trial Lawyers. And in the year 2010, he was selected by his peers to the college's board of regents.

Simultaneously, Bill has maintained a substantial pro bono practice. In 2010, he received the Maine Bar Foundation's Howard H. Dana award for career-long pro bono service on behalf of low income Mainers.

As Senator Snowe has mentioned, in 2011, the U.S. Supreme Court appointed him as Special Master in *Kansas* v. *Nebraska and Colorado*, an original water rights case, an indicator of the Court's confidence in his legal abilities.

Finally, as Senator Snowe has also mentioned, he has earned the American Bar Association's highest rating—unanimously well qualified—reflecting the ABA's assessment of his credentials, his experience, and his temperament.

Bill's impressive background makes him eminently qualified for the seat on the first circuit. His 30-plus years of real world litigation experience would bring a needed perspective to this prestigious court.

Madam Chairman, the first circuit has the fewest judges of any circuit, and, consequently, any vacancy there is felt most acutely.

In January of this year, Judge Kermit Lipez took active senior status after decades of outstanding public service to Maine and the Nation, for which I would like to thank him. While Judge Lipez has agreed to carry a full caseload over to his senior status, he has made it very clear that he will carry that load only until the beginning of September. At that point, the caseload would have to be distributed among the remaining five judges.

For this reason, as well as in recognition of the nominee's extraordinary qualifications, I urge the Committee to act expeditiously on Mr. Kayatta's nomination in order to avoid a real problem for the first circuit in handling its caseload.

Madam Chairman, members of the Committee, the State of Maine has a long, proud history of supplying superb jurists to the Federal bench. I know that, if confirmed, Mr. Kayatta will continue in that fine tradition.

I urge the Committee to act as quickly as possible on the nomination and to move it forward to the Senate floor, for he deserves overwhelming bipartisan support.

Thank you very much.

Senator KLOBUCHAR. Thank you very much, Senator Collins.

Not everyone has to stick around, if any of you—I just wanted to let you know that.

We now have—we have many things to do—Senator Menendez, who is here on behalf of Kevin McNulty. Whenever I see a New Jersey name, I always remember Senator Menendez telling me that they had tee shirts in New Jersey that say "Only the strong sur-

vive." And so I am sure that is true of your judicial nomination process.

Senator Menendez.

PRESENTATION OF KEVIN McNULTY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY BY THE HON. ROBERT MENENDEZ, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator MENENDEZ. Thank you, Madam Chair. I will not continue on that story. But let me thank you, as well as the Ranking Member and the distinguished members of the Committee.

I actually have two New Jerseyans to introduce to the Committee today, and I am privileged to do so. Let me first introduce Kevin McNulty for consideration as the next United States District Judge for the District of New Jersey.

Both of these nominees have family and friends here, including a former justice of the New Jersey Supreme Court, Justice Visalli. We are pleased to have him with us.

A district judge must possess exemplary analytical skills, a strong work ethic, an extraordinary knowledge of the law. Mr. NcNulty has demonstrated these qualities on countless occasions.

He is the chair of the appeals group in the prestigious law firm of Gibbons P.C. At Gibbons, he has been directly involved in approximately 100 appeals related to a wide variety of legal issues, including pharmaceutical, intellectual property, commercial, and criminal matters.

He has tirelessly fought for his clients' interests. His hard work and dedication earned him the *New Jersey Law Journal's* Lawyer of the Year award.

Before joining Gibbons, Mr. McNulty served as the chief of the appeals division of the United States Attorney's office. He was the lead attorney for the Organized Crime and Drug Enforcement Task Force, as well as the ethics officer and grand jury coordinator.

And while serving at the U.S. Attorney's office, Mr. McNulty was honored with a Federal Law Enforcement Officers Association award.

He began his professional career as a law clerk for the honorable Frederick B. Lacey, U.S. district judge for the district of New Jersey. He graduated cum laude and was third in his class at New York University School of Law. His academic achievement also earned him membership in the New York University law review, where he served as articles editor, membership in the honor society, and Order of the Coif. And while at New York University School of Law, he was awarded the American Judicial Society prize, the Pomeroy prize, and the Moot Court Advocacy Award.

Outside of his professional career, he has demonstrated an admirable commitment to public service. He is a member of the board of trustees at the Urban League of Essex County, former member of the third circuit lawyers advisory committee, co-author of the *Pennsylvania Bar Institute Guide to Third Circuit Practice*, and he has written and spoken on a host of legal topics.

He is an active member of the New Jersey, Federal and American Bar Associations. And throughout his career, he has demonstrated a strong analytical ability, rapid research skills, and an

outstanding work ethic, integrity, and he is well equipped to serve with distinction as a district court judge for the district of New Jersey.

PRESENTATION OF MICHAEL S. SHIPP, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY BY THE HON. ROBERT MENENDEZ, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Madam Chair, members of the Committee, I also want to introduce and express my strong support for Judge Michael Shipp, for the United States District Court of New Jersey.

All of us in New Jersey are very familiar with Judge Shipp's qualifications. He is an exceptional candidate for the Federal bench. He is an accomplished jurist, with impressive qualifications. With almost 5 years experience as a Federal magistrate judge for the district of New Jersey, he is well prepared to be a Federal district judge.

He has successfully managed significant and complex cases as a magistrate, and has, on occasion, served as a district court judge in cases with magistrate jurisdiction.

The first 8 years of his distinguished legal career were spent in the litigation department at the law firm of Skadden Arps. In 2003, he left the firm to serve in the public sector as an assistant attorney general for consumer protection in the office of the attorney general of New Jersey, where he honed his expertise in consumer fraud prosecution, insurance fraud prosecution, security fraud prosecution, professional boards prosecution, and debt recovery.

Judge Shipp excelled at the office of the attorney general and was twice promoted within the office, first as liaison to the attorney general and, second, as counsel to the attorney general. And in that context, he was in charge of day-to-day operations of the department of law and public safety, a department with over 10,000 employees and 800 attorneys.

Judge Shipp is also deeply involved in the legal community. Beyond his leadership role with the New Jersey State Bar Association, his membership in the Garden State Bar Association, he has served as a faculty member of Seton Hall University School of Law Summer Institute for Pre-Legal Studies, which helps disadvantaged students develop their interest in law.

He has also served on the faculty of the New Jersey Attorney General's Advocacy Institute, which ensures that attorneys representing the State of New Jersey maintain the highest possible levels of professionalism.

He is a proud New Jerseyan, with deep roots in our State, a native of Patterson, New Jersey. I say that because if Senator Lautenberg were here, he would tell you that, and I feel compelled to do so in his absence.

He grew up in New Jersey. He lives in New Jersey. He earned his degree from Rutgers State University, Seton Hall Law School, and went on to clerk for the honorable James Coleman, a former justice of the Supreme Court of New Jersey.

He is an extraordinary jurist with a tremendous opportunity, a judicial temperament, extraordinary legal experience, and a deep and abiding commitment to the rule of law.

These are two exceptional nominees, and I would urge the Committee's quick and positive nomination to the floor. And I am sure Senator Grassley is going to feel that way after he hears from him.

Senator KLOBUCHAR. Very good. Thank you very much, Senator Menendez.

Judge Shipp, I apologize for not mentioning you earlier, but there was some confusion with Senator Lautenberg. And you know he would love to be here, but he could not be here because he was at the funeral for Representative Payne.

But he did ask that I submit his statement for the record. And without objection, we will put it on the record.

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

Senator KLOBUCHAR. And thank you for both of the nominees, extremely qualified.

We now move closer to my home, the State of Iowa, with Senator Harkin, who is going to speak, as is our Ranking Member here, Senator Grassley, for Stephanie Marie Rose.

Thank you. And thank you, Senator Menendez.

PRESENTATION OF STEPHANIE MARIE ROSE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA BY THE HON. TOM HARKIN, A U.S. SENATOR FROM THE STATE OF IOWA

Senator HARKIN. Thank you very much, Madam Chair and Ranking Member Grassley, Senator Franken. It is a great privilege for me to be here to introduce U.S. Attorney Stephanie Rose to serve as a district court judge in Iowa's southern district.

I was honored to recommend this outstanding attorney to the President, and I thank him for nominating her.

Let me begin first by thanking you, Senator Leahy, for agreement to such a prompt hearing, and to thank my senior colleague from Iowa, Senator Grassley, for his assistance in making this prompt hearing possible.

For many years, Senator Grassley and I have cooperated in a collaborative spirit on judicial nominations in our State, and I am glad that we are continuing Iowa's fine tradition regarding Iowa's judicial selections.

Madam Chair, a U.S. Senator has few more important responsibilities than recommending to the President the person best qualified to serve in a lifetime position as a Federal judge.

I believe Stephanie Rose possesses all of the qualifications necessary to assume the very serious responsibilities carried out by a Federal judge. In fact, the American Bar Association gave Ms. Rose a unanimous well qualified rating, their highest.

A little over 2 years ago, in 2009, this same Committee and the Senate unanimously confirmed Ms. Rose to become U.S. attorney in the northern district of Iowa, having previously served 12 years as an assistant U.S. attorney.

She is a superb attorney. And among jurists, prosecutors, and the Defense Bar, she has a reputation as someone who is unfailingly fair and ethical and who possesses exceptional legal ability, intellect, and judgment.

It is no surprise she enjoys wide bipartisan support from the Iowa legal community. In fact, Charles Larsen, former United States attorney for the northern district of Iowa, under President George W. Bush, recently wrote this Committee, stating that Ms. Rose, "has all the requisite abilities and traits to serve all litigations for the southern district of Iowa in the manner expected of a Federal judge. Ms. Rose would be a distinguished member of the judiciary."

Finally, Ms. Rose reflects very proudly on all of us who have chosen to be public servants. She earned her master's degree with honors from the University of Iowa in just 3 years. She earned her J.D. from the University of Iowa College of Law in just 2 years, graduating in the top 5 percent of her class.

She could easily have commanded a big salary with a top law firm. Instead she opted for public service and long hours as a Federal prosecutor, working to uphold the rule of law, making our neighborhoods safer, and advancing the cause of justice.

We are fortunate that she seeks to continue her public service to Iowa and our Nation by serving as a Federal judge.

Madam Chair, it is often helpful to know some more personal background on a nominee. Ms. Rose was born in Topeka, Kansas, and later moved to Mason City, Iowa when she was 4. Both of her parents were public school teachers.

She and her husband, Rob, have two children, Kyle, age 13, and Missy, who is 10. Ms. Rose has two sisters, one of whom was adopted after coming to the family as a foster child, one of five foster children her parents welcomed into their home.

While I do not know that family personally, I am told by others who do know them and who associate with them in their church activities and community activities that this is a wonderful, supportive, and very close-knit family.

Before recommending Ms. Rose to the President, I reviewed an unusually strong field of candidates for this position. She stood out as a person of truly outstanding intellect and character. Stephanie Rose is exceptionally qualified to serve as United States District Judge for the Southern District of Iowa.

I urge this Committee to swiftly and unanimously approve her and send her to the Senate floor as soon as possible.

Madam Chair, I would also ask that the three articles, two that appeared in the *Des Moines Register*, one that appeared in the *Cedar Rapids Gazette* today, also be included with my statement in the record.

Senator KLOBUCHAR. They will be included.

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

Senator KLOBUCHAR. And now, Senator Grassley.

PRESENTATION OF STEPHANIE MARIE ROSE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA BY THE HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Thank you. I compliment Senator Harkin for his recommendations of Ms. Rose to the White House and the White House making the selection.

Senator Harkin has spoken correctly that during the 24 years and the 31 years that he and I have been in the U.S. Senate that we have cooperated very closely on selection of people for the judicial and executive branch of government.

So it is a pleasure for me to recommend to this Committee Stephanie Marie Rose. Her husband, Mr. Robert Rose, as well as other family and friends in attendance today and viewing the hearing elsewhere.

The President has nominated Ms. Rose to serve as U.S. District Judge for the Southern District of Iowa. Ms. Rose is a hawk-eye through and through, receiving two degrees from the University of Iowa; as Senator Harkin said, her BA and her law degree in a short period of time.

Ms Rose, I guess, you were on a fast track through law school, obviously.

Thankfully, after graduation from law school, she chose to stay in the State of Iowa. She first served as a law clerk, U.S. attorney's office, northern district of Iowa, In 1997, she was hired as a full-time attorney in that office, where she has risen through the ranks and now heads that office.

She served as special assistant to the U.S. attorney from 1997 to 1999, and has been assistant U.S. attorney 1999 through the year 2009. During this time, she was the lead counsel in prosecutions of more than 250 cases. These cases spanned a wide range of legal issue from violent crimes and drug abuses and offenses to immigration violation and money laundering.

Additionally, she has handled approximately 45 Federal civil cases. These cases have included post-conviction relief, an asset for venture mattress, as well as Freedom of Information Act and property return lawsuits.

In 2009, she was confirmed by the Senate and appointed by President Obama to serve as U.S. attorney, northern district of Iowa. In this role, she oversees most every aspect of the office. This includes overseeing civil and criminal work completed by office staff and making final determinations regarding charging decisions, plea offers, and civil settlements.

The American Bar Association standing committee on the Federal judiciary unanimously rated Ms. Rose as well qualified for this position.

So, obviously, as Senator Harkin deserves congratulations, she is the one that has worked very hard to attain the notoriety that she has and has risen to now be nominated.

So I congratulate Ms. Rose and, at the same time, I am going to congratulate the other nominees, but not take the time of the Committee to go into their backgrounds, and I will put that in the record, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Grassley. That will be included in the record.

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

Senator KLOBUCHAR. Now, we continue our tour around the country to the south, and Senator Alexander is here on behalf of Judge John Thomas Fowlkes, who is a nominee for the district court for the western district of Tennessee.

PRESENTATION OF JOHN THOMAS FOWLKES, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE, BY THE HON. LAMAR ALEXANDER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator ALEXANDER. Thank you, Madam Chairman. I note the perfect attendance of the Senators from Minnesota for this hearing.

Senator KLOBUCHAR. We heard there was somewhat up from Tennessee, so we thought we would come.

[Laughter.]

Senator ALEXANDER. That is good. You are hard to get ahead of.

Madam Chairman, Senator Grassley, it is a real honor to introduce Judge John Fowlkes, who is sitting over here in the right. He is a State judge in Memphis. The President has nominated him to fill a vacancy for the United States History judgship for the western district of Tennessee, and the President has made an excellent nomination.

As Governor of Tennessee, I appointed about 50 judges and as I look back on it, I find out that they have lasted a lot longer than most of the things that I tried to do when I was Governor. So one has to appoint judges carefully. And I try not to inquire too far into their views on things, but really into their intellect, their character, their demeanor, their capacity for fairness, and especially the respect they would have for the litigants and the lawyers who appear before them.

By that test, Judge Fowlkes passes with flying colors. He is already a judge. He is well known in Shelby County and in Memphis, Tennessee. And he is deeply involved in his community. I received a number of letters from citizens of Memphis and Shelby County talking about his, "creative mind and his independent work ethic."

I knew his reputation, but I took some time after the President nominated him to study his qualifications further and to meet personally with him, and I am impressed.

He devotes 50 hours a year of service to the Port of Memphis Area Legal Services. He is active in support of the Boy Scouts. He has devoted himself to the community in which he lives.

So I am sure the Committee will carefully examine his judicial qualifications, but from my vantage point, his reputation is excellent. He has served well as a judge for our State. He is well respected in his community. And I would recommend that the Committee approve him and move him on to the Senate for full consideration.

I also should note—I will let him do the introducing—he has pretty good family support. He has got a wife, father, two sisters, a niece, two cousins, and a nephew all here today, and I imagine he will want to introduce them when the time comes.

Senator KLOBUCHAR. Very good. Thank you very much, Senator Alexander.

Do you want to say anything, Senator Grassley, more before we start with our first nominee?

We will ask our first nominee, Mr. Kayatta, to come forward. And if you could remain standing and raise your right hand, Mr. Kayatta—thank you so much—and I will administer the oath.

[Nominee sworn.]

Senator KLOBUCHAR. Now, Mr. Kayatta, if you would like to introduce—we have heard a lot about you from the Senators from Maine, and we would love to see if you want to introduce anyone who is here, friends or family.

STATEMENT OF WILLIAM J. KAYATTA, JR., NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FIRST CIRCUIT

Mr. KAYATTA. Thank you, Madam Chair and Ranking Member Grassley and Senator Franken, for giving me this opportunity to be here today. It is a tremendous and inspiring privilege for someone who has grown up and spent his life working in Maine to be introduced to this Committee by Senator Snowe and Senator Collins.

Maine is a small state. We get to know each other pretty well. And there is no one in Maine who is more widely respected than these two extraordinary women. So I am very honored by their introduction today.

I would also like to thank Representative Mike Michaud and Representative Chellie Pingree and their selection committee for suggesting my name to the President. And, obviously, I would like to thank very much the President for having the confidence in me to make this nomination.

Senator Snowe was very gracious to introduce my family, my wife, Anne, and daughter, Katherine, and her fiance, Ian Gilbert, who were able to come here today. My daughter, Elizabeth, as Senator Snowe mentioned, is doing her own job interview as we sit here today.

My parents, I know, wish very much that they could come, but they, together with my colleagues and friends at my law firm, Pierce Atwood, will take advantage of the Web broadcast.

Senator KLOBUCHAR. Always exciting.

Mr. KAYATTA. Yes. Although I might be fearful of watching it myself.

[Laughter.]

Mr. KAYATTA. And with that, I know how busy the members of this Committee are, and so I will refrain from any further comments.

Senator KLOBUCHAR. Very good.

Do you want to begin, Senator Grassley.

Senator GRASSLEY. Usually, I do not get that right very much.

Senator KLOBUCHAR. Well, I thought I would do that to be nice and bipartisan. We just passed a bill today.

Before you—Senator Corker, do you want to——

Senator GRASSLEY. Yes. Let us start with Senator Corker.

Senator KLOBUCHAR. Right. Do you want to go and talk about your—could we just take a break to do this? All the people involved in Rules.

Do you mind, Mr. Kayatta.

Mr. KAYATTA. Not at all.

Senator KLOBUCHAR. You are not under oath, Senator Corker.

Senator CORKER. Thank you. It makes me very nervous. Now, Lamar has already been in, is that correct?

Senator KLOBUCHAR. Right. He just spoke and we would love to hear from you about your nominee, John Thomas Fowlkes.

Senator CORKER. Listen, I know that this Committee is going to look into the various judicial proceedings that he has been involved in. I know this Committee does an outstanding job with that.

But when the White House began looking for someone in the Memphis area to become a Federal judge, every civic and respected political leader, the first name that came out was Judge Fowlkes.

I have been involved in many of these, as have so many of you. I do not believe I have come across someone who has come before this Committee that has been more highly recommended by people that I respect.

Our former Governor, a Democrat, a friend of mine, Phil Bredesen, appointed him to a State judge post, the mayor of Shelby County, A.C. Wharton, both of these gentlemen highly respected, but he served as his chief administrative officer prior to that.

And I just want to say to this Committee, I went to Shelby County, to Memphis, to meet with this gentleman so that these proceedings could move on quickly. I am very, very highly impressed with him and highly recommend him to this Committee to have its proceedings.

And I thank you for letting me come in late and interrupt this fine gentleman's testimony. Thank you very much.

Senator KLOBUCHAR. Very good. Thank you very much, Senator Corker.

Senator Grassley.

Senator GRASSLEY. The first question comes in regard to the fact that in your position, you will probably be considering some cases of crime, but you seem to lack experience with criminal cases. In answer to your questionnaire, your private practice has not included any criminal cases.

So I give you a chance to tell us and share with us about your legal background to ease concerns that we might have about lack of criminal law experience.

Mr. KAYATTA. Yes, Senator. Thank you. And it is correct, I have had no experience in representing parties in criminal proceedings, either the State or the defendants.

I have had—and I do think that is an area where I will come in with a fair amount of work to do to bring myself appropriately up to speed.

Now, I have had some exposure to criminal law in several respects. My year clerking, I obviously saw a full year's worth of cases that the first circuit had, including all the criminal cases.

I also had the privilege for 8 or 9 years of representing quite a few police officers who were sued in suits that raised issues of Fourth or Fifth Amendment procedure, excessive force, other type issues, and that required me, even though I was not representing parties in criminal proceedings, it required me to get a pretty good understanding of the rules of procedure both under the Fourth Amendment, the Fifth Amendment, the Eighth Amendment, and other issues that arise, and to also spend a fair amount of time understanding how the law enforcement process worked.

Finally, my civil practice involves—I have not specialized in any one particular area in my civil practice. I have moved—one year, it would be an antitrust case; another year, it would be an energy regulation case; another year, a securities case. And so that has

given me an opportunity to learn how to become familiar with the body of law that I had not previously been familiar with, and I would hope that that training would be something that I could bring to bear to supplement the limited experience in criminal law that I have described.

Senator GRASSLEY. There is nothing wrong with a nominee like you being involved in parsing politics, but prior to serving on the standing committee, you participated in Obama for President meetings and, also, donated.

Did politics affect your evaluations in any way of anything you have done?

Mr. KAYATTA. I can think of nothing I did on the standing committee or, frankly, not much I will expect that had been affected by that.

Senator GRASSLEY. As a young attorney, in 1984, you represented the city council of Portland in a suit alleging the city violated an individual's Second Amendment rights by denying him a gun permit.

A three-judge panel on the first circuit held that there was no Second Amendment.

Among the cases cited was by the first circuit to support his opinion. It was a 1976 case of *U.S.* v. *Warin* that held, "The Second Amendment guarantees a collective rather than an individual right."

Do you recall, in defending the city council, whether you argued the Second Amendment only provided a collective right?

Mr. KAYATTA. I don't specifically recall that, Senator. However, I'm quite sure that as a lawyer for the city, having the ethical duties that a lawyer would have in representing a municipal government in litigation, I certainly—it's highly likely I would have raised the law as it existed at that time in any briefing.

And I'm sure the first circuit followed that law then as today. The first circuit would follow the materially different law that we now have.

Senator GRASSLEY. If you had any briefs in that case, would you be willing to provide my staff and me with a copy of any brief you filed?

Mr. KAYATTA. Yes, I would, Senator.

Senator GRASSLEY. In *Heller*, as well as in *McDonald* v. *Chicago*, the Supreme Court held that the Second Amendment is an individual right.

Do you personally agree that the Second Amendment confers an individual right rather than a collective right?

Mr. KAYATTA. Senator, I don't think it's appropriate that I express my personal beliefs. Among other reasons, I don't think my personal beliefs would be something that I would bring to bear in deciding cases as a judge.

I am familiar with *Heller* and with the current state of the law and would certainly have no hesitancy in following and enforcing that precedent.

Senator GRASSLEY. That is good. Thank you.

In *McDonald*, the Supreme Court further held that individual rights apply to the States. Would your same answer apply there, that the precedent set by *McDonald* you would follow as a judge?

Mr. KAYATTA. Yes, it would, Senator Grassley.

Senator GRASSLEY. Let me ask one more question. Then I will move on.

You were a member of the American College of Trial Lawyers' ad hoc committee on judicial compensation that issued a report that was highly critical of the current pay of Federal judges.

Knowing what you know about judicial pay, are you sure that you are able to accept the pay for judges as currently set by Congress?

Mr. KAYATTA. I confess, Senator Grassley, I'm probably an even more enthusiastic proponent of increased judicial pay than I was then.

Yes. I certainly—you know, I don't come from a large metropolitan area and the amount of judicial pay for someone like me is a very substantial—in the State of Maine, it is an extraordinary amount, and I would be privileged to take this position.

I do continue to believe, on a national level, that the prolonged reduction in judicial pay that has occurred as a result of the combination of no pay increases and inflation over time is a serious matter for Congress to consider.

Senator KLOBUCHAR. Very good. Thank you very much, Senator Grassley.

You should know, as he asked about that pay issue, that I once called Senator Grassley and he was in a café eating apple pie that he claimed was like $1.29 or something like that. So very careful with the money.

Mr. KAYATTA. Perhaps I'll need the name of that.

Senator KLOBUCHAR. I wanted to, first of all, just—I know Senator Grassley had asked appropriately about the question about politics, but I also would note that you have the support of both Republican Senators from the State of Maine. And I also notice that you actually were a classmate of Justice Roberts and have spoken of him positively.

And then, also, in 1981, he identified you as a potential candidate for the special assistant attorney general during the Bush Administration. So I just wanted to put that on the record. It appears as though you have worked well with people of both parties.

So I wanted to ask you some questions about your experience, first of all. I think for most lawyers, the opportunity to argue a case before the Supreme Court represents the ultimate career highlight, and you have argued two cases there.

Can you tell me about how your experiences as an appellate advocate will inform you in how you approach the job for which you are nominated?

Mr. KAYATTA. Yes, Madam Chair. One, a sense of humility, I managed to, with one small exception, lose both cases 9–0.

Senator KLOBUCHAR. I did not note that. I might not have asked that question. I was trying to ask an easy question. But go ahead.

Mr. KAYATTA. On one of the cases, my dear dad, who always rooted for me in every case, asked me how I could lose a case 9–0 and I told him it was because there were not 10 justices on the court.

For a lawyer who reveres the rule of law, who regards this country as an exceptional country that is built on the rule of law, to ap-

pear before the Supreme court is inspiration, it's emotionally moving, and it left me with an even higher regard for what an extraordinary system we have in this country.

And I think that would heighten my sense of responsibility as a judge to live up to those expectations and to understand the responsibility that every judge has to stand for the rule of law and to protect the great institutions that have in this country.

Senator KLOBUCHAR. Thank you. I noted that Senator Collins and Senator Snowe talked about your pro bono work, and I think that is such an important part of being a lawyer.

Do you want to talk about why you got started with pro bono work and how you think we can make sure that that continues as part of the practice of law?

Mr. KAYATTA. I'm hesitant to talk about my own pro bono work. I don't think it's something that one crows about. I think every lawyer—as a lawyer, you're actually given by the government a license, a monopoly of a sort, to practice law, and I've always thought that with that privilege comes some responsibility to do more than use that license solely for your self.

In that respect, though, I've done much less than many people I know who dedicate themselves full-time to those causes. So I feel what I did was something that every lawyer should do.

Senator KLOBUCHAR. I just have one last question. If confirmed, you will be serving on the circuit court, as we know, and you will be hearing cases wit a panel of judges.

Could you talk about the importance of seeking out agreement with your colleagues? Is there value in finding common ground, even if it is a slightly narrower ground than you might like to get a unanimous opinion on appellate cases?

Mr. KAYATTA. My experience in virtually everything I have done is that several people on a common mission, if they listen to each other, if they have respect for each other and they work hard, are probably likely to come up with a better, more informed decision than someone working on his or her own.

So I do think an important part of serving on a circuit court is communicating with the other judges on that court regarding decisions and listening to their different perspectives.

Senator KLOBUCHAR. Very good. Thank you very much.

I think Senator Franken was next. Thank you.

Senator FRANKEN. Thank you, Madam Chair.

Mr. Kayatta, congratulations on your nomination. My wife is from Portland and my in-laws are all still in Maine, and I love the State and I recognize your accent.

[Laughter.]

Senator FRANKEN. You were the American Bar Association's lead evaluator during Elena Kagan's nomination to the U.S. Supreme Court. What types of things did you look for or do you look for when you are evaluating a judicial nominee?

Mr. KAYATTA. I actually had no personal input or choice as to what I would look for. The criteria are basically that we look for ethics, judicial temperament, and professional competence. And those are the three criteria that are to be applied. And when I was on——

Senator FRANKEN. Would you repeat those? Ethics, what?

Mr. KAYATTA. Temperament.

Senator FRANKEN. Temperament.

Mr. KAYATTA. And professional competence.

Senator FRANKEN. Well, within those you must have some certain personal criteria that you apply.

Mr. KAYATTA. I think the—in terms of digging into each of those areas, I think that what I looked for was what other lawyers and judges would look for. And I say that because the ABA process, as it was implemented while I was on the ABA standing committee, in many respects, simply channeled a peer review of a nominee.

And by that, I mean we would speak to, in that case, hundreds of people familiar with the nominee and ask them what their assessment was under those criteria and ask them to provide examples and facts that would substantiate that. And it was then putting together the whole body of that.

Often, that peer review that would get back would speak for itself and did not require a large interpretative undertaking by the person doing the evaluation.

Senator FRANKEN. Got it. And you received—your recommendation was unanimously well qualified. Is that correct?

Mr. KAYATTA. I did, yes.

Senator FRANKEN. That means everyone agreed, right, unanimously?

Mr. KAYATTA. That means every member of the Committee selected that evaluation, yes.

Senator FRANKEN. That was not a trick question.

[Laughter.]

Senator FRANKEN. Sometimes overlooking the obvious is a bad thing.

After graduating from law school, you served as a law clerk on the first circuit court of appeals, the court to which you are now nominated.

Did you learn any lessons as a law clerk that will help you as a judge on the court?

Mr. KAYATTA. Yes, I did. I learned that a lot of hard work was involved. I also learned something I think is good for every law student. There's a tendency sometimes when you're in law school to become impressed with one's own perception of one's intellectual prowess.

And serving a year for Judge Coffin of the first circuit, I realized that there is a lot more wisdom involved in the job than I had, and I hd a lot to learn and needed a lot of experience to learn.

Senator FRANKEN. And, finally, I hate to return to your pro bono work, but I just wanted to ask you—one case that you did that, you were lead counsel I a lawsuit on behalf of 800 Medicaid-eligible children who had been denied in-home mental health services.

That seems like a lot of work. Why did you decide to take that case?

Mr. KAYATTA. I had been involved in a group that was trying to encourage members of the private bar to spend more time and, also, to devote their particular talents and resources to assisting those who were full time helping those who not afford a lawyer.

And one of the major groups in the State came to me and said, "We have this very large, very complex case that we believe the

law is not being enforced and that if it were enforced, it would be a win-win both for the children and for the government's budget.

But they couldn't take it on—they didn't have the resources—and they asked if I would take it on. And with the permission of my partners, one partner in particular, Margate O'Keefe and a number of other lawyers who agreed to work with me, we took that one for many years.

Senator FRANKEN. Thank you and, once again, congratulations to you and to your family.

Mr. KAYATTA. Thank you, Senator.

Senator FRANKEN. Thank you.

Senator KLOBUCHAR. Very good. Senator Lee.

Senator LEE. I would not let anybody give you a hard time about the 9–0 losses.

Your former classmate, Chief Justice Roberts, had a 9–0 loss not too long before you went onto the Supreme Court. Sometimes the court gets it wrong.

In any event, you have got one of those quill pens, I am sure, each time you argued that.

Mr. KAYATTA. Yes, I did.

Senator LEE. And that is a victory in and of itself.

As a Federal judge, you will be called upon on an almost constant basis to evaluate what could potentially be defects in any case. When you come across a case in which Article 3 standing is, arguably, deficient, what factors would you look to in deciding whether or not there is standing and what might you do in a case in which you are in doubt, you are sort of wondering which way the scales tip?

Mr. KAYATTA. Well, not profession to be an expert on standing, let me say that it's my impression that as a judge, I would actually be obligated in every case, whether the issue of standing has been raised or not., to make a determination that I have been given the power and the court I am on have been given the power to do anything at all. And without standing, a Federal court—- if the parties who come before the court who had brought the case lacks standing, then the court lacks jurisdiction, generally, other than some odd unusual circumstances.

Senator LEE. Regardless of whether they raise it.

Mr. KAYATTA. That's correct. I think it's one of those issues that the court could—we are—the Federal courts are courts of limited hours and limited jurisdiction, and pat of being a good Federal judge is to always ask yourself, "Am I operating within those limits?"

And so standing is one of the important limits because it ensures that the party who comes before the court has a stake in the outcome. And if we didn't have standing requirements, then courts, instead of deciding cases and controversy, would start deciding issues, and our courts are not set up to decide issues. They decide actual cases and controversy where there is an injury, in fact, or an imminent injury, in fact, and where a judgment would actually have an effect on the litigants before the court.

Senator LEE. And when you are in doubt as to weighing those elements of standing along with the element of whether or not they

are fairly traceable to the conduct of the defendants, how would you sort of decide how to balance a close case?

How do you just say whether or not there is standing if you are really on the fence?

Mr. KAYATTA. Right. Let me address the process, because as a practicing attorney, one of the first things I would say is that when a court sua sponte, as us lawyers say, raise something of themselves, I think the court should generally ask the parties to weigh in on the issue.

And sometimes the courts don't do that and I think it's a mistake not to get the benefit of the adversarial process.

Having done that and having looked at the case, I would obviously be bound by the precedent. Having come to the end of the process of reading the precedent, if I didn't know what the decision was, I think I would certainly engage in the process that the chair has suggested of consulting with the other judges on the court, and, ultimately, one has to make a decision.

Senator LEE. You indicated a minute ago that the Federal courts are government bodies with limited jurisdiction. We, too, as a Congress, we are a legislative body with limited jurisdiction, even though we do not always act like it.

We have exercised a lot of power under the commerce clause of the Constitution. I was wondering if you could tell us what, in your opinion, are the limits on what we can enact under the commerce clause?

Mr. KAYATTA. Well, given the currency of high profile litigation exploring the reach of the commerce clause could——

Senator LEE. And I am not asking you to weigh in on anything pending across the street, sir.

Mr. KAYATTA. Well, I think one starts with the presumption of—I think it's Madison in the Federalist Papers, I think he used the term that the powers of the Federal Government are few and defined.

So one starts, I think, with the presumption that for our government to exercise powers, those powers must have their source in the Constitution. In other words, that the people have granted the government that power. So one looks in the Constitution.

Beyond that, you would then look at precedent, and I would be bound by the precedent both of the Supreme Court and of the circuit.

Senator LEE. Is there anything in our precedents beyond what is found in *U.S.* v. *Lopez* and *U.S.* v. *Morrison* that is outside of that power? Is there any real limit?

Mr. KAYATTA. Well, those cases discussed certain aspects of the limit. Just knowing how complex the issue of the breadth of Congress' power is, I would be surprised if there weren't other issues that could arise outside the context of those, but I do not profess to be familiar with that.

Senator LEE. I see my time has expired unfortunately. Thank you.

Senator KLOBUCHAR. Thank you very much, Senator Lee.

Senator Grassley has a followup.

Senator GRASSLEY. Just one question following-up on something Senator Franken asked you about, the standards that you applied. I have one followup to that.

I would like to have you explain—well, based upon what you said about your respect for rule of law, I presume that applies to respect for standards that you apply for judicial nominees.

Would you mind explaining the standing committee's conclusion in regard to Ms. Kagan's nomination of being well qualified. The conclusion given, its stated standard that judicial nominees should have, "have at least 12 years" experience in the practice of law and, "a substantial courtroom and trial experience as a lawyer or trial judge," considering the fact that Ms. Kagan had spent only a couple years as a lawyer in private practice and did not have the experiences talked about here in the standard.

Mr. KAYATTA. Let me see if I can address that without stepping outside of proper role, because since I'm no longer a member of the standing committee and I've never been authorized to speak on behalf of the committee, other than the particular testimony that was put forth.

But I do have enough familiarity with the standards to know that the trial practice, in particular, which is mentioned in the Committee's backgrounder, is a factor that diminishes the higher one goes.

In other words, it's a very significant factor for a district court nominee; important, but less so, in practice. It was my understanding, if memory serves me correctly. That that was not a requirement for a position on the Supreme Court.

And in that particular incidence, we had the rather extraordinary fact that we had an individual who had served as solicitor general for the United States.

This is a position often referred to as the 10th justice. So it's quite an extraordinary and unusual litigation-related qualification.

Senator KLOBUCHAR. Very good. Well, thank you very much, Mr. Kayatta, and thank you for your testimony, and you are done.

Mr. KAYATTA. 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).

   John Thomas Fowlkes, Jr.

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

   United States District Judge for the Western District of Tennessee

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.

   Criminal Court, Division VI
   Criminal Justice Complex
   201 Poplar Avenue, Suite 519
   Memphis, Tennessee 38103

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

   1951; Washington, D.C.

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

   1975 – 1977, University of Denver School of Law; J.D., 1977

   1974 – 1975, Valparaiso University School of Law; no degree received

   1969 – 1975, Valparaiso University; B.A., 1975

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

1980 – present
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101
Partner (1986 – present)
Associate (1980 – 1985)

1979 – 1980
United States Court of Appeals for the First Circuit
156 Federal Street
Portland, Maine 04101
Law Clerk for Chief Judge Frank M. Coffin

Summer 1979
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, New York 10019
Summer Associate

Spring 1979
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Research Associate

Summer 1978
Hale & Dorr
(now Wilmer Hale)
60 State Street
Boston, Massachusetts 02109
Summer Associate

Summer 1977
Harvard Law School
156 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant for Professor Philip Areeda

Summer 1976
Racket & Fitness Center
2445 Congress Street
Portland, Maine 04102
Assistant Tennis Professional

Other Affiliations (uncompensated):

2010 – present
American College of Trial Lawyers
19900 MacArthur Boulevard, Suite 530
Irvine, California 92612
Regent

2005 – present
Pericles Foundation
c/o Michael R. Currie, President
H.M. Payson & Co.
One Portland Square
Portland, Maine 04101
Secretary

1996 – present
University of Maine School of Law
246 Deering Avenue
Portland, Maine 04102
Board of Visitors

1997 – 2005
Maine Bar Foundation
40 Water Street
Hallowell, Maine 04347
President (2004)
Board Member, Officer (2001 – 2004)

1978
Harvard Law Review
Gannett House
1511 Massachusetts Avenue
Cambridge, Massachusetts 02138
Officer

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

I have not served in the military. I registered for selective service 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, 2011 Client Guide, Star Individual in Commercial Litigation (Maine) (2011)

Best Lawyers in America, Various Litigation Categories (2001 – 2011)

Howard H. Dana Award, Maine Bar Foundation (2010)

Lawdragon, The Lawdragon 500 Leading Litigators (United States) (2006)

Giraffe "Champions for Children Award," Maine Children's Alliance (2003)

Maine Equal Justice Partners' Appreciation Award (2003)

Special Recognition Award, Disability Rights Center of Maine (2001)

Editor and Officer, Harvard Law Review (1978 and 1979)

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 Committee on Maine Rules of Civil Procedure (2008 – present)

American Bar Association (1981 – present)
- Summit on Civil Justice Improvements, Maine Representative (1993)
- Standing Committee on the Federal Judiciary (2007 – 2010)

American Bar Foundation (2009 – present)

American College of Trial Lawyers (2002 – present)
- Regent (2010 – present)
- Ad Hoc Commission on Judicial Compensation, Vice-Chair (2007)
- Emil Gumpert Award Committee (2002 – 2010)
  - Chair (2008 – 2010)
- Regent Liaison to the Atlantic States Committees (2010 – present)
- Regent Liaison to the Teaching/Trial & Appellate Advocacy Committee (2010 – present)
- Regent Liaison to the Emil Gumpert Award Committee (2010 – present)
- Maine State Committee (2003 – 2008)
  - Chair (2006 – 2008)

American Law Institute (2005 – present)

Campaign for Justice, Chair (2006)

Cumberland County Bar Association (1980 – present)

Maine Bar Foundation (1997 – 2005)
Officer (2001 – 2004)
President (2004)

Maine Board of Bar Examiners (1985 – 1990)
Chair (1988 – 1990)

Maine Legal Services Response Team, Co-Chair (2001 – 2003)

Maine State Bar Association (1980 – present)

Professional Ethics Commission of the Maine Board of Overseers of the Bar (1995 – 2002)
Chair (2002)

Supreme Court Historical Society (1994 – 1995; 2003 – 2007; 2008 – present)

United States Magistrate Judge Merit Selection Committee, District of Maine, Chair (2007)

10. **Bar and Court Admission**:

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

Maine, 1980

There have been no lapses in membership.

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

Supreme Court of the United States (1987)
United States Court of Appeals for the First Circuit (1984)
United States Court of Appeals for the Second Circuit (2010)
United States Court of Appeals for the Sixth Circuit (2007)
United States Court of Appeals for the Ninth Circuit (2004)
United States Court of Appeals for the Eleventh Circuit (2002)
United States District Court for the District of Maine (1980)
United States Court of Federal Claims (2008)
United States Tax Court (2001)
State of Maine (all courts) (1980)

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.

Gignoux Inn of Court (1994 – 1996)

Pericles Foundation
Secretary (2005 – present)

Purpoodock Club (2005 – present)

University of Maine School of Law
Board of Visitors (1996 – present)

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

I am told that, more than twenty years before I joined, the Purpoodock Club, a golf club, discriminated against women in assigning tee times on weekends. Other than that, to the best of my knowledge the organizations listed in response to 11(a) do not discriminate and did not formerly discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or 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.

Charles Harvey, MAINE CIVIL PRACTICE (3rd ed. 2011) published by West. As explained in the 2010 preface to this treatise, I co-edited the final draft of this three-volume treatise when the author died before completion. Copies of the preface and the table of contents are supplied.

Maine: Decisions Interpreting Rule 23 of the Maine Rules of Civil Procedure, in Survey of State Class Action Law (American Bar Association, Section of Litigation, ed., 2003 – 2007). I have supplied a copy of the 2007 version, which contains all material included in earlier versions.

Maine's New Business Court, Benchmark Litigation at 153 (Legal Media Group 2007). Copy supplied.

Year in Review: 2006 Accomplishments, Campaign for Justice Annual Report (2006). Copy supplied.

Kristina H. Allaire, Byrne J. Decker, Elizabeth L.B. Greene, Joseph M. Hamilton, William J. Kayatta Jr., Brooks Magratten, & Geraldine G. Sanchez, *First Circuit, in* ERISA SURVEY OF FEDERAL CIRCUITS (Brooks Magratten, ed., 2005). Copy supplied.

Looking Forward...A Message from William J. Kayatta, Jr., Campaign for Justice Annual Report (2005). Copy supplied.

President's Report, 2004 Annual Report of the Maine State Bar Foundation (2005). Copy supplied.

Developments in the Law – Corporate Crime: Regulating Corporate Behavior through Criminal Sanctions, 92 HARV. L. REV. 1227 (1979). I was a co-editor of this article. Copy supplied.

Note, *The Sixth Amendment Right to Have Use Immunity Granted to Defense Witnesses*, 91 HARV. L. REV. 1266 (1978). Copy supplied.

I edited a few other student notes or comments while on the Harvard Law Review in 1978 and 1979, but have no record or memory of which notes or comments I might have edited in some manner.

Class of 1976 Notes, AMHERST MAGAZINE (Fall 1979 to Summer 2001). 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.

American College of Trial Lawyers, American Code of Conduct for Trial Lawyers and Judges Involved in Civil Cases with Self-Represented Parties (2011). This document was published while I was a member of the Board of Regents. I had no role at all in its preparation. Copy supplied.

American College of Trial Lawyers, White Paper on Judicial Elections (2011). This document was published while I was a member of the Board of Regents. I had no role at all in its preparation. Copy supplied.

Since 2008, I have been a member of the Advisory Committee on Maine Rules of Civil Procedure. This committee considers, drafts, and comments on rule changes presented to the Maine Supreme Judicial Court for its consideration. The current version of the Rules is available at http://www.courts.state.me.us/rules_adminorders/rules/TableMRCivPPlus6-10.html.

American College of Trial Lawyers, Judicial Compensation: Our Federal Judges Must Be Fairly Paid (2007). This was prepared by a committee of which I was the vice-chair, and I participated in editing this publication. Copy supplied.

Campaign for Justice Annual Report (2006). Copy supplied in response to 12(a).

2004 Annual Report of the Maine State Bar Foundation (2005). Copy supplied.

In 2004, I was interviewed for a report by the Legal Services Corporation entitled *Evaluation of the Maine State Justice Community Report.* I played no role in authoring the report, nor am I quoted in it. Copy supplied.

In my capacity as a member of the American Bar Association's Standing Committee on the Federal Judiciary between August 2007 and August 2010, I prepared written reports on the judicial candidates for whom I was assigned the role of lead investigator. Under Committee rules, these reports were distributed only to Committee members and were treated as highly confidential. Even after a potential or actual nominee is confirmed and appointed, or withdraws, only one copy of the report is maintained for future use by the Committee, in confidence, and only in the event the person evaluated is later nominated for the same or another Article III position.

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.

Nomination of Patrick Ende to be a Judge On Maine's District Court, Hearing before the Maine Legislature's Joint Standing Committee on the Judiciary (Aug. 18, 2010) (testimony in support of nomination). Audio recording supplied; my remarks begin about 46 minutes into the recording.

Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States, Hearing before the Committee on the Judiciary, United States Senate, 111th Congress (July 2, 2010) (testimony given as a member of the ABA's Standing Committee on the Judiciary). A recording of my brief oral testimony can be found at: http://www.c-spanvideo.org/program/294266-2 (at 03:37:30).

Statement of Kim J. Askew, Chair of the American Bar Association Standing Committee on the Federal Judiciary, Concerning the Nomination of the Honorable Elena Kagan to be Associate Justice of the Supreme Court of the United States, before the Committee on the Judiciary, United States Senate (July 1, 2010). I helped draft this statement, a copy of which is supplied.

Letter to Chairs, Maine Legislature's Joint Standing Committee on the Judiciary (Feb. 17, 2009) (supporting the re-appointment of Chief Justice Leigh Saufley). Copy supplied.

Biennial Budget 2008-2009, Hearing Before the Maine Legislature's Joint Standing Committee on Appropriations and Financial Affairs & Joint Standing Committee on Judiciary (Mar. 5, 2007) (supporting the judiciary's proposed budget). I have no notes, transcript or recording of my testimony.

Nomination of Hon. Leigh Saufley as Chief Justice of the Maine Supreme Judicial Court, Hearing Before the Maine Legislature's Joint Standing Committee on the Judiciary (Dec. 5, 2001) (testimony in support of nomination). I have no notes, transcript, or recording of my testimony.

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

May 5, 2011: Continuing Legal Education presentation with Peter J. Guffin on "Data Security Breach: Now What?" at a meeting of the Northeast Chapter of the Association of Corporate Counsel at Pierce Atwood LLP, in Portsmouth, New Hampshire. Copy of presentation slides supplied.

October 26, 2010: Introduction of Frank M. Coffin Lecturer Stephen H. Oleskey at the Portland Museum of Art Auditorium, sponsored by the University of Maine School of Law. Copy supplied.

September 25, 2010: Introduction of Speaker Joseph Olimpi of the Neighborhood Legal Services Association of Pittsburgh, Pennsylvania, at the Annual Meeting of the American College of Trial Lawyers in Boston, Massachusetts. I have no notes, transcript or recording. The address of the ACTL is 19900 MacArthur Boulevard, Suite 530, Irvine, California 92612.

August 5, 2010: Continuing Legal Education presentation on "Merchant Exposure in the Wake of Credit Card Data Theft" at a conference on Data Security and Management in Global Commerce sponsored by the Maine Center for Entrepreneurial Development. Copy of presentation slides supplied.

July 29, 2010: Emil Gumpert Award Presentation to the Neighborhood Legal Services Association of Pittsburgh, Pennsylvania, in Pittsburgh, Pennsylvania, on behalf of the American College of Trial Lawyers. I have no notes, transcript or recording, but press coverage is supplied. The address of the ACTL is 19900 MacArthur Boulevard, Suite 530, Irvine, California 92612.

June 12, 2010: Panelist, "The Challenges of Self-Represented Litigants" at the 2010 Northwest Regional Meeting of the American College of Trial Lawyers in Halifax, Nova Scotia, Canada. Copy of presentation slides supplied.

January 21, 2010: Acceptance Remarks delivered upon receipt of 2010 Howard H. Dana Award at the Annual Meeting of the Maine State Bar Association. Copy of remarks supplied.

October 20, 2009: Continuing Legal Education presentation, "Devising Procedural Strategies in ERISA Class Actions" at the American Conference Institute Conference on ERISA Litigation. Copy of accompanying materials supplied.

October 10, 2009: Introduction of Speaker Lynn Burns of Pro Bono Law Ontario, Toronto, Canada, at the Annual Meeting of the American College of Trial Lawyers in Washington, D.C. I have no notes, transcript or recording. The address of the ACTL is 19900 MacArthur Boulevard, Suite 530, Irvine, California 92612.

September 24, 2009: Emil Gumpert Award Presentation to Pro Bono Law Ontario of Toronto, Canada, at the reception following the Annual Opening Ceremony for the Provincial Courts in Ottawa, Canada, on behalf of the American College of Trial Lawyers. I have no notes, transcript or recording, but ACTL

coverage is supplied. The address of the ACTL is 19900 MacArthur Boulevard, Suite 530, Irvine, California 92612.

April 1, 2009: Classroom lecture on "Preparation for Bar Exam on Professional Responsibility," presented to third-year students of the University of Maine Law School. Copy of presentation slides supplied.

February 27, 2009: Eulogy for Charles Harvey at the Cathedral Church for Saint Luke, 143 State Street, Portland, Maine. Copy supplied.

March 8, 2008: Mock Debate on the proposition "Roger Clemens Should Be Barred for Life from Baseball's Hall Of Fame" at the Annual Meeting of the American College of Trial Lawyers in La Quinta, California. Copy of notes supplied.

October 11, 2006: Remarks for Opening Law Court Arguments at South Portland High School, South Portland, Maine. Copy of notes and press coverage supplied.

May 3, 2005: Presentation on "Make-Whole Relief Post-*Davila*" at the Law Conference on Health Insurance Plans: Bridging the Gap between Providers and Insurers. Copy of outline supplied.

October 22, 2004: Panelist, "The Vanishing Jury Trial" at the District of Maine Judicial Conference. I have no notes, transcript, or recording. The address for the U.S. District Court for the District of Maine is 156 Federal Street, Portland, Maine 0411.

April 23, 2001: Classroom lecture on "The Ins and Outs of Civil Litigation," presented at the University of Maine School of Law. Copy of presentation slides supplied.

October 20, 2000: Continuing Legal Education presentation on "Employment Discrimination Litigation Case Filing Data," at the 2000 Judicial Conference of the United States District Court for the District of Maine. Copy of presentation slides supplied.

May 1, 2000: Classroom lecture on "Civil Pretrial Practice," presented to third-year students at the University of Maine School of Law. Copy of annotated outline supplied.

April 13, 2000: Continuing Legal Education presentation on "The Aftermath of *Unum v. Ward*," at a meeting of the Defense Research Institute. Copy of presentation slides and outline supplied.

January 31, 2000: Classroom lecture on "Effective Appellate Advocacy," presented to first-year students at the University of Maine School of Law. Copy of outline and presentation slides supplied.

February 13, 1998: Panelist, "Jury Reform: Using Existing Rules to Improve the Quality of Information Given to Jurors," presented at the mid-winter meeting of the Committee on Corporate Counsel of the American Bar Association. Copy of outline supplied.

December 17, 1997: Continuing Legal Education presentation on "Don't Be Disabled by ERISA" at a Continuing Legal Education program sponsored by the Maine State Bar Association. Copy of outline supplied.

April 4, 1997: Panelist, "Use of Depositions at Trial" at the Maine State Bar Association Continuing Legal Education program. Copy of outline supplied.

1994: Presenter or panelist, "Recent Trends in Employment Litigation in the District of Maine," District of Maine Judicial Conference. I have no notes, transcript or recording. The address for the U.S. District Court for the District of Maine is 156 Federal Street, Portland, Maine 04101.

April 16, 1993: Presenter, "A Primer in Trademark Litigation for General Litigation Practitioners," Maine State Bar Association. Copy of handout supplied.

November 1, 1991: Presentation of observations gathered in defending law enforcement officials, at a conference on police misconduct litigation sponsored by the University of Maine School of Law and the Maine Civil Liberties Union. I have no notes, transcript or recording. The address of the University of Maine School of Law is 246 Deering Avenue, Portland, Maine 04102. The address of the MCLU is 121 Middle Street, Suite 301, Portland, Maine 04101.

It is possible that I participated in other events, none recent, that I have been unable to recall or identify through searches of personal and public records.

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.

Trevor Maxwell, *Portland Lawyer Leads Panel Reviewing Kagan*, Portland Press Herald (July 3, 2010) (reprinted in multiple outlets). Copy supplied.

Sheri Qualters, *No Quiet Retirement for Justice Souter*, National Law Journal (Apr. 19, 2010) (reprinted in multiple outlets). Copy supplied.

Trevor Maxwell, *Lawyers Told Volunteering To Help Poor More Critical*, Portland Press Herald (Jan. 22, 2010). I was interviewed for this article, but not quoted. Copy supplied.

Judy Harrison, *Judge, Lawmaker Frank Coffin Dies*, Bangor Daily News (Dec. 9, 2009). Copy supplied.

Trevor Maxwell, *He Was a National Treasure*, Portland Press Herald (Dec. 9, 2009). Copy supplied.

Trevor Maxwell, *Taking Measure of a Legal Giant*, Portland Press Herald (July 12, 2009). Copy supplied.

Trevor Maxwell, *A Lawyer Who Won Cases and Respect*, Portland Press Herald (Apr. 1, 2009). Copy supplied.

Trevor Maxwell, *Federal Judge Steps Down after 20 Years of Service*, Portland Press Herald (Mar. 31, 2008). Copy supplied.

Tess Nacelewicz, *Panel Backs City, Rejects Key Scotia Prince Claims*, Portland Press Herald (Sept. 22, 2007). Copy supplied.

Noel K. Gallagher, *Maine Lawyers Prove Their Worth in California Rate Case*, Portland Press Herald (Dec. 26, 2006). Copy supplied.

Press release, *Pierce Atwood LLP Wins Landmark Case Affecting Future Regulation of Nation's Electricity Industry*, Pierce Atwood LLP (Dec. 21, 2006). Copy supplied.

David Johnston, *Court Says U.S. Oversight of Power Industry Was Lax*, New York Times (Dec. 20, 2006). Copy supplied.

Interview by Jack Friedman and Barry Diskin for their article *Nuclear Waste Disposal: A Taxing Real Estate Issue*, Real Estate Issues (July 1, 2006). Although I was not directly quoted, a copy is supplied.

Taylor Smith, *The Supreme Experience*, Mainebiz.com (May 15, 2006). Copy supplied.

Tom Nugent, *Portland Fails to Fix Sea Terminal*, Boston Globe (Mar. 18, 2006). Copy supplied.

Jeff Montgomery, *BP Gas Terminal Dealt Setback*, The News Journal (Jan. 24, 2006). Copy supplied.

Guy Taylor, *Roberts Made His Mark Quietly, Early at Harvard*, The Washington Times (Sept. 2, 2005). Copy supplied.

Janny Scott, *Roberts's Roots as Conservative*, New York Times (Aug. 21, 2005) (quotes reprinted in multiple outlets). Copy supplied.

Peter Grier, *Roberts Blends Low-Key Style, High Ambition*, Christian Science Monitor (July 25, 2005). Copy supplied.

Richard Serrano, et al., *Roberts Was Ready at Every Turn*, Los Angeles Times (July 25, 2005). Copy supplied.

Nancy Gibbs, *Judging Mr. Right*, Time (July 24, 2005). Copy supplied.

Jeff Tuttle, *Maine Groups Divided on Roberts*, Bangor Daily News (July 21, 2005). Copy supplied.

Nina Easton and Kevin Cullen, *To Many, He Is a Quiet Conservative*, Boston Globe (July 21, 2005) (quote reprinted in multiple outlets). Copy supplied.

Todd S. Purdum et al., *Court Nominee's Life is Rooted in Faith and Respect for Law*, New York Times (July 21, 2005) (quotes reprinted in multiple outlets). Copy supplied.

Trevor Maxwell, *Portland Lawyer's Ties to Roberts Span Decades*, Portland Press Herald (July 21, 2005). Copy supplied.

Portland Lawyer Talks Up Supreme Court Nominee John Roberts, Associated Press (July 20, 2005). Copy supplied.

Taylor Smith, *Policing Lawyers*, Mainebiz.com (Nov. 22, 2004). Copy supplied.

Justin Ellis, *Berry Grower to Halt Aerial Spraying of Pesticides* (Oct. 5, 2004). Copy supplied.

Allison Bell, *Group Disability Insurers Fight for Flexibility*, National Underwriter Life & Health Financial Services (Aug. 9, 2004). Copy supplied.

Katherine Cassidy, *Final OK Given in Blueberry Settlement*, Bangor Daily News (June 26, 2004). Copy supplied.

Katherine Cassidy, *2 Blueberry Processors Opt to Settle*, Bangor Daily News (Feb. 13, 2004). Copy supplied.

Aurelia Scott, *Doing Well and Doing Good*, Maine Times (Dec. 2003). Copy supplied.

Barbara Walsh, *State Fails Again on Children's Services*, Portland Press Herald (Feb. 13, 2003) (reprinted in multiple outlets). Copy supplied.

Barbara Walsh, *Crying for Help, Seldom Heard*, Portland Press Herald (Aug. 18, 2002). Copy supplied.

Settlement Will Extend In-Home Care to Hundreds of Mentally Disabled Kids, Associated Press (May 9, 2002). Copy supplied.

Gregory Kesich, *State Agrees to Speed Home Care for Mentally Disabled Youths*, Portland Press Herald (May 9, 2002). Copy supplied.

Gregory Kesich, *Legal Fees: Nil. Satisfaction: Plenty*, Portland Press Herald (May 9, 2002). Copy supplied.

Tom Chard, *Full Circle: The Kayatta Sisters of Cape Elizabeth and a Powers from Waynflete Are Carrying on Rich Tennis Traditions*, Portland Press Herald (May 14, 2001). Copy supplied.

Multi-Million Dollar Contamination Lawsuit Settled for $35,000 in Maine, Insurance Times (Jan. 23, 2001). Copy supplied.

David Hench, *Lawyers Settle MTBE-Related Suit*, Portland Press Herald (Jan. 11, 2001). Copy supplied.

Peter Pochna, *Mental-Health Suit Survives Challenge*, Portland Press Herald (Oct. 14, 2000). Copy supplied.

State Asks for Dismissal of Lawsuit over Services to Children, Associated Press (July 20, 2000) (reprinted in multiple outlets). Copy supplied.

Peter Pochna, *State Attacks Suit Over Services for Troubled Children*, Portland Press Herald (July 20, 2000). Copy supplied.

Peter Pochna, *Suit Faults Mental Health Services*, Portland Press Herald (June 13, 2000) (reprinted in multiple outlets). Copy supplied.

Joshua Weinstein, *MCLU Drops Maine Med Suit*, Portland Press Herald (Apr. 12, 2000) (reprinted in multiple outlets). Copy supplied.

Dieter Bradbury, *Judge Rules against MTBE Class-Action Suit*, Portland Press Herald (Mar. 4, 2000). Copy supplied.

Michelle Emery, *Judge Rejects Class-Action Status for MTBE Lawsuit*, Associated Press (Mar. 3, 2000) (quotes reprinted in multiple outlets). Copy supplied.

Chris Santella, *Instant Gratification in Courtrooms*, Law Technology News (Dec. 1999). Copy supplied.

Clarke Canfield, *Judge Dismisses Suits Filed over Biweekly Wages*, Portland Press Herald (Nov. 19, 1999) (quotes reprinted in multiple outlets). Copy supplied.

Judge Removes Defendants from MTBE Lawsuit, Associated Press (Sept. 1, 1999) (reprinted in multiple outlets). Copy supplied.

Michelle Emery, *MTBE Not Gone, Not Forgotten, After Change to New Gas*, Associated Press (July 16, 1999) (reprinted in multiple outlets). Copy supplied.

Kathleen Burge, *Vermont Ski Area Embroiled in Discrimination Suit*, Boston Globe (Apr. 25, 1999). Copy supplied.

Micmac-Killington Discrimination Trial Begins, Associated Press (Apr. 13, 1999). Copy supplied.

Jason Wolfe, *Lawyer Cites Conflict in Court's Decision*, Portland Press Herald (Aug. 31, 1996). Copy supplied.

Jerry Harkavy, *Maine Court Throws Out Judgment against Chubb Life*, Journal of Commerce (Aug. 15, 1996) (reprinted in multiple outlets). Copy supplied.

Peter Pochna, *Judge Throws Out Part of Suit against Maine Yankee*, Portland Press Herald (May 3, 1996). Copy supplied.

David Sharp, *Students Exposed to Gas Sue Maine Yankee*, Bangor Daily News (Nov. 10, 1995). Copy supplied.

Peter Pochna, *Students Sue over Radiation Exposure*, Portland Press Herald (Nov. 10, 1995). Copy supplied.

Scott Rosenberg, *Law Students Begin New Winter Term*, The Crimson (Jan. 8, 1979). Copy supplied.

On several occasions, none recent, I was interviewed by local radio or broadcast television reporters in connection with events that were most likely the subject of print media coverage. I have no memory or record of the subject matter or of the dates, nor any means of acquiring a tape or transcript. It is also likely that I have

spoken with a print reporter on other occasions concerning which I have no memory or record.

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 by the United States Supreme Court to serve as Special Master in *Kansas v. Nebraska and Colorado*, No. 126 Orig. (U.S.), on April 4, 2011, and I continue to hold that position.

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

I am presiding over a single case in my role as Special Master, which has yet to go to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0% [total 100%]
civil proceedings:	0%
criminal proceedings:	0% [total 100%]

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

I have issued no opinions. All procedural orders can be found at http://www.pierceatwood.com/KansasversusNebraskaandColorado126Original.

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 (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Kansas v. Nebraska and Colorado*, No. 126 Orig. (U.S. filed May 3, 2010)

This case is an original action on the docket of the United States Supreme Court. By Order dated April 4, 2011, the Court appointed me as Special Master "to fix the time and conditions for the filing of additional pleadings, to direct subsequent proceedings, to summon witnesses, to issue subpoenas, and to take such evidence as may be introduced ...." I am further directed to submit reports to the full Court as I may deem appropriate. The parties' dispute arises under the Republican River Compact, as enacted by Congress. 57 Stat. 86 (1943). The subject of the

dispute concerns the parties' respective use of groundwater and implementation of a prior settlement agreement resolving a prior original action. The action is pending.

Kansas's lead counsel:	John B. Draper Montgomery & Andrews, PA PO Box 2307 Santa Fe, New Mexico 87504 (505) 982-3873
Nebraska's lead counsel:	Justin D. Lavene Assistant Attorney General Office of the Attorney General 2115 State Capitol Building PO Box 98920 Lincoln, Nebraska 68509 (402) 471-2682
Colorado's lead counsel:	Peter J. Ampe First Assistant Attorney General Federal & Interstate Water Unit Natural Resources and Environment Section Office of the Attorney General State of Colorado 1525 Sherman Street, 7th Floor Denver, Colorado 80203 (303) 866-5032
United States' lead counsel:	James J. DuBois U.S. Department of Justice Environment and Natural Resources Division Natural Resources Section 999 18th Street South Terrace, Suite 370 Denver, Colorado 80202 (303) 844-1375

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.

There are no opinions.

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

There are no 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.

There are none.

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.

There are none.

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.

There are none.

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

There are none.

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

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

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

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

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

The issue of recusal has never arisen in the single matter over which I am presiding. Before accepting appointment by the Court, I conducted the conflict search and analysis as instructed by the Clerk of the Court.

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.

Member (1985 – 1990), and Chair (1988 – 1990), Maine Board of Bar Examiners; appointed by Maine's Governor.

Member (1995 – 2002), and Chair (2002), of the Professional Ethics Commission of the Maine Board of Overseers of the Bar; appointed by Order of Maine's Supreme Judicial Court.

Chair (2007), United States Magistrate Judge Merit Selection Committee for the District of Maine; appointed by the Chief Judge for the District of Maine.

Member (2008 – present), Advisory Committee on Rules of Civil Procedure; appointed by Order of Maine's Supreme Judicial Court.

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.

1982: O'Leary for Congress Campaign. John J. O'Leary was a friend and colleague at my law firm who ran for the Democratic nomination to the U.S. House of Representatives from Maine's First Congressional District. I had no title. I was a volunteer actively involved in most aspects of the unsuccessful campaign.

1990: Brennan for Governor Campaign. Joseph Brennan was a sitting U.S. Congressman and former Governor who ran again for Governor in 1990. I had no title. I was briefly involved with this ultimately unsuccessful campaign in providing advice on whether and how one might combine Maine's district and superior courts.

1994: Diamond for Congress. I attended a meeting to discuss campaign strategy for G. William Diamond, an unsuccessful candidate for the Democratic Nomination to the U.S. House of Representatives from Maine's First Congressional District. I had no title.

2007: Cote for Congress. I attended an organizing meeting for an ultimately unsuccessful primary campaign by Adam Cote for the Democratic nomination to the U.S. House of Representatives from Maine's First Congressional District. I had no title, nor any further involvement after June of 2007.

2007: Obama for President. I attended an organizing meeting for a Maine state committee supporting Barack Obama in the Democratic primary campaign. I had no title, nor any involvement after June of 2007.

1998 – 2008: Anne Swift-Kayatta for Town Council. I supported and counseled my wife when she successfully ran in non-partisan campaigns for the Cape Elizabeth, Maine, Town Council. I had no title.

I may have been listed on a "host committee" for one of U.S. Representative Thomas Allen's campaign fundraisers for Congress between 1996 and 2007, but I have no record of it.

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

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

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

I served as law clerk to Chief Judge Frank M. Coffin, United States Court of Appeals for the First Circuit, from 1979 to 1980.

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.

Summer 1979
Cravath, Swaine & Moore LLP
825 Eighth Avenue

New York, New York 10019
Summer Associate

1980 – present
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101
Partner (1986 – present)
Associate (1980 – 1985)

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 an arbitrator.

I served as a mediator in *Morse, Payson & Noyes v. Wyman*, Dkt. No. CV-98-665 (Me. Super. Ct.), Dec. 16, 1999. At the request of counsel for the parties, I mediated this dispute arising out of the movement of an employee from one insurance broker to another. The mediation lasted one-half day, and did not result in an immediate settlement.

b. Describe:

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

After completing my clerkship, I began private practice in September 1980 at Pierce Atwood in Portland, Maine, where I have remained. As an associate, and then as a partner beginning in 1986, I worked on a mix of trial court and appellate matters, the size and complexity of which have increased over the years.

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

In civil litigation and dispute resolution, I have usually represented relatively large companies, but also smaller companies and individuals. I have also represented numerous law firms, municipal and state governmental agencies, and non-profit organizations. Working from a small city in a small state, my work has involved a wide and ever-changing range of subject matters, including energy regulations and contracts, ERISA, antitrust, construction, banking, and class actions. I have argued approximately 37 appeals, yet tried enough cases to become a Fellow and Regent in the American College of Trial Lawyers. I have

appeared in small claims court, the United States Supreme Court, and essentially all levels of courts in between. In addition to my paying work, a substantial minority of my time each year is devoted to unpaid work for legal aid organizations, their clients, or organizations supporting the administration of justice and our court system.

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.

With the exception of the occasional arbitration matter, the entirety of my practice has been in litigation. I appeared frequently in courts throughout my career, on motion practice, in hearings, in trial, and on appeal.

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: 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.

24 such cases: 12 as sole counsel, 7 as chief counsel, 3 as co-counsel, and 2 as associate counsel.

i. What percentage of these trials were:
   1. jury: 58%
   2. non-jury: 42%

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

I have argued two cases before the Supreme Court of the United States:

UNUM Life Insurance Co. of America v. Ward, 119 S. Ct. 1380 (1999), 119 S. Ct. 334 (1999). Copy of Petitioner's Reply Brief and Supplemental Brief (I did not author the main brief) and the oral argument transcript are supplied.

S.D. Warren Co. v. Maine Board of Environmental Protection, 547 U.S. 370 (2006). Copy of briefs and the oral argument transcript are supplied.

I have in addition filed merits briefs with the Court in the following other actions:

Morgan Stanley Cap. v. Pub. Util. Dist. No. 1, 554 U.S. 527 (2008). Copy supplied.

Yates v. Hendon, 541 U.S. 1 (2004) (on behalf of UnumProvident Corporation as amicus). Copy supplied.

Black & Decker Disability Plan v. Nord, 538 U.S. 822 (2003) (on behalf of American Council of Life Insurers as amicus). Copy supplied.

Finally, I have authorized and filed as counsel of record, or otherwise appeared on, briefs seeking or opposing grants of certiorari in the following cases:

Sempra Generation v. Public Util. Comm'n of the State of California, 129 S. Ct. 445 (2007). Copy supplied.

Patrick v. Unum Life Ins. Co. of America, 122 S. Ct. 2619 (2002). Copy supplied.

Nelson v. Unum Life Ins. Co. of America, Inc., 120 S. Ct. 1998 (2000). Copy supplied.

Unum Corp. and Unum Life Ins. Co. of America v. United States, 119 S. Ct. 42 (1998). Copy supplied

Colford v. Chubb Life Ins. Co. of America, 117 S. Ct. 2433 (1997). Copy supplied.

Hannaford Bros. Co. v. Ciampi, 117 S. Ct. 685 (1996). 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. *S.D. Warren Co. v. Maine Bd. of Envir. Prot.*, 547 U.S. 370 (2006). The issue in this case was whether water run through turbines in a dam may result in a "discharge into … navigable waters" under section 401 of the Clean Water Act. If so, then state environmental authorities may impose conditions upon FERC's re-licensing of the dam. Maine's highest court ruled that the dam results in a "discharge into" the river because the water loses its character as waters of the United States when diverted into the dam, and is then added back into (or "discharged into") U.S. waters when exiting the dam. After other lawyers in my firm who handled the state administrative and court proceeding successfully secured a grant of certiorari, I took the lead on briefing and arguing the case to the Supreme Court. In an opinion authored by Justice Souter, the Court unanimously rejected the rationale adopted by Maine's highest court but affirmed on an alternative rationale.

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2. *UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999). This was an action in which an insured beneficiary under an ERISA welfare benefit plan sought benefits after failing to provide the timely notice of claim to the plan fiduciary, Unum, as required under the plan. The Ninth Circuit ruled that Unum could not deny the claim due to late notice for two possible reasons: (1) California common law rendered such clauses unenforceable absent a showing that the lateness of the notice caused prejudice; and (2) under California common law, notice delivered to the employer sufficed because the employer that established the benefit plan could be deemed to be an agent of the plan fiduciary

insuring the plan. The Supreme Court granted certiorari on two questions: Was application of California's "notice-prejudice" rule to an ERISA plan preempted by ERISA; and was application of California common law deeming the employer to be an agent of the fiduciary-insurer preempted by ERISA? In a unanimous opinion written by Justice Ginsburg, the Court affirmed the Ninth Circuit on the first issue (holding that the notice-prejudice rule is not preempted) and reversed the Ninth Circuit on the second issue (holding that California common law deeming the employer to be an agent for purposes of receiving notice is preempted). I was retained by Unum after the opening briefs were filed, I assisted prior lead counsel in drafting the reply brief and I argued the case to the Supreme Court.

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3. *Public Util. Comm'n of California v. F.E.R.C.*, 474 F.3d 587 (9th Cir. 2006), vacated and remanded, *Sempra Generation v. Public Util. Comm'n of California*, 128 S. Ct. 2993 (U.S. June 27, 2008) and *Dynegy Power Marketing, Inc. v. Public Util. Comm'n of California*, 128 S. Ct. 2993 (U.S. June 27, 2008); and remanded, *Public Util. Comm'n of California v. F.E.R.C.*, 550 F.3d 767 (9th Cir. 2008). This action arose out of the western energy crisis of 2000 to 2001, during which an agency of the State of California signed approximately $43 billion worth of long term contracts for the purchase of electricity in the midst of price spikes that wiped out the ability of investor-owned utilities to purchase and supply electricity throughout California. The California Electricity Oversight Board and the California Public Utilities Commissions filed complaints on behalf of California consumers and rate payers with the Federal Energy Regulatory Commission seeking to have contracts with 24 counter-party suppliers vacated or modified as unjust and unreasonable. The California agencies retained my firm to prosecute

the actions. I served as lead trial counsel in the FERC proceedings, which resulted in a 2-1 decision by the Commission rejecting the complaints. I then argued the appeal to the Ninth Circuit Court of Appeals, which reversed the Commission. The panel decision was authored by Judge Marcia Berzon, and joined in by Judges Browning and Pregerson. The U.S. Supreme Court vacated the Ninth Circuit decision for remand and reconsideration in light of its 2008 decision in *Morgan Stanley Cap. Group Inc. v. Pub. Util. District No. 1*, 554 U.S. 527 (2008). The Ninth Circuit then remanded the action to FERC for further proceedings in accord with the Supreme Court's *Morgan Stanley* decision. Our clients thereafter settled the few remaining claims that had not previously been settled over the course of these proceedings.

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4. *In re New Motor Vehicle Canadian Export Antitrust Litigation*, 522 F.3d 6 (1st Cir. 2008). Plaintiffs in this action commenced one nationwide class action under the federal antitrust law and 23 state class actions under the antitrust laws of 23 states against the world's largest motor vehicle manufacturers, alleging a conspiracy to tighten restraints on the import into the United States of vehicles sold in Canada at lower prices. The actions were consolidated into a single multi-district proceeding. After the trial court certified the various class actions under Federal Rule of Civil Procedure 23 and one defendant (Toyota) entered into a settlement agreement, the principal remaining defendants (General Motors, Ford, Honda, Nissan and my clients Chrysler and Mercedes) engaged me to present collectively on their behalf the principal argument on the appeal of the certification ruling. The First Circuit vacated the certification ruling, remanding for further proceedings in the trial court. Chief Judge Lynch authored the Court's opinion, in which Judge Torruella and Senior Judge Selya joined. On remand, I argued in opposition to a renewed motion for class certification and in support of a motion for summary judgment, the latter of which the district court granted, terminating the action save for proceedings concerning the class-wide settlement negotiated by Toyota before the First Circuit's ruling. The district court opinion, by Judge D. Brock Hornby, is published at 632 F. Supp. 2d 42.

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5. *Risinger v. Concannon*, 201 F.R.D. 16 (D. Me. 2001) (certifying class) and 117 F. Supp. 2d 61 (D. Me. 2000) (denying motion to dismiss). At the request of the Maine Equal Justice Project and the Disability Rights Center of Maine, I agreed to serve pro bono as lead counsel in bringing and litigating this action on behalf of two children who were denied in-home mental health services under Medicaid. The Court (Carter, J.) denied the State's motion to dismiss. After further discovery and contested motions, the Court granted our motion to certify a state-wide class of approximately 500-800 children. After further discovery, the State agreed to provide the programmatic and procedural changes sought in the action, and the case was settled with a Consent Order. We then monitored and enforced the Order for an additional period of several years until full compliance was confirmed by an agreed-upon audit process.

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Hon. Patrick F. Ende
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Margaret M. O'Keefe
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Opposing Counsel: Paul Stern
Nancy M. Macirowski
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6. *Bachelder v. Communications Satellite Corp.*, 837 F.2d 519 (1st Cir. 1988). I represented the defendant in this ERISA class action as lead counsel in the district court and on appeal, which I argued. The district court (Carter, J.) entered judgment for a certified national class, holding that cash distributions from an employee stock ownership plan should have been made in accord with the terms of a summary plan description, rather than the less favorable terms of the actual ERISA plan. On appeal, the First Circuit reversed, ordering the entry of judgment for defendant, because no class member relied or could have relied to his or her detriment on the summary plan description. Judge Torruella wrote the Court's opinion, in which Judges Campbell and Bryer joined.

Opposing Counsel: Robert Edmond Mittel
MittelAsen, LLC
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7. *Board of Overseers of the Bar v. Warren*, 2011 ME 124, ___A.3d ___. In the wake of the discovery that a senior partner had stolen hundreds of thousands of dollars of client funds, Maine's second largest law firm retained me to represent and counsel the firm on a broad array of issues. The portion of this particular action that I handled arose when the firm's recently departed general counsel sought to turn over his internal investigative files to bar counsel, who served a subpoena to facilitate the production. After a single justice of Maine's highest court denied a motion to quash the subpoena, the full court vacated the ruling, remanding for a full hearing and further proceedings before the single justice. *In re Motion to Quash Bar Counsel Subpoena*, 2009 ME 104, 982 A.2d 330. After

further proceedings and a two-day hearing, the single justice granted the motion to quash, and the full court thereafter affirmed.

Opposing Counsel: J. Scott Davis
Bar Counsel
Maine Board of Overseers of the Bar
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Augusta, Maine 04332
(207) 623-1121

8. *Federal Ins. Co. v. Maine Yankee Atomic Power Co.*, 183 F. Supp.2d 76 (D. Me. 2001). A surety, Federal Insurance Company, supplied the performance and payment bonds for the general contractor performing the decommissioning of a commercial nuclear power plant. In a decision of first impression arising out of a declaratory action by Federal against the plant owner, which I represented as lead counsel, the court (Hornby, J.) held that the owner may recover on an equitable subrogation theory under the payment bond the amounts the owner paid to the subcontractors and suppliers who were covered by the bond. The action ultimately settled for the payment of $44 million under the performance and payment bonds collectively.

Opposing Counsel: Gerald F. Petruccelli
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Stephen A. Stallings
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9. *Diversified Foods v. First Nat. Bank of Boston*, 985 F.2d 27 (1st Cir. 1993). This action was one of several attempts by a defunct borrower to recover $60 million from its lender on various so-called lender liability theories. I represented the defendant bank in the trial court and on appeal in this action brought under the Bank Holding Company Act, 12 U.S.C. § 1972. The action was related to a companion case brought in state court in which I also represented the defendant bank. *Diversified Foods, Inc. v. First Nat. Bank*, 605 A.2d 609 (Me. 1992). In an opinion written by Judge Boudin, with whom Circuit Judge Torruella and District Judge Keeton (sitting by designation) joined, the First Circuit affirmed the judgment below dismissing the complaint, concluding that doctrines of merger and bar precluded this companion federal action because federal court jurisdiction under the Bank Holding Company Act was not exclusive.

Opposing Counsel: Richard E. Poulos (since deceased)

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10. *In re Stone & Webster, Inc.*, 279 B.R. 748 (Del. 2008). This was an adversary proceeding in bankruptcy court brought by Maine Yankee Atomic Power Co. against the terminated general contractor charged with decommissioning Maine Yankee's nuclear power plant. I was lead trial counsel for Maine Yankee. After trial, the Court (McKelvie, J.) rejected the contractor's claims and determined that Maine Yankee was entitled to recover total damages from the contractor and its surety in the amount of $64.8 million.

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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.)

Other than litigating cases, the principal legal activities in which I have engaged all focus on increasing access to legal services and our courts for disadvantaged persons, or improving the quality of the administration of justice. Initially, my efforts consisted of handling individual pro bono cases on referral from the Maine Volunteer Lawyers Project. Subsequently, I also became actively involved in the leadership of a series of organizations devoted to one or both of these activities. Those organized efforts in which I took a leadership role include the following:

Legal Services Response Team, Co-chair. First Circuit Judge Frank Coffin appointed me co-chair of this organization that coordinated the involvement of the judiciary and the private bar with efforts of Maine's legal aid providers.

Maine Bar Foundation. I served as a board member, officer, and eventually President of this Foundation, the charitable arm of the Maine Bar Association. No longer a board member, I continue to provide pro bono legal advice and services to the Foundation on a recurring basis.

Campaign for Justice. In 2006 I chaired the joint fundraising campaign of the principal non-profit providers of legal aid services to disadvantaged Maine citizens, raising approximately $382,000 annually (an amount that placed Maine lawyers second in the country on a per capita basis).

American College of Trial Lawyers. As Chair of the College's committee that gives an annual $50,000 award and recognition to programs that further access to justice, as vice-chair of the College's Ad Hoc Committee on Federal Judicial Compensation, and now as a Regent of the College, I have worked with other Fellows around the country on a series of projects and white papers aimed at improving the administration of justice.

I have never registered as a lobbyist, or been paid for any lobbying services. When I was co-chair of the Legal Services Response Team, and while I was on the Board of the Maine Bar Foundation, lawyers working with the respective organizations communicated with Maine state legislators on subjects of court funding and access to courts. While I have been a Fellow of the American College of Trial Lawyers, the College has communicated with members of Congress on matters concerning our courts, including judicial compensation and proposed rules of evidence and procedure.

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, although I served as an instructor in 2007 at Harvard Law School's Trial Advocacy Program for law students. I have no writings or syllabus concerning that instruction.

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

    Upon retirement and age qualification, I will be entitled to receive pension payments from the defined pension benefit plan established by Pierce Atwood LLP. I will also be entitled to be paid back certain partnership notes and to receive payouts under the buyout provisions of the partnership agreement. The timing and amounts of these payments are reflected in 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.

    If I am confirmed, then with the consent of the Supreme Court and the Chief Judge of the Circuit, I would expect to continue serving as Special Master in *Kansas v. Nebraska and Colorado* if the action is not yet completed at the time I join the Court. I would not receive compensation for the 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.

       Family members: My older daughter practices law in Boston as an associate at the firm of Robinson & Cole LLP. My younger daughter is a third year law student at Boston College School of Law. I would expect to recuse myself from any case in which either of them has any involvement or interest of any type, and

to follow established Circuit practice consistent with applicable canons of conduct regarding any cases in which their firms, but not either of my daughters, are involved.

Firm and clients: For some yet to be determined period of time (at least until after receipt of any payments to me from the firm or for which it could be liable) I would expect to recuse myself from all matters in which a lawyer associated with Pierce Atwood appears. I would also recuse myself from any case on which I worked myself, as well as any case where, due to a current or past professional or personal relationship with a party, witness, or attorney, my impartiality might reasonably be questioned.

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

I would handle all matters involving actual or potential conflicts of interest in accordance with the Code of Conduct for United States Judges and any other relevant canons or 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.

On average for the past 15 years I have devoted approximately 10% or more of my work hours to unpaid work aimed at providing access to justice for disadvantaged persons and improving the administration of justice. This work has included both individual representations through the Maine Volunteer Lawyers Project, and group representations such as *Risinger v. Concannon*, 201 F.R.D. 16 (D. Me. 2001) (pro bono representation of a class of mentally and emotionally disabled Maine children). Additionally, as president of the Maine Bar Foundation, as chair of the Campaign for Justice, as a regent of the American College of Trial Lawyers, and as the court-appointed chair of several committees and organizations, I have led and participated in efforts targeted at either improving the efficacy and efficiency of the delivery of legal services to disadvantaged Maine citizens or improving more generally the administration of justice through our state and federal courts. My efforts have been recognized by the Disability Rights Center of Maine, by the Maine Equal Justice Project, by the Maine Children's Alliance and most notably by my receipt of the Maine Bar Foundation's Howard H. Dana Award in 2010.

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 April 8, 2011, U.S. Representatives Chellie Pingree and Michael Michaud announced formation of a nine member screening panel to assist and advise them as they prepared to make recommendations to President Obama on the appointment of the next judge for the U.S. Court of Appeals for the First Circuit. Because of my prior service on the ABA's Standing Committee on the Federal Judiciary, I did not apply. The Standing Committee rules provide that members "agree[] not to seek or accept a federal judicial nomination while serving on the Committee and for at least one year thereafter." Backgrounder at 2 (2009).

After the application deadline had passed, I received a call from several people, including the chair of the Pingree-Michaud screening panel, inquiring why I had not applied. When I explained why, the chair asked that I write to the congressional representatives' staff, explaining why I had not applied and whether I would likely apply in the future if the position were still open. I did so.

I next received a call from a member of Representative Pingree's staff, who asked if I could speak to the screening panel if invited. I declined. She then asked if she could ask the ABA whether I could accept a sua sponte invitation to meet with the panel. I demurred, and then called Kim Askew, who was Chair of the Standing Committee on the Federal Judiciary during my last year on the committee, and Ben Hill, the incumbent chair of the Standing Committee on the Federal Judiciary. I explained the invitation to each of them, separately, and supplied to each a copy of my letter explaining why I had not applied. Ms. Askew and Mr. Hill each confirmed that I could accept an invitation to meet with the screening panel as long as I informed the entire panel of my status, as explained in my letter. I confirmed for Mr. Hill, as well, that I had done no work for the Standing Committee since my term expired, and that, while on the Standing Committee, I had not evaluated any potential nominee from Maine.

I thereupon met with the Pingree-Michaud screening panel on May 16, 2011. On May 27, 2011, I was notified by Congressional staff that Representatives Pingree and Michaud were recommending me and one other person to the President.

On September 2, 2011, I was called by the White House Counsel's Office to discuss the Circuit Court vacancy. Since October 28, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 1, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On January 23, 2012, 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
Kayatta, William J.	First Circuit	1/23/2012
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 1/23/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2011 to 12/31/2011
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.	
Pierce Atwood LLP Merrills Wharf 254 Commercial Street Portland, ME 04101	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	Pierce Atwood LLP
2.	Board Member	Pericles Foundation
3.	Regent	American College of Trial Lawyers
4.	Member	University of Maine Board of Visitors
5.	Co-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 9	Name of Person Reporting Kayatta, William J.	Date of Report 1/23/2012

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	Pierce Atwood LLP (Partnership income)(close estimate; K-1 not yet available)	$870,000.00
2. 2010	Pierce Atwood LLP (Partnership income)(per K-1 and 1040, line 17)	$905,412.00
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
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 Kayatta, William J.	Date of Report 1/23/2012

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 Kayatta, William J.	Date of Report 1/23/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. Brokerage Account #1					Exempt				
2. - iShares Russell 1000 Gr. Index	B	Dividend	M	T					
3. -iShares Russell 1000 Value Index	B	Dividend	M	T					
4. - iShares Russell 2000 Gr.. Index	A	Dividend	M	T					
5. - iShares MSCI Japan Index	A	Dividend	K	T					
6. - iShares Russell 2000 Index	B	Dividend	K	T					
7. - Vanguard Energy ETF	A	Dividend	K	T					
8. - Vanguard Inform.Tech. ETF	A	Dividend	J	T					
9. - iShares NASDAQ Biotech. Index	A	Dividend	J	T					
10. - John Hancock Tax-Advant. Div. Income Fund	D	Dividend	J	T					
11. - Fidelity Advisors New Insights Fund		None	M	T					
12. - Invesco Van Kampen Senior Income Trust	D	Dividend	L	T					
13. - Oppenheimer Intern. Bond Fund	B	Dividend	L	T					
14. - Ivy Asset Strategy Fund	A	Dividend	L	T					
15. - MFS Intern. Value Fund	A	Dividend	L	T					
16. - BlackRock Global Small Cap Fund	A	Dividend	K	T					
17. - Invesco Van Kampen Comstock 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
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

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 9	Name of Person Reporting Kayatta, William J.	Date of Report 1/23/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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. - BlackRock Basic Value Fund	A	Dividend	K	T					
19. - Alger Mid Cap Growth Fund		None	K	T					
20. -Wells Fargo 7.5% Perp. Conv. Pfd.	D	Dividend	M	T					
21. - Wells Fargo & Co. New SERJ 8% PEPP	D	Dividend	M	T					
22. -JP Morgan Chase Common	A	Dividend							
23. -General Electric Common	A	Dividend							
24. -Duke Energy Corp New Common	A	Dividend							
25. -Merrill Lynch Bank Deposit Program	A	Interest	N	T					
26. - BIF Money Fund	A	Interest	K	T					
27. 401(k) Account #1									
28. -CurrencyShares Jap. Yen Trust		None	K	T					
29. -iShares Gold Trust ETF		None	L	T					
30. -iShares Tr. G. Investop	A	Dividend	K	T					
31. -iShares MSCI Hong Kong Index Fund	B	Dividend	L	T					
32. -iShares Barlays 7-10 Yr. Treas. Bond Fund	A	Int./Div.	K	T					
33. -iShares Barclays TIPS Bond Fund	D	Int./Div.	M	T					
34. -PIMCO Enh. Short Term Maturity Strat. Fund	A	Dividend	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 9

Name of Person Reporting	Date of Report
Kayatta, William J.	1/23/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
35. -PIMCO 15+ Yr. U.S. TIPS Index Fund	B	Dividend	K	T					
36. -PowerShares DB Commod. Index Tracking Fund		None	L	T					
37. -PowerShares QQQ Trust, Series 1	A	Dividend	K	T					
38. -SPDR Gold Trust ETF		None	L	T					
39. -Wisdom Tree Asia Local Debt	B	Int./Div.	K	T					
40. -Vanguard Dividend Appreciation ETF	B	Dividend	M	T					
41. -Vanguard MSCI EAFA ETF	B	Dividend	K	T					
42. -Vanguard MSCI Emerging Markets ETF	B	Dividend	K	T					
43. -Vanguard REIT ETF	C	Dividend	M	T					
44. -Vanguard Total Stock Market ETF	C	Dividend	M	T					
45. -Vanguard Bond Index Fund	D	Int./Div.	M	T					
46. -SPDR S&P 500	A	Dividend							
47. -Wisdom Tree Emeging Market Local Debt Fund	B	Dividend							
48. -Schwab Sweep Account	A	Interest	L	T					
49. Pierce Atwood Capital Contribution Notes	E	Interest	O	U					
50. Key Bank IRA (CD)	A	Interest	J	T					
51. Bank of America Deposit Account	A	Interest	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $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 9	Name of Person Reporting Kayatta, William J.	Date of Report 1/23/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
52. Trust #1									
53. -Fidelity Growth Company	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 8 of 9	Name of Person Reporting Kayatta, William J.	Date of Report 1/23/2012

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

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Kayatta, William J.	Date of Report 1/23/2012

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		313	121	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	2	817	002	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		132	000
Real estate owned – personal residence		950	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		225	000				
Cash value-life insurance							
Other assets itemize:							
Certificate of Deposit (IRA)		2	695				
Pierce Atwood Capital Contribution Notes		517	833				
				Total liabilities		132	000
				Net Worth	4	693	651
Total Assets	4	825	651	Total liabilities and net worth	4	825	651
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	
iShares Russell 1000 Growth Index	$213,920
iShares Russell 1000 Value Index	146,912
iShares Russell 2000 Growth Index	23,184
iShares MSCI Japan Index	16,781
iShares Russell 2000 Index	17,569
Vanguard Energy ETF	10,117
Vanguard Information Technology ETF	9,782
iShares NASDAQ Biotechnology Index	11,235
John Hancock Tax-Advantage Dividend Income Fund	105,300
Fidelity Advisor New Insights Fund	83,536
Invesco Van Kampen Senior Income Trust	93,347
Oppenheimer International Bond Fund	74,891
Ivy Asset Strategy Fund	57,607
MFS International Value Fund	32,064
BlackRock Global SmallCap Fund	27,390
Invesco Van Kampen Comstock Fund	22,519
BlackRock Basic Value Fund	17,558
Alger Mid Cap Growth Fund	11,815
Wells Fargo 7.5% Perp. Conv. Pfd.	109,000
Wells Fargo & Co New SERJ 8% PEPP	116,240
BIF Money Fund	43,260
CurrencyShares Japanese Yen Trust	44,235
iShares Gold Trust ETF	71,009
iShares Tr. G. Investop	45,411
iShares MSCI Hong Kong Index Fund	91,422
iShares Barclays 7-10 Year Treasury Bond Fund	43,763
iShares Barclays TIPS Bond Fund	197,331
PIMCO Enhanced Short Maturity Strategy Fund	43,325
PIMCO 15+ Year U.S. TIPS Index Fund	45,308
PowerShares DB Commodity Index Tracking Fund	56,559
PowerShares QQQ Trust, Series 1	47,646
SPDR Gold Trust ETF	78,906
Wisdom Tree Asia Local Debt	45,134
Vanguard Dividend Appreciation ETF	117,737
Vanguard MSCI EAFE ETF	46,095
Vanguard MSCI Emerging Markets ETF	49,550
Vanguard REIT ETF	102,246
Vanguard Total Stock Market ETF	205,361
Vanguard Bond Index Fund	191,017
Schwab Sweep Account	50,930
Total Listed Securities	$2,817,002

Pierce Atwood LLP Partnership Agreement
Should I separate from my law firm, my Partnership Agreement entitles me to receive an amount equal to the average of my three highest annual partnership draws through December 31, 2008, which amount may be paid out without interest in quarterly installments over as long as 10 years, unless a lump sum distribution is reasonably necessary to avoid violation of a federal, state, local or foreign ethics or conflict of interest rule, and is consistent with section 409A of the Internal Revenue Code and regulations issued thereunder. I will also be entitled to receive upon withdrawal any unpaid portion of my 2011 share, and any amounts due for 2012.

Pierce Atwood LLP Defined Benefit Pension Plan
Under the now frozen qualified Defined Benefit Pension Plan established by Pierce Atwood LLP, under which there is no further vesting, I will receive pension payments upon reaching retirement age, unless the plan is terminated before then, in which case I will receive an annuity.

AFFIDAVIT

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

1-24-12 (DATE)

(NAME)

Denise M Plourde (NOTARY)

DENISE M. PLOURDE
Notary Public, Maine
My Commission Expires April 1, 2014

Senator KLOBUCHAR. I want to bring the next group up, if you could all come up, please. You want to keep standing there. Very good. Will you please raise your right hand and stand to be sworn?

[Nominees sworn.]

Senator KLOBUCHAR. Thank you very much. That oath went a little more smoothly. I did not make it up that time.

We will start. We are looking forward to having you introduce the people that are here with you. We will start with Judge Fowlkes. You had good recommendations from both of your Senators, Senator Lamar Alexander and Senator Corker, and we welcome you today.

STATEMENT OF JOHN THOMAS FOWLKES, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE

Mr. FOWLKES. Good afternoon, Senator. Thank you. And the other Senators, thank you for being here and giving us the opportunity to speak before you. It is truly an honor to be here.

Special thanks to the Senators who gave some very kind words for me. Of course, they had to leave. Also, Representative Steve Cohen who submitted my name in the first place. Of course, a special thanks to the President for nominating me.

I have with me, as was said, several family members. Of course, my wife of 40 years, Michelle, is with me today, just sitting just behind me.

Senator KLOBUCHAR. I see her.

Mr. FOWLKES. My father is also with me, John Thomas Fowlkes, Sr. He's sitting just behind my wife. He's here from Raleigh, North Carolina, along with my two sisters who are here, Alisa Washington and Deidre Taylor.

I have also here cousins, Edward Montgomery, Dr. Montgomery is here. William Baltimore, he's a battalion chief here in the District. And also I have a nephew who is here, 15 years old, Owen Davis, here from Raleigh, North Carolina. He has to write a paper about his experience here.

Senator KLOBUCHAR. Where is he?

Mr. FOWLKES. He's sitting just——

Senator KLOBUCHAR. There we go. We can talk to him later, Senator Grassley, do a little interview. All right.

Mr. FOWLKES. Thank you very much. I have no further opening statement.

Senator KLOBUCHAR. Thank you.

Mr. FOWLKES. I appreciate your being here and listening.

Senator KLOBUCHAR. Thank you for being here. Very good.

Mr. McNulty.

[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 Thomas Fowlkes, Jr.

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

   United States District Judge for the Western District of Tennessee

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.

   Criminal Court, Division VI
   Criminal Justice Complex
   201 Poplar Avenue, Suite 519
   Memphis, Tennessee 38103

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

   1951; Washington, D.C.

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

   1975 – 1977, University of Denver School of Law; J.D., 1977

   1974 – 1975, Valparaiso University School of Law; no degree received

   1969 – 1975, Valparaiso University; B.A., 1975

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

2007 – present
30th Judicial District at Memphis
Criminal Court, Division VI
Criminal Justice Complex
201 Poplar Avenue, Suite 519
Memphis, Tennessee 38103
Judge

2002 – 2007
Shelby County Government
160 North Main Street
Memphis, Tennessee 38103
Chief Administrative Officer

1989 – 2002
United States Attorney's Office
167 North Main Street
Memphis, Tennessee 38103
Assistant United States Attorney (1989 – 2002)
First Assistant United States Attorney (1993 – 1997; 2001 – 2002)

1979 – 1989
Shelby County District Attorney's Office
201 Poplar Avenue, Suite 301
Memphis, Tennessee 38103
Assistant District Attorney General

1978 – 1979
Shelby County Public Defender's Office
201 Poplar Avenue, Suite 201
Memphis, Tennessee 38103
Assistant Public Defender

1978
Memphis Area Legal Services
Claridge House Building
109 North Main, Suite 200
Memphis, Tennessee 38103
Law Clerk

1975 – 1977
Lakewood City Attorney's Office
480 South Allison Parkway
Lakewood, Colorado 80226
Law Clerk

1975
U.S. Geological Survey
Department of the Interior
P.O. Box 25046
Lakewood, Colorado 80225
Lab Assistant

Summer 1975
Yellow Cab Company
7500 East 41st Avenue
Denver, Colorado 80216
Cab Driver

Other Affiliations (uncompensated):

2010 – present
Tennessee Judicial Conference
Administrative Office of the Courts
511 Union Street, Suite 600
Nashville, Tennessee 37219
Treasurer (2011 – present)
Executive Board Member (2010 – present)

2009 – present
Shelby County Public Records Commission
Archives Office
980A Nixon
Memphis, Tennessee 38134
Commissioner

2009 – present
Economic Club of Memphis
FAB407 Fogelman College of Business and Economics
University of Memphis
Memphis, Tennessee 38152
Board of Directors

2003 – 2007; 2009 – present
Memphis in May International Festival, Inc.
88 Union Avenue, Suite 301
Memphis, Tennessee 38103
Board of Directors

2008 – present
Memphis Ten Point Coalition, Inc.
815 North McLean Boulevard

Memphis, Tennessee 38107
Board of Directors

2005 – present
Memphis Area Legal Services, Inc.
109 North Main, Suite 200
Memphis, Tennessee 38103
Board of Directors

2009 – 2011
Memphis Business Academy
3306 Overton Crossing Street
Memphis, Tennessee 38127
Board of Directors

2009 – 2010
National Bar Association, Ben F. Jones Chapter
P.O. Box 3493
Memphis, Tennessee 38173
Board of Directors

2008 – 2010
Memphis Shelby Crime Commission
600 Jefferson Avenue, Suite 400
Memphis, Tennessee 38105
Board of Directors

2007 – 2010
Lifeblood, Inc.
1040 Madison Avenue
Memphis, Tennessee 38104
Board of Directors

2008 – 2009
Cross of Calvary Lutheran Church
4327 Elvis Presley Boulevard
Memphis, Tennessee 38116
President

2005 – 2007
Memphis Cook Convention Center
255 North Main Street
Memphis, Tennessee 38103
Board of Directors

2005 – 2007
Bremington Place Homeowner Association
Memphis, Tennessee 38111
Board of Directors

2004 – 2007
National Civil Rights Museum
450 Mulberry Street
Memphis, Tennessee 38103
Board of Directors

2004 – 2007
Memphis Convention and Visitors Bureau
47 Union Avenue
Memphis, Tennessee 38103
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 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.

   Citizen of the Year for Outstanding Service, Prince Hall Grand Lodge (2008)

   Award of Excellence for Exemplary Leadership and Dedication, Ben F. Jones Chapter, National Bar Association (2008)

   Award for Outstanding Legal Service, Ben F. Jones Chapter, National Bar Association (2004)

   Citizen of the Year for Outstanding Community Service, Sigma Gamma Rho Sorority, Inc. (2002)

   Director's Award for Sustained High Level Performance as an Assistant United States Attorney, Executive Office for United States Attorneys, Washington D.C. (2001)

   United States Attorney's Award for Outstanding Performance (2000)

   Award for Sustained High Level Performance, United States Attorney's Office (1998, 1999)

FedEx "Well Done" Award, Federal Express Corporation (1995)

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

American Bar Association
Delegate to the National Conference of State Trial Judges (2008 – 2010)
Criminal Justice Act Cost-Containment Committee of the United States District Court for the Western District of Tennessee (1994)
Federal Defender Evaluation Committee
Chairman (2004)
Judicial Committee on Fairness and Sensitivity (2009 – present)
Judicial Compensation and Retirement Committee (2007 – present)
Leo Bearman, Sr. American Inn of Court
Judicial Master (2007 – present)
Memphis Bar Association
Standing Committee on Professionalism (2005 – 2007)
Memphis Bar Foundation
National Association of Assistant United States Attorneys
National Bar Association, Ben F. Jones Chapter
Board of Directors (2009 – 2010)
Tennessee Bar Foundation
Tennessee Judicial Conference
Treasurer (2011 – present)
Executive Board Member (2010 – present)
Tennessee Judicial Performance Evaluation Commission (2009 – present)
Tennessee Judicial Redistricting Advisory Committee (2008 – 2009)
Tennessee Pattern Jury Instruction Committee (2008 – present)
Tennessee Supreme Court Blue Ribbon Commission (2007 – 2008)
United States Magistrate Selection Committee (1994)

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.

Tennessee, 1978

There has been no lapse in membership.

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

United States Court of Appeals for the Sixth Circuit, 1989
United States District Court for the Western District of Tennessee, 1989
Tennessee, 1978

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.

Bremington Place Homeowner Association
Board of Directors (2005 – 2007)
Cross of Calvary Lutheran Church (1999 – present)
President (2008 – 2009)
Economic Club of Memphis (2004 – present)
Board of Directors (2009 – present)
League of Women Voters (2008 – present)
Lifeblood, Inc. (2007 – 2010)
Board of Directors (2007 – 2010)
Memphis Area Legal Services, Inc. (2005 – present)
Board of Directors (2005 – present)
Chair, 40th Anniversary Committee (2010)
Memphis Business Academy (2009 – 2011)
Board of Directors (2009 – 2011)
Memphis Convention and Visitors Bureau (2004 – 2007)
Board of Directors (2002 – 2007)
Memphis Cook Convention Center (2005 – 2007)
Board of Directors (2005 – 2007)
Memphis in May International Festival, Inc. (2003 – 2007; 2009 – present)
Board of Directors (2003 – 2007; 2009 – present)
Treasurer and Finance Committee (2006 – 2007)
International Committee (2005 – 2006, 2011 – present)
Bylaws Committee (2004 – 2005)
Memphis Shelby Crime Commission (2008 – 2010)
Board of Directors (2008 – 2010)
Memphis Ten Point Coalition, Inc. (2008 – present)
Board of Directors (2008 – 2010)
National Association of the Advancement of Colored People (1993 – present)
National Civil Rights Museum (2004 – 2007)
Board of Directors (2004 – 2007)

Optimist Club of Whitehaven, Tennessee (1992 – 1994; 1999 – present)
Pyramid Reutilization Committee (2004)
Shelby County Public Records Commission (2009 – present)
Southern Christian Leadership Conference (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 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.

None that I can recall or have been able 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.

I am a member of the Tennessee Pattern Jury Instruction Committee. In 2011, the Committee published the 15th edition of Tennessee Pattern Jury Instructions – Criminal. A copy of the Preface and Table of Contents is supplied.

I am a member of the Tennessee Judicial Performance Evaluation Commission. On December 20, 2010, an interim report was issued by the Commission. Also in 2010, an evaluation report on two judges was issued by the commission. Copies supplied.

When I was Chief Administrative Officer for Shelby County, at the request of the county mayor, I conducted an investigation of several high level county

employees for alleged violation of county policy related to retirement benefits. The results of the investigation were summarized in a report submitted to the mayor on August 16, 2004. Copy supplied.

When I was Chief Administrative Officer for Shelby County, and at the request of then Chief Circuit Judge Danny J. Boggs, I was Chairman of the Committee to Evaluate and Recommend Reappointment of the Federal Defender for the Western District of Tennessee. A final report and recommendation was submitted to Judge Boggs on April 15, 2004. Copy supplied.

When I was the Chief Administrative Officer for Shelby County, I served as chairman of a committee that produced an ethics code for the county. It went into effect in late 2003. Copy supplied.

In 2000, I was interviewed for a report on *Federal-Local Law Enforcement Collaboration in Investigating and Prosecuting Urban Crime, 1982 – 1999: Drugs, Weapons and Gangs* that was published by the National Institute of Justice. I did not contribute to the drafting of the report, but a copy is supplied.

I also served on the Pyramid Reutilization Committee in 2004, which generated a report with recommendations on how to use the Pyramid building. I have been unable to obtain a copy of the report.

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

From 2002 to 2007, I served as the Shelby County Government Chief Administrative Officer. In this capacity, I occasionally made remarks and answered questions during Board of Commissioners meetings. The minutes of these meetings are voluminous and maintained by the Board of Commissioners in hard copy only. Press coverage of an August 2004 meeting 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.

Over the past two decades, I have been heavily involved in educational and community activities. Normally, I am asked to speak at least a dozen times every

year. Many times, I do not keep my notes or outlines of my talk, and some speeches occurred so long ago that I cannot recall the exact date, location or audience of the speech. The following is a list of public talks that I have identified after a thorough review of my records and publicly-available databases. It is likely that I have given other remarks that I have been unable to locate or identify.

October 16, 2011: Freedom from Unnecessary Negatives (FFUN) Neighborhood Organization Picnic. I spoke about the importance of supporting our youth throughout the year. I also spoke to the youth about the importance of education and staying out of trouble. I have no notes, transcripts, or recording. The address of FFUN is 674 Marshall Street Memphis, Tennessee 38103.

October 13, 2011: Career Day Speaker at the annual Career Day event, Oakshire Elementary School. I spoke to students about how to become a judge/lawyer and the importance of education. I have no notes, transcripts or recordings. The address of Oakshire is 1765 East Holmes Road, Memphis, Tennessee 38116.

July 28, 2011: Speaker to the youth organization of Berean Missionary Baptist Church. I spoke with the youth about juvenile crime in Memphis and the importance of setting and attaining positive goals. I have no notes, transcripts or recordings. The address of the church is 1666 East Raines Road, Memphis, Tennessee 38116.

May 4, 2011: Keynote address at the National Corrections Professionals Week Memorial Service at Advent Presbyterian Church. I spoke about the importance of remembering law enforcement officers who serve and sacrifice themselves for all citizens. I have no notes, transcripts, or recordings. The address of the church is 1879 North Germantown Parkway, Cordova, Tennessee 38016.

March 10, 2011: Presentation on "Crime in Our Community," Germantown Kiwanis Club meeting. I emphasized the need for mentors and volunteers for youth of the community to help break the bonds of poverty and to help educate them. I have no notes, transcripts, or recordings. The address of the Kiwanis Club is P.O. Box 38383, Germantown, Tennessee 38183.

January 25, 2011: Presentation to the youth of Hope Fellowship Baptist Church. I talked about how easy it is to get into trouble and how that trouble may follow a person throughout life. I have no notes, transcripts or recordings. The address of the church is 3406 Providence, Memphis, Tennessee 38116.

January 20, 2011: Breakfast Meeting Speaker, Germantown Kiwanis Club. I gave the membership an update on cases and trends in the Shelby County Criminal Courts. I have no notes, transcripts or recordings. The address of the Kiwanis Club is P.O. Box 38383, Germantown, Tennessee 38183.

October 14, 2010: As chairman of the Memphis Area Legal Services (MALS), 40th Anniversary Committee, I gave opening remarks at the celebration reception. I thanked members of the legal community for their support of MALS. I have no notes, transcripts or recordings. The address for MALS is 109 North Main, Suite 200, Memphis, Tennessee 38103.

July 18, 2010: Sermon to the congregation of King Solomon Baptist Church, Memphis, Tennessee. The theme was "Building a Strong Family and Keeping it Together." A copy of my notes is supplied.

April 22, 2010: Presentation to the Germantown Kiwanis Club meeting. I spoke about ways to reduce crime, with an emphasis on jobs and quality education and personal involvement with youth. I have no notes, transcripts, or recordings. The address of the Kiwanis Club is P.O. Box 38383, Germantown, Tennessee 38183.

April 20, 2010: Keynote Speaker at the Memphis Bar Association Memorial Service held at Calvary Episcopal Church, Memphis, Tennessee. I joined with family, friends and members of the legal community in remembering and mourning the loss of legal professionals over the past year. A copy of my notes is supplied.

March 6, 2010: Address at the Men's Breakfast Meeting of King Solomon Baptist Church, Memphis, Tennessee. The theme was "Building a Strong Family and Keeping it Together." I used the same notes as those supplied for the July 18, 2010 event.

November 7, 2009: Presentation to the Trustees, Magnolia First Baptist Church. I spoke about the importance of strong positive male figures in the life of young people. I have no notes, transcripts or recordings. The address of the church is 1518 South Cooper Street, Memphis, Tennessee 38114.

September 19, 2009: Presentation entitled "After God's Heart," a talk about King David, his strengths and weaknesses and God's forgiveness. My talk was presented at Christ the King Lutheran Church in Memphis, Tennessee. A copy of my notes is supplied.

July 24, 2009: Keynote Speaker at the 26th Annual National Black Prosecutors Association Conference Banquet. I spoke about the impact that Dr. King has had on our society, and the importance of remembering that his work is not finished. I have no notes, transcripts, or recordings. The address of the NBPA is 1507 East 53rd Street, Suite 108, Chicago, Illinois, 60615.

February 24, 2009: Presentation entitled "The Civil Rights Movement – The Last 40 Years." My talk was presented at the Johnson & Johnson Black History Month celebration, Memphis, Tennessee. I spoke about the changes and

evolution of the civil rights movement, and its impact on our society. A copy of my notes is supplied.

September 10, 2008: Panel discussion entitled "Crime: From All Sides – A Look at Crime and Criminal Justice in Memphis from Every Angle," MPACT Issue Forum. The discussion centered on local problems and solutions. I have no notes, transcripts, or recordings. The address of MPACT Memphis is 506 South Main, #101, Memphis, Tennessee 38103.

June 15, 2008: 15th Annual Juneteenth Freedom and Heritage Festival. I made brief comments to the festival crowd, who were celebrating the emancipation of slaves during the civil war. I have no notes, transcripts, or recordings. The festival does not have a physical address.

June 14, 2008: Father's Day Celebration Speech for the Hickory Hills Neighborhood Association, Memphis, Tennessee. The theme was "What About Me Daddy?" I spoke about fathers' relationships with daughters, mothers and wives. A copy of my notes is supplied.

May 25, 2008: Presentation entitled "Servant Leadership" at the Germantown United Methodist Church, Germantown, Tennessee. It was part of the larger Memorial Day program. I spoke about the importance of all citizens performing some type of civic duty. A copy of my notes is supplied.

May 24, 2008: Memphis Democratic Club political forum, Lemoyne-Owen College. I participated in this forum with my opponents for the Division 6 Criminal Court judgeship. All candidates spoke about their qualifications for the position. I have no notes, transcripts, or recordings. The MDC does not have a physical address.

April 2008: Met with visiting group of judges and prosecutors from the Middle East, U.S. Patent & Trademark Office. I have no notes, transcript or recording, but press coverage is supplied. The address of the U.S. Patent & Trademark Office is Madison Buildings, 600 Dulany Street, Alexandria, Virginia 22314.

February 13, 2008: Presentation entitled "Servant Leadership, an Open Door" at the Second Congregational Church, Memphis, Tennessee. The talk was to college age students about preparing for the future, and in later years becoming leaders and mentors in their communities. A copy of my notes is supplied.

December 19, 2007: Keynote Speaker at the Shelby County Sheriff's graduating recruit class about challenges facing law enforcement and the need for professionalism and integrity. A copy of my notes is supplied.

November 11, 2007: Keynote speaker at the LINKs Incorporated 43rd Founder's Day Celebration. The celebration identified and encouraged promising young

men to set high goals and work hard to attain them. I have no notes, transcripts, or recordings, but press coverage is supplied. The address of LINKs Incorporated is 1200 Massachusetts Avenue NW, Washington, DC 20005.

September 28, 2007: Investiture Ceremony of Judge John Fowlkes in Memphis, Tennessee. I gave thanks to those who helped me attain my judgeship, and publicly committed that everyone in my courtroom would be treated with respect, fairness and integrity. A copy of my notes is supplied.

May 4, 2007: Panel discussion on satisfying ethical requirements of participation in pro bono activities, Memphis Bar Association, Annual Bench Bar Conference. I spoke and answered questions regarding opportunities and limits on governmental lawyers' ability to participate in pro bono activities. I have no notes, transcripts, or recordings. The address of the MBA is Brinkley Plaza, 80 Monroe, Suite 220, Memphis, Tennessee 38103.

July 12, 2006: Remarks at a brief ceremony commemorating the opening of a stretch of Canada Road from U.S. 64 to I-40, in an unincorporated area of Shelby County, Tennessee. Members of the public and governmental representatives of state, county, and local road and transportation departments were present. I have no notes, transcripts, or recordings, but press coverage is supplied.

July 2, 2006: Remarks at a Founder's Day celebration commemorating the 141st anniversary of Lemoyne-Owen College. The ceremony was held at the Metropolitan Baptist Church, Memphis, Tennessee. I spoke about the long term impact the college has made on the surrounding community. A copy of my notes is supplied.

May 8, 2006: Keynote speaker to the recruit graduation class of the Shelby County Correctional Center. I spoke about the importance of professionalism and teamwork. A copy of my notes is supplied.

April 26, 2006: Welcoming Remarks at the Tennessee Personnel Management Association Conference held at the Cook Convention Center, Memphis, Tennessee. The theme of the conference was "Human Resources Today and in the Future." A copy of my notes is supplied.

April 26, 2006: Keynote speaker at the Shelby County Correctional Center Volunteer Appreciation and Awards Banquet. I thanked the volunteers for their work and interaction with the correctional center inmates. I have no notes, transcripts or recordings. The address of the center is 1045 Mullins Station Road, Memphis, Tennessee 38134.

April 25, 2006: Addressed Leadership Bartlett, a leadership training organization, in Memphis, Tennessee. I gave the class the "County Perspective" on the role of

county government and relations with area municipalities. A copy of my notes is supplied.

January 9, 2006: Keynote Speaker, graduating class of "Building for the Future," a Shelby County Correctional Center program designed to train young offenders in carpentry and home building. I talked to the graduates about the importance of planning for the future, staying out of trouble and using the skills they had obtained. A copy of my notes is supplied.

August 28, 2005: Presentation at Cross of Calvary Lutheran Church, Memphis, Tennessee, as part of its 10th anniversary celebration. The theme was "A New Season," and I spoke about the importance of growing a church on solid ground. A copy of my notes is supplied.

April 15, 2005: Keynote Speaker, Graduation Class, Shelby County Correctional Center. Ceremony held in the Shelby County Board of Commissioners Chambers, Memphis, Tennessee. I spoke about the importance of professionalism and teamwork. My outline was essentially the same as that supplied for the May 8, 2006 event.

November 20, 2004: Panel Discussion, "The American South, Then and Now" Symposium, University of Mississippi. The panel discussed "The Urban South," and the impact of poverty, crime, race and politics on large southern cities. I have no notes, transcripts or recordings. The address of the university is 1848 University Circle, University, Mississippi 38677.

October 14, 2004: Participated in "Principal for A Day," A. Maceo Walker Middle School. It was a program of the Memphis City School System where citizens shadow school principals during a routine day of work and interaction with students. I have no notes, transcripts or recordings. The address of the school is 1900 East Raines Road, Memphis, Tennessee 38116.

November 20, 2003: Speaker at the neighborhood outreach center and gymnasium dedication ceremony of Brinkley Heights Baptist Church, Memphis, Tennessee. I represented county government in thanking church leaders and members for becoming so deeply involved in bettering the surrounding community. A copy of my notes is supplied.

June 27, 2003: Keynote Speaker at the National Client Council Regional Banquet, Memphis, Tennessee. I spoke about the importance of teaching young people the importance of self sufficiency and independence. A copy of my notes is supplied.

February 11, 2003: Addressed Leadership Bartlett, a leadership training organization, in Memphis, Tennessee. I gave the class the "County Perspective" on the role of county government and relations with area municipalities. I used the same notes as supplied for the April 25, 2006 event.

October 27, 2002: Keynote Speaker, Men and Women's Day Services, Friendship United Methodist Church, Millington, Tennessee. The theme of the service was "The Role of The Christian Man and The Christian Woman." A copy of my notes is supplied.

September 27, 2002: Presentation entitled "Federal Prosecution of Identity Theft," presented to several criminal justice classes at the University of Tennessee at Martin. I spoke about the importance of protecting personal identity information, and how investigators and prosecutors go about prosecuting an identity theft case. I have no notes, transcripts, or recordings. The address of the university is Martin, Tennessee 38238.

2001 – 2002: Presentations entitled "Use of Informants," delivered on at least six occasions to federal, state and local law enforcement officers in Memphis, Tennessee and Jackson, Tennessee. It was a training review for drug and gang investigations. A copy of my outline is supplied.

October 31, 2001: Presentation entitled "Juvenile Prosecution: One Successful Case," presented to prosecutors and investigators at the OCDETF regional conference, New Orleans, Louisiana. A copy of my outline is supplied.

September 25, 2001: Presentation entitled "Gang Violence: Federal Gang Prosecution," Tennessee Gang Investigators Association (TNGIA) Conference, Jackson, Tennessee. A copy of my outline is supplied.

June 8, 2001: Presentation entitled "Youth Gangs and Gang Violence," Tennessee Juvenile Court Services Association, Annual West Tennessee Mini Conference, Bolivar, Tennessee. A copy of my outline is supplied.

April 12, 2000: Panel Discussion at a forum on racial profiling, Black Law Students Association and the Tennessee Civil Liberties Union, University of Memphis. I answered questions about the legality and negative impact of racial profiling. I have no notes, transcripts, or recordings, but press coverage is supplied. The address of the BLSA is 1505 Cumberland Avenue, Knoxville, Tennessee 37996. The address of the TCLU is P.O. Box 120160, Nashville, Tennessee 37212.

March 20, 1998: Presentation entitled "Impact of the United States Sentencing Guidelines: Departures," Memphis Bar Association, Annual Bench and Bar Conference, Hot Springs, Arkansas. A copy of my outline is supplied.

June 1997: Father's Day Speech entitled "Celebration" at the Unity Christian Church, Memphis, Tennessee. A copy of my notes is supplied.

May 8, 1997: Presentation entitled, "The Bail Reform Act (From a Prosecutor's Eyes)." I presented a review of the Federal Bail Reform Act at a federal practice seminar in Hot Springs, Arkansas. A copy of my outline is supplied.

February 28, 1997: Presentation entitled "Constitutional Issues, Fourth Amendment Questions, and Motions to Suppress," Federal Practice Seminar, Memphis, Tennessee. A copy of my outline is supplied.

1996 – 1997: Instructor for the Advanced Trial Advocacy Course, Office of Legal Education, National Advocacy Center. I have no notes, transcripts, or recordings. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 16, 1996: Presentation entitled "Fourth Amendment Questions and Motions to Suppress," Federal Practice Seminar, Memphis, Tennessee. A copy of my outline is supplied.

September 21, 1995: Presentation entitled "Admission of Evidence in Federal Court," Memphis Bar Association, Trial Practice Workshop, Memphis, Tennessee. A copy of my outline is supplied.

May 6, 1994: Participated in "Teach for a Day," a program of the Memphis City School System where citizens teach a class at a local school. It gives students an opportunity to learn about career options. I have no notes, transcripts, or recordings. The address of the Memphis City Schools is 2597 Avery Avenue, Memphis, Tennessee 38112.

1993: Instructor for the Basic Trial Advocacy Course, Office of Legal Education, Department of Justice. I have no notes, transcripts, or recordings. The address of the Department of Justice is 950 Pennsylvania Avenue, NW, Washington, DC 20530.

August 1, 1992: Panel Discussion at a forum hosted by the Tennessee Task Force on the African American Male, Memphis, Tennessee. I have no notes, transcripts, or recordings, but press coverage is supplied. The task force does not have a physical address.

1988 – 1989: Presentations entitled "Sexual Assault Evidence (A Brief Review)," presented during training conferences for sexual assault investigators, nurse clinicians and state prosecutors on at least four occasions at the Shelby County District Attorney General's Office, Memphis, Tennessee. A copy of my outline is supplied.

2007-2011: Presided over many ceremonial events such as investitures and weddings. I have no notes, transcripts or recordings of these events.

2005-2011: Judged regional and state rounds of the Tennessee State High School Mock Trial Championship Tournament. I have no notes, transcripts or recordings of these events.

I also gave a speech on Mother's Day on several occasions, but I have been unable to recall or identify when and to which organizations. Outline 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.

Bartholomew Sullivan, *Obama Chooses Fowlkes for Bench*, Commercial Appeal, Dec. 17, 2011. Copy supplied.

Lauren Lee, *Analyzing Media Impact on Noura Jackson Case*, nourajacksoncase.weebly.com, Apr. 7, 2011. Copy supplied.

Interview discussing cameras in the courtroom, video available at http://www.youtube.com/watch?v=p8hBF3GZOw0, 2011.

Halley Johnson, *Killing Crime*, Memphis Flyer, May 20, 2010. Copy supplied.

Alex Coleman, *Police Battle Urban Terrorists Better Known as Criminal Repeat Offenders*, WREG, July 20, 2009. Copy supplied.

Bill Dries, *Fowlkes Seeks Better Way to Treat Criminals in System*, Daily News (Memphis), Sept. 19, 2008. Copy supplied.

Lawrence Buser, *4 Vie for Criminal Court Judgeship*, Commercial Appeal, Aug. 6, 2008. Copy supplied.

Wiley Henry, *Who Wants to be the Judge?*, Tri-State Defender, July 10, 2008 – July 16, 2008. Copy supplied.

Jody Callahan, *Forum Airs Local Views on Violence*, Commercial Appeal, Mar. 12, 2008. Copy supplied.

Press release, *Judge John Fowlkes Focuses on the 3 R's*, Judge Fowlkes Election Campaign, 2008. Copy supplied.

Nicole Grida, *Judge John Fowlkes*, Memphis Lawyer, Dec. 2007. Copy supplied.

Lawrence Buser, *No Easy Caseload for New Judge*, Commercial Appeal, Aug. 27, 2007. Copy supplied.

Kontji Anthony, *County Commissioners Vote to Invest in Fiber Optics Company*, WMC-TV, Aug. 13, 2007. Copy supplied.

Sybil C. Mitchell, *Year of 'Jubilee' at Cross of Calvary*. Tri-State Defender, Aug. 9-15, 2007. Copy supplied.

Press release, *Governor Appoints Fowlkes to Criminal Court Bench*, Office of Governor Phil Bredesen, Aug. 9, 2007 (quotes re-printed in multiple outlets). Copy supplied.

Jacinthia Jones, *'Draft A C' Buzz Grows*, Commercial Appeal, July 12, 2007. Copy supplied.

Interview with NBC 5 on the Draft AC Wharton campaign, July 11, 2007. A transcript of the news story referencing my interview is supplied.

Michael Erskine, *Panel OK's Living Wage – Commission Democrats Prevail to Pass Ordinance*, Commercial Appeal, May 22, 2007. Copy supplied.

Michael Erskine, *Proponents Hope for More Local Contracts*, Commercial Appeal, Feb. 18, 2007. Copy supplied.

Kontji Anthony, *County Answers Tough Questions about Fireman Accused of Drug Trafficking*, WMC-TV, Feb. 7, 2007. Copy supplied.

Kontji Anthony, *Firefighter Arrested for Meth Trafficking*, WMC-TV, Feb. 5, 2007. Copy supplied.

Jane Roberts, *Arresting Development: FBI Chief Honored for Communication Skills That Unify, Clarify*, Commercial Appeal, Jan. 11, 2007. Copy supplied.

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October 27, 2006: Press conference about suspected bugging of a local Homeland Security office. Summaries of news stories and other press coverage of the conference supplied.

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Interview about FBI investigation of Michael Hooks, CBS 3, Jan. 23, 2006. News story referencing my remarks supplied.

David Williams, *Griz Clause May Haunt Coliseum*, Commercial Appeal, Dec. 17, 2005. Copy supplied.

David Williams, *Coliseum Gets 'Buy' Offer*, Commercial Appeal, Dec. 9, 2005. Copy supplied.

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David Williams, *Coliseum Needs a Comeback*, Commercial Appeal, Nov. 14, 2005. Copy supplied.

Michael Erskine, *Jail Privatizing Still Alive – Two Firms Must Answer Tough Remaining Questions*, Commercial Appeal, Aug. 25, 2005. Copy supplied.

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Michael Erskine, *Sandridge Facing Discipline – Hearing to Weigh Sanctions for Absences*, Commercial Appeal, Oct. 14, 2004. Copy supplied.

David Williams, *Officials Consider Options for Developing Memphis, Tenn., Fairgrounds*, Commercial Appeal, Oct. 13, 2004. Copy supplied.

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Michael Erskine, *Wharton Intends to Sell Oakville Nursing Home*, Commercial Appeal, May 27, 2004. Copy supplied.

Tom Charlier, *She Wasn't Sneezing at this Offer – City's Top Air-Pollution Official Will Breathe Easier in Arizona Job*, Commercial Appeal, May 21, 2004. Copy supplied.

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Michael Erskine, *School in Southeast Could Be First Up*, Commercial Appeal, Feb. 23, 2004. Copy supplied.

Lawrence Buser, *Wharton Seeks to Ax Dr. Smith – Medical Examiner Out as Murder Trial Witness*, Commercial Appeal, Sept. 25, 2003 (quotes re-printed in multiple outlets). Copy supplied.

Lance Allan, *County Seeks Major Government Conference*, Daily News (Memphis), Sept. 11, 2003. Copy supplied.

Arthur L. Webb, *Shelby County Administration Challenges Headstart, Inc.*, Tri-State Defender, Aug. 27, 2003. Copy supplied.

Arthur L. Webb, *Headstart, Inc./Cultural Connection Dispute Still Unresolved*, Tri-State Defender, Aug. 27, 2003. Copy supplied.

Aimee Edmondson, *Head Start Group Appeals Termination*, Commercial Appeal, July 22, 2003. Copy supplied.

Sherri Drake, *County Told to Fix Up Head Start – Wharton Wants Plan by Friday*, Commercial Appeal, July 10, 2003 (quotes re-printed in multiple outlets). Copy supplied.

Shirley Downing, *Happy Fourth! – Celebrate Our Long-Ago Break from . . . France?*, Commercial Appeal, July 4, 2003. Copy supplied.

Michael Erskine, *County to Boost Internal Auditing Staff – Department Will Go from One Auditor to at Least Five*, Commercial Appeal, Feb. 20, 2003. Copy supplied.

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Marc Perrusquia, *Williams Denies Trips for Pleasure*, Commercial Appeal, Dec. 8, 2002. Copy supplied.

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James W. Brosnan, *Senators Have 3 Choices So Far for Gibbons Seat*, Commercial Appeal, May 6, 2002. Copy supplied.

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John Semien, *Brother of Tiger Coach Finch Pleads Guilty in Cocaine Distribution Case*, Commercial Appeal, Nov. 22, 1996. Copy supplied.

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Toni Lepeska, *3 Men Sentenced*, Commercial Appeal, Jan. 6, 1996. Copy supplied.

Chris Conley, *Judge Gives Life Sentence to Calloway in Hijacking*, Commercial Appeal, Aug. 12, 1995. Copy supplied.

Pilot Who Tried to Hijack Plane Gets Life in Prison, Associated Press, Aug. 11, 1995. Copy supplied.

Chris Conley, *Jury Rules Calloway Sane, Guilty*, Commercial Appeal, Mar. 31, 1995. Copy supplied.

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Tom Charlier, *FedEx Crew Never Lost Control, Official Says*, Commercial Appeal, Apr. 12, 1994. Copy supplied.

Chris Conley, *Motive is Elusive as Charges Are Filed in Hammer Attack on FedEx Plane Crew*, Commercial Appeal, Apr. 9, 1994. Copy supplied.

Federal Express Pilot Charged with Air Piracy, Reuters, Apr. 8, 1994 (re-printed in multiple outlets). 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 September 28, 2007, I was appointed by the Governor of the State of Tennessee to be Criminal Court Judge for Division VI of the 30th Judicial District at Memphis, Tennessee. In 2008, I was elected to a full term. In 2011, I was elected by judges of the 30th Judicial District to serve as presiding judge. I have jurisdiction over state felony and misdemeanor cases in the district.

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

Since being sworn in as a criminal court judge, I have presided over 85 jury trials.

i. Of these, approximately what percent were:

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

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

I have not written any opinions. However, I have drafted several orders that have been dispositive of the cases. These orders are not published and cannot be found in any official reporter or commercially-available database.

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

(1) *State v. Dickerson*, No. 04-02309 (Tenn. Crim. Ct. 2009), *aff'd*, 2009 Tenn. Crim. App. LEXIS 456 (Tenn. Crim. App. 2009). The defendants were charged with murder in the second degree for shooting and killing two victims after an altercation in a nightclub. The trial began on my first day on the criminal court bench. Dickerson was convicted of two counts of murder in the second degree and sentenced to concurrent terms of 22 years confinement. The codefendant, Harris, was convicted of reckless homicide and voluntary manslaughter and sentenced to four years and six years to be served concurrently. The judgments and sentences were affirmed on appeal.

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(2) *State v. Fielder*, No. 08-03221 (Tenn. Crim. Ct. 2009), *aff'd*, 2011 Tenn. Crim. App. LEXIS 663 (Tenn. Crim. App. 2011). Defendant Fielder was accused and convicted of especially aggravated robbery and especially aggravated kidnapping and received concurrent sentences of 20 years confinement. The case involved "a drug deal gone bad." Fielder, along with two co-defendants, beat, robbed and tortured the victim. The other defendants testified against Fielder and ultimately received lesser sentences. The primary issues were whether the proof was sufficient to show the victim suffered serious bodily injury and if the sentence imposed was excessive. The conviction and sentence were upheld by the Court of Appeals.

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(3) *State v. Ifabiyi*, No. 07-01795 (Tenn. Crim. Ct. 2009). The defendant was charged with theft of property over $10,000 and falsification of state tax returns. This case involved a trial of state tax fraud, which is rarely seen in State Criminal Court. The defendant was found not guilty of theft, but guilty of the tax violation. Ultimately, the defendant was placed on probation and ordered to make restitution to the State of Tennessee.

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(4) *State v. Jones*, No. 08-05720 (Tenn. Crim. Ct. 2009), *aff'd*, 2011 Tenn. Crim. App. LEXIS 179 (Tenn. Crim. App. 2011). The defendant, an off duty Shelby County Sheriff's Deputy, was convicted of murder in the second degree, attempted murder in the second degree and possession of a firearm during the commission of a dangerous felony, and sentenced to 27 years confinement. After an argument, Jones fired several shots inside a crowded restaurant, striking the victims and endangering many other patrons and employees as they ran from the establishment. The primary trial issue was whether the defendant acted in self defense. Also, there were several evidentiary issues. The convictions and sentences were affirmed by the Court of Appeals.

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(5) *State v. Smith*, No. 08-02796 (Tenn. Crim. Ct. 2009), *aff'd*, 2011 Tenn. Crim. App. LEXIS 397 (Tenn. Crim. App. 2011). After trial, the defendant was convicted of kidnapping and rape and received concurrent sentences of ten years confinement. The primary question at trial was credibility of the victim and sufficiency of the evidence. The defendant also appealed the trial court's denial of *Batson v. Kentucky* objections, arguing that the state abused its use of preemptory challenges by eliminating jurors based on race or gender. Ultimately, the convictions and sentences were upheld by the Court of Appeals.

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(6) *State v. Dorsey*, No. 08-01634 (Tenn. Crim. Ct. 2009), *aff'd*, 2011 Tenn. Crim. App. LEXIS 466 (Tenn. Crim. App. 2011). The defendant was convicted of murder in the first degree, and received a sentence of life imprisonment without the possibility of parole. The question on appeal was sufficiency of the evidence at trial and sufficiency of the evidence supporting the aggravating circumstances where the evidence introduced at trial was purely circumstantial. The conviction and sentence were upheld by the Court of Appeals.

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(7) *State v. Taylor*, No. 09-02218 (Tenn. Crim. Ct. 2010). The defendant was charged with murder in the first degree and especially aggravated robbery. The victim was found in his residence stabbed multiple times. Several items of personal property as well as the victim's automobile were missing from the scene. Later, several individuals were arrested in possession of stolen items belonging to the victim. Subsequently, the defendant gave a statement to law enforcement officers admitting possession of stolen items and being with the victim on the day the murder took place. The defendant was convicted of murder in the first degree and robbery. However, because of credibility problems with the officer who took the statement of admission from the defendant, I granted the defense Motion to Set Aside the Jury Verdict. The State of Tennessee elected not to appeal that decision. Later, the defendant entered a guilty plea to the offense of voluntary manslaughter and aggravated robbery and received a 12-year sentence on each.

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(8) *State v. Coleman*, No. 09-03572 (Tenn. Crim. Ct. 2011). The defendant, a real estate broker, was charged and convicted of murder in the second degree and aggravated assault and received concurrent sentences of 17 years and 6 years respectively. The defendant, a local businessman, became involved in an argument with the victim over parking spaces outside a local restaurant. When the defendant and his wife arrived, the victim was actually vandalizing the defendant's car. The defendant argued with the victim, and then retrieved his firearm from his vehicle. Even though several bystanders urged the defendant to break off the incident, he threatened, and then shot the victim to death. The matter is presently on appeal.

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(9) *State v. Moody*, No. 09-06207 (Tenn. Crim. Ct. 2011). The defendant was charged and convicted of murder in the second degree and aggravated assault, and received concurrent sentences of confinement for 20 years and 8 years respectively. The defendant armed himself with a handgun, and got into an argument with a woman inside a residence. In an attempt to protect the woman, the victim moved between her and the defendant. The defendant pulled the handgun and threatened the victim as well as the other witnesses. A struggle began and ultimately, the defendant shot the victim. The incident took place in front of many witnesses and a small child. The matter is presently pending before the Court of Appeals.

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(10) *State v. Blake*, No. 08-06637 (Tenn. Crim. Ct. 2010), *aff'd in part and vacated in part*, 2011 Tenn. Crim. App. LEXIS 733 (Tenn. Crim. App. 2011). The victim in this case was a 5 year old girl. The child died from internal injuries caused by beatings inflicted by the defendant, who was the live-in boyfriend of the child's mother. The defendant was convicted of felony murder and received a life sentence. He appealed his conviction citing as error my denial of his motion

to suppress his statement and admission of prejudicial photos. The conviction was affirmed on appeal.

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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) *State v. Starks*, No. 10-01052, Order Denying Motion for New Trial. Order supplied.

Counsel for the State:
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Counsel for the Defense:
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(2) *Guevara v. State*, No. 94-05661, Order Denying Petition for Post-Conviction Relief. Order supplied.

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(3) *Lambert v. State*, No. P-34560, Order Granting Petition for Writ of Habeas Corpus. Order supplied.

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(4) *State v. Carter*, No. 09-02185, Order Denying Motion and Supplemental Motion to Dismiss Indictment. Order supplied.

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(5) *State v. Smith*, No. 09-01132-33, Order Denying In Part and Granting In Part Motion to Suppress Evidence. Order supplied.

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(6) *State v. Clark*, No. 08-05909, Order Denying Motion to Suppress Statements. Order supplied.

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(7) *Himes v. State*, Nos. 07-00800 and 06-08492, Order Denying Petition for Post-Conviction Relief. Order supplied.

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(8) *State v. Small*, No. 01-00912-29, Order Denying Motion to Dismiss for Speedy Trial Violation. Order supplied.

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(9) *State v. Warren*, No. 08-01717, Order Denying Motion to Suppress Evidence. Order supplied.

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(10) *State v. Galtelli and Gardner*, No. 04-06282, Order (Relative to Abuse of Prosecutorial Discretion). Order supplied.

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Counsel for Gardner:
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e. Provide a list of all cases in which certiorari was requested or granted.

None.

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

(1) *State v. Blake*, No. 08-06637 (Tenn. Crim. Ct. 2010), *aff'd in part and vacated in part*, 2011 Tenn. Crim. App. LEXIS 733 (Tenn. Crim. App. 2011). All of the issues raised by the defense were denied and the judgment was affirmed. However, even though the sentences were ordered to be served concurrently, the Court of Appeals remanded the case to effectuate the merger of the convictions into one judgment.

(2) *Williams v. State*, No. 01-08325-33 (Tenn. Crim. Ct. 2010), *rev'd*, 2011 Tenn. Crim. App. LEXIS 694 (Tenn. Crim. App. 2011). Petitioner appealed entry of an order denying his Petition for Post-conviction Relief. The trial court had barred two individuals from the courtroom during defendant's trial, and I denied post-conviction relief. The Court of Appeals upheld my determination that the defendant had waived that issue, but remanded for findings on his claim of ineffective assistance of counsel.

(3) *State v. Mosby*, No. 08-04742 (Tenn. Crim. Ct. 2009), *remanded*, 2011 Tenn. Crim. App. LEXIS 54 (Tenn. Crim. App. 2011). The case was remanded for resentencing due to a misapplication of a sentencing factor. On resentencing, I found that the defendant had been a model prisoner while serving his sentence, and his sentence was adjusted accordingly.

(4) *Tappan v. State*, No. 05-01325 (Tenn. Crim. Ct. 2010), *aff'd in part and rev'd in part*, 2010 Tenn. Crim. App. LEXIS 728 (Tenn. Crim. App. 2011). Petitioner appealed entry of my order denying his petition for post-conviction relief. The Court of Appeals reversed that decision and remanded the case for further proceedings, holding that the trial court's failure to charge the jury on circumstantial evidence prejudiced the petitioner.

(5) *State v. Williams*, No. 04-05980 (Tenn. Crim. Ct. 2009), 2009 Tenn. Crim. App. LEXIS 906 (Tenn. Crim. App. 2009). I revoked the defendant's probation after finding probable cause that he had committed another offense. The Court of Appeals reversed and remanded, finding that the wrong standard had been applied at the revocation hearing. On remand, the proper standard was applied and the defendant's probation was revoked.

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

I handle a typical criminal court caseload in a large urban city. It is necessary tha cases be handled in an organized and efficient manner. Thus, the vast majority of decisions are made orally on the record. Normally, written orders are entered when the issues are unusual or more complex and additional research is necessary. Consequently, written orders are entered in less than 3% of the cases. An exception is in the number of written orders entered in post-conviction matters. My general practice is to enter an order in all post conviction cases.

All written orders are stored internally in my chambers by case name.

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 th opinions listed were not officially reported, provide copies of the opinions.

State v. Starks, No. 10-01052, Order Denying Motion for New Trial. Opinion supplied in response to 13(d).

Guevara v. State, No. 94-05661, Order Denying Petition for Post-Conviction Relief. Opinion supplied in response to 13(d).

Lambert v. State, No. P-34560, Order Granting Petition for Writ of Habeas Corpus. Opinion supplied in response to 13(d).

State v. Carter, No. 09-02185, Order Denying Motion and Supplemental Motion to Dismiss Indictment. Opinion supplied in response to 13(d).

State v. Smith, No. 09-01132-33, Order Denying In Part and Granting In Part Motion to Suppress Evidence. Opinion supplied in response to 13(d).

State v. Clark, No. 08-05909, Order Denying Motion to Suppress Statements. Opinion supplied in response to 13(d).

Himes v. State, Nos. 07-00800 and 06-08492, Order Denying Petition for Post-Conviction Relief. Opinion supplied in response to 13(d).

State v. Small, No. 01-00912-29, Order Denying Motion to Dismiss for Speedy Trial Violation. Opinion supplied in response to 13(d).

State v. Warren, No. 08-01717, Order Denying Motion to Suppress Evidence. Opinion supplied in response to 13(d).

State v. Galtelli and Gardner, No. 04-06282, Order (Relative to Abuse of Prosecutorial Discretion). Opinion supplied in response to 13(d).

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 rescued 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 basis by which I assess the necessity or propriety of recusal involves consideration of the facts giving rise to the question, and the law governing such situations. The first step is to address the matter openly on the record to ensure transparency. The facts must be developed so that the question is clear. I always consider the Tennessee Code of Judicial Conduct and case law, as well as my colleagues' experiences. The question usually is whether a reasonable person with knowledge of the facts would conclude that the judge's impartiality might reasonably be questioned. If the answer is yes, then recusal is mandated.

I am involved in two recusal situations:

(1) Recently, the General Sessions Court Clerk was indicted for political misdeeds. The Clerk and his assistants handle criminal cases and prepare information that ultimately appears in Criminal Court. All of the criminal judges have been recused.

(2) I recently became aware that a pro se defendant has filed a motion asking that I recuse myself from his case. He alleges that I am "Active in concert with the prosecutor

over this matter, and the District Attorney has committed a multitude of constitutional and criminal violations to obtain a wrongful conviction on illegal and void indictments...." The matter was heard on November 21, 2011, and the defendant was given an opportunity to present evidence and argue the merits of his motion. He had nothing to add to his written allegations, and I denied the motion.

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

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

       I was appointed by Mayor A.C. Wharton to serve as the Chief Administrative Officer for Shelby County, a position I held from November 2002 to August 2007. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

       I have not been a member or officer of, or rendered any 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 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.

1978
Memphis Area Legal Services
Claridge House Building
109 North Main, Suite 200
Memphis, Tennessee 38103
Law Clerk

1978 – 1979
Shelby County Public Defender's Office
201 Poplar Avenue, Suite 201
Memphis, Tennessee 38103
Assistant Public Defender

1979 – 1989
Shelby County District Attorney's Office
201 Poplar Avenue, Suite 301
Memphis, Tennessee 38103
Assistant District Attorney General

1989 – 2002
U.S. Attorney's Office for the Western District of Tennessee
167 North Main Street, Suite 800
Memphis, Tennessee 38103
Assistant United States Attorney (1989 – 1993; 1997 – 2001)
First Assistant United States Attorney (1993 – 1997; 2001 – 2002)

2002 – 2007
Shelby County Government
160 North Main Street
Memphis, Tennessee 38103
Chief Administrative Officer

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.

From 1978 to 1979, I was an Assistant Public Defender. I represented indigent persons who were accused of committing crimes. This required

me to be involved in all stages of the defense, including the investigations, motion practice and jury trial.

From 1979 to 1989, I was an Assistant District Attorney in the Shelby County District Attorney General's Office. During that time, I handled all types of state criminal matters such as homicides, assaults, child and adult sex offense, robberies, burglaries. During the ten years I was with the District Attorney General's Office, I tried nearly 150 jury trials. Also, I was a member of the Multiple Violators Unit, Director of the Child Sexual Abuse Unit and was advisor to the Rape Crisis Center.

From 1989 to 2002, I was an Assistant United States Attorney. I was heavily involved in motion practice, jury trials and associated appellate practice. During those years, I tried over 100 jury trials and handled all associated appellate work. I was an OCDETF attorney and the district gang prosecutor. My years of litigation experience required that I develop a team approach to addressing problems. Thus, I became effective in combating crime by pulling together investigative units made up of representatives of all law enforcement agencies. I also taught investigative techniques and trial advocacy to law enforcement officers and lawyers. Also, during my time in the United States Attorney's office, I became First Assistant, which required me to direct the day to day operations of the office.

From November 2002 to August 2007, I was Chief Administrative Officer for the Shelby County Government. I did not practice law or appear in court during that time.

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

As an Assistant Public Defender, I represented indigent defendants that had been charged with committing a variety of criminal offenses.

As an Assistant District Attorney General, I represented the people of Shelby County, Tennessee. I was a member of the Multiple Violators Unit, where I represented the state in prosecuting offenders with long and violent criminal records. Later, I became leader of the office's Child Sexual Abuse Unit, where I supervised a unit of prosecutors and investigators.

As an Assistant United States Attorney, I specialized in the prosecution of criminal organizations on behalf of the United States. More particularly, in the early 1990's when I was an Organized Crime Drug Enforcement Task Force (OCDETF) attorney, I led teams of federal, state and local law enforcement officers in the investigation and prosecution of large multi-

state drug organizations. In the late 1990's, I continued to lead investigative teams in the prosecution of violent street gangs throughout the Western District of Tennessee. Over the decade, several hundred drug and gang offenders were prosecuted in federal court.

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.

With the exception of my time as the First Assistant U.S. Attorney and Chief Administrative Officer, I appeared in court regularly. While First Assistant, I handled fewer cases, and appeared in court only occasionally.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 50%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 5%
   2. criminal proceedings: 95%

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

I estimate that I tried over 250 cases to verdict, all of which were jury trials. I was sole counsel in at least 95% of these 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.

(1) *United States v. Brown*, No. 99CR20244 (W.D. Tenn. 2000), *aff'd*, 54 Fed. Appx. 201 (6th Cir. 2002). The case involved federal prosecution of four individuals for drug, firearm and homicide violations. The head of this organization sent the two victims to Houston, Texas to obtain several kilograms of cocaine. The victims returned to Memphis with no cocaine after losing the money entrusted to them. As a result, the head of the organization ordered the execution of the victims. The matters were severed and three were tried and convicted. The fourth changed his plea to guilty and received a 25 year sentence. Although tried separately, the cases were joined for appeal. All convictions and sentences were affirmed. I tried the cases, wrote the briefs and argued the matters before the Court of Appeals for the Sixth Circuit. The matters were tried before Judge Julia Smith Gibbons, and heard on appeal before Judges Boyce Ficklen Jr., James L. Ryan and Avern Cohn.

Counsel for the Defense:
Howard Manis
8245 Tournament Drive
Memphis, Tennessee 38125
(901) 746-6350

Robert Brooks
100 North Main Street
Memphis, Tennessee 38103
(901) 763-2832

Robert Irby
4345 East Mallory Avenue
Memphis, Tennessee 38111
(901) 682-7775

(2) *United States v. Calloway*, No. 94CR20112 (W.D. Tenn. 1995), *aff'd in part and vacated in part*, 116 F.3d 1129 (6th Cir. 1997). The defendant was charged in a two-count indictment with attempted aircraft piracy and interference with flight crew members. The defendant, a Federal Express Airline engineer, attempted to commandeer a Federal Express DC 10 aircraft after it had taken off from the Memphis International Airport. When the aircraft reached an altitude of 20,000 feet, the defendant attacked the

flight crew, and a fight occurred on board during the entire time the aircraft returned to the airport. The defendant was convicted of both counts of the indictment after presenting an insanity defense during trial, which was rejected by the jury. The trial court granted my motion for an upward departure from Mr. Calloway's recommended guideline sentence and imposed a sentence of life imprisonment for each count of the indictment. The Court of Appeals for the Sixth Circuit affirmed the conviction and sentence in count I, but vacated count II. I tried the case, wrote the appellate brief and argued it before the Sixth Circuit. The case was tried before Judge Julia Smith Gibbons, and heard on appeal before Judges David A. Nelson, Pierce Lively, and James L. Ryan.

Counsel for the Defense:
Mayor A.C. Wharton
160 North Main Street, Suite 850
Memphis, Tennessee 38103
(901) 576-6016

Robert Brooks (on appeal)
100 North Main Street
Memphis, Tennessee 38103
(901) 763-2832

(3) *United States v. Talley*, No. 99CR10064 (W.D. Tenn. 2000), *rev'd and remanded*, 275 F.3d 560 (6th Cir. 2001). Mr. Talley was one of several individuals prosecuted as part of a larger OCDETF conspiracy. The district judge granted Mr. Talley's Motion to Suppress Evidence, and the government appealed. The Court of Appeals for the Sixth Circuit reversed the District Court, which allowed Talley's prosecution to continue. Ultimately, Talley and co-defendant Ellis changed their pleas to guilty and were sentenced to terms of imprisonment. I handled the Motion to Suppress, wrote the appellate brief and argued the case before the Sixth Circuit. The matter was heard before Judge James Todd, and on appeal was heard before Judges Cornelia G. Kennedy, Damon J. Keith, and Alice M. Batchelder.

Counsel for the Defense:
G. William Hymers III
112 West Baltimore Street
Jackson, Tennessee 38301
(731) 427-5560

(4) *United States v. Finch*, No. 92CR20340 (W.D. Tenn. 1994), *aff'd*, 1995 U.S. App. LEXIS 589 (6th Cir. 1995). This case was part of a multi-district OCDETF investigation that involved a federal prosecution for money laundering. A used car dealership owner was helping local drug dealers launder their drug proceeds through the sale of luxury automobiles. It is believed to be the first money laundering trial in the Western District of Tennessee. The convictions and sentences were later affirmed by the Court of Appeals for the Sixth Circuit. I tried the case, wrote the appellate brief and argued the case before the Sixth Circuit. The case was tried before Judge Odell Horton (now deceased), and

heard on appeal before Judges Cornelia G. Kennedy, Eugene E. Siler Jr., and James P. Churchill.

Counsel for the Defense:
Stephen Shankman
200 Jefferson Avenue, Suite 200
Memphis, Tennessee 38103
(901) 544-3895

(5) *United States v. A.R.*, No. 99CR10011 (W.D. Tenn. 1999), *aff'd*, 203 F.3d. 955 (6th Cir. 1999). In 1999, a total of eight individuals, five of whom were juveniles, were prosecuted in federal court for gang-related crimes. As a result of this case, several of these individuals cooperated with law enforcement. This directly resulted in the prosecution and conviction in federal court of nearly 50 additional gang members. A.R. was a juvenile who was part of a gang that had committed Hobbs Act robberies of restaurants. A.R. challenged the District Court's finding that he should be prosecuted as an adult. The Court of Appeals for the Sixth Circuit affirmed the District Court's findings. A.R. later changed his plea to guilty and was sentenced to a term of imprisonment. I handled the remand hearings, wrote the appellate brief and argued the case before the Sixth Circuit. The case was heard at the trial level before Judge James D. Todd and heard on appeal before Judges Nathaniel R. Jones, Danny J. Boggs, and Ransey G. Cole Jr.

Counsel for the Defense:
David Camp
403 North Parkway, Suite 101
Jackson, Tennessee 38305
(713) 664-4499

(6) *United States v. Harris*, Nos. 89-20132, 89-20209 (W.D. Tenn. 1990), *aff'd*, 1991 U.S. App. LEXIS 20586 (6th Cir. 1991). This case involved federal prosecution of two defendants for attempting to kill a federal informant. The defendants had been charged with federal drug offenses. After being released on bail, the defendants and others forced entry into the informant's residence, kidnapped the informant and took him to a secluded area in order to murder him. Prior to leaving the informant's residence, one of the defendants raped the informant's wife. The informant was able to free his hands and obtain a weapon. After firing several shots and killing one of the kidnappers, the informant escaped. The two defendants were later apprehended, tried and convicted of the offenses. Their convictions were affirmed on appeal. I tried the case before the District Court, wrote the appellate briefs and argued the matter before the Sixth Circuit. The matter was tried before Judge Julia Smith Gibbons, and heard on appeal before Judges Boyce F. Martin Jr., David A. Nelson, and Harry W. Wellford.

Counsel for the Defense:
Mayor A.C. Wharton
160 North Main Street, Suite 850

Memphis, Tennessee 38103
(901) 576-6016

(7) *United States v. Jones*, No. 91CR20055 (W.D. Tenn. 1992), *aff'd*, 1993 U.S. App. LEXIS 31449 (6th Cir. 1993). The defendant was identified by federal drug agents based in Los Angeles, California as a buyer of large quantities of cocaine. Mr. Jones entered into an agreement to buy approximately six kilograms of cocaine from undercover federal agents. Upon completing the deal, the defendant was arrested. He proceeded to trial, claiming that he was entrapped into participating in the drug transaction. Ultimately, the defendant was convicted of attempt to possess with intent to distribute six kilograms of cocaine. His conviction and sentence were upheld by the Court of Appeals for the Sixth Circuit. I tried the case, wrote the appellate brief and argued the case before the Sixth Circuit. The case was tried before Judge Julia Smith Gibbons, and heard on appeal before Judges Danny J. Boggs, Bailey Brown, and Richard F. Suhrheinrich.

Counsel for the Defense:
William Massey
3074 East Street
Memphis, Tennessee 38128
(901) 384-4004

(8) *United States v. Barnes*, 910 F.2d 1342 (6th Cir. 1990). In the late 1980's, it became known to federal authorities that two national motorcycle gangs were involved in a violent gang war. In an effort to stop the violence, the Bureau of Alcohol, Tobacco and Firearms investigators began prosecuting gang members for federal offenses. The defendant, a member of one of the gangs, was arrested and charged with a firearms offense. The defendant pleaded guilty to being a convicted felon in possession of a firearm. However, the defendant appealed the District Court's denial of his Motion to Suppress and upward departure from the sentencing guidelines. The Court of Appeals for the Sixth Circuit held that the police officers made a valid *Terry* traffic stop when they pulled the defendant over based on information the officers received from several federal law enforcement agents, and that the upward departure was appropriate. I handled the matter before the District Court, wrote the appellate brief and argued the case before the Sixth Circuit. The matter was tried before Judge Jerome Turner (now deceased), and heard on appeal before Judges Ralph B. Guy Jr., James L. Ryan, and Albert J. Engel.

Counsel for the Defense:
Honorable William Anderson
201 Poplar Avenue, LL56
Memphis, Tennessee 38103
(901) 545-5190

(9) *State v. Harbin*, No. 88-07380 (Tenn. Crim. Ct. 1989), *aff'd*, 1990 Tenn. Crim. App. LEXIS 609 (Tenn. Crim. App. 1990). After being convicted at trial, the defendant appealed his ten-year sentence for second degree murder. The defendant was driving at a

high rate of speed a vehicle he knew to have defective brakes in an area frequented by small children. He struck and killed the five-year old victim and injured her eight-year old brother as they, and other children, walked home from school. The Court of Appeals affirmed the jury verdict and sentence imposed by the trial court. I tried the case before Judge L.T. Lafferty, and it was heard on appeal before Judges Lyle Reid, Joe D. Duncan and Gary R. Wade.

Counsel for the Defense
Ed M. Hurley
3540 Summer Avenue
Memphis, Tennessee 38122
(901) 525-8766

(10) *United States v. Robertson*, No. 00CR10010 (W.D. Tenn. 2000), *aff'd in part and vacated in part*, 40 Fed. Appx. 933 (6th Cir. 2002). This case involved the prosecution and trial of three individuals for violating federal drug conspiracy statutes. The leader of the group was a quadriplegic who used others to sell drugs for him. A search warrant was served at his residence which produced a large quantity of cocaine and cocaine base. All three defendants were convicted at trial, and appealed. Two defendants' convictions were affirmed, but the third was remanded with instructions to inquire further about representation at the trial level. I was lead counsel at the trial. Assistant United States Attorney Tu Pham, now a United States Magistrate Judge, was co-counsel at trial, wrote the appellate briefs and argued the matter before the Court of Appeals for the Sixth Circuit. The case was tried before Judge James Todd, and heard on appeal before Judges James G. Carr, Alice M. Batchelder, and Eric L. Clay.

Co-Counsel for the United States:
Honorable Tu Pham
United States Magistrate Judge
167 North Main Street
Memphis, Tennessee 38103
(910) 495-1351

Counsel for the Defense:
Russell Larson
211 East Main Street
Jackson, Tennessee 38301
(731) 422-3344

Kemper Durand
40 South Main, 29th Floor
Memphis, Tennessee 38103
(901) 525-8721

Mary Jermann
200 Jefferson Avenue, Suite 200

Memphis, Tennessee 38103
(901) 544-3895

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 District Attorney General from 1987 to 1989, I was assigned to several divisions of Criminal Court as a regularly assigned assistant district attorney general, and then was assigned to the Multiple Violators Unit, a unit that prosecuted repeat offenders. Afterwards, I became director of the district attorney general's Child Sexual Abuse Unit. As director, I reviewed all child sexual abuse cases for prosecution and assigned the cases to unit prosecutors. In addition, I developed investigative techniques and case development protocols for prosecutors, investigators and rape crisis center nurse clinicians. As a direct result of my duties as director of the unit, I became the district attorney general's office liaison with the Memphis and Shelby County Rape Crisis Center. I became an advisor to the center and was involved in the training of their staff.

As an Assistant United States Attorney, I was assigned to the Organized Crime Drug Enforcement Task Force (OCDETF) from 1991 to 1994. As an OCEDTF attorney, I developed expertise in the investigation and prosecution of multi-district drug organizations. This required me to head investigations involving most federal, state and local law enforcement agencies. The investigations resulted in convictions of high, medium and low level conspiracy members in the States of Tennessee, California, Arizona, Texas, Louisiana and Florida. These investigations resulted in convictions of approximately 100 conspiracy members.

From 1998 to 2001, I was the Gang Prosecutor of the United States Attorney's Office for the Western District of Tennessee. During this time, I approached all federal, state and local law enforcement agencies in Shelby County, Tennessee and Madison County, Tennessee and developed multi-agency gang investigative units. These investigative units targeted large and violent gang organizations throughout the District. The result was the prosecution and conviction of approximately 200 gang members for various federal offenses. During this time, I was instrumental in training the investigative units on proper techniques of gathering evidence, interrogating suspects and potential cooperators, and delivering testimony in court proceedings.

From 1993 to 1997 and 2001 to 2002, I was the First Assistant United States Attorney for the Western District of Tennessee. I had overall management responsibility for all units of the United States Attorney's Office. It was my responsibility to supervise and review the performance of all United States Attorney staff. I also continued to investigate and prosecute criminal organizations.

I am a member of the American Bar Association, the Tennessee Bar Foundation, the Memphis Bar Association, the Memphis Bar Foundation and the National Bar Association. I am also on the Board of Memphis Area Legal Services. I pay dues, make financial donations to further bar activities and participate in bar activities. I also maintain membership in, and remain active in several community not-for-profit agencies.

I have never been a lobbyist and I have never performed any lobbying activities.

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

    I have not taught any courses at institutions of higher learning.

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 expect to receive retirement benefits from the State Judges' Retirement System and 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.

    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.

I do not anticipate any such conflicts of interest. In the event that such conflicts should arise, I would resolve them in accordance with the Code of Conduct for United States Judges.

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, when a conflict of interest question arises, I always review the Tennessee Code of Judicial Conduct and applicable statutes and case law. In addition, I confer with other judges regarding how they have addressed conflict or recusal issues in the past. Similar to recusal, the facts of a potential conflict must be developed and discussed on the record. Disqualification is necessary when a judge's impartiality might reasonably be questioned.

If confirmed for this position, I will observe the same practice by fully considering the facts, conferring with colleagues and applying 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.

Memphis and surrounding cities have a large percentage of poor and disadvantaged citizens. Although members of the judiciary are somewhat limited by the Code of Judicial Conduct, I have tried to satisfy my ethical obligations, by being active on boards of directors, neighborhood groups and school activities. I have been a member of the Board of Memphis Area Legal Services for nearly ten years, and commit over 50 hours of service annually. Also, I speak at many school, church and neighborhood functions about commitment to excellence, work ethic, and crime. Most recently, I spoke at the "Freedom From Unnecessary Negatives (FFUN)" picnic, and "Career Day" for Oakville Elementary School. Each such appearance requires an average commitment of two to four hours. Over the years, I have also been actively involved with coaching and judging students at all levels of mock trial and moot court competition. For many years, I coached high school age students as part of the Boy Scouts of America Explorer Program, which exposes young men and women to potential career options. I started the United States Attorney's Office law-related explorer post, and coached the office mock trial team. Also, for many years I helped coach the mock trial team sponsored by our

local power company, Memphis Light, Gas and Water. I continue to judge law school, undergraduate and high school mock trial and moot court competitions. If appointed, it is my intention to continue involvement in community activities.

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 summer of 2010, it became public knowledge that United States District Court Judge Bernice Donald was being seriously considered to fill a vacancy on the Sixth Circuit Court of Appeals. In September 2010, I wrote a letter to Congressman Steve Cohen seeking consideration for a potential vacancy in the U.S. District Court for the Western District of Tennessee. Several weeks later, I attended an interview with Congressman Cohen and members of his staff. In the spring of 2011, I was contacted by Congressman Cohen's office about an appearance before a committee formed by the Congressman to vet potential candidates. I appeared before the committee on May 27, 2011. In September 2011, Congressman Cohen's office informed me that he was recommending me to the White House for consideration.

Since September 27, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 26, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On December 16, 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) Fowlkes, John T.	2. Court or Organization U.S. District Court	3. Date of Report 12/16/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Court Judge	5a. Report Type (check appropriate type) ☑ Nomination, Date 12/16/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 1/01/2010 to 12/16/2011
7. Chambers or Office Address Criminal Justice Complex 201 Poplar Avenue, Suite 519 Memphis, Tennessee 38103	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.	Treasurer	Tennessee Judicial Conference
2.	Commissioner	Shelby County Public Records Committee
3.	Board of Directors	Economic Club of Memphis
4.	Board of Directors	Memphis in May International Festival, Inc.
5.	Board of Directors	Memphis Ten Point Coalition, Inc.
6.	Board of Directors	Memphis Area Legal Services, Inc.
7.	Board of Directors	Memphis Business Academy
8.	Board of Directors	National Bar Association, Ben F. Jones Chapter
9.	Board of Directors	Memphis Shelby Crime Commission
10.	Board of Directors	Lifeblood, Inc.

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting	Date of Report
	Fowlkes, John T.	12/16/2011

2.

3.

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting	Date of Report
	Fowlkes, John T.	12/16/2011

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 Tennessee, Salary	$147,000.00
2. 2010	State of Tennessee, Salary	$145,008.00
3. 2009	State of Tennessee, Salary	$144,159.00
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	Memphis Shelby Crime Commission, Salary
2. 2010	Memphis Shelby Crime Commission, Salary
3. 2010	Save The Children Federation, Salary
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting Fowlkes, John T.	Date of Report 12/16/2011

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.	Citi Bank	Credit Card	J
2.	Shelby County Credit Union	Credit Line	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 5 of 8	Name of Person Reporting Fowlkes, John T.	Date of Report 12/16/2011

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. Alliance Berstein Global Thematic Growth		None	J	T	Exempt				
2. DFA International Value Portfolio		None	J	T	Exempt				
3. Fidelity Contrafund		None	J	T	Exempt				
4. Fidelity International Discovery Fund		None	J	T	Exempt				
5. Fidelity OTC Portfolio		None	J	T	Exempt				
6. Fidelity Spartan 500 Index Fund		None	J	T	Exempt				
7. Fidelity Stock Selector Cap		None	J	T	Exempt				
8. Vanguard Institutional Index Fund		None	J	T	Exempt				
9. Vanguard Total Bond Fund		None	J	T	Exempt				
10. America Funds Investment Company of America	A	Interest	K	T	Exempt				
11. YWCA 401 (A) Retirement Fund Cash Equivalent Account	C	Interest	L	T	Exempt				
12. FDIC Insured Deposit CRBS Citizens IRA Cash Equivalent Acct.		None	K	T	Exempt				
13. Shelby County Retirement-Fixed Account	A	Dividend			Exempt				
14. Principal Financial Group	A	Dividend			Exempt				
15. Shelby County Credit Union Accounts	A	Interest	J	T	Exempt				
16. Regions Bank Account		None	J	T	Exempt				
17. Suntrust Bank Account		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
P1 =$1,000,001 - $5,000,000
P2 =More than $50,000,000
L =$50,001 - $100,000
M =$100,001 - $250,000
P3 =$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 Fowlkes, John T.	Date of Report 12/16/2011

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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. Federal Building Credit Union Accounts		None	J	T	Exempt				

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	
	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		
	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 Fowlkes, John T.	Date of Report 12/16/2011

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Fowlkes, John T.	Date of Report 12/16/2011

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 WILLFULLY 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		11	500	Notes payable to banks-secured (autos)		18	000
U.S. Government securities				Notes payable to banks-unsecured		13	000
Listed securities – see schedule		47	575	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		4	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		290	000
Real estate owned – personal residence		270	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		55	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		319	932				
Retirement Accounts (cash)		120	933				
				Total liabilities		325	000
				Net Worth		499	940
Total Assets		824	940	Total liabilities and net worth		824	940
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	
AllianceBernstein Global Thematic Growth Fund	$1,004
American Funds Investment Company of America	22,417
DFA International Value Portfolio	1,737
Fidelity Contrafund	2,994
Fidelity International Discovery Fund	3,203
Fidelity OTC Portfolio	1,018
Fidelity Puritan Fund	878
Fidelity Spartan 500 Index Fund	4,557
Fidelity Stock Selector Cap	1,881
Vanguard 500 Index Fund	854
Vanguard Institutional Index Fund	3,665
Vanguard Total Bond Fund	2,694
Medco Health Solutions stock	281
Merck & Company Inc stock	392
Total Listed Securities	$47,575

AFFIDAVIT

I, JOHN T. FONLKES, JR, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12/19/20 (DATE) (NAME)

(NOTARY)

My Commission Expires

JANIS DUNAVANT
STATE OF TENNESSEE NOTARY PUBLIC
SHELBY CO.

STATEMENT OF KEVIN McNULTY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Mr. MCNULTY. Thank you. With me today are, of course, first and foremost, my family members. My wife, we will be married 25 years in June, is back there; and next to her, my daughter, Tess, who's a junior at Yale and is giving up part of her spring vacation to be here today.

Senator KLOBUCHAR. What a sacrifice.

Mr. MCNULTY. Yes, indeed. I would also like to acknowledge my dear friends who have taken time out of their busy lives to come down here today. Just in order of seating, behind me is James Zazzali, formerly chief justice of New Jersey Supreme Court.

Next to him is one of the lions of the New Jersey bar, Michael Griffinger. And behind them is Paul Weissman, a dear old friend and also an attorney with one of the pharmaceutical firms in New Jersey.

I'd also like to acknowledge Judge John Gibbons, who could not be here today, but I know is watching on the Webcast.

Having said that, I would like to thank the President for forwarding my nomination, and my two home State Senators, Senator Lautenberg and Senator Menendez, and Senator Menendez especially for his kind words at the beginning of this process.

And I almost forgot, of course, my son, Jake, who could not be here today, is also on the Webcast. He's in England, and so was a little too far away to make it.

Thank you.

Senator KLOBUCHAR. Very, very good. Welcome, everyone. Thank you for being here.

Judge Shipp.

[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).

   Kevin Charles McNulty

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

   United States District Judge for the District of New Jersey

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.

   Gibbons P.C.
   One Gateway Center
   Newark, New Jersey 07102

   Residence: Short Hills, New Jersey

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

   1954; Elizabeth, 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.

   1980 – 1983, New York University School of Law; J.D. (*cum laude*), 1983
   1976 – 1977, Brown University (Graduate School); no degree awarded
   1972 – 1976, Yale University; B.A., 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.

   1998 – present
   Gibbons P.C.
   (formerly Gibbons, Del Deo, Dolan, Griffinger & Vecchione)

One Gateway Center
Newark, New Jersey 07102
Director (2000 – present)
Of Counsel (1998 – 2000)

1987 – 1998
United States Attorney's Office for the District Of New Jersey
970 Broad Street
Newark, New Jersey 07102
Chief, Appeals Division (1995 – 1998)
Deputy Chief, Criminal Division (1992 – 1995)
Assistant United States Attorney (1987 – 1998)

1984 – 1987
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Associate

1983 – 1984
Hon. Frederick B. Lacey (now retired)
United States District Judge, District of New Jersey
Frank R. Lautenberg U.S. Post Office and Courthouse Building
Federal Square
Newark, New Jersey 07101
Judicial Clerk

Summer 1983
Arnold & Porter
555 Twelfth Street, NW
Washington, DC 20004
Summer Associate

Summer 1982
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Summer Associate

Summer 1981
Bernard Flaton, Esq.
One Penn Plaza
New York, New York 10119
Summer Associate

1978 – 1979
East Haven Shore Line Associations
50 Coe Avenue
East Haven, Connecticut 06512
Program Administrator

1978
Yale University
Human Resources/Personnel office
155 Whitney Avenue
New Haven, Connecticut 06520
Field interviewer, Medical School public health project

1977 – 1978
Mattatuck Historical Society
119 West Main Street
Waterbury, Connecticut 06702
Archivist

1976
New Haven Historical Society
114 Whitney Avenue
New Haven, Connecticut 06520
Archivist

Other Affiliations (uncompensated):

2010 – present
Bar Association for the Third Federal Circuit
c/o Nieves Heimall
P.O. Box 4041
Brick, New Jersey 08723
Member, Board of Governors

2010 – present
The Historical Society of the United States
Court of Appeals for the Third Circuit
No physical address
Member, Board of Directors

2005 – 2010
Urban League of Essex County, New Jersey
508 Central Avenue
Newark, New Jersey 07107
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 registered for the selective service in 1972. I did not serve in the military.

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

   Best Lawyers in America (2011 and prior years)
   Super Lawyers (2011 and prior years)
   Lawyer of the Year, New Jersey Law Journal (2008)
   U.S. Attorney's Office: Performance Awards (Unknown dates, 1987 – 1998)
   Federal Law Enforcement Officers Association Award (Unknown date, 1987 – 1998)
   Law Review Alumni Association Award (1983)
   John Norton Pomeroy Prize (1983)
   Order of the Coif (1983)
   New York University Law Review Articles Editor (1982 – 1983)
   New York University Law Review (1981 – 1982)
   American Judicature Society Prize (1981)
   Moot Court Advocacy Award (1981)

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 (2004 – present)
   Association of the Federal Bar of New Jersey (1999 – present)
   Bar Association of the Third Federal Circuit (2010 – present)
   Member, Board of Governors (2010 – present)
   Historical Society of The United States Court of Appeals for the Third Circuit (2010 – present)
   Member, Board of Directors (2010 – present)
   New Jersey State Bar Association (2004 – present)
   Appellate Practice Committee (2010 – present)
   Third Circuit Lawyers' Advisory Committee (1997 – 1999)

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, 1985

New Jersey, 1988

There have been no lapses in my memberships.

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

Supreme Court of the United States, 1999
United States Court of Appeals for the Second Circuit, 1987
United States Court of Appeals for the Third Circuit, 1987
United States Court of Appeals for the Fourth Circuit, 2009
United States Court of Appeals for the Fifth Circuit, 2000
United States Court of Appeals for the Eighth Circuit, 2001
United States Court of Appeals for the Eleventh Circuit, 2006
United States Court of Appeals for the District of Columbia Circuit, 2011
United States Court of Appeals for the Federal Circuit, 2010
United States District Court for the Southern District of New York, 1985
United States District Court for the Eastern District of New York, 1985
United States District Court for the District of New Jersey, 1988

There have been no lapses in my memberships.

11. **Memberships**:

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

Colony Pool & Tennis Club (1999)

Montclair Beach Club (1994 – 1998)

Museum of Modern Art (2010 – 2011)

Urban League of Essex County, New Jersey (2005 – 2010)
Member, Board of Directors (2005 – 2010)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above

currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations 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.

With Jed Goldstein, *A Re-Examination of the Third Circuit's Open Policy Toward the Submission of Amicus Curiae Briefs in Light of the Government's Recent Advocacy in Other Circuits of a More Restrictive Standard*, Bar Association for the Third Federal Circuit Newsletter, Spring 2011. Copy supplied.

Third Circuit Appellate Practice Manual, Penn. Bar Inst., 2d ed., 2010 (Co-authored chapter 22 re: Criminal Appeals). Copy supplied. A copy of the same chapter from the superseded first edition (2006) is also supplied.

With Victoria K. Pérez, *Federal Appellate Trap for The Unwary: The Tenth Circuit Rules in Vanderwerf v. SmithKline Beecham Corp. That the Deadline for Filing a Notice of Appeal Was Not Suspended After Plaintiffs Withdrew Their Motion for Reconsideration*, Business & Commercial Litigation Newsletter, June 8, 2010. Copy supplied.

With Christopher Walsh, *What Lies Ahead; Preview of arbitration cases currently on the docket*, New Jersey Law Journal, March 30, 2009. Copy supplied.

As an editor of the New York University Law Review (1981 – 1983), I had some editorial responsibility for a number of articles, notes and comments. I had no responsibility for the content, and my name would not be listed except in the masthead of the law review volume.

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.

June 12, 2007: Testimony before the New Jersey Courts Committee on Attorney Advertising about Super Lawyers and Best Lawyers. I have no notes, transcript or recording, but press coverage 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.

July 8, 2009: NJ-ICLE (New Jersey Institute for Continuing Legal Education) accredited class taught at Gibbons, P.C. (single one-hour session); Basics of Appellate Procedure, Federal and New Jersey. Notes supplied.

May 17, 2007: Panelist, New Jersey State Bar Association Annual Meeting Atlantic City, New Jersey. This was a panel and question/answer session concerning the then-pending litigation over Ethics Opinion 39, which essentially banned participation in, or lawyer's communications of, ratings in Super Lawyers, Best Lawyers, and other similar publications. Attorneys for both sides participated. I have no notes, transcript, or recording, but press coverage is supplied. The address of the New Jersey State Bar Association is 1 Constitution Square, New Brunswick, NJ 08901.

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.

Interview, *Q&A with Gibbons' Kevin McNulty*, Law360, Nov. 25, 2009. Copy supplied.

Mary Pat Gallagher, *N.J. Court Weighs Proposed Easing of Super Lawyers Ban*, New Jersey Law Journal, Sept. 28, 2009 (reprinted in multiple outlets). Copy supplied.

Henry Gottlieb, *Champions for Free Commercial Speech*, New Jersey Law Journal, Dec. 29, 2008. Copy supplied.

Dana Sullivan, *Deciding Super Lawyers*, New Jersey Lawyer, July 7, 2008. Copy supplied.

Henry Gottlieb, *Binding Arbitration Not Appealable If Reviewed Below*, New Jersey Law Journal, June 23, 2008. Copy supplied.

Daniel Wakin, *A Prosecutor Known for His Common Sense and Straightforward Style*, New York Times, Nov. 2, 2005. Copy supplied.

Rudy Larini, *Developer, Out of Jail, Now Entitled to New Trial*, Star-Ledger, Sept. 28, 2005. Copy supplied.

George Jordan, *Financiers Appeal $27M Tax Collection Verdict*, Star-Ledger, May 6, 2003. Copy supplied.

Matthew Dowling, *Sending Districts Seek Greater Presence*, Star-Ledger, Apr. 15, 2003 (reprinted in multiple outlets). Copy supplied.

Mitchel Maddux, *Party Boss's Bribery Conviction Overturned*, The Record, Mar. 20, 2003 (quote reprinted in multiple outlets). Copy supplied.

Mitchel Maddux & Josh Gohlke, *Ex-GOP Chief in Passaic Freed Pending Appeal*, The Record, Oct. 19, 2002. Copy supplied.

Robert Seidenstein, *New High Hurdle: Going After Docs Who Lie about Credentials*, New Jersey Lawyer, June 24, 2002. Copy supplied.

Michael Booth, *High Court Lengthens Coattails of Its Anti-Profiling, Consent-Search Edict*, New Jersey Law Journal, May 6, 2002 (reprinted in multiple outlets). Copy supplied.

William Safire, *On Language*, New York Times, Mar. 31, 2002. Copy supplied.

Henry Gottlieb, *N.J. Joins Minority of States that Ban Freewheeling Consent Searches*, New Jersey Law Journal, Mar. 15, 2002 (reprinted in multiple outlets). Copy supplied.

Laura Mansnerus, *High Court in New Jersey Strictly Limits Auto Searches*, New York Times, Mar. 5, 2002. Copy supplied.

Robert Schwaneberg, *High Court Ruling Limits Police on Car Searches*, Star-Ledger, Mar. 5, 2002. Copy supplied.

Josh Gohlke, *Ex-County GOP Chairman Begins Prison Term Today*, The Record, Nov. 2, 2001. Copy supplied.

Tim O'Brien, *Malicious Prosecution Remains New Jersey's Toughest Tort*, New Jersey Law Journal, Oct. 29, 2001. Copy supplied.

Former Prosecutor's Wife Loses Conviction Appeal, New York Times, Feb. 14, 1998. Copy supplied.

Dana Coleman, *Mental Disorders Could Mean Lighter Fed Sentence*, New Jersey Lawyer, Oct. 6, 1997. Copy supplied.

Joseph Slobodzian, *Volition New Factor in Sentencing*, National Law Journal, Sept. 15, 1997. Copy supplied.

Matt Ackermann, *Lack of Control May Warrant Shorter Term, Court Rules*, New Jersey Law Journal, Sept. 8, 1997. Copy supplied.

Henry Gottlieb, *Sorry, Wrong Number: 911*, New Jersey Law Journal, June 10, 1996. Copy supplied.

Lisa Brennan, *The Singing Prosecutor*, New Jersey Law Journal, May 27, 1996. Copy supplied.

Steven Crabill, *Former Banker Gets 51 Months in Prison*, The Record, Dec. 24, 1991. Copy supplied.

Two Former Officials of New Jersey Banks Plead Guilty to Fraud, Wall Street Journal, Aug. 15, 1991. Copy supplied.

Boca Raton Man Indicted in Drug, Credit Card Scheme, Miami Herald, Mar. 9, 1991. Copy supplied.

Chris Mondics, *8 Indicted in Drug, Counterfeit Ring*, The Record, Mar. 9, 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:	___% [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 held any judicial office.

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

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

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

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

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

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

I have never held public office. I have never been a candidate for elective 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 never held office in or rendered services to 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;

Hon. Frederick B. Lacey, United States District Judge for the District of New Jersey, 1983 – 1984

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.

1984 – 1987
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019
Associate

1987 – 1998
United States Attorney for the District Of New Jersey
970 Broad Street
Newark, New Jersey 07102
Assistant United States Attorney (1987 – 1998)
Deputy Chief, Criminal Division (1992 – 1995)
Chief, Appeals Division (1995 – 1998)

1998 – present
Gibbons P.C.
(formerly Gibbons, Del Deo, Dolan, Griffinger & Vecchione)
One Gateway Center
Newark, New Jersey 07102
Of counsel (1998 – 2000)
Director (2000 – 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 an arbitrator or mediator.

b. Describe:

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

My law practice has been devoted to civil and criminal litigation at the trial and appellate levels.

From 1984 through 1987, I was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison, in New York City. My work involved a mix of civil litigation in both state and federal court, as well as some white collar criminal defense.

From 1987 to 1998, I was a federal prosecutor in the United States Attorney's Office for the District of New Jersey. From 1987 to 1991, as a member of the Criminal Division, I prosecuted a wide variety of firearms, narcotics, fraud and immigration offenses. In 1990, I was selected to head the Organized Crime and Drug Enforcement Task Force, which handled the largest cases in the Criminal Division, including RICO prosecutions. From 1991 to 1992, I prosecuted large white-collar fraud cases in the Frauds Division. In 1992, I was appointed Deputy Chief of the Criminal Division, and maintained a full caseload while supervising other attorneys. In early 1995, I was appointed Chief of Appeals. In that position, I briefed and argued criminal appeals to the United States Court of Appeals for the Third Circuit, supervised the other attorneys in the Division, served as Ethics Officer, and acted as general legal adviser to the Office and the United States Attorney.

In 1998, I joined Gibbons P.C., where I am a Director. I am chair of the firm's appellate practice, and a member of the Business & Commercial Litigation department. My time is equally divided between appeals and trial work.

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

From 1984 through 1987 I was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York. I had no subspecialty. Most of my clients were corporations, and the majority of my practice was civil litigation.

From 1987 to 1998, as an Assistant United States Attorney, I represented the United States. From 1987 to 1995, my practice consisted of prosecution of criminal cases in the United States District Court for the District of New Jersey. From 1995 to 1998, as Chief of Appeals, I specialized in criminal appellate practice, representing the United States before the United States Court of Appeals for the Third Circuit.

From 1998 to the present, at Gibbons P.C., I have resumed my practice of predominantly civil litigation. The majority of my clients are corporations. Civil matters have largely consisted of litigations between commercial entities, and have typically included antitrust, securities, patent and contract disputes, but have also encompassed constitutional and

other claims. My criminal cases have almost all been white-collar defense representations.

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

Nearly 100% of my practice has been in the field of civil and criminal litigation. When in the Criminal Division at the United States Attorney's Office (1987 – 1994), I appeared in court frequently, sometimes daily, although the frequency decreased as my cases came to involve more pre-indictment investigation and my supervisory responsibilities grew. In private practice, my court appearances have been regular, but less frequent.

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

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 twelve cases to verdict, judgment, or final decision: four as lead counsel (or co-lead counsel); six as sole counsel; and two as associate counsel.

i. What percentage of these trials were:
   1. jury: 58%
   2. non-jury: 42%

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

I have not argued before the Supreme Court. I took the major role in drafting amicus briefs in two Supreme Court cases:

Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029 (2000) (concerning duties of criminal defense attorney to counsel client regarding right to appeal and to file notice of appeal)

United States v. Peguero, 526 U.S. 23, 119 S. Ct. 961 (1999) (obligation of court to advise defendant of right to appeal in criminal case)

Copies of the briefs are 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. *United States v. Marval*, Crim. No. 88-245 (District of New Jersey), *aff'd by judgment order*, 908 F.2d 965 (Table) (3d Cir. 1990); Hon. Anne E. Thompson, United States District Judge (Hon. Dickinson R. Debevoise re-entered two guilty pleas when a potential conflict of interest emerged regarding Judge Thompson)

    In 1988, I supervised and conducted an investigation of a ring that supplied fraudulent immigration documents to visa applicants, netting millions of dollars from the applicants, only to leave them in legal jeopardy. The means of investigation included the use of cooperating informants, grand jury subpoenas, undercover tapes and search warrants. A number of defendants pled guilty, and four went to trial. I was sole counsel for the United States at the trial, which occupied several weeks and involved thousands of documents, as well as numerous witnesses. Three defendants pled guilty after the presentation of the government's case, and a fourth was found guilty by the jury.

    Counsel for Defendant L. Marval:
    Francis J. Hartman
    505 South Lenola Road
    Moorestown, New Jersey 08057
    (856) 235-0220

Counsel for Defendant S. Marval:
Dominic F. Amorosa
86 Stewart Road
Short Hills, New Jersey 070078
(973) 467-7999
[successor post-trial; trial counsel, Charles Nugent, is deceased]

Counsel for Defendant Gervasoni:
John S. Furlong
Furlong & Krasny
820 Bear Tavern Road
West Trenton, New Jersey 08628
(609) 882-0288

Counsel for Defendant Meier:
Donald Roscoe Brown
333 West State Street
Trenton, New Jersey 08618
(609) 915-3705

2. *United States v. Parlavecchio, et al.*, Crim. No. 91-35 (District of New Jersey), *aff'd by judgment order*, No. 92-5216 (3d Cir. 1993), *cert. denied*, 511 U.S. 1126 (1994); Hon. Garrett E. Brown, Jr., United States District Judge

From 1989 to 1991, I conducted and supervised a two-year wiretap investigation that resulted in multiple indictments. A large group of conspirators engaged in a wide range of criminal activities, including narcotics trafficking and counterfeiting of financial instruments, in the United States, Brazil and Italy. Most pled guilty, but in 1991 four defendants went to trial before a jury on RICO, narcotics, counterfeit credit card and counterfeit money order charges. Assisted by a junior AUSA, I conducted the jury trial, which lasted over a month, and obtained guilty verdicts against all defendants. I also briefed and argued the appeal, obtaining affirmances of all convictions in 1993.

For Defendant N. Parlavecchio:
Thomas R. Ashley
50 Park Place, #1400
Newark, New Jersey 07102
(973) 623-0501

For Defendant A. Parlavecchio:
(on appeal)
Alan L. Zegas
552 Main Street
Chatham, New Jersey 07928
(973) 701-7080

(at trial)
Robert J. DeGroot
56 Park Place
Newark, New Jersey 07102
(973) 643-1930

For Defendant Dellisanti:
Kim Otis, Esq
Haveson & Otis
194 Nassau Street #9
Princeton, New Jersey 08542
(609) 921-0090

For Defendant Zirpoli:
David E. Schafer
Assistant Federal Public Defender
22 South Clinton Avenue
Station Plaza #4, 4th Floor
Trenton, New Jersey 08609
(609) 989-2160

3. *Ssangyong (USA). Inc. v. Innovation Group Ltd.*, Civ. No. 3-96-10165 *et al.* (consolidated cases) (S.D. Iowa); Hon. Ronald E. Longstaff, United States District Judge.

In this commercial contract case, a financing entity sued our client, a cookware importer, and our client counterclaimed for breach of the covenant of good faith and fair dealing. Together with a partner, I conducted a bench trial in which we obtained a verdict on our counterclaim, while the plaintiff recovered on a smaller claim. I was co-counsel in the case from 1998 to 2001. I conducted depositions, briefed and argued motions, prepared witnesses, and examined witnesses at trial.

Co-counsel for Innovation Group Ltd.:
David E. De Lorenzi
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4743

Counsel for individual co-defendant:
Kevin H. Marino
Marino Tortorella P.C.
437 Southern Boulevard
Chatham, New Jersey 07928
(973) 824-9300

Counsel for Ssangyong:
Gregory M. Harvey
Montgomery, McCracken, Walker & Rhoads
123 South Broad Street
Philadelphia, Pennsylvania 19109
(215) 772-7684

4. *United States v. Murphy*, 323 F.3d 102 (3d Cir. 2003) (Judges Becker, Scirica, and McKee); on remand at Crim. No. 00-778 (D.N.J.); Hon. Garrett E. Brown, Jr., United States District Judge

In a lengthy, high profile political corruption trial, a county party Chairman was convicted of mail fraud and bribery in connection with a kickback scheme. We were retained to handle the appeal to the United States Court of Appeals for the Third Circuit. The Court of Appeals accepted our arguments that the government's theory of mail fraud did not properly extend to political patronage, despite Congress's general endorsement of the "honest services" theory. After oral argument and supplemental briefing, the Court *sua sponte* released Murphy from prison. In a published decision, the Court reversed Murphy's criminal conviction. I briefed the appeal, which was argued by my partner Lawrence S. Lustberg. On remand, after a negotiated plea, I argued the resentencing before the District Judge.

Counsel for United States:
George S. Leone, then Chief of Appeals, U.S. Attorney's Office
Currently a Judge of the New Jersey Superior Court
Camden County Hall of Justice
101 South Fifth Street, 1st Floor
Camden, New Jersey 08103
(856) 379-2371

5. *Varsolona v. Bankers Trust, et al.*, 360 N.J. Super. 292 (Appellate Division), 180 N.J. 605 (July 28, 2004).

I represented Bankers Trust (Deutsche Bank) on appeal of a class action judgment arising from a municipal program to securitize tax liens. The trial court, citing our State's tax sale law and consumer fraud act, had invalidated a program under which nonperforming tax liens served as collateral for a bond issue by a private trust and produced immediate cash flow for strapped municipalities. I drafted the appeal briefs in cooperation with co-counsel and argued the case in the Appellate Division and the New Jersey Supreme Court. The New Jersey Supreme Court affirmed the Appellate Division's reversal of the trial court's judgment and substantially adopted our positions.

Co-counsel for Bankers Trust (Deutsche Bank):
Frederick A. Brodie
Pillsbury Winthrop LLP
One Battery Park Plaza
New York, New York 10004
(212) 858-1000

Lead Attorney for the Plaintiff Classes:
Peter Pearlman
Cohn Lifland Pearlman Herrmann & Knopf LLP
Park 80 Plaza West-One
Saddle Brook, New Jersey 07663
(201) 845-9600

Attorneys for Defendants Breen Capital Service Corporation:
Andrew T. Solomon
Sullivan & Worcester, LLP
1290 Avenue of the Americas
New York, New York 10104
(212) 660-3000

Attorneys for Defendant FBTLC Trust:
Gary F. Eisenberg
Windels, Marx, Lane & Mittendorf, LLP
120 Albany Street
New Brunswick, New Jersey 08901
(732) 846-7600

6. *ITT v. Pierre Development, A&P, et al.*, No. A2841-02T5 (Appellate Division, Dec. 3, 2004), *certification denied*, 183 N.J. 217 (2005).

The firm obtained a summary judgment in favor of ITT, arising from a mortgage foreclosure in which ITT's lien was incorrectly reported as having been discharged in bankruptcy or otherwise satisfied. Because of the difficulty of the legal issues, I was retained to brief and argue the appeal, and I obtained affirmance of the judgment.

Counsel for Defendants/Appellants:
Adam K. Derman, Esq.
Wolff & Samson
One Boland Drive
West Orange, New Jersey 07052
(973) 530-2027

Scott T. Tross, Esq.
Herrick, Feinstein LLP
2 Penn Plaza, 11th Floor

Newark, New Jersey 07105
(973) 274-2030

Michael J. Fasano, Esq.
Lomurro, Davison, Eastman & Munoz, PA
Monmouth Executive Center
100 Willowbrook Road
Building 1
Freehold, New Jersey 07728
(732) 462-7170

Alan J. Brody, Esq.
Greenberg Traurig, LLP
200 Park Avenue
P.O. Box 677
Florham Park, New Jersey 07932
(973) 360-7900

7. *United States v. Umbrell, et al.*, Crim No. 04-370 (E.D. Pa.), *aff'd*, 500 F.3d 257 (3d Cir. 2007); Hon. Michael M. Baylson, United States District Judge; Cowen, Smith, and Siler, J., 6th Cir., by designation, Circuit Judges

From 2004 to 2007, my partner and I represented Mr. Umbrell. This was a public corruption case involving the Philadelphia City Treasurer and others. Our client, a Vice President of Commerce Bank, was essentially accused of giving favorable treatment to a city official to obtain preferential treatment for the bank. I briefed and argued highly complex and voluminous motions. During the three-month trial, I was essentially in charge of briefing and arguing issues of law (motions, evidence questions, jury charges and the like). Our client was convicted. I substantially drafted the brief on appeal; co-counsel argued. Our client's conviction was affirmed by the Court of Appeals.

Counsel for United States:
Robert A. Zauzmer
Office of the United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, Pennsylvania 19106
(215) 861-8568

Co-counsel for Defendant Umbrell:
Lawrence S. Lustberg
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Counsel for Defendant Holck:
Kevin H. Marino
Marino Tortorella P.C.
437 Southern Boulevard
Chatham, New Jersey 07928
(973) 824-9300

Counsel for Defendant Hawkins:
(on appeal)
Timothy K. Lewis
Nancy Winkelman
Schnader, Harrison, Segal & Lewis, LLP
Suite 3600, 1600 Market Street
Philadelphia, Pennsylvania 19103
(215) 751-2000

(at trial)
Nathaniel E. Jones, Jr.
Jones & Associates
111 South Calvert Street
Legg Mason Tower Suite 2700
Baltimore, Maryland 21202
(410) 385-5246

Counsel for Defendant Kemp:
Lloyd Parry
William R. Spade, Jr.
Davis, Parry & Tyler
1525 Locust Street, 14th floor
Philadelphia, Pennsylvania 19102
(215) 732-3755
(215) 732-3001

Counsel for Defendant Knight:
Nino V. Tinari
123 South Broad Street, Suite 1970
Philadelphia, Pennsylvania 19109
(215) 790-4010

8. *In re Opinion 39 of Committee on Attorney Advertising*, trial before Special Master, Docket Nos. E 18, 19, 20 (Hon. Robert A. Fall, J.A.D. (retired)); 197 N.J. 66, 961 A.2d 722 (2008); proceedings to amend RPC 7.1(a)(3) (amended effective Nov. 2, 2009).

From 2006 to 2009 I represented Key Professional Media, Inc., in a successful First Amendment challenge to State Committee On Attorney Advertising Opinion No. 39,

which prohibited the communication of lawyer ratings. The State Supreme Court stayed Opinion 39 and referred the case to a Special Master, the Hon. Robert Fall, for trial of the underlying factual issues. I conducted a lengthy trial at which I examined all witnesses, opened and closed. Judge Fall filed a 300-page report, substantially adopting our position. The Supreme Court vacated Opinion 39 and remanded for proceedings to amend New Jersey Rule of Professional Conduct 7.1. I argued before the Supreme Court in connection with the amendment proceedings. The Rule was amended consistent with our suggestions.

Bench trial before Hon. Robert A. Fall, J.A.D. (ret.)
1844 Bay Boulevard
Point Pleasant, New Jersey 08742
(732) 892-9394

Counsel for State Committee on Attorney Advertising:
Steven N. Flanzman, S.D.A.G.
Anne Marie Kelly, D.A.G.
State of New Jersey
Office of the Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-2707

Co-counsel at trial:
For Key Professional Media (Super Lawyers):
E. Joshua Rosenkranz, Esq.
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, New York 10019
(212) 506-5380

For Martindale-Hubbell:
Thomas R. Curtin, Esq.
Graham Curtin, P.A.
4 Headquarters Plaza
P.O. Box 1991
Morristown, New Jersey 07962
(973) 401-7117

For New Jersey Monthly:
Arnold H. Chait, Esq.
Vogel, Chait, Collins & Schneider
25 Lindsley Drive, Suite 200

Morristown, New Jersey 07960
(973) 538-3800

For Best Lawyers:
Frederick J. Dennehy, Esq.
Wilentz, Goldman & Spitzer
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, New Jersey 07095
(732) 855-6158

9. *Thomas & Betts Corp. v. Richards Mfg. Co.*, 342 Fed. App'x 754 (3d Cir. 2009); Barry, Smith, Circuit Judges, DuBois (E.D. Pa.), by designation; on remand at No. 01 cv 4677 (D.N.J.); Hon. Stanley R. Chesler, United States District Judge

This case arose from a research director's misappropriation of our client's confidential technical and business information on the eve of his acceptance of employment with a competitor, which promptly began manufacturing a competitive product. On a 25,000 page record, and hundreds of pages of opinions, the district court entered summary judgment against our client. I was retained to handle the appeal to the United States Court of Appeals for the Third Circuit. Aided by colleagues, I drafted the appellant's briefs, and I argued the appeal. The Court of Appeals reversed summary judgment and remanded to the district court for a jury trial.

On remand, I was retained as co-lead counsel, essentially in charge of legal issues and trial strategy. I prepared witnesses and, at trial, handled all briefing, jury charges and arguments of law. The jury returned a verdict and awarded damages to our client.

Co-counsel for Thomas & Betts:
James Scarpone
Scarpone & Vargo LLC
50 Park Place, Suite 1003
Newark, New Jersey 07102
(973) 623-4101 ext. 302

Lead counsel for Richards et al.:
Stephen B. Pokotilow
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
(212) 806-5400

10. *AO Techsnabexport v. Global Nuclear Services*, No. 09-2064 (4th Cir. 2010); Traxler, Davis and Keenan, Circuit Judges

This dispute arose from the Russian Federation's cancellation of a uranium sale contract, and arrived in the American courts after arbitration in Sweden. Representing the appellee, I obtained a Court of Appeals affirmance of the denial of a damages claim. I drafted the brief with others, and I argued the appeal before the Fourth Circuit.

Counsel for Appellant:
Andrew K. Fletcher
Pepper & Hamilton, LLP
1 Mellon Center, 50th Floor
500 Grant Street
Pittsburgh, Pennsylvania 15219
(412) 454-5000

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.)

Virtually all of my practice has involved trial or appellate litigation. My career at the United States Attorney's Office involved supervision of other attorneys' cases. As my cases grew more complex, more of my time was devoted to investigation, including wiretaps and grand jury presentations. I was one of two New Jersey AUSAs (Robert J. Cleary was the other) assigned to the pre-arrest phase of the nationwide UNABOM investigation from 1994 to 1996. The matter was ultimately charged and resolved in the Eastern District of California.

At Gibbons, I have conducted or participated in internal investigations of potentially criminal or wrongful activity at major corporations, the subject matter and identity of which remain privileged. An example of legal activity that did not result in an appearance in court is my substantial participation in the confidential moot-courting of claims and ultimately the settlement of a large patent infringement claim involving a cancer drug. I also took the lead in researching and formulating the legal positions that led to a highly favorable confidential settlement of our pharmaceutical client's patent claims involving its sole product, and avoided hundreds of millions of dollars in potential losses.

My most significant bar association involvement has consisted of membership on the governing boards of the Bar Association for the Third Federal Circuit and the Third Circuit Lawyer's Advisory Committee. The purpose of these committees is to

disseminate useful practice information to the bar, to foster bench-bar relations, and to suggest improvements to the rules and practices of the Court. Issues discussed have included more convenient scheduling of oral arguments for out-of-state attorneys, development of model jury charges, suggested revisions to electronic filing procedures, and newsletter articles concerning legal developments.

I have performed no lobbying activities.

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

    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 arrangements for future or deferred compensation as described, other than the following:

    If confirmed, I will resign my directorship at my present firm, Gibbons, P.C., which is the only paid position I hold. Upon my withdrawal, I will receive return of my capital contribution as of the date of withdrawal, and compensation owed as of that date, net of ordinary deductions.

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.

There are no areas of particular concern. I would recuse myself from any matter in which I had prior personal or supervisory involvement, however small. To avoid the appearance of a conflict, I would for an appropriate period of time recuse myself from all cases involving my firm, Gibbons P.C. My family members have never been litigants or counsel in the U.S. District Court for the District of New Jersey, but if this were to occur, I would of course 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 addition to what is stated in (a), above, and the usual screening for financial conflicts of interest, I would diligently apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as other ethical rules that govern the conduct of attorneys and the judiciary. There are no particular categories of cases that would pose an ethical concern. I would recuse myself from any case in which a credible claim could be made that the outcome would affect my or my family's financial interests, or that my relationship with an attorney or litigant would affect my impartiality. In any situation that a party or member of the public could regard as constituting a conflict of interest, I would direct the parties to address and, if advisable, brief the issue.

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 at the Gibbons firm, I have done considerable unpaid, pro bono work. I do not have a breakdown of hours for individual matters, but matters tracked under a general pro bono number total 427 hours. Representative matters that I can recall include *Roe v. Flores-Ortega* and *United States v. Peguero* (two *amicus* briefs to U.S. Supreme Court regarding advice of right to appeal in criminal case); *State v. Carty* (*amicus* brief to New Jersey Supreme Court concerning State constitutional constraints on searches incident to traffic stops); *State v. Stafford* (appeal from reckless driving conviction); and *In re Hong Hong Zhan* (state appeal from denial of name change application).

I sat on the Board of the Urban League of Essex County for approximately five years (late 2005 – 2010), during which time I rendered legal advice. I did not record most of the time spent, but kept sporadic records reflecting 67 hours.

26. **Selection Process**:

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

Senator Frank R. Lautenberg has convened a judicial selection committee, consisting of attorneys and members of his staff, to assist him in making his recommendations to the President. On October 5, 2009, I had an interview with that committee in connection with current and/or future vacancies. On November 12, 2009, I had an interview with Senator Lautenberg and a member of his staff. On March 10, 2010, I was interviewed by Senator Robert Menendez and a member of his staff. On July 11, 2011, I was again interviewed by Senator Lautenberg and a staff member. On September 27, 2011, Senator Lautenberg informed me that my name would be submitted to the President for consideration.

Since September 30, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 4, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On December 16, 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
McNulty, Kevin	United States District Court for the District of New Jersey	12/16/2011
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 12/16/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 12/1/2011
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.	
Gibbons P.C. One Gateway Center Newark, NJ 07102-5310	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Director	Gibbons P.C.
2.	Member, Board of Governors	Bar Association of the Third Federal Circuit
3.	Director	Historical Society of the United States Court of Appeals for the Third Circuit
4.	Director	Urban League of Essex County (2005-2010)
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 McNulty, Kevin	Date of Report 12/16/2011

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 YTD	Gibbons P.C. Employment compensation	$137,500.00
2. 2010	Gibbons P.C. Employment compensation	$344,613.00
3. 2009	Gibbons P.C. Employment compensation	$305,454.00
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	Self-employed writer and instructor. 1099 income.
2. 2011	Gotham Writers' Workshop, part-time employment as instructor. W-2 income.
3. 2010	Self-employed writer and instructor. 1099 income.
4. 2010	Gotham Writers' Workshop, part-time employment as instructor. W-2 income.

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 McNulty, Kevin	Date of Report 12/16/2011

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

☑ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.			
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 McNulty, Kevin	Date of Report 12/16/2011

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. Brokerage account #1					Exempt				
2. -Core money market acct	A	Dividend	L	T					
3. -Fidelity growth company mutual fund	A	Dividend	K	T					
4. -Fidelity value mutual fund	A	Dividend	K	T					
5. -Fidelity equity income mutual fund	A	Dividend	J	T					
6. -Fidelity strategic real return mutual fund	A	Dividend	J	T					
7. -Fidelity high income mutual fund	B	Dividend	K	T					
8. IRA #1									
9. -Fidelity contra mutual fund	A	Dividend	K	T					
10. -Fidelity growth discovery mutual fund	A	Dividend	K	T					
11. -Fidelity equity income mutual fund	B	Dividend	K	T					
12. -Fidelity mega cap stock mutual fund	A	Dividend	L	T					
13. -Fidelity low priced stock mutual fund	A	Dividend	J	T					
14. IRA #2									
15. -Fidelity core money market fund	A	Dividend	J	T					
16. -Fidelity Mega cap stock mutual fund	A	Dividend	K	T					
17. -Fidelity Select health care mutual 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 5 of 7

Name of Person Reporting	Date of Report
McNulty, Kevin	12/16/2011

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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. IRA #3									
19. -Fidelity core money market account	A	Dividend	J	T					
20. -Fidelity contra mutual fund	A	Dividend	L	T					
21. -Fidelity growth discovery mutual fund	A	Dividend	K	T					
22. -Fidelity equity income mutual fund	A	Dividend	J	T					
23. -Fidelity select energy mutual fund	A	Dividend	K	T					
24. -Fidelity select health care mutual fund	A	Dividend	J	T					
25. T Rowe Price-Vanguard 500 mutual fund (401(k))	D	Dividend	N	T					
26. Fidelity balanced mutual funds	C	Dividend	M	T					
27. Fidelity cash reserves money market fund	A	Dividend	J	T					
28. Vanguard wellington mutual fund	A	Dividend	J	T					
29. Hudson City Savings Bank accounts, including matured CDs	B	Interest	M	T					
30. American Express high yield savings accounts	B	Interest	K	T					
31. Bank of America accounts	A	Interest	K	T					
32. Gibbons P.C. Capital Account		None	L	T					

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting McNulty, Kevin	Date of Report 12/16/2011

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting McNulty, Kevin	Date of Report 12/16/2011

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 Kevin McNulty

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		260	734	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	046	495	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		401	757
Real estate owned – personal residence		818	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		91	875				
Cash value-life insurance							
Other assets itemize:							
Gibbons PC capital account		69	456				
Thrift Savings Plan		228	824				
				Total liabilities		401	757
				Net Worth	2	114	627
Total Assets	2	516	384	Total liabilities and net worth	2	516	384
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	
Fidelity Balanced Fund	$104,204
Fidelity Contrafund	124,406
Fidelity Equity-Income Fund	42,923
Fidelity Growth Company Fund	39,692
Fidelity Growth Discovery Fund	60,191
Fidelity High Income Fund	15,275
Fidelity Low-Priced Stock	2,303
Fidelity Mega Cap Stock Fund	88,688
Fidelity Select Energy Fund	25,868
Fidelity Select Health Care Fund	43,753
Fidelity Strategic Real Return Fund	12,284
Fidelity Value Fund	16,675
Fidelity Cash Reserves (IRA)	9,193
Vanguard 500 Index Fund	451,314
Vanguard Wellington Fund	9,726
Total Listed Securities	$1,046,495

AFFIDAVIT

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

12/19/2011
(DATE)

Kevin McNulty
Kevin McNulty

Renee V. Woods
(NOTARY)

RENEE V. WOODS
A Notary Public of New Jersey
My Commission Expires Mar 1, 2016

STATEMENT OF MICHAEL A. SHIPP, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Mr. SHIPP. Thank you.

Senator KLOBUCHAR. Judge Shipp, is that your son that was sitting next to you over there?

Mr. SHIPP. That's my youngest son.

Senator KLOBUCHAR. I especially enjoyed when Senator Menendez was going through glowing references to your biography and your son looked very bored and put his head on your shoulder.

[Laughter.]

Senator KLOBUCHAR. Good thing that maybe not everyone captured on the Webcast, but I saw it.

Mr. SHIPP. Thank you so much, Senator Klobuchar. I would like to thank the panel for conducting this hearing here today. I also would like to thank President Obama for nominating me for this position.

I would like to thank my hometown Senators, Senator Lautenberg and Senator Menendez.

Along with me today I have here my three sons; my oldest son, Miles, age 13; Marcus, age 11; and, my youngest son, who you referenced already, Mason, age 9. The three of them are also sacrificing by missing school for a couple of days to be here. They, too, are obligated to take pictures and to write a paper.

I also have my mother, Ida, here from North Carolina. My brother, Marcel, who I would like to specifically thank. He flew in all night on a redeye from Arizona to be here. My sister, Pamela Shipp-Jackson, and her husband, James, as well as their daughter, Jasmine, are here. My aunt, Doris Fox, from Stanford, North Carolina, is here. My brother-in-law, Al Bess, from Loudoun County, Virginia is here. And my good friend, Raquel Straud and Anthony Thomas are here.

And I'm also very delighted to be joined by an incredibly talented group of young lawyers who have worked with me over the past 5 years and served as my law clerks and courtroom deputy, and they are here with me, as well, today.

Not physically here, but here with me always, my late father, the Cleon Shipp, and one of my best friends, the late Will Haines.

And then, finally, watching live, we have a host of friends back at the district court of New Jersey watching it live via the Webcast.

Thank you.

Senator KLOBUCHAR. Very, very good. Thank you, Judge Shipp.

Judge Rose.

[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).

   Michael Andre Shipp

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

   United States District Judge for the District of New Jersey

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

   United States District Court for the District of New Jersey
   Martin Luther King, Jr. Federal Building & United States Courthouse
   50 Walnut Street
   Newark, New Jersey 07102

   Residence: Monmouth Junction, New Jersey

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

   1965; Paterson, 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.

   1991 – 1994, Seton Hall University School of Law; J.D., 1994

   1983 – 1987, Rutgers University; B.S., 1987

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

2007 – Present
United States District Court for the District of New Jersey
Martin Luther King Jr. Federal Building and United States Courthouse
50 Walnut Street
Newark, New Jersey 07102
United States Magistrate Judge

2001 – Present
Summer Institute for Pre-Legal Studies
Seton Hall University School of Law
One Newark Center
Newark, New Jersey 07102
Adjunct Professor

2003 – 2007
Office of the Attorney General of New Jersey
Department of Law & Public Safety
Richard J. Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625
Counsel to the Attorney General (2007)
Assistant Attorney General in-charge of Consumer Protection (2003 – 2007)

1995 – 2003
Skadden, Arps, Slate, Meagher & Flom LLP
One Newark Center
Newark, New Jersey 07102
Litigation Associate

1994 – 1995
New Jersey Supreme Court
Richard J. Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625
Law Clerk to the Honorable James H. Coleman, Jr. (Retired)

1993 – 1994
Stryker, Tams & Dill
One Penn Plaza
Newark, New Jersey 07102
Law Clerk (1993 – 1994)
Summer Associate (Summer 1993)

1992 – 1993
Summer Institute for Pre-Legal Studies
Seton Hall University School of Law

One Newark Center
Newark, New Jersey 07102
Supervisor of Graduate/Teaching Assistants (Summer 1993)
Graduate/Teaching Assistant (Summer 1992)

1992 – 1993
Sellar Richardson
293 Eisenhower Parkway, Suite 170
Livingston, New Jersey 07039
Law Clerk

1987 – 1991
Sprint – United Telephone Systems
160 Center Street
Clinton, New Jersey 08809
Assistant Area Manager (1990 – 1991)
Customer Service Center Supervisor (1988 – 1990)
Management Trainee (1987 – 1988)

Other Affiliations (uncompensated)

2009 – Present
Mu Boule – Sigma Pi Phi Fraternity, Inc.
c/o Dr. Don N. Harris
26 Summerall Road
Somerset, New Jersey 08873
President (2011 – Present)
Vice President (2009 – 2011)

2005 – Present
District Court Historical Society
Martin Luther King, Jr. Federal Building & United States Courthouse
50 Walnut Street
Newark, New Jersey 07102
Member, Board of Directors (2005 – 2006)
Advisor (2007 – present)

2006 – 2007
New Jersey Lawyer Magazine
One Constitution Square
New Brunswick, New Jersey 08901
Member, Editorial Board of Directors

1998 – 2007
Sphinx Scholarship Fund
5 Gary Court

Somerset, New Jersey 08873
Member, Board of Directors

1995 – 1999
Alpha Phi Alpha Fraternity, Inc.
P.O. Box 53
Somerset, New Jersey 08873
President (1997 – 1999)
Vice President (1993 – 1995)

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 with 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.

   Alpha Phi Alpha Fraternity, Inc., Theta Psi Lambda President's Award (2008)
   Garden State Bar Association, Roger M. Yancey Award (2008)
   Skadden, Arps, Slate, Meagher & Flom LLP 2002 Pro Bono Service Award (2002)
   PMBR Bar Course Scholarship (1994)
   Thurgood Marshall Student Achievement Award (1994)
   Black Law Students Association Academic Achievement Award (1992 – 1994)
   Clyde Ferguson Scholarship (1992 – 1994)

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
   Asian Pacific American Lawyers Association
   Association of the Federal Bar, District of New Jersey
   Federal Magistrate Judges Association
   Garden State Bar Association
   - Judicial Council (2011)

   Historical Society of the United States District Court for the District of New Jersey
   - Director (2005 – 2006)
   - Advisor (2007 – present)

   Lawyers Advisory Committee of the United States District Court for the District of New Jersey
   - Judge member (2007 – present)
   - Sat by designation of the Attorney General's Office (2005 – 2006)

New Jersey State Bar Association
Federal Trial Practice Section
Minorities in the Profession Section
Director (approx. 1999 – 2002)

10. **Bar and Court Admission**:

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

New Jersey, 1994
Pennsylvania, 1995

I passed the Pennsylvania bar in 1994, but never practiced there. In 1999, I did not complete the continuing legal education requirements for Pennsylvania and I was transferred to inactive status. I became active again in 2001, and remained sc until 2003 when I transferred back to inactive status. I have never practiced in Pennsylvania and do not intend to do so in the future so I remain on inactive status.

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

New Jersey Supreme Court, 1994
United States District Court for the District of New Jersey, 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.

Alpha Phi Alpha Fraternity, Inc. (1984 – present)
President (1997 – 1999)
Vice President (1993 – 1995)
Just the Beginning Foundation (2007 – present)
Mu Boule – Sigma Pi Phi Fraternity, Inc. (2000 – present)
President (2011 – present)
Vice President (2009 – 2011)

New Jersey Attorney General Advocacy Institute
Faculty (2003 – 2007)
New Jersey Lawyer Magazine
Member, Board of Directors (2006 – 2007)
Seton Hall University School of Law Alumni Council (1999 – 2004)
Seton Hall University School of Law Inter-Scholastic Moot Court Team
Coach (1995 – 2000)
Sphinx Scholarship Fund
Member, Board of Directors (1998 – 2007)

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

By charter, the fraternities are male-only. To the best of my knowledge, the organizations listed above do not otherwise currently 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.

Shipp, Michael A., *Charitable Giving, Are Fraudsters in Your Pockets?*, 28 N.J. LAW. MAG. 33 (Feb. 2011) (co-authored) (Consumer Protection Issue). Copy supplied.

Shipp, Michael A., *A Tribute to Our Magistrate Judges*, 10 NUNC PRO TUNC 7 (Feb. 2008) (co-authored). Copy supplied.

I do not recall any other publications, although there may be some I have been unable to recall or 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.

Lawyers Advisory Committee of the U.S. District Court for the District of New Jersey Resolution, January 29, 2008. Copy supplied.

Authorized Proposed Amendments to New Jersey Administrative Code Sections 13:101-1.3, 4.2, 5.2, 5.6, 6, 7, and 8.1. Law and Public Safety Juvenile Justice Commission, 2008. Although I was never a member or officer of the Juvenile Justice Commission, in my role as Counsel to the Attorney General, I frequently stood in his place and was charged with reviewing and approving issues in connection with the Commission. 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.

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.

After reviewing my records and publicly-available information, I have listed all presentations, speeches and remarks that I am able to identify. Although I have maintained records since 2007, there may be others I have not been able to remember or identify. For example, I have regularly participated on panels and given informal and formal talks at Rutgers School of Law-Newark and Seton Hall University School of Law. I have also regularly spoken at Career Days for various elementary and middle schools. I have no notes, transcripts or recordings other than those provided herein.

October 14, 2011: Remarks to Seton Hall University School of Law students. The Honorable Susan D. Wigenton, U.S.D.J., and I presented remarks in courtroom 2C. Judge Wigenton and I encouraged the students to excel academically and to pursue judicial internships and clerkships. I have no notes, transcript or recording. The visit was sponsored by the Black Law Students Association at Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

July 13, 2011: Lunch with the New Jersey Law and Education Empowerment Project (LEEP) students in Chambers. I provided general comments regarding the

importance of a strong education. I have no notes, transcript or recording. The lunch was sponsored by Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

July 12, 2011: Remarks to summer interns from Newark Municipal Prosecutor's Office in courtroom 2C. I encouraged the students to excel academically and to pursue judicial internships and clerkships. I have no notes, transcript or recording. The visit was sponsored by Newark Municipal Prosecutor, 31 Green Street, Newark, New Jersey 07102.

July 2, 2011: Remarks, Pre-Legal Program luncheon. I provided general congratulatory comments and encouraged the students to excel when they returned to their undergraduate institutions. I have no notes, transcript or recording. The luncheon was sponsored by the Summer Institute for Pre-Legal Studies, Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

June 23, 2011: Remarks to summer interns from the New Jersey Attorney General's Office in courtroom 2C. I encouraged the students to excel academically and to pursue judicial internships and clerkships. I have no notes, transcript or recording. The event was sponsored by the New Jersey Office of the Attorney General, New Jersey Department of Law and Public Safety, Division of Law, 124 Halsey Street, Newark, New Jersey 07101.

April 28, 2011: Served as mock trial host and provided remarks, Take Your Child to Work Day. Welcome and mock trial script supplied.

April 2, 2011: Mock Trial Judge, John J. Gibbons National Criminal Procedure Moot Court Competition. I have no notes, transcript or recording. The address of the Gibbons Competition is Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

March 3, 2011: Panelist, Judges of Color Panel. I answered general questions about what judges looked for in a law clerk. I have no notes, transcript or recording. The event was sponsored by Rutgers School of Law-Newark, 123 Washington Street, Newark, New Jersey 07102.

February 10, 2011: Remarks, "Tea with the Judge." Seton Hall University School of Law. I encouraged the students to excel academically and to pursue judicial internships and clerkships. I have no notes, transcript or recording. The event was sponsored by Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

June 26, 2010: Remarks, Pre-Legal Program luncheon. I provided general congratulatory comments and encouraged the students to excel when they returned to their undergraduate institutions. I have no notes, transcript or

recording. The luncheon was sponsored by the Summer Institute for Pre-Legal Studies, Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

June 23, 2010: Remarks to summer interns from the New Jersey Attorney General's Office in conjunction with the Newark Municipal Prosecutor's Office in courtroom 2C. Notes supplied.

May 4, 2010: Mock Trial Judge, Benjamin N. Cardozo Law School, Trial Practice class. I have no notes, transcript or recording. The mock trial was sponsored by the Benjamin N. Cardozo School of Law, 55 Fifth Avenue, New York, New York 10003.

February 1, 2010: Speech, "Believe in the Dream," in celebration of Black History Month, City of Paterson. PowerPoint presentation supplied.

January 25, 2010: Panelist, New Jersey Institute for Continuing Legal Education, Federal Practice Training, "Practice Before a United States Magistrate Judge." Notes and audio supplied.

January 21, 2010: Panelist, John C. Lifland American Inn of Court. Panel on Rule 16 Conferences and Rule 26 Disclosures. I have no notes, transcript or recording. The panel was sponsored by the Lifland American Inn of Court, One Constitution Square, New Brunswick, New Jersey 08901.

November 10, 2009: Presentation, New Jersey Attorney General's Office. Notes and PowerPoint presentation supplied.

October 2, 2009: Keynote speaker, Minority and Leadership Equal Success Program, Somerset School North Plainfield. "Life's Biggest Moments Begin at Home." Notes and PowerPoint presentation supplied.

August 7, 2009: Panelist, City of Newark Law Department. I provided biographical information regarding my pathway to the bench, answered questions regarding internships and provided career advice. I have no notes, transcript or recording. The address of the law department is 31 Green Street, Newark, New Jersey 07102.

August 5, 2009: Remarks, Legal Education Opportunity Students from Seton Hall Law School. I encouraged the students to excel academically and to pursue judicial internships and clerkships. I have no notes, transcript or recording. The event was sponsored by Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

July 11, 2009: Remarks, Marcel Shipp Football Camp. I have no notes, transcript or recording. The event was sponsored by Marcel Shipp and co-sponsored by the

City of Paterson, Division of Recreation, 133 Ellison Street, Paterson, New Jersey 07505.

June 27, 2009: Remarks, Pre-Legal Program luncheon. I provided general congratulatory comments and encouraged the students to excel when they returned to their undergraduate institutions. I have no notes, transcript or recording. The luncheon was sponsored by the Summer Institute for Pre-Legal Studies, Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

May 20, 2009: Panelist, Diversity Summit. I spoke about my career path to becoming a federal magistrate judge. I have no notes, transcript or recording. The Diversity Summit was sponsored by the Office of the New Jersey Attorney General, Department of Law and Public Safety, P.O. Box 080, Trenton, New Jersey 08625.

April 2, 2009: Panel member, Rutgers Business Law Journal and Rutgers School of Law-Newark, "E-discovery 101: Overview of E-Discovery Rule Amendments, New Amendments, Recent Case Law of Interest, and Why Zubulake is Still the Best E-Discovery Example from Which to Learn." I have no notes, transcript or recording. The address of the Law Journal is Rutgers School of Law-Newark is 123 Washington Street, Newark, New Jersey 07102.

March 28, 2009: Mock Trial Judge, John J. Gibbons National Criminal Procedure Moot Court Competition. I have no notes, transcript or recording. The address is The Gibbons Competition, Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

March 26, 2009: Panel member, United States District Court Federal Bar Conference. I spoke about Rule 16 conferences and final pretrial orders. I have no notes, transcript or recording. The conference was sponsored by the Association of Federal Bar of New Jersey, P.O. Box 172, West Allenhurst, New Jersey 07711.

February 24, 2009: Panel speaker, "Minority Judges Panel: Diversity and Networking Reception," which was hosted by law school minority student associations. I answered general questions about what judges looked for in a law clerk and provided career advice. I have no notes, transcript or recording. The address of Rutgers School of Law-Newark is 123 Washington Street, Newark, New Jersey 07102.

January 28, 2009: Remarks, 100th Anniversary celebration of the NAACP. I was slated for a panel on the impact of the NAACP legal work on education, employment law, voting rights and the justice system, but was unable to attend the event in time for my panel. Instead, I gave informal remarks at the end of the celebration. I have no notes, transcript or recording. The event was sponsored by

the Middlesex County Bar Association, 87 Bayard Street, New Brunswick, New Jersey 08901.

January 22, 2009: Provided closing remarks at Dedication of Dr. Martin Luther King, Jr. Exhibit. I have no notes, transcript or recording. The event was sponsored by the Historical Society for the United States District Court for the District of New Jersey, Martin Luther King Jr. Federal Building and United States Courthouse, 50 Walnut Street, Newark, New Jersey 07102.

December 2008: Remarks, Alpha Phi Alpha Founder's Day Program. Notes supplied.

October 30, 2008: Guest speaker, Legal Education Opportunity Program's 30th Anniversary Banquet, Seton Hall University School of Law. Remarks supplied.

June 28, 2008: Remarks, Pre-Legal Program luncheon. I provided general congratulatory comments and encouraged the students to excel when they returned to their undergraduate institutions. I have no notes, transcript or recording. The luncheon was sponsored by the Summer Institute for Pre-Legal Studies, Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

June 14, 2008: Remarks, Garden State Bar Association Dinner and recipient of the Roger M. Yancey Award. The pre-recorded award speech can be found at http://www.Youtube.com/watch?V=J0A8GwEIQ1E.

April 24, 2008: Welcome address for Take Your Child to Work Day. I have no notes, transcript or recording. The event was sponsored by the United States District Court, District of New Jersey, 50 Walnut Street, Newark, New Jersey 07102.

February 25, 2008: Keynote Speaker, District Court of New Jersey's Black History Month Program. "Remembering Yesterday, Building Hope for Tomorrow." Notes and PowerPoint presentation supplied.

December 6, 2007: Remarks at my Investiture Ceremony. DVD and notes supplied.

December 1, 2007: Guest speaker, Paterson School District. "Life's Biggest Moments Begin at Home." PowerPoint presentation and notes supplied.

April 27, 2007: Guest speaker, "Fair Housing: It's not an Option, It's the Law" conference. The event was co-sponsored by the New Jersey State Bar Foundation, New Jersey Apartment Association, New Jersey Association of County Disability Services, New Jersey State Conference of the NAACP, Latino Leadership Alliance of New Jersey, the U.S. Department of Housing & Urban

Development, and the following New Jersey state entities: Division on Civil Rights, Commission on Civil Rights, Department of the Public Advocate, and Department of Community Affairs. I have no notes, transcript or recording. The address of the New Jersey State Bar Association is One Constitution Square, New Brunswick, New Jersey 08901.

2003 – 2007: New Jersey Attorney General Advocacy Institute. I taught skills-related courses to incoming Deputy Attorneys General. The courses included: Trial Techniques; Taking Effective Depositions; and Conducting Internal Investigations. I have no notes, transcript or recording. The address of the Office of the Attorney General is 25 West Market Street, Trenton, New Jersey 08625.

June 20, 2006: Guest speaker at high school commencement ceremony for New Jersey Training School for Boys. I encouraged students who received their General Equivalency Diplomas while incarcerated to get their lives back on track and to lead law-abiding, productive lives. I have no notes, transcript or recording, but press coverage is supplied. The address of the school is P.O. Box 500, Grace Hill Road, Monroe Township, New Jersey 08831.

December 12, 2001: Remarks, Re-Swearing In Ceremony for the Honorable James H. Coleman, Jr. at a ceremony giving him lifetime tenure. I have no notes, transcript or recording. This event was sponsored by the New Jersey Judiciary, 25 West Market Street, Trenton, New Jersey 08625.

June 1998: Panelist, Symposium on Professionalism sponsored by New Jersey Commission for Professionalism in the Law. I have no notes, transcript or recording, but press coverage is supplied. The Commission does not have a physical address.

Late March 1991: Speaker, Passaic County Vocational and Technical High School career day. I have no notes, transcript or recording, but press coverage is supplied. The address of the high school is 45 Reinhardt Road, Wayne, New Jersey 07470.

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.

Charles Toutant, Michael Booth, Lisa Brennan, and Tony Mauro, *Inadmissible; Judge-Schooled*, New Jersey Law Journal, Oct. 19, 2007 (quote re-printed in multiple outlets). Copy supplied.

Press release, *Attorney General Names New Counsel*, Office of the New Jersey Attorney General, Feb. 26, 2007. Copy supplied.

Press release, *New Jersey Announces Agreement with Nissan North America*, Office of the New Jersey Attorney General, Jan. 19, 2006 (quote re-printed in multiple outlets). Copy supplied.

Noreen Seebacher, *Legal Education Opportunities Institute Opens Doors*, Seton Hall Law School Magazine, Issue 1 (Fall 2002). Copy supplied.

Ray Alexander Smith, *Family of Slain Parolee, Police in Heated Meeting*, The Record, Feb. 15, 1996. Copy supplied.

Chris Mondics, *Coleman Confirmed for Top Court*, Philadelphia Inquirer, Oct. 21, 1994. Copy supplied.

Kerrie Beckner, *Alumni Return to Share Job Expertise*, The Record, Apr. 3, 1991. Copy supplied.

I have not made any other comments that I can recall. Since assuming my judicial position in 2007, it has not been my practice to give interviews.

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

In October 2007, I was appointed and sworn in as a United States Magistrate Judge for the District of New Jersey. I preside over pre-trial proceedings in civil cases and I preside over civil actions in full when all parties consent. I also preside over the initial phase of all criminal matters, including bail hearings and initial appearances.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 2

i. Of these, approximately what percent were:

jury trials:	50 %
bench trials:	50 %
civil proceedings:	100 %
criminal proceedings:	0 %

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

See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Hahn v. OnBoard, LLC*, Civil Action No. 09-3639 (MAS), 2011 U.S. Dist. LEXIS 16633 (D.N.J. Feb. 18, 2011); 2011 U.S. Dist. LEXIS 115144 (D.N.J. Oct. 5, 2011).

The parties consented to magistrate judge jurisdiction in this matter. Plaintiff Hahn sought damages in excess of $75,000 for alleged breach of contract and breach of the implied covenant of good faith and fair dealing, as well as tortious interference with contract by Defendants. Plaintiff was a former employee of Onboard, LLC, a corporation incorporated in the State of New York. There were many factual disputes as to the circumstances surrounding Hahn's termination. The Honorable Dickinson R. Debevoise, U.S.D.J., dismissed several counts and allowed the filing of an amended complaint. I presided over all in-person and telephone status conferences involving pre-trial issues. After the parties consented to my full civil jurisdiction, Plaintiff filed a motion for summary judgment, which I denied in a written opinion on February 18, 2011. Additionally, I presided over a three-day bench trial, listening to testimony and receiving evidence from various key witnesses and the parties. On October 5, 2011, I issued a final opinion denying all claims and counterclaims.

Counsel for Plaintiff Hahn:	Melinda Beth Maidens Jeffer, Hopkinson & Vogel 1600 Route 208 North Post Office Box 507 Hawthorne, NJ 07507 (973) 423-0100
Counsel for Defendant Onboard LLC:	Arthur D. Russell 661 Franklin Avenue Nutley, NJ 07110 (973) 661-4545

2. *Colon v. Mountain Creek Waterpark*, Civil Action No. 06-4298 (MAS), 2009 U.S. Dist. LEXIS 91351 (D.N.J. Sept. 30, 2009).

Plaintiff, a customer at Mountain Creek Waterpark, was injured while attempting to board a water ride known as the Colorado River Ride. I originally presided over discovery in the matter. After counsel consented to magistrate judge jurisdiction, I denied Defendant's motion for summary judgment. I decided a number of in limine motions and presided over an approximately six-day jury trial in the matter. After the trial resulted in a defense verdict, I entered an opinion denying Plaintiff's motion for a judgment notwithstanding the verdict or, alternatively, for a new trial. The matter is currently on appeal to the Third Circuit.

Counsel for Plaintiff Colon:	Michael J. Breslin, Jr. 126 State Street, 2nd Floor Hackensack, NJ 07601 (201) 343-5678
Counsel for Defendant Mountain Creek Waterpark:	Carla Varriale Havkins Rosengeld Ritzert & Varriale Eleven Penn Plaza, Suite 2101 New York, NY 10001 (646) 747-5130

3. *Taylor v. State of New Jersey, et al.*, Civil Action No. 08-4651 (MAS).

This multi-party action presented a plethora of discovery-related issues. The case arose from an incident of alleged police misconduct after Plaintiff's arrest for an outstanding municipal warrant. Plaintiff Taylor alleged violation of his civil rights while acting under the color of law against multiple entities, along with assault and battery and intentional infliction of emotional distress allegations. This case required extremely efficient case management and I resolved several disputes in the matter. Counsel consented to magistrate judge jurisdiction in May 2011. A jury trial was scheduled to commence on July 25, 2011. However, I settled the matter and an order was entered on July 20, 2011, dismissing the case as settled.

Counsel for Plaintiff Taylor:	Joel Martin Bacher 401 Hamburg Turnpike, Suite 201 Wayne, NJ 07470 (973) 720-8111
Counsel for Defendant City of Newark:	Avion Monique Benjamin Corporation Counsel Office 920 Broad Street, Room 316 Newark, NJ 07102 (973) 733-3880
Counsel for Defendant Parker:	David Paul Kreizer Fisher, Byrialsen & Kreizer, LLC 291 Broadway, Suite 709 New York, NY 10007 (347) 289-5031
Counsel for Defendant Bowman:	Jeffery Simms Jeffery Simms & Associates, PC 293 Passaic Street

	Passaic, NJ 07055 (973) 471-5240
Counsel for Defendant Bailey:	Ronald J. Ricci Ricci & Fava, LLC 300 Lackawanna Avenue, Suite 5 West Paterson, NJ 07424 (973) 837-1900

4. *Rodsan v. Borough of Tenafly*, Civil Action No. 10-1923 (MAS), 2011 U.S. Dist. LEXIS 70686 (D.N.J. June 30, 2011).

The parties consented to magistrate judge jurisdiction in this matter. Plaintiffs, the Rodsans, lived in a single family home in Tenafly, New Jersey, and appealed various denials of variances and violations of Borough codes related to a detached garage used as an entertainment room and cabana for their disabled adult son. In 2009, a suit was brought in New Jersey state court, where claims against Defendants were dismissed. The Appellate Division denied the appeal, and the New Jersey Supreme Court denied certification. Eventually in 2010, an action was brought in this Court claiming constructive seizure of property without compensation and misconduct by township officials in violation of 42 U.S.C. §1983, unlawful discrimination, and violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment. Defendants filed a motion for summary judgment, opposed by Plaintiffs, and Plaintiffs filed cross-motions for leave to amend the complaint, which Defendants opposed. I wrote an opinion granting summary judgment in favor of Defendants pursuant to Fed. R. Civ. P. 56(b) and denying Plaintiffs' cross-motions. The opinion set forth an in-depth analysis of New Jersey and federal law regarding res judicata/issue preclusion, and the Full Faith and Credit statute. The parties did not appeal the decision.

Counsel for Plaintiffs:	Scott B. Piekarsky Piekarsky & Associates, LLC 191 Goodwin Avenue Wycoff, NJ 07481 (201) 560-5000
Counsel for Defendants Borough of Tenafly and Mattola:	William R. McClure Picinich & McClure 201 West Passaic Street, Suite 204 Rochelle Park, NJ 07662 (201) 820-4595
Counsel for Defendants Board of Adjustment of Borough of Tenafly and Lorenzo:	Harold Ritvo One University Plaza Hackensack, NJ 07601 (201) 487-5600

5. *Crisostomo v. Exclusive Detailing, Inc.*, Civil Action No. 08-1771 (MAS), 2010 U.S. Dist. LEXIS 64022 (D.N.J. June 28, 2010).

Employees of Exclusive Detailing, Inc. brought a class action suit, claiming they were not paid mandatory overtime premium for hours worked in excess of the forty hours permitted in a work week. The employees brought their claims under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. Eleven separate Plaintiffs acting on their own behalf instituted claims based on the New Jersey Wage and Hour Law, N.J.S.A. § 34:11-56a, et seq. Upon initiation of this suit from 2008 to 2010, I conducted numerous conferences to ensure the case continued to move forward in a timely fashion. After the parties consented to magistrate judge jurisdiction, I conducted all proceedings, which included a written opinion denying Defendant's motion for summary judgment. During the final pretrial conference, I was able to assist the parties in reaching a settlement agreement, which resulted in a 60-day Order administratively terminating and closing this matter as settled on September 15, 2010.

Counsel for Plaintiffs:	Alan T. Friedman Bagolie-Friedman, LLC The Five Corners Building 660 Newark Avenue, Third Floor Jersey City, NJ 07306 (201) 656-8500
	R. Andrew Santillo The Winebrake Law Firm, LLC 715 Twining Road Bresher, PA 19025 (215) 884-2491
Counsel for Defendants:	Gregory D. Winter Winter & Winkler, Esqs. 554 South Livingston Avenue Livingston, NJ 07039 (973) 994-6660

6. *Nye v. Ingersoll Rand Co.*, Civil Action No. 08-3481 (DRD) (MAS), 2010 U.S. Dist. LEXIS 29252 (D.N.J. Mar. 24, 2010).

In 2008, Plaintiffs filed an action against Ingersoll-Rand Company ("IR") for breach of contract alleging that IR had an obligation to pay Plaintiffs approximately $40 million, pursuant to a joint venture agreement with Dresser, Inc. Plaintiffs also requested promissory estoppel relief and an award of attorneys' fees. Throughout this matter, I presided over numerous in-person status and settlement conferences to assist the parties in resolving various

complex discovery disputes, which resulted in a number of rulings. The case involved high-level, corporate transactions and the sale of corporate interests and assets. Notably, two other related matters had been consolidated into this matter, which involved different Plaintiff employees and retired employees. *See Brown v. Ingersoll Rand, Co.*, Civil Action No. 08-4260 (DRD) (MAS) and *Bond v. Ingersoll Rand Co.*, Civil Action No. 08-5371 (DRD) (MAS). I diligently managed these cases to ensure the motions filed were consistent with the Scheduling Order and that the cases proceeded in an expeditious manner. A great amount of electronic discovery, confidential and proprietary information and discovery was involved, which required judicial intervention and assistance, including an in camera inspection of hundreds of documents. This resulted in an order compelling the production of some of the discovery and finding the remaining documents to be privileged. Finally, my continued involvement and assistance brought the parties closer to settlement. This matter settled in November 2011 after trial commenced before the Honorable Dickinson R. Debevoise, U.S.D.J.

Counsel for Plaintiffs Nye and Bond:	Eugene R. Egdorf Lanier Law Firm 6810 FM 1960 West Houston, TX 77069 (713) 659-5200
Counsel for Consolidated Plaintiff Bond:	Kevin Wicka Brown & Tarantino, LLC 1500 Rand Building Buffalo, NY 14203 (716) 849-6500
Counsel for Consolidated Plaintiff Brown:	Ryan Higgins Rusty Hardin, PC Five Houston Center 1401 McKinney, Suite 2250 Houston, TX 77010 (713) 652-9000
Counsel for Defendant Ingersoll-Rand Company:	Anthony Bartell McCarter & English Four Gateway Center 100 Mulberry Street Post Office Box 652 Newark, NJ 7101 (973) 622-4444

7. *Hoffmann-La Roche Consolidated Cases* (SRC) (MAS); *Hoffmann-La Roche v. Apotex*, 07-4417 (consolidated with 08-3065, 08-4053 and 10-6241 for all purposes); *Hoffmann-La Roche v. Dr. Reddy's Labs*, 07-4516 (consolidated with 08-3607, 08-4055 and 10-5623 for all purposes); *Hoffmann-La Roche v. Cobalt Pharm., Inc.*, 07-4539 (consolidated with 07-4540, 08-4054 and 10-6206 for all purposes), 2010 U.S. Dist. LEXIS 79114 (D.N.J. Aug. 4, 2010); *Hoffmann-La Roche v. Orchid Chem. & Pharm., Ltd.*, 07-4582 (consolidated with 08-4051 and 10-4050 for all purposes); and *Hoffmann-La Roche v. Genpharm*, 07-4661 (consolidated with 08-4052 and 11-579 for all purposes).

This matter involves several Hatch-Waxman actions for patent infringement. Briefly, Roche owns patents directed to methods of treating osteoporosis with a salt of ibandronic acid, the active ingredient in Roche's osteoporosis drug Boniva. Defendants are generic pharmaceutical manufacturers who have filed Abbreviated New Drug Applications seeking FDA approval to engage in the manufacture and sale of generic versions of Boniva prior to the expiration of the Roche patents. Plaintiff alleges that all Defendants infringed U.S. Patents Nos. 7,410,957 and 7,718,634. Plaintiff also alleges that Defendants Apotex, Cobalt and Orchid infringed U.S. Patent No. 4,927,814. All of the cases are informally consolidated for pre-trial purposes and I preside over the pre-trial proceedings. I have decided over 100 motions in the cases and have issued comprehensive orders. In addition, I have conducted numerous consolidated conferences to address discovery issues and disputes that impacted all of the matters and separate individual conferences to address matters specific to the individual cases. These matters are pending.

Counsel for Plaintiff:	Sheila F. McShane Gibbons, PC One Gateway Center Newark, NJ 07102 (973) 596-4637
Counsel for Defendant Apotex:	Steven Gerber Gonzalez Saggio & Harlan, LLP 155 Willowbrook Boulevard, Suite 300 Wayne, NJ 07470 (973) 256-9000
Counsel for Defendant Dr. Reddy's:	Stuart D. Sender Budd Larner, PC 150 John F. Kennedy Parkway Short Hills, NJ 07078 (973) 379-4800
Counsel for Defendant Cobalt:	James E. Cecchi Melissa Flax Carella Byrne Cecchi Olstein

	Brody & Agnello, PC 5 Becker Farm Road Roseland, NJ 07068 (973) 994-1700
Counsel for Defendant Orchid:	Charles Quinn Graham, Curtin PA 4 Headquarters Plaza Morristown, NJ 07962 (973) 292-1700
Counsel for Defendant Genpharm:	Arnold B. Calmann Saiber LLC One Gateway Center, Tenth Floor Newark, NJ 07102 (973) 622-3333

8. *Jewett v. IDT*, Civil Action No. 04-1454 (SRC) (MAS). Order supplied.

Plaintiff, a former executive of IDT, filed suit for alleged wrongful termination against IDT, a telecommunications company. The Plaintiff brought suit under the New Jersey Anti-Racketeering Statute, the New Jersey Conscientious Employee Protection Act, the New Jersey Law Against Discrimination and various other causes of action. The case was extremely contentious and received press coverage based on Jewett's claims that IDT fired him for opposing bribes to foreign officials. When I took over case management responsibility for this matter, there were several motions pending and fact discovery was still in an early stage. I conducted numerous status conferences in this matter and ruled on several applications pertaining to discovery issues, including a comprehensive protective order motion, which established limits to the broad-reaching discovery requested in the case. I conducted a settlement conference in this matter as well as a final pretrial conference. The case did not proceed to trial and counsel ultimately filed a stipulation of dismissal in this matter.

Counsel for Plaintiff:	William P. Perniciaro 84 New Dorp Plaza Staten Island, NY 10306 (718) 667-5000
Counsel for Defendants:	J. Michael Riordan McElroy, Deutsch, Mulvaney & Carpenter, LLC 1300 Mount Kemble Avenue Morristown, NJ 07962 (973) 993-8100

Donald A. Robinson
Robinson, Wettre & Miller, LLC
One Newark Center
Newark, NJ 07102
(856) 690-5400

9. *I-Med Pharma, Inc. v. Biomatrix, Inc.*, Civil Action No. 03-3677 (DRD) (MAS), 2008 U.S. Dist. LEXIS 45339 (D.N.J. June 9, 2008).

This case involves a complex litigation that arose from distribution contracts and the business relationship between the parties. Plaintiff made claims for breach of contract, breach of fiduciary duty, fraud, and negligence as Defendant allegedly did not fulfill its licensing agreement. While the fraud claims were dismissed, several claims remain pending. I have taken the lead in conducting numerous in-person settlement and telephone status conferences in order to expedite the adjudication of all matters in this case.

Counsel for Plaintiff: Gary Maitland
Kriesberg & Maitland, LLP
116 John Street, Suite 1120
New York, NY 10038
(212) 629-4970

Counsel for Defendant: Thane D. Scott
Bingham McCutchen, LLP
One Federal Street
Boston, MA 02110
(617) 951-8040

10. *Pontani v. Amerihealth Ins. Co.*, 08-4580 (FSH) (MAS).

This is a class action litigation on behalf of individuals covered by AmeriHealth HMO where the company set limitations on payments and denied or reduced coverage for treatment of certain eating disorders. I ruled on several discovery disputes in this case. In addition, I conducted several in-person status and settlement conferences in order to facilitate resolution of the matter. One issue in dispute was whether the ERISA's fee-shifting provisions should govern the calculation of attorney's fees. Counsel ultimately reached a settlement. On December 14, 2011, the District Court entered a final order and judgment approving the settlement.

Counsel for Plaintiff Pontani: Bruce Heller Nagel
Nagel Rice, LLP
103 Eisenhower Parkway, Suite 201
Roseland, NJ 07068
(973) 618-0400

Counsel for Defendant Magellan:	Tracy A. Roman Crowell & Moring, LLP 1001 Pennsylvania Avenue, NW Washington, D.C. 20004 (202) 624-2500
Counsel for Defendant Amerihealth Insurance Company of New Jersey:	James L. Griffith, Jr. Akin, Gump, Strauss, Hauer & Feld, LLP One Commerce Square 2005 Market Street, Suite 2200 Philadelphia, PA 19103 (215) 965-1200

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. *Contel Global Mkt. v. Cotera, et al.*, 01-238 (SRC) (MAS), 2010 U.S. Dist. LEXIS 71482 (D.N.J. July 15, 2010), *adopted*, 2010 U.S. Dist. LEXIS 104335 (D.N.J. Sept. 30, 2010).

Counsel for Plaintiff:	Thomas A. Della Croce Sills Cummis & Gross, PC One Riverfront Plaza Newark, NJ 07102 (973) 643-7000
Counsel for Defendant:	Tracy Siebold Ballard Spahr, LLP 210 Lake Drive East, Suite 200 Cherry Hill, NJ 08002 (856) 873-5528

2. *Jewett v. IDT*, 04-1454 (SRC) (MAS). Opinion supplied in response to 13(c).

Counsel for Plaintiff:	William P. Perniciaro 84 New Dorp Plaza Staten Island, NY 10306 (718) 667-5000
Counsel for Defendants:	J. Michael Riordan McElroy, Deutsch, Mulvaney & Carpenter, LLC 1300 Mount Kemble Avenue

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3. *Crisostomo v. Exclusive Detailing, Inc.*, 08-1771 (MAS), 2010 U.S. Dist. LEXIS 64022 (D.N.J. June 28, 2010).

Counsel for Plaintiff:

Alan T. Friedman
Bagolie-Friedman, LLC
The Five Corners Building
660 Newark Avenue, Third Floor
Jersey City, NJ 07306
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R. Andrew Santillo
The Winebrake Law Firm, LLC
715 Twining Road
Bresher, PA 19025
(215) 884-2491

Counsel for Defendant:

Gregory D. Winter
Winter & Winkler, Esqs.
554 South Livingston Avenue
Livingston, NJ 07039
(973) 994-6660

4. *Hahn v. OnBoard, LLC, et al.*, 09-3639 (MAS), 2011 U.S. Dist. LEXIS 16633 (D.N.J. Feb. 18, 2011).

Counsel for Plaintiff:

Melinda Beth Maidens
Jeffer, Hopkinson & Vogel, Esqs.
1600 Route 208 North
Post Office Box 507
Hawthorne, NJ 07507
(973) 423-0100

Counsel for Defendants:

Arthur D. Russell
661 Franklin Avenue
Nutley, NJ 07110
(973) 661-4545

5. *Crenshaw v. Computex Info. Serv.*, 10-1493 (MAS), 2011 U.S. Dist. LEXIS 46309 (D.N.J. Apr. 29, 2011).

Counsel for Plaintiff:	Joseph K. Jones Law Offices of Joseph K. Jones, LLC 375 Passaic Avenue, Suite 100 Fairfield, NJ 07004 (973) 227-5900
Counsel for Defendant Computex:	Cindy D. Salvo The Salvo Law Firm, PC 165 Passaic Avenue, Suite 310 Fairfield, NJ 07004 (973) 233-4080
Counsel for Defendant Levy, Ehrlich & Petriello, PC:	John J. Petriello Levy, Ehrlich & Petriello, PC 60 Park Place, Suite 1016 Newark, NJ 07102 (973) 643-0040

6. *Marketvision/Gateway Research, Inc., et al. v. Priority Payroll, LLC, et al.*, 10-1537 (SRC) (MAS), 2011 U.S. Dist. LEXIS 46767 (D.N.J. Apr. 29, 2011).

Counsel for Plaintiff:	Frank Peretore Fredda Katcoff Peretore & Peretore, PC 191 Woodport Road Sparta, NJ 07871 (973) 729-8991
Counsel for Defendants:	Lawrence Zachary Kotler Carlin & Ward, PC 25A Vreeland Road Post Office Box 751 Florham Park, NJ 07932 (973) 377-3350

7. *Rodsan, et al. v. Borough of Tenafly, et al.*, 10-1923 (MAS), 2011 U.S. Dist. LEXIS 70686 (D.N.J. June 30, 2011).

Counsel for Plaintiff:	Scott B. Piekarsky Piekarsky & Associates, LLC 191 Goodwin Avenue Wycoff, NJ 07481 (201) 560-5000

Counsel for Defendant Borough of Tenafly:	William R. McClure Picinich & McClure 201 West Passaic Street, Suite 204 Rochelle Park, NJ 07662 (201) 820-4595
Counsel for Defendant Board of Adjustment of Borough of Tenafly:	Harold Ritvo One University Plaza Hackensack, NJ 07601 (201) 487-5600

8. *Critelli v. Culture Club of New York City*, 05-5877 (SRC) (MAS), 2010 U.S. Dist. LEXIS 135304 (D.N.J. Dec. 7, 2010), *adopted*, 2010 U.S. Dist. LEXIS 135408 (D.N.J. Dec. 22, 2010).

Counsel for Plaintiff:	Toni Ann Marcolini Toni Ann R. Marcolini, Esq. 843 Rahway Avenue, Suite 105 Woodbridge, NJ 07095 (732) 750-4411
Counsel for Defendant:	Christopher John White White & McSpedon, PC 875 Avenue of the Americas, Suite 800 New York, NY 10001 (212) 564-6633

9. *Digital Technology Licensing, LLC v. Sprint Nextel Corp.*, 07-5432 (SRC) (MAS), 2008 U.S. Dist. LEXIS 69344 (D.N.J. Aug. 27, 2008).

Counsel for Plaintiff:	Stephen F. Roth Lerner, David, Littenberg, Krumholz & Mentlik, LLP 600 South Avenue West Westfield, NJ 07090 (908) 654-5000
Counsel for Defendant:	Liza M. Walsh Connell Foley, LLP 85 Livingston Avenue Roseland, NJ 07068 (973) 535-0500

10. *Berman v. Ballet Makers, Inc.*, 08-1032 (FSH) (MAS), 2009 U.S. Dist. LEXIS 30675 (D.N.J. Apr. 7, 2009).

Counsel for Plaintiff:	Joseph A. Venti 458 Columbia Avenue Post Office Box 234 Cliffside Park, NJ 07010 (201) 945-8565
Counsel for Defendant:	Vincent N. Avallone Kirkpatrick & Lockhart Preston Gates Ellis One Newark Center, Tenth Floor Newark, NJ 07102

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

To the best of my knowledge, certiorari has not been requested in any of my cases.

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

To date, none of my Reports and Recommendations has ever been rejected by a district judge.

1. *Clark v. Prudential Life Ins. Co.*, 08-6197 (DRD) (MAS).

On May 13, 2011, the Honorable Dickinson R. Debevoise, U.S.D.J., affirmed my ruling regarding several discovery issues, but reversed the confidentiality designations of 15 documents that were submitted for an in camera inspection, noting that while perhaps Rule 26(c) confidentiality protection was once merited, because years had passed since the documents were first created and the policy in question had been off the market for quite some time, the underlying basis for any such protection no longer existed. Opinion supplied; the District Court's opinion is found at *Clark v. Prudential Life Insurance Company*, No. 08-6197, 2011 U.S. Dist. LEXIS 51486 (D.N.J. May 13, 2011).

2. *Nye v. Ingersoll Rand Co.*, No. 08-3481 (DRD) (MAS).

On January 25, 2011, the Honorable Dickinson R. Debevoise, U.S.D.J., affirmed my ruling regarding several discovery disputes, except that the District Court permitted two depositions to proceed, which I had denied. Notably, however, the

District Court limited the depositions to one hour each and required that they be conducted telephonically with the sole purpose of assessing whether the deponents could verify the authenticity of certain documents and whether they gave any legal advice to one of the named Plaintiffs. All other discovery rulings were affirmed. Opinion supplied. The District Court's opinion is found at *Nye v. Ingersoll Rand Co.*, No. 08-3481, 2011 U.S. Dist. LEXIS 7383 (D.N.J. Jan. 25, 2011).

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 magistrate judge, I issue orders on non-dispositive matters and in dispositive matters for which I have magistrate jurisdiction. I also issue reports and recommendations for dispositive matters referred to me. My non-dispositive orders include basic scheduling orders, requests to extend time to respond to various pleadings, motions to amend, motions to quash subpoenas and motions for sanctions. The orders, reports and recommendations I issue are filed with the court's electronic filing system. While very few orders are published, most of my substantive decisions are published electronically on Westlaw and Lexis Nexis.

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

None.

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

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 federal recusal statutes and the Code of Conduct for United States Judges. I also maintain a standing recusal list with the Clerk's Office. If a case is assigned to me involving a lawyer on the recusal list, it is automatically reassigned to another judge.

There has been one instance in which I was asked to recuse beyond my standing recusal list. In *Higgins v. Ebay*, Civil Action No. 09-5341 (KSH), the pro se Plaintiff filed an application for my recusal. I recused myself from the matter after the same pro se Plaintiff also filed a civil complaint against Judge Chesler and me. *See Higgins v. Chesler*, Civil Action No. 10-5969 (JRS).

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

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

I have not held public office other than judicial office. I have 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.

On Election Day in 2002, I assisted with legal issues pertaining to voter irregularities in Newark, Essex County, New Jersey, for the mayoral candidate Cory Booker. I provided legal advice when questions were raised regarding voters who were allegedly denied the opportunity to vote. Since 2002, I have not engaged in any political activity.

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 1994 to 1995, I clerked for the Honorable James H. Coleman, Jr., Supreme Court of New Jersey (Retired).

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.

1995 – 2003
Skadden, Arps, Slate, Meagher & Flom LLP
One Newark Center
Newark, New Jersey 07102
Litigation Associate

2003 – 2007
Office of the Attorney General of New Jersey
Department of Law & Public Safety
Richard J. Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625
Counsel to the Attorney General (2007)
Assistant Attorney General in-charge of Consumer Protection (2003 – 2007)

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.

Since assuming the position of United States Magistrate Judge in 2007, I have conducted numerous settlement conferences and successfully settled a substantial number of significant cases. However, I did not serve as a mediator or arbitrator while in private practice.

b. Describe:

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

I began practicing law in 1995 as an Associate at Skadden, Arps, Slate, Meagher & Flom. My practice was primarily general litigation, but I did a large amount of labor and employment work. I also developed an expertise in mass tort law and products liability litigation. Over the course

of the eight years, I became adept at managing complex commercial litigation.

In 2003, I went to work in the public sector as the Assistant Attorney General in-charge of Consumer Protection with the Department of Law and Public Safety for the State of New Jersey. In this capacity, I was charged with managing five practice groups: Consumer Fraud Prosecution, Insurance Fraud Prosecution (civil), Securities Fraud Prosecution, Professional Boards Prosecution, and Debt Recovery. I supervised approximately 80 Deputy Attorneys General within the practice groups and indirectly supervised any of the remaining 520 lawyers in the Division of Law. I also managed and retained outside counsel in the litigation of 12 major class action lawsuits in federal courts throughout the nation.

In 2005, I was promoted to the Attorney General's front office. There, I became a top advisor to the Attorney General on sensitive legal issues relating to ethics, appointments, and other matters requiring personal involvement by the Attorney General. I managed the day to day issues within the Department of Law and Public Safety, and advised and strategized with attorneys, directors, commissioners, and other government officials on significant litigation matters. I served as a key liaison between the Attorney General and the directors of the various divisions within the Department. These divisions included: Law, Consumer Affairs, Civil Rights, Criminal Justice, Gaming Enforcement, Alcoholic Beverage Control, Highway Traffic Safety, Elections, New Jersey State Police, and the Juvenile Justice and Racing Commissions. In February 2007, I was officially named Counsel to the Attorney General of New Jersey.

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

While at Skadden my clients were generally large corporations. I primarily performed defense work. At the Attorney General's Office, my role was protection of consumer interests within the State of New Jersey. I represented the public interest and specific individuals taken advantage of by scrupulous businesses. I handled all affirmative litigation and served as the State's civil fraud prosecutor.

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 my appointment to the position of Magistrate Judge, virtually all of my practice was in civil litigation. While at Skadden Arps from 1995 to 2003, my

practice varied between New Jersey state courts and federal court. During my time at the Attorney General's Office, my practice was mostly state court litigation. Over the years, I have also handled a few minor state court criminal matters and cases before administrative agencies. I would estimate that during my time in private practice, I appeared in court no less than twice per month.

i. Indicate the percentage of your practice in:

1.	federal courts:	20%
2.	state courts of record:	75%
3.	other courts:	5%
4.	administrative agencies:	0%

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.

All of my cases were prepared as if they were going to trial; however, the cases settled and none resulted in a trial on the merits.

i. What percentage of these trials were:

1.	jury:	0%
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.

1. Post Hurricane Katrina Gas Price Gouging Cases: *Harvey v. Amerada Hess Corp., et al.*, Superior Court of New Jersey, Law Division, Mercer County, Docket No. MER-L-2520-05; *Farber v. Motiva Enter., LLC, et al.*, Superior Court of New Jersey, Law Division, Mercer County, Docket No. MER-L-2521-05; *In re BP Products of N. Am., Inc.* (do not recall docket number).

On behalf of the State of New Jersey, I filed individual Complaints against several defendants arising from the statewide inspections of service stations and allegations of price gouging in the wake of Hurricane Katrina. The Complaints alleged that the Defendants violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the Regulations Governing General Advertising Practices, N.J.A.C. 13:45A-9.1 et seq., the Motor Fuels Act, N.J.S.A. 56:6-1 et seq., and the Motor Fuels Regulations, N.J.A.C. 18:19-1.1 et seq., by: (1) changing the retail price of motor fuel more than once within a 24-hour period; (2) failing to maintain requisite books and records; (3) failing to provide the State investigators with access to books and records; and/or (4) displaying on outside signage retail prices for motor fuels that did not reflect the actual price charged to consumers. I crafted the legal theories, reviewed and revised the complaint, and represented the State at all of the settlement conferences. I ultimately settled all of the individual matters, with Hess making a payment of $372,391, Motiva making a payment of $371,000 and BP making a payment of $315,000.

Counsel for Hess Corp. Defendants:	Brian J. Molloy, Esq. Matthias D. Dileo, Esq. Wilentz, Goldman & Spitzer, PA 90 Woodbridge Center Drive Woodbridge, NJ 07095 (732) 855-6083
Counsel for Motiva Enter., LLC Defendants:	Frank C. Testa, Esq. Morgan, Lewis & Bockius, LLP 502 Carnegie Center Princeton, NJ 08540 (609) 919-6600
Counsel for BP Products of N. Am. Inc. Defendant:	Edward J. Fanning, Jr., Esq. McCarter & English, LLP 100 Mulberry Street Newark, NJ 07102 (973) 622-4444

2. *Harvey v. Blockbuster, Inc.*, Superior Court of New Jersey, Chancery Division, Mercer County, Docket No. MER-C-24-05.

On February 18, 2005, I filed, on behalf of the State of New Jersey, a Complaint against Blockbuster, Inc., alleging violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the Regulations Governing General Advertising Practices, N.J.A.C. 13:45A-9.1 et seq., arising from Blockbuster's "No more late fees" ad campaign. The allegations included: (1) providing consumers with misleading information concerning the nature of its "No more late fees" policy; and (2) failing to disclose in advertisements and through store personnel the material terms of the "No more late fees" policy. On March 18, 2005, Blockbuster filed a motion to remove the case to federal court on the ground of diversity jurisdiction. I filed a motion to remand the action to state court. On August 8, 2001, the Honorable Mary L. Cooper, U.S.D.J. issued a Memorandum Opinion and Order remanding the action to state court. I settled the matter on December 23, 2005. This action was settled, among other things, with Blockbuster making a payment of $50,000.

Counsel for Defendant: Alfred C. DeCotiis, Esq.
DeCotiis, Fitzpatrick, Cole and Wisler, LLP
500 Frank W. Burr Boulevard
Teaneck, NJ 07666
(201) 928-1100

3. Dangerous Dietary Supplements Litigation: *Harvey v. Cytodyne Tech.*, Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. MON-C-205-03; *Harvey v. Goen Tech.*, Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. MRS-C-183-03; and *Farber v. NVE Pharms., Inc., et al.*, Superior Court of New Jersey, Chancery Division, Somerset County, Docket No. SOM-C-39-04.

In July 2003, October 2003 and August 2004, respectively, I filed, on behalf of the State of New Jersey, Complaints against Cytodyne Technologies, Goen Technologies and NVE Pharmaceuticals, Inc. Cytodyne Technologies was the manufacturer of ephedra-based Xenadrine RFA-1 and ephedra-free Xenadrine EFX, among others. Goen Technologies manufactured ephedra-based TrimSpa and NVE Pharmaceuticals manufactured dietary supplements. The State's allegations included that the Defendants violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., in the production, sales, marketing, and advertising of these dietary supplements by making claims as to the efficacy of the supplements without scientific basis as well as failing to disclose potentially dangerous side effects. I crafted the legal theories, reviewed and revised the complaints and represented the State at the settlement conferences in all of the matters. In the *Cytodyne Technologies* matter, Defendant Nutraquest filed for bankruptcy protection. I settled the case for $940,000 (cash payment of $750,000 and $190,000 in an unsecured claim against Nutraquest in bankruptcy).

Following Bankruptcy Court approval, the settlement document was signed by the Honorable Alexander D. Lehrer, J.S.C. and filed with the Superior Court on June 30, 2005. In the *Goen Technologies* matter, on August 5, 2005 the parties executed and filed a Consent Order with the Court wherein Defendants agreed to a $750,000 payment. In the *NVE Pharmaceuticals* case, I settled the matter on June 5, 2006 for $260,000. NVE subsequently filed for Chapter 11 bankruptcy protection. On August 9, 2006, the Bankruptcy Court approved the State's settlement with NVE.

Counsel for Cytodyne Defendant:	Brian J. Molloy, Esq. Matthias D. Dileo, Esq. Wilentz, Goldman & Spitzer, PA 90 Woodbridge Center Drive Woodbridge, NJ 07095 (732) 636-8000
Counsel for Goen Technologies Defendant:	Donald Beshada, Esq. Drinker, Biddle & Reath, LLP 500 Campus Drive Florham Park, NJ 07932 (973) 549-7000
Counsel for NVE Defendants:	Robert P. Donovan, Esq. McElroy, Deutsch, Mulvaney & Carpenter, LLP Gateway Three Newark, NJ 07102 (973) 622-7711

4. *Harvey v. Nissan N. Am., Inc.*, Superior Court of New Jersey, Chancery Division, Somerset County, Docket No. SOM-C-12016-04.

On March 8, 2004, I filed, on behalf of the State of New Jersey, a Complaint against Nissan North America, Inc. arising from the theft of its High Intensity Discharge bi-level xenon projector headlights from 2002 and 2003 Nissan Maximas between December 2002 and November 2003. The State alleged that Nissan knew that the Xenon Headlamps were being targeted by thieves and developed an anti-theft kit, but failed to advise consumers of the availability of such anti-theft device. This action was dismissed by the trial court, from which the State appealed. I crafted the legal theories, reviewed and revised the complaint, and represented the State at all of the settlement conferences. I ultimately settled the matter on January 17, 2005, for a $325,000 payment as well as dismissal of the pending appeal. Thereafter, the New Jersey Division of Consumer Affairs identified 234 consumers who were entitled to restitution, in the aggregate amount of $110,034.

Counsel for Defendant:

Edwin M. Baum, Esq.
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036
(212) 969-3000

Peter M. Burke, Esq.
Lindabury, McCormick, Estabrook & Cooper, PC
53 Cardinal Drive
Westfield, NJ 07091
(908) 233-6800

5. *Harvey v. Sears, Roebuck & Co.*, Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. HUD-C-144-02.

On or about October 10, 2002, I filed, on behalf of the State of New Jersey, a Complaint against Sears, Roebuck and Co., alleging violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., in connection with its sale of wheel alignments at its auto centers throughout New Jersey. Among other things, the Complaint alleged that Sears charged consumers for the more expensive four-wheel alignments on vehicles that did not allow for rear-wheel alignments. This action was heavily litigated. I handled and helped resolve several discovery disputes. I prepared witnesses for trial, including our primary expert. I also handled the mediation before the Honorable Stephen Orlofsky, former U.S.D.J. The matter was resolved on March 5, 2004. As part of the settlement, Sears agreed to pay $500,000 to be applied to Division of Consumer Affairs' initiatives, $124,440 in consumer restitution as well as the State's out-of-pocket costs.

Counsel for Defendant:

Edward J. Fanning, Jr., Esq.
McCarter & English
100 Mulberry Street
Newark, NJ 07102
(973) 622-4444

Andrew S. Tulumello, Esq.
Gibson Dunn & Crutcher, LLP
1050 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 955-8500

6. *Harvey v. Sleepy's, Inc., et al.*, Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. BER-C-68-04.

In late February 2004, I filed, on behalf of the State of New Jersey, a Complaint against Sleepy's, Inc., alleging violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the Regulations Governing General Advertising Practices, N.J.A.C. 13:45A-9.1 et seq., and Delivery of Household Furniture and Furnishings Regulations, N.J.A.C. 13:45A-5.1 et seq., in connection with its advertisement and sale of mattresses, box springs, and other bedding supplies. The allegations included: (1) delivering defective and/or damaged merchandise; (2) failing to deliver merchandise on the contracted for delivery date and failing to notify consumers of its inability to deliver the merchandise; (3) misleading consumers as to the exchange policy and/or their right to receive a refund; and (4) promising, then failing, to send an inspector to consumers' homes to inspect damaged and/or defective merchandise. I settled the matter on December 23, 2004. This action was settled, among other things, with Sleepy's making a payment of $660,000.

Counsel for Defendant:

Christine Amalfe, Esq.
Gibbons, PC
One Gateway Center
Newark, NJ 07102
(973) 596-4500

7. *In re Utica Boilers*, Superior Court of New Jersey, Asbestos Litigation, Middlesex County. (Numerous docket numbers grouped by various categories of Plaintiffs, including electricians, pipefitters, etc.)

In approximately 2002-2003, I defended Utica Boiler Company in well over one hundred cases involving claims of asbestos exposure. A special master handled case management duties for numerous matters for Judge Ann G. McCormick. I took hundreds of depositions, and made countless court appearances on discovery disputes and various motions. In addition, I drafted many summary judgment motions and settled all matters not disposed of by motion.

Counsel for Plaintiffs:

Patrick J. Bartels, Esq.
Keefe Bartels, LLC
170 Monmouth Street
Red Bank, NJ 07701
(732) 224-9400

Angelo Cifaldi, Esq.
Wilentz, Goldman & Spitzer, PA
90 Woodbridge Center Drive

Woodbridge, NJ 07095
(732) 855-6096

8. *Corbett v. University of Medicine and Dentistry of New Jersey*, Superior Court of New Jersey, Law Division, Essex County. (Do not recall docket number.)

In approximately 2000-2001, I represented the University of Medicine and Dentistry of New Jersey in a complex employment litigation case alleging gender, race and religious based discrimination claims. I drafted the answer, handled extensive paper discovery, prepared witnesses for depositions, sought out and retained experts, and drafted dispositive motions. This case ultimately settled.

Counsel for Plaintiff: Patricia Breuninger
Breuninger & Fellman
1829 Front Street
Scotch Plains, NJ 07076
(908) 490-9900

9. *Oppenheim v. American Biogenetic Sciences, Inc.*, United States District Court for the District of New Jersey, 02-282 (GEB).

In 2002, I represented American Biogenetic Sciences, Inc. ("ABS") in a breach of contract matter concerning the Plaintiff's claim for a finder's fee commission as a result of a third party investment made in ABS. I interviewed the client and drafted and filed a dispositive motion to dismiss or, in the alternative, to transfer the case. I appeared as second chair before Judge Garrett E. Brown, Jr., on the dispositive motion. The motion was successful and the case was transferred to the Eastern District of New York. I also actively participated in litigating the matter in the Eastern District of New York.

Counsel for Plaintiff: David E. Shaver, Esq.
Broege, Neumann, Fisher & Shaver, Esqs.
25 Abe Voorhees Drive
Manasquan, NJ 08736
(732) 223-8484

10. *Deborah Dean v. French International Movers*, Superior Court of New Jersey, Law Division, Hunterdon County. (Do not recall docket number.)

In approximately 1996-1997, I represented Plaintiff in a matter against French International Movers, located in Phillipsburg, New Jersey. Defendant originally submitted the lowest bid to move Plaintiff's personal and business possessions from New Jersey to France. After the goods were loaded and shipped, Defendant then advised Plaintiff of a significant change in the bid, resulting in substantial inequity and harm to the Plaintiff. I filed the complaint, conducted depositions

and prepared the case for trial. The case settled on the first day of trial. I do not recall the name of opposing counsel.

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.)

    Prior to becoming a judge, I spent my legal career as a litigator and the cases described above were representative of my practice.

    My former legal activities include participation in the New Jersey State Bar Association. I served as a Director in the Minorities in the Profession Section for approximately four years. In addition, I previously served as a moot court coach for Seton Hall University School of Law for six years, actively preparing teams for and attending the Minnesota National Civil Rights Moot Court Competition.

    As a current federal magistrate judge, I have developed a comprehensive internship program. The program provides a structured, supervised introduction to the federal court system and prepares law students for judicial clerkships and legal practice. Former interns who later served as law clerks related that the internship program helped them to quickly acclimate to the demands of judicial clerkships. I am dedicated to the professional development of law students so that they will make positive contributions to the legal profession.

    I have not performed any lobbying activities on behalf of any clients or organizations.

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.

    Summers of 2001 – Present: I teach a Contracts Course for the Pre-Legal Program at Seton Hall University School of Law. The Pre-Legal Program is designed for students who have excelled in their undergraduate studies and are interested, but not yet admitted, into law school. The Contracts Course provides an overview of basic contract formation principles (capacity, offer, acceptance and consideration) and a number of contract defenses. Copy of syllabus 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.

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.

    To the extent that I receive the appropriate approval, I plan to continue to teach Contracts for the Pre-Legal Program at Seton Hall University School of Law.

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, my current recusal list would remain in place and I would regularly review and update the list with the Clerk's Office, if necessary. I will also continue to review the parties and attorneys listed in the matters that are assigned to me to ensure that there are no 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.

       I would be guided by the federal recusal statutes and the Code of Conduct for United States Judges in order to resolve any potential conflict of interest. I would recuse myself in matters in which I have a sufficiently close social connection with counsel or the parties. If necessary, I will seek guidance from the Committee on Codes of Conduct of the Judicial Conference of the United States.

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

As a United States Magistrate Judge, I am not permitted to represent clients – pro bono or otherwise. I was also not permitted to represent clients while I served at the Attorney General's Office. However, I have participated throughout the years in programs aimed at inspiring young people to get the most out of their academic education. Many of the speaking engagements listed earlier were for this very purpose, as I regularly spoke at elementary and middle schools, focusing on strengthening educational foundations. In addition, my fraternal memberships in Alpha Phi Alpha and Sigma Pi Phi allow me to participate in community service activities consistent with Canon 2. Alpha Phi Alpha's Mentoring And Leadership Equals Success Program provides monthly mentoring to disadvantaged youth and is focused on strengthening educational foundations and exposure to positive male role models. I also participate in the selection and awarding of annual scholarships through the Sphinx Scholarship Fund and Mu Boule Foundation. I worked on a number of pro bono assignments while employed at Skadden, Arps. Such work included: drafting amicus appellate briefs on behalf of public, non-profit entities; accepting designations from state and federal courts to represent indigent defendants; serving as guardian ad litem in state court termination of parental rights proceedings; drafting and filing 501(c)(3) documents for a Newark-based entity; and representing a charter school Board of Education in an emergent proceeding to resolve an issue regarding the Directors' authority. I was a recipient of Skadden's 2002 Pro Bono Service Award.

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 Frank Lautenberg empanelled a selection committee comprised of attorneys in New Jersey and members of his staff to assist him with his recommendation to the President. In September 2009, I interviewed with members of the committee. Thereafter, in October 2009, I interviewed with Senator Lautenberg at his New Jersey office. That round of interviews resulted in two of my colleagues on the magistrate judges' bench being elevated. On June 24, 2011, I interviewed again with Senator Lautenberg. On August 5, 2011, I

interviewed with Senator Robert Menendez and his Chief Counsel. Subsequently, Senators Lautenberg and Menendez advised me that they had recommended me to the President.

Since September 30, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 26, 2011, I interviewed with officials from the White House Counsel's Office and Department of Justice in Washington, DC. On January 23, 2012, 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
Shipp, Michael A.	U.S. District Court - NJ	1/23/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	**5a. Report Type (check appropriate type)** ☑ Nomination, Date 1/23/2012 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2011 to 12/31/2011
7. Chambers or Office Address Federal Bldg. & Courthouse 50 Walnut Street, Room 2042 Newark, NJ 07102	**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 6

Name of Person Reporting	Date of Report
Shipp, Michael A.	1/25/2012

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	Seton Hall University School of Law - Summer Institute for Pre-Legal Studies - Teaching	$6,500.00
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		
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 Shipp, Michael A.	Date of Report 1/25/2012

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
Shipp, Michael A.	1/23/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "EX" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sale, exchange)	(2) Date mo./day/yr.	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Clarify or explain any gain or transaction
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1 Income Gain Codes (See Columns B1 and D4)
A = $1,000 or less
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 = More than $25,000,000

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Shipp, Michael A.	Date of Report [illegible] 2012

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Shipp, Michael A.	Date of Report [illegible] 2012

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 MAShipp

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		10	000	Notes payable to banks-secured (auto)		32	145
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		6	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		287	156
Real estate owned – personal residence		325	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		32	857				
				Total liabilities		325	301
				Net Worth		142	556
Total Assets		467	857	Total liabilities and net worth		467	857
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							

AFFIDAVIT

I, Michael A. Shipp, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/25/12
(DATE)

(NAME)

(NOTARY)

KIMBERLY DARLING
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 5, 2013

STATEMENT OF STEPHANIE MARIE ROSE, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA

Ms. ROSE. Thank you. As with my fellow nominees, I offer my thanks to a number of people, including President Obama for the nomination, Senator Harkin for sending my name forward and for his enduring and seemingly boundless faith in me these last 3 years; Senator Grassley for his kind words today and his long-term support of my office and its work.

Chairman Klobuchar, Senator Lee, Senator Grassley, Senator Franken, who are here and whose work on this committee is so important.

I offer my thanks to my husband who is here with me today, our kids back in Iowa who are probably out of school and watching on a Webcast.

My parents, I would note. I am sure my dad is wearing his lucky tie. My mom, my mother-in-law, my sisters; unknown and I'm sure a large number of people who are watching the Webcast that are friends, family, coworkers, judges, colleagues; and, then, a number of friends who traveled long distances and short distances to be here with me today in the audience.

I offer all of them my gratitude for their help and making me the person I am and getting me to this place before you. And I look forward to any questions the Committee may have.

Senator KLOBUCHAR. Thank you very much.

Senator Grassley will begin.

Senator GRASSLEY. You three on the left will not mind if I only ask questions of the Iowan.

What I would like to do is—because you were involved in what was a fairly controversial case at one time, I think we need to get some things on the record. And just so you know that I am not trying to play "catch you."

I would like to read all the questions and then come back and read them and have you answer them one-by-one so you do not have to repeat yourself. This is in regard to the wholesale immigration prosecutions.

At the time of the prosecutions, you were deputy chief, criminal division, U.S. Attorney's office. So I would like to have you describe your responsibilities and duties.

Two, what was your specific role in the Postville case?

Three, how much involvement did you have with each of the following: A, the planning of the raid; B, the pre-raid ratified plea agreements; and, C, the prosecution of cases?

Four, who had ultimate decision-making authority within your office? What was the nature of main Justice's involvement with the various states of the Postville raid and criminal cases?

Six, what was the specific crime the government charged the workers with? What were the specific crimes in the pre-ratified plea deal offered by the government?

Reports indicate that all—this is eight—reports indicate that almost 400 individuals who were in the United States unlawfully were charged with crimes. Reports also seemed to indicate that about 300 of them pled guilty.

A, could you please tell us what legal process those who did not plead guilty underwent? What was the conclusion of those who pled not guilty?

And then nine and ten are in regard to living conditions. What government agency was responsible for treatment and care of the accused following the raid, and have you personally seen the accommodations? How would you describe them? Were they comparable to conditions found in Iowa detention facilities?

So let me start over again. At the time of the prosecution, you were the deputy chief——

Senator KLOBUCHAR. Thank you.

Senator GRASSLEY. At the time of the prosecution, you were deputy chief, criminal division, U.S. Attorney's office.

Kind of give us a brief description of your responsibilities and duties in that position.

Ms. ROSE. Thank you, Senator Grassley. I think there is some misnomer to the term deputy criminal chief and it has caused a fair amount of confusion.

What my role was largely to do back in 2008 and 2009, until I became U.S. attorney, was to handle and oversee the guns and drugs prosecutions being done on behalf of the northern district of Iowa.

That meant that I generally mentored and supervised the drug attorneys in Cedar Rapids and those attorneys who were handling the violent crime cases. I was not the criminal chief. I was not the FOUS (ph) and I was not the U.S. attorney. Each one of those individuals were above me in the chain of command.

At the time of the Postville operation, I was overseeing the supervision of law students, legal assistants, paralegals, SOUSES (ph), and criminal attorneys, all of whom were involved in drugs and gun prosecutions.

Senator GRASSLEY. Number two, what was your specific role in the Postville case?

Ms. ROSE. I was involved over a 2-week period when the operation was in Waterloo, Iowa. My job was to serve as a liaison between my office, the defense attorneys, the court, the probation office, the clerk's office, the marshals, and the agents involved.

That generally meant that I spent a lot of time on the phone. I had three phones at the time. I got my records back. On just one of those phones, I had 687 calls in a 12-day window, and the other two phones rang about as often.

So I spent 24 hours a day onsite for the first 2 days. I was there all but may 4 hours to sleep on the third day. And during that time, I was literally running around ensuring that the hearings were covered, that the defense attorneys had the materials they needed, that they had access to their clients, that the probation office got what they needed, that our office was getting things moving through as soon as possible.

And so my role was really as a key problem-solver during that raid.

Senator GRASSLEY. What involvement did you have with the planning of the raid?

Ms. ROSE. None.

Senator GRASSLEY. What involvement did you have with the preraid ratified plea agreements?

Ms. ROSE. None.

Senator GRASSLEY. What role did you have with the prosecution of the cases?

Ms. ROSE. To the extent it was going on when I was in Waterloo, I was there to make sure there were attorneys covering those hearings. We had four SOUSES (ph) brought in to assist with that.

In the middle of one of the operations, I think we were in the middle of initial appearances, the chief judge became upset with two of the SOUSES (ph), didn't like how they were handling cases, asked that I be paged and come down and take over them myself.

I immediately went to the courtroom, which was the ballroom of this facility, and I stayed throughout the rest of those hearings to ensure things were going smoothly.

So to the extent that's part of the prosecution, I was involved in that way.

After May 23, which was when we left Waterloo, I wasn't involved again in the prosecutions.

Senator GRASSLEY. Who had ultimate decision-making authority within your office?

Ms. ROSE. Within my office, the U.S. attorney at the time was Matt Dummermuth. I know much of this—and I don't know all the details because I wasn't involved in the planning, but much of the approvals were being done at the Department of Justice level and I don't know all of the people involved in those decisions.

Senator GRASSLEY. I think you touched on this next question. What was the nature of main Justice's involvement with various stages of the Postville raid and criminal cases?

Ms. ROSE. It's my understanding—and, again, I wasn't involved—that the planning took place from the fall of 2007 until the operation began in May 2008. I know there was daily and regular contact during parts of that time.

Certainly, the major decisions about what charges to offer, what kinds of provisions were going to go into those plea agreements I understand were made with Department of Justice, either at their direction or with their blessing.

This was an approved fast-track program and, as such, it had to have the endorsement of the Department of Justice.

Senator GRASSLEY. Number six, what was the specific crime the government charged the workers with?

Ms. ROSE. There were a handful, but the most predominant one was use of somebody else's Social Security card or use of somebody else's alien registration number.

Senator GRASSLEY. Seven, what was the specific crime in the preratified plea deal offered by the government?

Ms. ROSE. It was those. There was, in fact, a matrix set up as part of the fast-track approved plea agreement, where, if certain facts were present, the plea offer would be X. If a different set of facts were present, the plea offer would be Y.

There was very little—in fact, no, that I'm aware of, movement off of what had been pre-approved, other than to apply whatever the facts were to the particular plea agreement that fit that situation.

Senator GRASSLEY. Number eight, reports indicate that almost 400 individuals who were in the United States unlawfully were charged with crimes. Reports also seem to indicate that while 300 of them pled guilty, A, can you please tell us what legal process those who did not plead guilty underwent?

Ms. ROSE. There were a number of workers who were encountered at the site of Agri Processors who were released on humanitarian grounds. Any worker who identified that they were caring for minor children, when they were encountered at Agri Processors, if there was only one person—in other words, if we found a couple, one of the parents went off for further processing and one parent was turned loose to go home and care for the children.

Those were put into ICE custody and I don't know all of the arrangements that happened with them. Those folks were not ultimately prosecuted by us.

Three hundred and six were prosecuted through the operation in Waterloo. We had a number of people who made it to the operation site in Waterloo and then, for the first time, told us, "OK, I really do have children." Those were immediately then released to go back home to care for those children.

And then we had a handful of defendants who had initially identified themselves as adults whose paperwork with the company indicated they were adults, but during the course of the 3 days we were in Waterloo, advised that they were, in fact, minors. We immediately and I personally immediately went to the judge and had those particular people—the cases against them dismissed and they were moved into juvenile custody through ICE.

Beyond that, I don't know what arrangements were made.

Senator GRASSLEY. B on eight was, what was the conclusion of those who pled not guilty?

Ms. ROSE. We had initial not guilty pleas, but all 306 who charged during those days did plead guilty. There was not a single trial held.

Senator GRASSLEY. Nine, which government agency was responsible for the treatment and care of the accused following the raid?

Ms. ROSE. A handful of them, ICE predominantly. But certainly those who came into U.S. Marshal custody, it would have been U.S. Marshal responsibility.

Senator GRASSLEY. Ten and final. Have you personally seen the accommodations? How would you describe them? Were they comparable to the conditions found in Iowa detention facilities?

Ms. ROSE. I did personally see them. As I said, I was onsite 24 hours a day for the first 2 days and then nearly 24 hours that third day.

The restrooms that all of us had to use were in the facility where the defendants were being housed. And so I was in and out of that building over those 72 hours.

Every person I saw had a cot, they had a blanket, they had clean clothing. They had meals catered by High V, which is a grocery store chain in Iowa. They had televisions, they had games. I never saw them playing the games, but they were sitting there.

And so I don't know what all the conditions are at the prisons. I would guess there was more limited access to things like showers and things that were easier to provide in the jail setting. But dur-

ing the 48 to 72 hours they were held in Waterloo, accommodations were everything you would and should expect.

People were moved as soon as we could move them out of site in Waterloo and into the real or more permanent detention facilities, and I have every reason to believe they were treated well throughout the time they were in our custody.

Senator GRASSLEY. Thank you. Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you very much, Senator Grassley.

Senator Harkin has asked that I submit this on his behalf. It is a letter of support for Ms. Rose to Senator Harkin from a group of defense attorneys involved in the case that Senator Grassley just discussed with you, and it was submitted during Ms. Rose's confirmation as U.S. attorney for the northern district of Iowa.

So without objection, I will include this in the record.

[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).

   Stephanie Marie Rose
   Stephanie Marie King (nee)

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

   United States District Judge for the Southern District of Iowa

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.

   401 First Street S.E.
   Suite 400
   Cedar Rapids, Iowa 52401

   Residence: Center Point, Iowa

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

   1972; Topeka, Kansas

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 Iowa College of Law; J.D. (with High Distinction), 1996

   1991 – 1994; University of Iowa; B.A. (with Highest Distinction and Honors), 1994

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
U.S. Attorney's Office – Northern District of Iowa
401 First Street S.E., Suite 400
Cedar Rapids, Iowa 52401
U.S. Attorney (2009 – Present)
Deputy Criminal Chief (2008 – 2009)
Assistant United States Attorney (1999 – 2008)
Iowa Assistant Attorney General *designated as* Special Assistant United States Attorney (1997 – 1999)
Law Clerk (Fall 1996)

Spring 1997
National Computer System (NCS) Pearson
7405 Irish Drive S.W.
Cedar Rapids, Iowa 52404
Professional Test Scorer

Summer 1996
Bradley & Riley, P.C.
2007 First Avenue S.E.
Cedar Rapids, Iowa 52402
Law Clerk

Spring 1996
University of Iowa School of Journalism and Mass Communications
100 Adler Journalism Building
Iowa City, Iowa 52242
Teaching Assistant

Other Affiliations (uncompensated):

1998 – 1999
Iowa Volunteer Lawyer's Project
Legal Services Corporation of Iowa
1111 Ninth Street, Suite 230
Des Moines, Iowa 50314
Volunteer lawyer (represented domestic violence victims)

1996 – 1998
Court Appointed Special Advocate
6th Judicial District of Iowa
Cedar Rapids, Iowa 52401
Volunteer lawyer (represented the interests of abused and neglected children)

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 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.

Mason City High School Distinguished Alumni Award (2011)
Patriotic Employer Award, awarded by The National Committee for Employer Support of the Guard and Reserve (2011)
Department of Justice Director's Award for Superior Performance by a Litigative Team (2009)
Organized Crime Drug Enforcement Task Force (OCDETF) National Award: Outstanding Innovative Pharmaceutical Investigation (2009)
West Central OCDETF Meritorious Achievement Awards (2002, 2003, 2009)
U.S. Department of Justice Certificates of Appreciation (19 occasions) (1999 – 2009)
Inducted as Fellow, Iowa Academy of Trial Lawyers (2008)
U.S. Department of Justice Certificate of Commendation (2006)
U.S. Department of Justice Special Achievement Award (2004)
Citation for Outstanding Appellate Litigation (2004)
Department of Justice Director's Award for Superior Performance by an Assistant United States Attorney (2001)
Federal Bureau of Investigations Recognition Award (1999)
Drug Enforcement Administration Certificate of Appreciation (1999)
U.S. Department of Justice Employee Volunteer Service Award (1999)
State of Iowa Governor's Volunteer Award (1997)
Order of the Coif (1997)
University of Iowa College of Law Faculty Award for Client Services (1997)

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

Attorney General's Advisory Committee
- 8th Circuit Representative (2010 – Present)
- Office of Management & Budget Subcommittee
  - Small District Representative (2010 – Present)
  - Investment Review Board, Chair (2010 – Present)
- Resource Allocation Working Group, Small District Representative (2010 – Present)
- Controlled Substances and Asset Forfeiture Working Group (2010 – Present)
- Criminal Practices Subcommittee (2010 – Present)

Court Appointed Special Advocates (1996 – 1998)

Dean Mason Ladd Inns of Court (approx. 2003 – 2004)
Department of Justice Case Management System Executive Steering Committee (2011 – Present)
Iowa Academy of Trial Lawyers, Fellow (2008 – Present)
Iowa State Bar Association (1997 – Present)
Iowa Volunteer Lawyer's Project (1998 – 1999)
Linn County Bar Association (approx. 1997 – 2000)
Midwest High-Intensity Drug Trafficking Area
- Fiscal & Planning Board
  - Chairman (2011 – present)
  - U.S. Attorney Representative (2010 – 2011)
- Executive Board (2009 – present)
  - Vice-Chair (2011 – present)

United States Attorney General's National Online Drug Diversion Working Group (2007 – 2009)
United States District Court for the Northern District of Iowa Blue Ribbon Panel for Criminal Cases (2007 – Present)

10. **Bar and Court Admission**:

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

Iowa, 1997

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 Eighth Circuit, 1997
United States District Court for the Northern District of Iowa, 1997
Iowa State Courts, 1997

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.

Center Point/Urbana Community Schools Community Advisory Board (2001 – 2002)

Center Point/Urbana Parent Teacher Organization (2001 – Present)

St. Andrews Place Homeowner's Association (1997 – 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, 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.

Jason Pepper Hardly a 'Small Time' Dealer, Des Moines Register, Dec. 27, 2010. Copy supplied.

With Rubashkin Sentencing, Prosecutor Speaks Out about Case, Cedar Rapids Gazette, June 23, 2010. Copy supplied.

The remaining materials I have written during my legal career have been documents internal to the Department of Justice. Because the materials are either privileged, constitute attorney work product, or are law enforcement sensitive, I have not supplied copies of these materials.

Just prior to my graduation from college (1994), my sociology honors thesis was published in a sociology journal the name of which I no longer recall. That thesis was titled "Building a Better Bridge: Using Ethnomethodology to Link Macro and Micro Sociology." I have been unable to obtain a copy of this thesis.

Prior to law school, I worked as a journalist. I was a staff writer for the *Globe Gazette* in Mason City, Iowa (1989 – 1991), and wrote freelance articles for the

Globe Gazette and *Daily Iowan* (Iowa City, Iowa) during college (1991 – 1994). In these various capacities, I would have authored numerous articles about sporting events, public interest news, and similar pieces. I was also a featured columnist during college (1992) in the *Mid-States Racing News* (Webster City, Iowa). That monthly column, titled "From the Winner's Circle," focused on dirt track racing. I have been unable to obtain copies of these articles.

Finally, I was the Editor of the University of Iowa Honors Program Newsletter from 1992 to 1994. As part of my job duties, I wrote, designed, formatted, printed, and mailed out a monthly newsletter to all University of Iowa honors students. I have been unable to obtain copies of these newsletters.

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

I have never prepared any reports, memoranda, or policy statements for any bar association, committee, conference, or organization outside my work for the Department of Justice. Because any materials I prepared for the Department of Justice are either privileged, constitute attorney work product, or are law enforcement sensitive, I have not supplied copies of these materials.

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 June 1, 2011, I testified before the United States Sentencing Commission at a hearing on retroactive application of the proposed amendment to the Federal Sentencing Guidelines implementing the Fair Sentencing Act of 2010. My opening statement, prepared written statement, and transcript of the hearing are 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. A summary of all speeches, remarks, and lectures I have located follows.

January 6, 2012: I presented a Department of Justice seal and made remarks at a farewell event for ICE Special Agent Eric Spalding. I have no notes, transcript or recording. The event was held at the Guaranty Bank Building, 300 Eighth Street Court, Fairfax, Iowa 52228.

November 30, 2011: I made congratulatory remarks during a retirement event for Senior United States Probation Officer Ann Vestle. I have no notes, transcript or recording. The event was sponsored by the Federal Court, 4200 C Street, Cedar Rapids, Iowa 52404.

November 21, 2011: I spoke to high school students following presentation of a Mason City High School Distinguished Alumni Award. The ceremony was sponsored by Mason City High School. A copy of my speech is supplied.

November 20, 2011: I spoke to community leaders, teachers, and students after accepting a Mason City High School Distinguished Alumni Award. The ceremony was sponsored by Mason City High School. A copy of my remarks is supplied.

November 3, 2011: Addressing School Violence Seminar, Dubuque, Iowa. I welcomed attendees to a seminar hosted by the Dubuque Sheriff's Office. A copy of my remarks is supplied.

October 4, 2011: 2011 Annual Law Enforcement Intelligence Network (LEIN) Conference, Johnston, Iowa. I welcomed attendees to LEIN's annual conference. A copy of my remarks is supplied.

July 19, 2011: Indian Country Conference. I welcomed attendees to the conference, which was held at the College of Saint Mary's, Omaha, Nebraska. A copy of my remarks is supplied.

May 23, 2011: Midwest Gang Investigators Association (MGIA) Annual Conference, Dubuque, Iowa. I gave luncheon remarks to attendees of the conference. A copy of my remarks is supplied.

May 10, 2011: Law Enforcement Coordinator's Conference, West Des Moines, Iowa. I presented the 2011 Law Enforcement Coordinator's Award to the Tri-County Drug Task Force. I have no notes, transcript or recording. The conference was sponsored by the United States Attorney's Offices for the Northern and Southern Districts of Iowa. The Northern District of Iowa United

States Attorney's Office is located at 401 First Street Southeast, Suite 400, Cedar Rapids, Iowa 52401.

May 9, 2011: Annual Law Enforcement Coordinator's Conference, West Des Moines, Iowa. I welcomed attendees to the Law Enforcement Coordinator's Conference. I have no notes, transcript or recording. The conference was sponsored by the United States Attorney's Offices for the Northern and Southern Districts of Iowa. The Northern District of Iowa United States Attorney's Office is located at 401 First Street Southeast, Suite 400, Cedar Rapids, Iowa 52401.

April 26, 2011: Guest Lecture Series. I gave a presentation entitled "My Journey to U.S. Attorney," to students at Iowa Central Community College as part of a guest lecture series. Presentation slides supplied.

April 21, 2011: I made congratulatory remarks during a retirement event for Chief United States Probation Officer Robert Askelson. I have no notes, transcript or recording. The event was sponsored by the Federal Court, 4200 C Street, Cedar Rapids, Iowa 52404.

April 14, 2011: I spoke at an event commemorating National Crime Victim Rights Week, Des Moines, Iowa. At the event, I presented the 2011 Law Enforcement Victim Single Service Award and spoke briefly about the importance of victim service providers. I have no notes, transcript, or recording. The event was sponsored by the Cedar Rapids Police Department, located at 505 First Street Southwest, Cedar Rapids, Iowa 52401.

March 5, 2011: I made congratulatory remarks at the promotion ceremony for Brigadier General Patrick J. Reinert, Cedar Rapids, Iowa. I have no notes, transcript or recording.

February 24, 2011: Iowa Academy of Trial Lawyer's Forty-Ninth Annual Seminar, Des Moines, Iowa. I partnered with a defense attorney to present a lecture entitled "Importance of Timely Pre-Indictment Intervention in Criminal Cases" to attendees of the seminar. Presentation slides supplied.

February 3, 2011: Criminal Justice Act (CJA) Brown Bag Luncheon, Cedar Rapids, Iowa. I presented a lecture entitled "BOP Computation of Time Served." Presentation slides supplied.

December 17, 2010: Iowa State Bar Association's 2010 Federal Practice Seminar, Des Moines, Iowa. I presented a lecture entitled "Issues in Federal Prosecution." Presentation slides and materials supplied.

December 3, 2010: I provided congratulatory remarks at the investiture of Kenneth Runde as U.S. Marshal for the Northern District of Iowa, Cedar Rapids, Iowa. A copy of my remarks is supplied.

November 13, 2010: Twenty-Eighth Annual University of Iowa College of Law Judge Roy L. Stephenson Trial Advocacy Competition Banquet, Iowa City, Iowa. I provided keynote remarks. A copy of my remarks is supplied.

October 21, 2010: Graduation Ceremony for the Thirty-Eighth Basic Class of the Cedar Rapids Regional Police Academy. I provided keynote remarks at the graduation ceremony. A copy of my remarks is supplied.

October 12, 2010: Hate Crimes Conference, Cedar Falls, Iowa. I gave welcoming remarks to attendees of the conference. A copy of my remarks is supplied.

October 5, 2010: Annual Law Enforcement Intelligence Network (LEIN) Conference, Johnston, Iowa. I welcomed attendees to the conference. A copy of my remarks is supplied.

September 10, 2010: Seventh Annual Protect Our Children Conference, Des Moines, Iowa. I gave closing remarks at the conference. A copy of my remarks is supplied.

August 20, 2010: I provided brief opening remarks regarding the role of my office to attendees of a regional law enforcement training program hosted by my office. I have no notes, transcript or recording. The event was sponsored by the United States Attorney's Office, 401 First Street Southeast, Suite 400, Cedar Rapids, Iowa 52401.

August 3, 2010: 2010 Appellate, Enforcement, and Protection Law Conference. I presented a lecture entitled "Perspectives of a U.S. Attorney," at the conference sponsored by U.S. Immigration & Customs Enforcement, 500 12th Street Southwest, Washington, DC 20536. Because law enforcement sensitive information was shared, the event was not recorded and the notes of my presentation are not available to the public.

July 8, 2010: Linn County Bar Association Annual Conference, Cedar Rapids, Iowa. I gave approximately 15 minutes of remarks related to my office's procedures and policies to a group of Linn County attorneys during a CLE event. A copy of my remarks is supplied.

June 17, 2010: Annual Civil Agency Meeting, West Des Moines, Iowa. I welcomed attendees to the meeting. A copy of my remarks is supplied.

June 9, 2010: I met with tribal leaders and members of the Sac & Fox of the Mississippi to discuss changes in office policy and practices regarding Indian country cases. I have no notes, transcript or recording. The event was sponsored by the United States Attorney's Office, 401 First Street Southeast, Suite 400, Cedar Rapids, Iowa 52401.

May 26, 2010: Case Progression Luncheon. I made general remarks regarding changes in USAO policies and practices. I have no notes, transcript or recording. The event was sponsored by the United States Attorney's Office, 401 First Street Southeast, Suite 400, Cedar Rapids, Iowa 52401.

May 13, 2010: Federal Criminal Law & Procedure Seminar. I made general remarks concerning changes in USAO policies and practices. I have no notes, transcript or recording. The seminar was sponsored by the Federal Public Defender of Iowa, 320 Third Street Southeast, Suite 200, Cedar Rapids, Iowa 52401.

May 11, 2010: Career Day. I spoke to students at Roosevelt Middle School, 300 Thirteenth Street Northwest, Cedar Rapids, Iowa 52405, regarding legal careers. I have no notes, transcript or recording.

May 10, 2010: Annual Law Enforcement Coordinators Conference, West Des Moines, Iowa. I welcomed attendees to the conference. A copy of my remarks is supplied.

May 5, 2010: Multi-State Victim Services Conference, Dubuque, Iowa. I presented the 2010 Law Enforcement Crime Victim Services Single Act Award during the conference. A copy of my remarks and press coverage are supplied.

May 5, 2010: Multi-State Victim Services Conference, Dubuque, Iowa. I welcomed attendees to the conference. A copy of my remarks is supplied.

April 18, 2010: Opening Ceremony, National Crime Victims' Rights Week. I gave general remarks during the ceremony, which kicked off at the Cedar Rapids Police Department. A copy of my remarks is supplied and a video recording is available at http://www.youtube.com/watch?v=SXea4VQ_uRg.

January 21, 2010 and January 14, 2010: Brown Bag Lunch Discussion, Federal Public Defender. I have no notes, transcript or recording. The address of the Federal Public Defender is 320 Third Street Southeast, Suite 200, Cedar Rapids, Iowa 52401.

January 17, 2010: Midwinter Osteopathic Family Practice Conference, Iowa Osteopathic Medical Association and Iowa Chapter of the ACOFP, Des Moines, Iowa. I presented a lecture entitled "Overview of Internet Pharmacy Operations and Regulations." Presentation slides supplied.

January 9, 2010: I made congratulatory remarks at a retirement event for State of Iowa Corrections Officer Steve Konarske, Cedar Rapids, Iowa. I have no notes, transcript or recording.

December 4, 2009: I gave remarks following my formal investiture as United States Attorney, Cedar Rapids, Iowa. A copy of my remarks is supplied.

October 23, 2009: I gave keynote remarks during the Investiture of Ian K. Thornhill as an Iowa District Court Judge, Cedar Rapids, Iowa. A copy of my remarks is supplied.

August 4, 2009: I presented a lecture entitled "Internet Prescribing" to students at the Des Moines University College of Osteopathic Medicine. Presentation slides supplied.

June 3, 2009: West Central Organized Crime Drug Enforcement Task Force (OCDETF) Annual Conference. I presented a lecture entitled "Internet Pharmacy Investigations" to attendees at the conference. The event was sponsored by West Central OCDETF, 111 South Tenth Street, Room 20.333, St. Louis, Missouri 63102. Because law enforcement sensitive information was shared, the event was not recorded and the notes of my presentation are not available to the public.

February 4, 2009: I presented a lecture entitled "Internet Pharmacy Investigations" at the Drug Enforcement Administration Quantico Training Facility. The training facility's mailing address is P.O. Box 1475, Quantico, Virginia 22124. Because law enforcement sensitive information was shared, the event was not recorded and the notes of my presentation are not available to the public.

May 28, 2008: I presented a lecture entitled "Internet Pharmacy Investigations" at the Department of Justice's National Advocacy Center, 1620 Pendleton Street, Columbia, South Carolina 29201. Because law enforcement sensitive information was shared, the event was not recorded and the notes of my presentation are not available to the public.

March 26, 2008: Iowa Association of Women Police Annual Conference, Dubuque, Iowa. I presented a lecture entitled "Internet Pharmacy Investigations." Because law enforcement sensitive information was shared, the event was not recorded and the notes of my presentation are not available to the public. The association does not have a physical address.

November 5, 2007: Iowa Gang Summit, Cedar Rapids, Iowa. I presented information to attendees regarding USAO intake of gang-related cases. Summit attendees included educators, community outreach providers, law enforcement personnel, juvenile and adult corrections, private security, and prosecutors. I have no notes, transcript or recording. The Summit was sponsored by the Midwest Gang Investigator's Association and the United States Attorney's Office for the Northern District of Iowa, located at 401 First Street Southeast, Cedar Rapids, Iowa 52401.

September 27, 2007: I presented a lecture entitled "Internet Pharmacy Investigations" to Drug Enforcement Administration agents and investigators, Scottsdale, Arizona. Because law enforcement sensitive information was shared, the event was not recorded and the notes of my presentation are not available to the public. The address of the DEA is Westmount Place, Suite 301, 3010 North Second Street, Phoenix, Arizona 85012.

May 9, 2007: I presented a lecture entitled "Internet Pharmacy Investigations" at the Department of Justice's National Advocacy Center, 1620 Pendleton Street, Columbia, South Carolina 29201. Because law enforcement sensitive information was shared, the event was not recorded and the notes of my presentation are not available to the public.

March 29, 2007: I presented a lecture entitled "Searching Pagers & Cell Phones" during regional law enforcement training, Peosta, Iowa. Presentation slides supplied.

November 30, 2006: I presented a lecture entitled "Internet Prescribing" to the Optimist Club of Cedar Rapids during their lunch-time chapter meeting. I used the same slides as those supplied for the August 4, 2009 event.

November 13, 2006: Iowa Gang Summit, Cedar Rapids, Iowa. I presented information to attendees regarding USAO intake of gang-related cases. Summit attendees included educators, community outreach providers, law enforcement personnel, juvenile and adult corrections, private security, and prosecutors. I have no notes, transcript or recording. The Summit was sponsored by the Midwest Gang Investigator's Association and the United States Attorney's Office for the Northern District of Iowa, located at 401 First Street Southeast, Cedar Rapids, Iowa 52401.

April 12, 2006: Multi-State Victim Services Conference, Dubuque, Iowa. I presented a lecture entitled "Drugs Don't Work." Presentation slides supplied.

March 3, 2006: I participated in a panel discussion with students at the University of Iowa College of Law about my experiences as a law student. I have no notes, transcript or recording. The address of the College of Law is 280 Boyd Law Building, Iowa City, Iowa 52422.

February 22, 2006: I presented a lecture entitled "Internet Prescribing" to students at the Des Moines University College of Osteopathic Medicine. I used the same slides as those supplied for the August 4, 2009 event.

February 16, 2006: I spoke to students during Career Day at the Center Point-Urbana Elementary School, located at 101 Palo Road, Center Point, Iowa 52213. I have no notes, transcript or recording.

February 3, 2006: I presented a lecture entitled "Internet Prescribing" to students at the University of Iowa College of Medicine. I used the same slides as those supplied for the August 4, 2009 event.

September 23, 2004: I summarized grand jury compliance responsibilities for legal support professionals in the Cedar Rapids community. I have no notes, transcript or recording. The event was sponsored by Klinger, Robinson, and Ford, LLP, 401 Old Marion Road Northeast, Cedar Rapids, Iowa 52402.

May 20, 2004: I presented the Iowa Bar Association Citizenship Award to a student graduating from the Center Point-Urbana High School, 145 Iowa Street, P.O. Box 296, Center Point, Iowa 52213. I have no notes, transcript or recording.

March 13, 2004: I presented a lecture entitled "Drugs Don't Work" to students at the Northeast Iowa Community College. I used the same slides as those supplied for the April 12, 2006 event.

April 18, 2003: I presented a lecture entitled "Drugs Don't Work" to staff at the Covenant Hospital, Waterloo, Iowa. I used the same slides as those supplied for the April 12, 2006 event.

February 18, 2003: I presented a lecture entitled "Drugs Don't Work" to staff at the Allen Hospital, Waterloo, Iowa. I used the same slides as those supplied for the April 12, 2006 event.

October 7, 2002: I presented information regarding terrorism issues for law enforcement officers during regional training held at the Regional Training Center, 6602 Allison Avenue, Sioux City, Iowa 51111. Because law enforcement sensitive information was shared, the event was not recorded and the notes of my presentation are not available to the public.

September 18, 2002: I presented an overview of federal gun statutes to state and local law enforcement officers, Waterloo, Iowa. I have no notes, transcript or recording. The presentation was sponsored by the Black Hawk County Sheriff's Office, 225 East Sixth Street, Waterloo, Iowa 50703.

February 15, 2001: I made a brief presentation and participated in a question and answer session with prospective law students attending a visitation day at the University of Iowa College of Law, 280 Boyd Law Building, Iowa City, Iowa 52242. I have no notes, transcript or recording.

December 4, 1999: I served as one of several judges for a high school mock trial competition. I have no notes, transcript or recording. The competition was held at the Linn County Courthouse, located at 51 Third Avenue, Cedar Rapids, Iowa 52401.

March 20, 1998: I spoke to high school students regarding methamphetamine dangers and prosecutions. I have no notes, transcript or recording, but press coverage is supplied. The speaking events occurred at Centerville High School, located at 600 CHS Drive, Centerville, Iowa 52544.

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 on which I gave those interviews. The interviews have centered on a particular case my office was prosecuting, law enforcement initiatives, debt collection efforts, or award announcements. I have located the following press conferences, formal interviews, and press releases listed below:

Trish Mehaffey, *Rose Picked for Federal Bench*, The Gazette, Feb. 3, 2012. Copy supplied.

Trish Mehaffey, *Sen. Harkin Says Stephanie Rose Will Be Nominated as Next Federal Judge*, The Gazette, Feb. 3, 2012. Copy supplied.

Press release, re-printed in multiple outlets, *Iowa Insurance Agent to Pay US to Resolve False Claims Allegations on the Federal Crop Insurance Program*, United States Attorney's Office for the Northern District of Iowa, Dec. 9, 2011. Copy supplied.

Press release, re-printed in multiple outlets, *Elementary School Principal Sentenced to 30 Years in Prison for Producing Child Pornography*, United States Attorney's Office for the Northern District of Iowa, Nov. 21, 2011. Copy supplied.

Deb Nicklay, *MCHS Honors Distinguished Alumni*, Globe Gazette, Nov. 21, 2011. Copy supplied.

November 21, 2011: I was interviewed by KGLO Radio News Director Robert Fisher at the Mason City High School, 1700 Fourth Street Southeast, Mason City, Iowa 52401. The interview related to my selection for a Mason City High School Distinguished Alumni Award. I have been unable to obtain a transcript or recording of the interview.

Press release, re-printed in multiple outlets, *U.S. Attorney's Office Collects $5,936,084 in Civil & Criminal Actions in FY 2011*, United States Attorney's Office for the Northern District of Iowa, Nov. 18, 2011. Copy supplied.

Press release, re-printed in multiple outlets, *Justice Department Settles Housing Discrimination Lawsuit in Waterloo, Iowa*, Department of Justice, Sept. 21, 2011. Copy supplied.

Press release, re-printed in multiple outlets, *Vinton Couple Sentenced [to] Prison on Federal Immigration, Tax and Fraud Charges and Will Forfeit More than $1.5 Million in Assets*, United States Attorney's Office for the Northern District of Iowa, Aug. 1, 2011. Copy supplied.

May 12, 2011: I was interviewed by Sue Danielson of the WHO Iowa Radio Network, located at 400 First Street S.E., Cedar Rapids, Iowa 52401. The focus of the interview was online safety for children. I have been unable to obtain a transcript or recording of the interview. However, I utilized my notes from the press conference that took place earlier in the day, and they are supplied.

May 12, 2011: I held a press conference at the Franklin Middle School, 300 Twentieth Street Northeast, Cedar Rapids, Iowa 52402. The focus of the press conference was online safety for children. I have been unable to obtain a transcript or recording of the press conference, but my notes are supplied.

Press release, *Child Pornography Sentences Highlight Internet Dangers to Children*, United States Attorney's Office for the Northern District of Iowa, May 12, 2011. Copy supplied.

Press release, *Former Police Chief of Parkersburg, Iowa Receives Victim Service Award*, United States Attorney's Office for the Southern District of Iowa, Apr. 14, 2011. Copy supplied.

Trish Mehaffey, *Assistant U.S. Attorney Bob Teig Retires*, The Gazette, Apr. 2, 2011. Copy supplied.

Press release, *United States Attorney Recognized for Extraordinary Support of Employees in the Military*, United States Attorney for the Northern District of Iowa, Mar. 31, 2011. Copy supplied.

Trish Mehaffey, *U.S. Attorney Reflects on Complicated Cases*, The Gazette, Dec. 27, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *U.S. Attorneys' Offices Contribute to $6.68 Billion in Civil and Criminal Collections in Fiscal Year 2010*, United States Attorney's Office for the Northern District of Iowa, Dec. 16, 2010. Copy supplied.

December 13, 2010: I held a press conference at the Washington High School, Cedar Rapids, Iowa, announcing the sentence in *United States v. Roegner*. I have been unable to obtain a transcript or recording of the press conference, but my notes and press coverage are supplied.

Press release, *Principals and Law Enforcement Warn of Dangers of "Sexting,"* United States Attorney's Office for the Northern District of Iowa, Dec. 13, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *'Sextortion' Lands Man in Federal Prison*, United States Attorney's Office for the Northern District of Iowa, Dec. 13, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *Guardians of Innocence: Iowa Awarded More Than $460,000 to Fight Sexual Predators Targeting Children*, Iowa Department of Public Safety, Dec. 10, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *Sioux City Federal Prosecutor Returns from Duty in Iraq*, United States Attorney's Office for the Northern District of Iowa, Dec. 9, 2010. Copy supplied.

Rami Fakhoury, *United States: Compliance Risks of Restrucuring to Avoid the H-1B/L-1 Surcharge*, Mondaq Business Briefing, Nov. 4, 2010. Copy supplied.

Federal Prosecutors to Handle Any Election Fraud, Associated Press, Nov. 1, 2010. Copy supplied.

Deadline Nears [for] Absentee Ballot Request in Iowa, Associated Press, Oct. 28, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *Domestic Violence Awareness Month*, United States Attorney's Office for the Northern District of Iowa, Oct. 19, 2010. Copy supplied.

Press release, *Department of Justice Holds Hate Crimes Conference in Cedar Falls*, United States Attorney's Office for the Northern District of Iowa, Oct. 12, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *Cedar Rapids Landlord Sentenced to 20 Years for Mail Fraud, Tax Fraud, and Perjury*, United States Attorney's Office for the Northern District of Iowa, Sept. 27, 2010. Copy supplied.

Lee Rood, *Misconduct Cases Taint Justice in Iowa*, Des Moines Register, Sept. 24, 2010. Copy supplied.

September 20, 2010: I was interviewed by Iowa Public Radio regarding Internet safety guidelines and tips for children and parents. The interview took place at Iowa Public Radio's Iowa City office, located at 710 Clinton Street, Iowa City, Iowa 52242. I have been unable to obtain a transcript or recording of the interview.

Press release, *Recidivist Burglar Gets 15 Years with No Parole for Having Gun*, United States Attorney's Office for the Northern District of Iowa, Sept. 16, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *U.S. Department of Justice Releases First National Strategy for Child Exploitation Prevention and Interdiction: U.S. Attorney Sends Message to Kids, Parents, and Offenders*, United States Attorney's Office for the Northern District of Iowa, Aug. 2, 2010. Copy supplied.

Edwin Black, *Who's Got the Beef?*, Jerusalem Post, June 25, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *Sholom Rubashkin Sentenced to 27 Years in Federal Prison*, United States Attorney's Office for the Northern District of Iowa, June 22, 2010. Copy supplied.

May 26, 2010: I held a press conference to present the 2010 Law Enforcement Award for Continuous Victim Service. The press conference was held at the Sioux City Police Department, located at 601 Douglas Street, Sioux City, Iowa 51101. I have been unable to obtain a transcript or recording of the press conference, but my notes are supplied.

Press release, re-printed in multiple outlets, *Man Who Threatened to Kill Estranged Wife Sentenced to 10 Years on Federal Firearms Convictions*, United States Attorney's Office for the Northern District of Iowa, May 12, 2010. Copy supplied.

May 10, 2010: I spoke during a press conference announcing Operation Northern S.T.A.R. The press conference was sponsored by the United States Marshals Service. I have been unable to obtain a transcript or recording of the press conference, but my notes are supplied.

Trish Mehaffey, *Former Cresco Pharmacist Sentenced to Prison*, The Gazette, May 8, 2010. Copy supplied.

Award-Winning Investigator on Catching a Cyber Predator, KWWL 7, May 5, 2010. Copy supplied.

April 21, 2010: I held a press conference to announce the designation of a Cedar Rapids Safe Streets Task Force. I have been unable to obtain a transcript or recording of the press conference, but my notes and press coverage are supplied.

Press release, *Law Enforcement Officials Introduce Safe Streets Task Force*, United States Attorney's Office for the Northern District of Iowa, Apr. 21, 2010. Copy supplied.

Trish Mehaffey, *Prosecutor to Target Porn, Drugs, Guns: Fraud Rises as Economy Sinks*, The Gazette, Apr. 19, 2010. Copy supplied.

Trish Mehaffey, *U.S. Attorney Rose Shares Her Priorities for the District*, The Gazette, Apr. 19, 2010. Copy supplied.

Press release, *Cedar Rapids Drug Task Force Recognized for Major Meth Investigation*, United States Attorney's Office for the Northern District of Iowa, Mar. 30, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *Wrong Way on One-Way Street Leads Waterloo Felon to Federal Prison*, United States Attorney's Office for the Northern District of Iowa, Feb. 18, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *Former Prosecutor Returns to U.S. Attorney's Office as First Assistant*, United States Attorney's Office for the Northern District of Iowa, Feb. 1, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *Debtors Owing Money to the United States or Victims of Federal Crimes May Not Get Tax Refunds*, United States Attorney's Office for the Northern District of Iowa, Jan. 19, 2010. Copy supplied.

Press release, re-printed in multiple outlets, *Sioux City Hospital to Pay $400,000 to Resolve False Claims Allegations*, United States Attorney's Office for the Northern District of Iowa, Dec. 2, 2009. Copy supplied.

Trish Mehaffey, *Material Witnesses in Agriprocessors Cases to Be Released: Deportation in Works*, The Gazette, Nov. 26, 2009. Copy supplied.

Press release, *New United States Attorney Sworn In*, United States Attorney's Office for the Northern District of Iowa, Nov. 24, 2009. Copy supplied.

Tresa Baldas, *New Law Targets Rogue Internet Pharmacies*, National Law Journal, June 29, 2009 (reprinted in multiple outlets). Copy supplied.

Courtney Blanchard, *2003 Internet Pharmacy Case Mushroomed*, Telegraph Herald, June 12, 2009. Copy supplied.

Jens Manuel Krogstad, *Harkin's Nominee for U.S. Attorney under Fire for Role in Postville Raid*, Waterloo Courier, Apr. 5, 2009 (reprinted in multiple outlets). Copy supplied.

Mary Pieper, *MCHS Grad Recommended for U.S. Attorney Post*, Globe Gazette, Apr. 3, 2009. Copy supplied.

Dave Rasdal, *Harkin Nominates Rose, Klinefeldt as Federal Prosecutors*, The Gazette, Mar. 13, 2009. Copy supplied.

Lynda Waddington, *Second Woman in State History Earns US Attorney Recommendation*, Iowa Independent, Mar. 13, 2009. Copy supplied.

Tony Leys, *Ex-Pharmacists in Dubuque Face Federal Charges*, Des Moines Register, Nov. 10, 2007. Copy supplied.

Jeff Reinitz, *Iowa Falls Couple Sentenced to Prison*, Waterloo Courier, Jan. 6, 2007 (reprinted in multiple outlets). Copy supplied.

Tony Leys, *Doctors Admit to Participating in Drug Scheme*, Des Moines Register, Dec. 23, 2006. Copy supplied.

Tony Leys, *U.S. Prosecutes Doctors in Internet Drug Ring; Prescriptions for People Physicians Never Met Went Through a Small Pharmacy in Dubuque*, Des Moines Register, Apr. 9, 2006. Copy supplied.

Doctors Plead Guilty to Running Internet Drug Operation, Associated Press, Mar. 25, 2006 (reprinted in multiple outlets). Copy supplied.

Tony Leys, *Pharmacist Faces Federal Drug Charge*, Des Moines Register, Apr. 1, 2005 (reprinted in multiple outlets). Copy supplied.

Decorah Man Sentenced in Morphine Case, Associated Press, Dec. 23, 2004. Copy supplied.

Former Police Officer Faces Competency Hearing Next Month, Associated Press, Dec. 20, 2004. Copy supplied.

Man Whose Daughter Shoots Deer Gets Prison Sentence on Firearm Charges, Associated Press, Sept. 7, 2004. Copy supplied.

Man Convicted of Selling Cocaine at Car Wash Sentenced, Associated Press, May 14, 2003. Copy supplied.

Key Figure in Waterloo Drug Investigation Sentenced to Life, Associated Press, Feb. 6, 2003. Copy supplied.

Man Convicted of Distributing Cocaine Used Car Wash as Front, Associated Press, Nov. 10, 2002. Copy supplied.

More Relatives of Shaken Baby Sent to Prison, Associated Press, July 21, 2000. Copy supplied.

Prosecutors Say Illegal Prescriptions Killed at Least Two, Associated Press, Oct. 9, 1999. Copy supplied.

Students Learn about Meth Consequences: Young Prosecutor Rose Receives Rare Opportunity, Daily Iowegian, Mar. 23, 1998. Copy supplied.

Staff, *Dubuque Couple Pleads Guilty to Selling Methamphetamine*, Telegraph Herald, Sept. 24, 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.

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.

I was appointed as the United States Attorney for the Northern District of Iowa on November 24, 2009, by President Barack Obama.

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 office 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 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 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.

1996 – Present
U.S. Attorney's Office – Northern District of Iowa
401 First Street S.E., Suite 400
Cedar Rapids, Iowa 52401
U.S. Attorney (2009 – Present)
Deputy Criminal Chief (2008 – 2009)
Assistant United States Attorney (1999 – 2008)

Iowa Assistant Attorney General *designated as* Special Assistant
United States Attorney (1997 – 1999)
Law Clerk (Fall 1996)

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.

Following my graduation from law school, I was hired by the United States Attorney's Office for the Northern District of Iowa to prosecute federal cases. I served as a Special Assistant United States Attorney from 1997 to 1999, and as an Assistant United States Attorney from 1999 to 2009. During that time, I represented the United States in the investigation and prosecution of more than 800 federal criminal cases, including those involving guns, drugs, money laundering, immigration violations, armed robbery, transportation of hazardous chemicals, and the distribution of drugs resulting in death. I served as lead counsel in approximately 250 to 300 of those cases.

My regular and routine practice during those 12 years involved the following aspects of federal criminal law: (1) preparing search warrant applications; (2) conducting grand jury investigations; (3) drafting charging documents, including complaints, indictments, and informations; (4) presenting cases to the grand jury for consideration at the conclusion of the grand jury's investigation; (5) representing the United States in preliminary and detention hearings; (6) briefing and litigating criminal pre-trial motions, including suppression and discovery motions; (7) preparing discovery files; (8) negotiating plea agreements; (9) representing the United States at plea hearings; (10) representing the United States at trial; (11) handling the sentencing of any defendant convicted of a criminal offense; (12) representing the United States in any appeal that followed conviction and sentencing; and (13) responding to any post-trial relief motions filed by defendants convicted of criminal offenses.

I also handled approximately 45 federal civil cases, including post-conviction relief and asset forfeiture matters, as well as Freedom of Information Act and property return lawsuits.

In 2009, I was appointed to serve as the United States Attorney for the Northern District of Iowa. My duties as the U.S. Attorney have involved ensuring the office's policies and procedures are consistent with federal law and Department of Justice directives; overseeing the civil and criminal work completed by office staff; making final determinations regarding charging decisions, plea offers, and civil settlements; and leading the management team in a variety of non-legal matters, such as conducting budget reviews, making personnel decisions, and determining infrastructure needs.

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

My only client has been the United States Government. As a Special Assistant United States Attorney, Assistant United States Attorney, Deputy Criminal Chief, and United States Attorney I have represented the United States in the prosecution of criminal cases, defended the United States in civil cases, and collected debts owed to the federal government.

I have multiple areas of expertise. First, between 2005 and 2010, I served as the lead prosecutor in an Internet pharmacy case coordinated with 48 other United States Attorneys' Offices and 36 federal, state, and local agencies and regulatory bodies. I have taught Internet pharmacy investigations at Quantico, the National Advocacy Center, and at DEA-sponsored events. I have also served on the Attorney General's National Online Drug Diversion Working Group.

Second, for several years I served as the Northern District of Iowa's International Coordinator. As part of these duties, I coordinated extradition requests, requests for assistance from foreign countries, issues regarding foreign material witnesses, Vienna Convention notifications, and compliance with international treaty agreements on behalf of the United States.

Third, I also spent several years serving as the district's Anti-Gang Coordinator and, fourth, I was one of three Organized Crime Drug Enforcement Task Force attorneys for the District. These positions resulted in specialized training, experience, and additional responsibilities related to the prosecution of large-scale and complex criminal drug organizations.

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.

From 1997 to 2009, I appeared in federal court frequently.

After I became the United States Attorney in 2009, the focus of my practice became more administrative and my docket of cases was significantly reduced, leading to only occasional court appearances.

i. Indicate the percentage of your practice in:
   1. federal courts: 99%
   2. state courts of record: ≤1%
   3. other courts: ≤1%
   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 33 cases to verdict. Of these, I was sole counsel on 20, chief counsel on 8, and associate counsel on 5.

i. What percentage of these trials were:
   1. jury: 97%
   2. non-jury: 3%

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. Kroeger*, Case CR No. 98-2010 (N.D. Iowa); *United States v. Kroeger*, 229 F.3d 700 (8th Cir. 2000)

Kroeger was charged with manufacturing methamphetamine and the reckless endangerment of human life while doing so. The case stemmed from a methamphetamine fire that caused the evacuation of a city block, and caused injuries to firefighters and neighbors exposed to the chemical smoke from the fire. Kroeger was convicted on both counts following a two-day jury trial in May 1999. Kroeger's conviction was affirmed on appeal. His case was remanded for resentencing after the government discovered an error in the sentence during the appeal process and alerted the appellate court to the error. I was the sole prosecutor assigned to the trial and appeal.

Presiding Judge:	The Honorable Michael J. Melloy United States Court of Appeals for the Eighth Circuit (Formerly United States District Judge)
Opposing Counsel:	Charles Nadler 1625 Larimer Street, Unit 901 Denver, Colorado 80202 (303) 825-0585

2. *United States v. Shultice*, Case No. CR 98-54 (N.D. Iowa); *United States v. Shultice*, 2000 WL 34040842 (N.D. Iowa Apr. 4, 2000)

Shultice, a licensed psychiatrist, was charged with numerous counts of unlawfully distributing pain narcotics and psychiatric controlled substances. He was also charged with the distribution of controlled substances resulting in the death of two patients. Shultice was convicted following a month-long trial that commenced in September 1999. The jury returned special verdicts finding Shultice caused the death of the two patients. One of these special verdicts was set aside by the district court; the second finding of distribution causing death was affirmed. After the trial, Shultice attempted to contract for the murder of a government trial witness. An undercover agent posing as a hit man recorded this murder-for-hire effort, resulting in Shultice's guilty plea to new obstruction charges. Shultice did not appeal his conviction or sentence. I was the associate prosecutor assigned to the trial.

Presiding Judge:	The Honorable Michael J. Melloy United States Court of Appeals for the Eighth Circuit (Formerly United States District Judge)

Co-Counsel:	Assistant United States Attorney C.J. Williams 401 First Street S.E., Suite 400 Cedar Rapids, Iowa 52401 (319) 363-6333
Opposing Counsel:	Alfred E. Willett 3600 First Avenue N.E. Cedar Rapids, Iowa 52402 (319) 364-2467

3. *United States v. Titlbach, et al.*, Case No. CR 00-25 (N.D. Iowa); *United States v. Titlbach*, 300 F.3d 919 (8th Cir. 2002); *United States v. Titlbach*, 339 F.3d 692 (8th Cir. 2003)

A husband and wife were charged with conspiring to manufacture methamphetamine. The husband was also charged with distributing methamphetamine. Following a one-week trial in February/March 2001, both defendants were convicted on all counts. The husband was sentenced to life imprisonment. The wife received a lesser sentence. The convictions of each defendant were affirmed on appeal, as was the wife's 88-month sentence, and the husband's life sentence on one count. The husband's concurrent 960-month sentence on a second count was corrected following the appeal after the government noticed a technical error in the sentence and alerted the appellate court. I was chief counsel for the prosecution of the trial and appeal.

Presiding Judge:	The Honorable Michael J. Melloy United States Court of Appeals for the Eighth Circuit (Formerly United States District Judge)
Co-Counsel:	Assistant United States Attorney Matthew J. Cole 401 First Street S.E., Suite 400 Cedar Rapids, Iowa 52401 (319) 363-6333
Opposing Counsel:	Clemens Erdahl (husband) 425 Second Street SE, Suite 1000 Cedar Rapids, Iowa 52401 (319) 369-6972 Wallace Taylor (wife) Higley Building 118 Third Avenue S.E., Suite 326 Cedar Rapids, Iowa 52401 (319) 366-2428

4. *United States v. Sanders*, Case No. CR 98-55 (N.D. Iowa); *United States v. Sanders*, 341 F.3d 809 (8th Cir. 2003)

Sanders was charged in 1998 with conspiring to distribute methamphetamine and two substantive methamphetamine-related counts. Sanders' criminal activity involved the sale of large amounts of pseudoephedrine that he claimed to be methamphetamine, and the exchange of this pseudoephedrine "methamphetamine" for other types of controlled substances. Following a nearly three-year pretrial process during which Sanders fired six defense attorneys and filed numerous and varied pro se motions, Sanders was convicted in August 2001 after a one-week trial. His conviction was affirmed on appeal. The sentence, imposed in 2002, was reversed following a government appeal. Sanders was resentenced in April 2005. No appeal of the amended sentence was filed. I was chief counsel for the prosecution of the trial and appeal.

Presiding Judge:	The Honorable Michael J. Melloy United States Court of Appeals for the Eighth Circuit (Formerly United States District Judge)
Co-Counsel:	Assistant United States Attorney C.J. Williams 401 First Street S.E., Suite 400 Cedar Rapids, Iowa 52401 (319) 363-6333
Opposing Counsel:	Alfred E. Willett 3600 First Avenue N.E. Cedar Rapids, Iowa 52402 (319) 364-2467

5. *United States v. Jackson, et al.*, Case No. CR 00-2032 (N.D. Iowa); *United States v. Jackson, et al.*, 345 F.3d 638 (8th Cir. 2003)

Jackson, along with two co-defendants, was charged with a variety of crack cocaine, cocaine, and marijuana-related offenses, including conspiring to distribute large quantities of each drug. Jackson was also charged with conducting a continuing criminal enterprise. The investigation leading to the indictment of Jackson and his associates involved two wiretaps and a series of related prosecutions. Jackson and the others were convicted on all charges following a one-month trial in February 2002. Jackson received a life sentence. His co-defendants were sentenced to lesser sentences. The convictions and sentences of each defendant were affirmed on appeal. I was chief counsel for the prosecution of the trial and appeals.

Presiding Judge:	The Honorable Michael J. Melloy United States Court of Appeals for the Eighth Circuit (Formerly United States District Judge)

Co-Counsel:	Kandice A. Wilcox (former Assistant United States Attorney) Office of Professional Responsibility 1425 New York Avenue, N.W. Washington, D.C. 20530 (202) 514-0458
Opposing Counsel:	Gerardo Gutierrez (Defendant Jackson) 53 West Jackson Boulevard, Suite 1122 Chicago, Illinois 60604 (312) 786-9970
	Alfred E. Willett (Defendant Washington) 3600 First Avenue N.E. Cedar Rapids, Iowa 52402 (319) 364-2467
	Roger Sutton (Defendant Mabry) 119 North Jackson Street Charles City, Iowa 50616 (641) 228-6010

6. *United States v. Rogers*, Case No. CR 02-2010 (N.D. Iowa); *United States v. Rogers*, 90 Fed. Appx. 478 (8th Cir. 2004)

Rogers used a car wash he owned in Waterloo, Iowa, to distribute significant quantities of crack cocaine. Rogers was charged with conspiring to distribute large quantities of crack, and with several distributions of crack cocaine. He was convicted on all charges following a three-day trial in November 2002, and was sentenced to 30 years' imprisonment. His conviction and sentence were affirmed on appeal. I was chief counsel for the prosecution of the trial and appeal.

Presiding Judge:	The Honorable Ortrie D. Smith (sitting by designation) United States District Court Judge Western District of Missouri
Co-Counsel:	Teresa K. Baumann, Assistant United States Attorney 401 First Street S.E., Suite 400 Cedar Rapids, Iowa 52401 (319) 363-6333
Opposing Counsel:	Charles Nadler 1625 Larimer Street, Unit 901 Denver, Colorado 80202 (303) 825-0585

7. *United States v. Denton*, Case No. CR 02-2030 (N.D. Iowa); *United States v. Denton*, 434 F.3d 1104 (8th Cir. 2006)

   Denton was an ex-police officer from Waterloo, Iowa, who became involved in the distribution of crack cocaine with a Waterloo gang known as The Clique. The Clique was responsible for the distribution of enormous quantities of crack cocaine in the late 1990s and early 2000s in Waterloo. Denton was convicted of conspiring to distribute crack cocaine, cocaine, and marijuana after a 3-day trial in February 2003. Denton was originally sentenced to life imprisonment, and his conviction and sentence were affirmed on appeal. The life sentence was later reduced pursuant to a retroactive application of the new crack cocaine sentencing guideline. I was sole counsel for the prosecution of the trial and appeal.

Presiding Judge:	The Honorable Linda R. Reade Chief United States District Court Judge Northern District of Iowa
Opposing Counsel:	Christopher Clausen 2414 South Second Street Marshalltown, Iowa 50158 (641) 752-7757

8. *United States v. Thompson*, Case No. CR 03-3069 (N.D. Iowa); *United States v. Thompson*, 408 F.3d 994 (8th Cir. 2005)

   Thompson was convicted following a one-day jury trial of possessing a firearm as an armed career criminal and possession of a sawed-off shotgun. Thompson committed a series of armed robberies of convenience stores in southern Minnesota and northern Iowa using a sawed-off shotgun. Thompson's 420-month sentence included an upward departure to reflect his underrepresented criminal history, which included numerous armed robberies, violent assaults, escapes from prison, and the rape of a young boy. Thompson's conviction and sentence were affirmed on appeal. I was sole counsel for the prosecution of the trial and appeal.

Presiding Judge:	The Honorable Linda R. Reade Chief United States District Court Judge Northern District of Iowa
Opposing Counsel:	John Bishop 222 Third Avenue S.E., #299 Cedar Rapids, Iowa 52401 (319) 398-0343

9. *United States v. Birbragher, et al.*, Case No. CR 07-1023 (N.D. Iowa); *United States v. Birbragher*, 603 F.3d 478 (8th Cir. 2010); *United States v. Kanner*, 603 F.3d 530 (8th Cir. 2010)

Defendants Birbragher and Kanner were the owners of Pharmacom, a Florida company that distributed controlled substances based on drug orders placed by Internet customers through the website www.buymeds.com. Defendant Lopez was one of the many physicians employed by Pharmacom to review the drug orders. The physicians approved drug orders without developing a patient relationship with the customers – who typically resided in states outside of where the physicians were licensed to practice medicine. Pharmacists, including Defendant Bouchey, employed by Pharmacom filled the orders and shipped the controlled substances to customers throughout the United States. Over the course of the charged conspiracy, Pharmacom dispensed over 12 million pills illegally, earning approximately $41 million. With the exception of one doctor who remains a fugitive, each of the five defendants in the case entered guilty pleas. The case was indicted in November 2007, and the last guilty pleas were entered in August 2008. The case took nearly six years to complete. The prosecution required coordination with 48 other federal districts, as well as with 36 separate federal, state, and local regulatory bodies and agencies. Birbragher's and Kanner's convictions were affirmed on appeal. Birbragher also challenged his sentence on appeal, which was also affirmed. I was chief counsel for the prosecution of the case and handled both appeals.

Presiding Judge:	The Honorable Linda R. Reade Chief United States District Court Judge Northern District of Iowa
Co-Counsel:	Assistant United States Attorney Matthew J. Cole 401 First Street S.E., Suite 400 Cedar Rapids, Iowa 52401 (319) 363-6333
Opposing Counsel:	Alfredo Parrish (Birbragher) 2910 Grand Avenue Des Moines, Iowa 50312 (515) 284-5737
	Alan Ross (Kanner) Lawyers Plaza, Fourth Floor 2550 Southwest Third Avenue Miami, Florida 80129 (305) 858-9550

Michael Lahammer (Lopez)
210 Second Street S.E., Suite 810
Cedar Rapids, Iowa 52401
(319) 364-1140

Raphael Scheetz (Bouchey)
1921 51st Street N.E.
Cedar Rapids, Iowa 52402
(319) 378-7416

10. *United States v. Medical Web Services*, Case No. CR 08-1318 (N.D. Iowa)

Medical Web Services was a corporation doing business in Sunrise, Florida, that distributed controlled substances based on drug orders placed by Internet customers through approximately 175 hosted websites. Defendants Ancier, Baron, Roman-Torres, and Trever were among many physicians employed by Medical Web Services to review the drug orders. These physicians approved drug orders without developing a patient relationship with the customers – who typically resided in states outside of where the physicians were licensed to practice medicine. Defendant Spears stole the identity of another doctor and used it to approve drug orders on Medical Web Services' behalf. Over the course of the charged conspiracy, Medical Web Services dispensed over 14 million pills, earning nearly $41 million. The case was indicted in August 2008. Medical Web Services and all but one individual defendant entered guilty pleas. Defendant Trever signed a pre-trial diversion agreement. The case concluded in the fall of 2009.

As with the prosecution of Pharmacom, prosecution of this case took nearly six years, and required coordination with 48 other federal districts, as well as with 36 separate federal, state, and local regulatory bodies and agencies. I was sole counsel for the prosecution of the case.

Presiding Judge: The Honorable Linda R. Reade
Chief United States District Court Judge
Northern District of Iowa

Opposing Counsel: Leon Spies (Medical Web Services)
312 East College Street, Suite 216
Iowa City, Iowa 52240
(319) 337-4193

Michael Lahammer (Ancier)
210 Second Street S.E., Suite 810
Cedar Rapids, Iowa 52401
(319) 364-1140

Patrick J. Kelly (Baron)
2535 Tech Drive, Suite 206
Bettendorf, Iowa 52722
(563) 332-3920

Alfredo Parrish (Rodriguez-Schmidt)
2910 Grand Avenue
Des Moines, Iowa 50312
(515) 284-5737

Stanley Roush (Roman-Torres)
5250 North Park Place N.E., Suite 101
Cedar Rapids, Iowa 52402
(319) 363-2921

Leslie Stokke (Trever)
225 Second Street S.E., Suite 310
Cedar Rapids, Iowa 52401
(319) 364-8580

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 majority of my legal activities have involved cases that have progressed to trial, or involved litigation of some type. In addition to these activities, I have served on a variety of committees that have tackled special projects. For instance, I worked with defense attorneys and private practitioners as part of the Northern District of Iowa's Blue Ribbon Panel to rework the district's jury questionnaires and address discovery practices. I also served on working groups assigned to coordinate nationwide efforts in the area of Internet pharmacy prosecutions.

As a United States Attorney, I have served on the Attorney General's Advisory Committee, and a number of its subcommittees and working groups. These groups have helped formulate Department of Justice administrative procedures necessitated by budget restrictions and reductions, considered and made recommendations regarding the development of practical IT solutions for the Department of Justice, and advised senior leadership at the Department regarding the allocation of scarce personnel resources.

Finally, I have served as part of the Midwest High-Intensity Drug Trafficking Area ("HIDTA") Executive Committee and Fiscal and Planning Committee, representing the

interests of eight Midwest districts in the development and implementation of HIDTA policies and procedures.

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 a federal government Thrift Savings Plan.

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

    I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service.

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.

Because any appointment would involve a different district from the one in which I have practiced since 1997, I do not anticipate any conflicts of interest. To the extent any Northern District of Iowa cases that were pending while I was United States Attorney are transferred to the Southern District of Iowa due to recusals or change of venue requests, I would address such conflicts by working with the Clerk of the Court to ensure I was not assigned to those matters.

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.

The entirety of my work for the United States Attorney's Office is dedicated public service. In addition to this paid employment, I have also worked *pro bono* to represent abused and neglected children in the juvenile court system. I served for over two years as a Court Appointed Special Advocate. During this time, I was responsible for monitoring Child in Need of Assistance cases pending in state court. I visited with children removed from their parents' care due to neglect or abuse, coordinated with treatment counselors and physicians, worked with *guardians ad litem* to ensure the children's best interests were being represented, and assisted in moving cases toward reuniting families, or finalizing the termination of parental rights, as quickly as possible.

I have also represented the interests of domestic violence victims in criminal contempt proceedings involving the violation of no-contact orders. In those matters, I served as the domestic violence victims' advocate at the court and worked with county attorneys to obtain criminal contempt convictions and sentences, as appropriate.

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 May 9, 2011, I learned that District Judge Robert Pratt was preparing to take senior status. After consulting with the Department of Justice's General Counsel, on May 26, 2011, I sent a letter to U.S. Senator Tom Harkin advising him that I was interested in being considered for Judge Pratt's position. On July 6, 2011, Senator Harkin's staff sent me his Application for Judicial Recommendation. On August 23, 2011, I was interviewed by three members of Senator Harkin's staff. On September 16, 2011, I was interviewed by Senator Harkin. On October 6, 2011, I was notified by Senator Harkin that I was among three names being sent to the White House for consideration.

Since October 12, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 6, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On February 2, 2012, 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
Rose, Stephanie M.	District Court-Southern Iowa	02/05/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Judicial Nominee, District Court Judge, Active Status	5a. Report Type (check appropriate type) ☑ Nomination, Date 02/02/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2011 to 02/05/2012
7. Chambers or Office Address United States Attorney's Office 401 1st Street S.E., Suite 400 Cedar Rapids, IA 52401	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 6	Name of Person Reporting Rose, Stephanie M.	Date of Report 02/05/2012

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.		
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 Rose, Stephanie M.	Date of Report 02/05/2012

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	ACS	Education Loans	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Rose, Stephanie M.	02/05/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. Series E Savings Bonds	A	Interest	J	T					
2. Iowa Aggressive Growth Portfolio (529)	A	Interest	J	T					
3. University of Iowa Community Credit Union Account (Cash)	A	Interest	J	T					
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 Rose, Stephanie M.	Date of Report 02/05/2012

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Rose, Stephanie M.	Date of Report 02/05/2012

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 M. Rose

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		4	500	Notes payable to banks-secured (auto)		16	584
U.S. Government E Series Bonds		2	000	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		4	700
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		155	684
Real estate owned – personal residence		169	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		92	250	Education loans		20	664
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		139	750				
Iowa Aggressive Growth Portfolio (529)		3	000				
				Total liabilities		197	632
				Net Worth		212	868
Total Assets		410	500	Total liabilities and net worth		410	500
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							

AFFIDAVIT

I, Stephanie M. Rose, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/6/12
(DATE)

Stephanie M. Rose
(NAME)

Linda S Mersch
(NOTARY)

LINDA S MERSCH
COMMISSION NUMBER 113200
MY COMMISSION EXPIRES
3-5-15

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

Senator KLOBUCHAR. I wanted to ask—I notice you are all former prosecutors. Is that right?

Mr. SHIPP. Not really.

Senator KLOBUCHAR. Thank you for answering that correctly under oath.

But for those of you that are, that was my former job, and I just ask if you would discuss how that experience will affect your work. I am sure you will be fair, but how will that affect your experience, either the experience you have already had on the bench, for those of you that are judges, or your experience going forward.

We will start with you, Judge Fowlkes.

Mr. FOWLKES. Thank you, Senator. My experience—well, I've actually had experience on both sides. For a time, I was also assistant public defender. So I handled cases on both sides. I was a state prosecutor for about 10 years and in the United States Attorney's office for about 13 years.

So I tried a large number of Federal jury trials as well as State trials, and I know my way around the courtroom. I'm very familiar with what goes on in a courtroom. That has really prepared me, the knowledge and experience that I have in court has prepared me, as well as my other community activities, to handle the responsibilities of a judge, I think, in a fair and competent manner.

So my experience as a prosecutor has helped me handle the job of being a trial judge. Those things that I have learned, the experience, the work ethic I will carry forward with me, assuming I'm confirmed in this process.

Senator KLOBUCHAR. Very good. Mr. McNulty.

Mr. MCNULTY. Yes. I, too, have been a Federal prosecutor and have, in private practice, seen the criminal practice from the other side, as well as civil practice, of course.

Being a prosecutor exposes you to a lot of courtroom work, to a lot of courtroom issues, and is a valuable experience for that reason.

Another valuable aspect, though, in terms of how it feels to be in a judiciary position is that when you're a prosecutor, you are an advocate, but not only an advocate. That is, it is impressed upon you, and rightly so, that you have to seek justice in each case and not just see what you can get away with in front of a judge. That is a valuable lesson to learn early in your career, and I think I learned it.

Senator KLOBUCHAR. Now, you had some. I mean, you were overseeing—should I go through it? It was pretty impressive. You managed five practice groups of the assistant attorney general, consumer fraud prosecution, insurance fraud prosecution, civil, securities fraud prosecution, professional boards prosecution.

Mr. SHIPP. All in a civil context. It was more managerial, if anything. I started off supervising directly the consumer fraud area and then expanded into those other areas.

When I became counsel to the attorney general, it was supervisory again. But I think all those skills there I acquired at the State of New Jersey by heading up the State's efforts in consumer fraud, insurance fraud and all those areas.

It was an incredibly large volume of work, and I think managing a docket on that size and that scale was a readily transferrable skill set when I came on board as a magistrate judge 5 years ago. And managing a large docket is a tremendous part of the work that a judge is called to do.

And I think that understanding and prioritizing, as well as going through each case and being familiar with the necessary facts and the law, all of those skills I think were honed and born through my work on the prosecutorial side, civil, albeit, at the State of New Jersey.

Senator KLOBUCHAR. Very good. Thank you.

Ms. Rose, I have 10 points I am going to ask you about.

[Laughter.]

Senator KLOBUCHAR. That was meant in a really good-natured way.

Ms. ROSE. I agree with the things my fellow nominees have said. The interesting thing about being a prosecutor is your obligation is not only to ensure that the government side is covered, but that the defense attorneys are doing what they need to do to protect the rights of their clients; both for practical reasons, you don't want the 2255, but for reasons of fairness and constitutionality.

So as a prosecutor, I'm used to looking at both sides to ensure that everything is being done to ensure a defendant's rights are protected and that the proceedings are fair.

Senator KLOBUCHAR. Right. I think we always called it ministers of justice. That's how we had to think of ourselves.

Actually, we had one of your Supreme Court justices from Iowa, at the State level, testify in this room—Senator Lee was there and others—about televising U.S. Supreme Court hearings.

Senator Grassley and I are both in favor of that, and I know that Justice Kagan, when she testified at her confirmation hearing, was in favor of that on the Supreme Court level.

And I just wondered if you had any views on how that has gone in Iowa, not to take it out to whether you think it should happen on the Supreme Court level.

Ms. ROSE. Judges everywhere are facing a number of difficulties, budget and shortages being two of them. Certainly, our experience with the use of BTC equipment or even conference call equipment is that it's a very effective method to use in certain types of cases, where there's not going to be adversarial proceedings, for instance, a sentencing where everything is uncontested, a plea hearing where there aren't particularly thorny issues, provided the defense attorney and defendant are in the same place so that they can communicate confidentially and provided that the judge agrees.

Senator KLOBUCHAR. I have a lot of issues having it done at the trial court level or having it mandated in any way. I just think we might have a different thing with the Supreme Court that already releases audio tapes.

Along those lines, I saw something in Minnesota 2 days ago and I was actually asked this question about the recusal standard for Federal judges. I had not been asked it before as a Senator.

And I would just ask all of you, we will start with you, Ms. Rose, how do you interpret that standard? What types of cases do you plan to recuse yourself from?

Ms. ROSE. I know of none right now that I would need to step away from. But, certainly, if I am fortunate enough to be confirmed, the types of cases I would anticipate recusals being necessary and would be things that might involve threats against me or my family, against other members of the staff, cases that were transferred from northern district of Iowa where I'm the U.S. attorney now to southern district of Iowa because of conflicts. I would have to bounce those somewhere else, I guess.

And then, certainly, any case that either had the actual conflict of interest or the appearance of a conflict of interest.

Senator KLOBUCHAR. Judge Shipp.

Mr. SHIPP. Mine is pretty easy. I've been doing this for a while and I would continue to abide by the same recusal standards that I've been abiding by for the last 5 years.

Fortunately, by this point in my career, I don't have very many conflicts as a result of representation and that sort. But I've continued to abide by the current rules as to recusals.

Senator KLOBUCHAR. Very good. Mr. McNulty.

Mr. MCNULTY. Under Section 455 of Title 28 of the U.S. Code and, also, judicial ethics standards, I would find myself, of course, recusing myself from any matter in which I had the slightest involvement, whether supervisory or personal, anything involving someone whose connection to me was close enough to give rise to even an appearance of possible favoritism.

I don't anticipate too many problems from my vast financial holdings, the——

[Laughter.]

Senator KLOBUCHAR. I can relate.

Mr. MCNULTY. There are a few and, of course, I would not engage in any case that would affect my personal finances in any way.

Senator KLOBUCHAR. Very good. Judge Fowlkes.

Mr. FOWLKES. Basically, the same answers. I face those circumstances in court from time to time, the code of ethics that we have to follow, as well as case law and rules.

And really the appearance of any impropriety, any conflicts must be considered and put openly on the record. And if there is even that appearance, then recusal may be in order.

I've followed those rules before. I'll follow, obviously, the Federal standards and Federal rules, if confirmed.

Senator KLOBUCHAR. Very good. Just one last question. I think this relates to how people are feeling right now about their institutions and the government in general.

As you know, there is a lot of distrust in politics and in people in leadership roles. And I just wonder whether assurances can you give to people that appear before you, if you receive the votes of the Senate, which I hope you all will, what assurances can you give that they will be treated fairly regardless of their political beliefs or whether they are rich, poor, defendant or plaintiff?

Judge Fowlkes.

Judge FOWLKES. Well, again, I've been ad just for about 5 years. Really the judge sets the standard in the court, how people are treated, with respect, professionalism and courtesy are the call of the day.

Whether it is a defendant that is difficult, a juror, the counsel that are there, people in the audience, really the standards are set by the judge who is the model and sets the tone for what happens in court.

All persons in my court have been treated fairly, with respect, and with courtesy. Obviously, that will continue, if I'm confirmed.

Senator KLOBUCHAR. Very good. Mr. McNulty.

Mr. MCNULTY. I, as I mentioned, have been on both sides of a lot of those divides in terms of legal issues and have also worked successfully under both Democratic and Republican officials in my career, particularly my public service career.

I regard it as a sacred trust that any judge should ensure, both the appearance and reality, that every party before that judge, win or lose, got a fair hearing for their point of view, and I would certainly try to comport myself in that way.

Senator KLOBUCHAR. Very good. Judge Shipp.

Mr. SHIPP. I would continue to treat all parties, litigants, jurors, court personnel with the same respect that I've always treated them with, and I believe that that courteous nature and that approachable demeanor allows everyone to leave the courtroom feeling that they've had an opportunity to be heard.

And my goal is to make sure that they have confidence in the system, confidence that the court has been prepared, has read the materials submitted, and has properly evaluated the case being put before them, and that they feel like they received equal justice under the law.

Senator KLOBUCHAR. Thank you very much. Ms. Rose.

Ms. ROSE. I'm fortunate to be last here. I agree with everything my fellow nominees have said.

Senator KLOBUCHAR. I am sure we could ask you some more questions.

Ms. ROSE. Sure.

Senator KLOBUCHAR. All right. Well, very good. This has been an informative hearing. I hope it is—I thought that was another Senator coming in to ask questions. You all looked very concerned up there.

[Laughter.]

Senator KLOBUCHAR. It has gone very well, and I think we had four Senators here, which is good for one of these hearings, and certainly even more than that that were here on your behalf.

So I want to thank you for all of your answers and also for your family. Your son has done very well on the front row. I think he has not moved since I called him out. I point that out.

I know that we have some students out there that we will talk to. Right? So you can get your—I can sign something that you were really here.

And I just want to thank everyone for being here.

We will keep the record open for 1 week. And with that, this hearing is adjourned. Have a great day.

[Whereupon, at 4:20 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follows.]

QUESTIONS AND ANSWERS

Responses of John Thomas Fowlkes, Jr.
Nominee to be United States District Judge for the Western District of Tennessee
to the Written Questions of Senator Chuck Grassley

1. **You gave a presentation at the Trial Practice Workshop for the Memphis Bar Association in 1995. In your notes you describe a trial this way:**

   "It must always be remembered that trials should be fun... Each of us has the choice of presenting evidence in a drab and uneventful way or to prepare and choreograph an event. Remember, you are only limited by your imagination and the personality of the judge before you."

   a. **Are there appropriate limits should bind attorneys in their presentation of law and evidence in trials. As a judge, if confirmed, how would you enforce such limits?**

      Response: Yes, there are appropriate limits that bind attorneys in their presentation of law and evidence in trials. The limits include the Rules of Evidence, the Rules of Civil and Criminal Procedure, the Canons of Ethics and principles of professionalism and courtesy. As a trial judge, I have presided over 90 jury trials in nearly five years. All of the limits outlined above are in place and are enforced in my courtroom, and proper courtroom decorum is maintained. If confirmed, these limits will be enforced in all proceedings before me in federal district court.

   b. **Recognizing your audience and the purpose of your presentation, some might still take issue with the notion that "trials should be fun." Certainly there are serious issues at risk in trials - including life, liberty and property. Given the serious nature of federal court proceedings, how would you conduct your courtroom, should you be confirmed as a federal district judge?**

      Response: Of course, federal court proceedings involve serious issues. As a state criminal court judge, I preside over equally serious issues including punishment for capital and other serious violent crimes. All trials involve a huge commitment of time and hard work. Trial work is rigorous, demanding and stressful. If a lawyer does not enjoy trial work, in time, he or she may be overwhelmed emotionally. If I am confirmed, trials and other proceedings in my courtroom will be conducted with the proper decorum, professionalism and ethical considerations, consistent with the Rules of Evidence and Procedure.

2. **You indicated in your questionnaire that you served on the Judicial Committee on Fairness and Sensitivity.**

   a. **What exactly does this committee do?**

Response: In 1997, the Tennessee Supreme Court formed a commission to inquire into the state of racial and ethnic fairness in the judicial system. The commission found that although incidents of unfairness or bias were rare, there existed in some communities a view that unfairness or bias was prevalent in the judicial system. The commission made several recommendations to address the public's concern. In response, the Tennessee Judicial Conference, an organization of Tennessee trial judges, formed the Judicial Committee on Fairness and Sensitivity. Its purpose is to address the misconception of bias in the judicial system. Surveys of judges, court personnel and community organizations were conducted to determine what specific steps should be taken.

b. What was your role in the committee?

Response: The role of committee members is to encourage other members of the Tennessee Judiciary to participate in public and civic events and interact with members of the public to dispel the misconception of judicial bias. I have set an example by frequently speaking in public and receiving students of all ages and other members of the public in my courtroom to view courtroom activities and discuss judicial issues.

3. You were the Shelby County Administrator for many years. During your time in this role, the local Homeland Security Office was bugged.

a. Could you please briefly describe that incident, your role, and the outcome of that situation?

Response: During the months before this incident, reports of grant mismanagement in the Office of Homeland Security were being investigated. A team of grant managers and auditors from other departments had been put in place to correct the errors made by Homeland Security employees. The working relationship between the grant management team and Homeland Security employees was strained. As the corrective work progressed, it came to light that listening devices had been located in the Homeland Security Office. An inquiry began to identify who had placed the devices in the offices. As Chief Administrative Officer, I was kept informed of the progress made in the inquiry. One of the grant management team members informed me and other management officials that he had contacted a friend who was a Special Agent with the Federal Bureau of Investigation. He said he informed the Special Agent of circumstances at the Homeland Security Office and the FBI was investigating. However, when I contacted the Special Agent in Charge of the Memphis FBI, I was informed that no contact had been made and no investigation was taking place. Soon thereafter, the grant management team member that made statements about FBI investigation was confronted and admitted that he had provided false statements. He was immediately suspended, and after a full investigation, he was terminated.

b. **You were quoted in a newspaper article saying that "We gave you some information that was false." Do you recall why your office first said that the FBI was investigating when they were not?**

Response: As noted above, a grant management team member who had been assigned to the Office of Homeland Security informed his superiors that a Special Agent with the FBI was investigating the matter. That information was communicated to members of the media. Later, it was found that the information provided by the team member was false. During a subsequent press conference, the false information and its source were identified, and the record was corrected.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is character. A judge's personal character is revealed every day the judge is on the bench. It includes integrity, an uncompromising sense of fairness and impartiality, infinite patience, and a strong and enduring work ethic. I possess all of these attributes and I have demonstrated them for the nearly five years I have been a judge, as well as the 25 years I practiced law prior to becoming a judge.

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 must be respectful, courteous, and patient when dealing with attorneys, parties or members of the public. A judge sets the example that others appearing in the court should follow. I have demonstrated appropriate judicial temperament for the nearly five years I have been 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 was dispositive on 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 begin by reviewing the specific constitutional provision or statute raised by the parties. If the plain language of the provision or statute were clear and unambiguous, I would consider the facts, apply the provision or statute and make the decision. If it were not clear or were ambiguous, and no controlling precedent existed, I would consider Supreme Court and 6th Circuit precedent involving interpretation of similar or closely related constitutional provisions or statutes. I would also take into consideration any legislative intent on the specific constitutional provision or statute. Throughout the

process, I would have no hesitation to consult with other district court judges in my district to ascertain whether or not they had faced the precise or similar question.

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 best judgment of the merits to decide the case?**

Response: I would exercise judicial restraint and fully apply the decision.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: The only circumstances where a federal court should declare a statute enacted by Congress unconstitutional is where the statute violates a provision of the Constitution or where Congress has exceeded its constitutional authority or power.

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 am a state criminal court judge. There are ten criminal courts in my district. When I first took the bench, I had the second largest case load of the ten courts. Two years later, I had cut t case load by nearly 40 percent. Now, my case load continually ranks as one of the smallest. This was accomplished by instilling a new work ethic in my division of court. Parties quickly realized that time periods between court settings were significantly reduced, and matters set for hearing, tri or other disposition would not be reset unnecessarily. Once the parties knew what to expect, final disposition of cases occurred more rapidly. If confirmed, I would bring a similar system to the federal bench.

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: Judges have a very significant role in controlling the pace and conduct of litigation. If confirmed, I would implement the steps outlined in my response to question number ten. More specifically, after reviewing all of the pending cases in my division of court, I would hold pretrial conferences in all matters as soon as possible and develop reasonable scheduling for each. This would include periodic reports to the court to ensure that deadlines were being met and progress towards disposition of the case, whether by trial, mediation or other disposition, is accomplished.

12. **Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on the March 21, 2012. I prepared the answers and forwarded them to the Department of Justice on March 23, 2012. That same day, I spoke with a representative of the Department of Justice about finalizing my answers. Thereafter, I requested the representative to submit my responses to Senator Grassley.

13. **Do these answers reflect your true and personal views?**

Response: Yes.

Responses of William J. Kayatta, Jr.,
Nominee to be United States Circuit Judge for the First Circuit,
to the Written Questions of Senator Chuck Grassley

1. **The ABA Standing Committee on Judiciary requires that all members agree, "not to seek or accept a federal judicial nomination while serving on the Committee and for at least one year thereafter."[1] In your Senate Questionnaire, you indicate you originally did not apply to the judicial screening committee established on April 8, 2011, due to the above agreement. Please expand upon the information you provided in your questionnaire as to your ultimate decision to meet with the screening committee and eventual nomination. In doing so please address the following questions:**

   a. **When did your term on the ABA Standing Committee expire?**

      Response: August 6, 2010

   b. **When was your last communication with members of the ABA standing committee regarding a judicial nominee?**

      Response: In early 2011 (or possibly late 2010) I was one of a large number of lawyers and judges contacted by a member of the ABA's Standing Committee on the Federal Judiciary ("the Committee") as part of its peer review soliciting information about a potential district court nominee. I did not know the nominee, hence I provided no information. I was also interviewed by the Committee in early January in connection with its evaluation of me as a nominee. I have otherwise had no communication with the Committee regarding any judicial nominee since my last day as a member of the Committee.

   c. **On what basis did Ms. Askew and Mr. Hill determine it was acceptable under the ABA Standing Committee agreement for you to accept an invitation to meet with the screening committee?**

      Response: The issue was whether I could meet with the screening committee at its invitation. Ms. Askew, as the most recent former chair during my tenure, and Mr. Hill, as the then current chair, each informed me that accepting such an invitation under the circumstances would be consistent with Committee rules. I understood their reasoning to be that such conduct would not constitute a "seeking" of the nomination within the meaning of the Committee rules. Mr. Hill also advised me that I should make sure that the screening panel understood that I could not and would not apply for the position until after August 7, 2011. A copy of a confirmatory email exchange at the time is attached to these answers. (Ms. Askew's prior concurrence was conveyed orally.) Mr. Hill's successor, and the entire Committee that later evaluated me as a nominee, were also informed of the manner in which I proceeded.

[1] ABA Standing Committee on the Federal Judiciary, What It Is and How It Works at p. 2

i. **Was it their belief that in accepting an invitation you were not violating the agreement because you were not "*seeking*" a federal judicial nomination? Is there precedent to support this interpretation of the agreement?**

Response: Yes, as explained above, that is my understanding of their reasoning. I am unaware of any precedent on point either way.

ii. **Did Ms. Askew and Mr. Hill grant you an exception to the ABA agreement? Have similar exceptions been granted in the past?**

Response: I did not regard the permission granted as an exception. Rather, I understood Ms. Askew and Mr. Hill to be saying as former and then current chairs of the Committee that my conduct was in keeping with the letter and purpose of the rule.

d. **Finally, please supply a copy of the letter you sent to Representatives Pingree and Michaud explaining why you had not applied for the judgeship.**

Response: I have attached an unsigned copy of the original letter as sent, with the exception that I have redacted my home address.

2. **As part of your service on the ABA Standing Committee on the Judiciary, you agreed, "not to participate in, or contribute to, any federal election campaign or engage in any partisan political activity on the federal level." You indicate in your questionnaire that you attended Cote for Congress and Obama for President organizing meetings until June of 2007. A search of federal campaign donations also indicates you made federal contributions to both of these campaigns in May of 2007.**

a. **When were you selected to serve on the ABA Standing Committee on the Judiciary and on what date did your term on the ABA Standing Committee actually begin?**

Response: The ABA's President informed me on July 13, 2007, that he was considering appointing me to the Committee if I would accept. I was notified of my appointment on July 30, 2007. I joined the Committee on August 11, 2007.

b. **What assurances can you give the Committee that your prior political activities or partisan views will play no part in your role as a judge?**

Response: My view of what a judge does – and my motivation to serve as a judge – are incompatible with any desire to allow such views or activities to form the basis for my decisions. The bipartisan support for my nomination in Maine and elsewhere provides tangible support for this assurance. And the fact that my views and political

activities have never prevented me from performing my role as counsel in advocating for my clients demonstrates that I know how to respect my role and will act with similar respect for the role of a judge.

3. **At your confirmation hearing, I asked you about your views on federal judicial pay. You responded in part by saying, you "continue to believe...that the prolonged reduction in judicial pay that has occurred as a result of the combination of no pay increases and inflation over time is a serious matter for Congress to consider." The American College of Trial Lawyers report on Judicial Compensation went further by suggesting that due to inflation, current judicial compensation violates the Constitution's edict that a judge's pay "shall not be diminished during their time in office." The report recognizes that the 1977 case of *Atkins v. United States* rejected such an argument. However, in a footnote the report argues, "the effect of inflation on judicial salaries over the past 30 years has eroded judicial compensation as effectively as an all-out assault."**

   a. **Do you believe the current pay scale for federal judges represents an "all-out assault" on the Judiciary?**

      Response: No. I do share the view that, over time, the erosion in real pay could undermine judicial independence for the reasons articulated by Chief Justice Roberts and explained in the report. The report responded to the Chief Justice's concern that the failure to raise federal judicial pay created a "constitutional crisis that threatens to undermine the strength and independence of our federal judiciary." *Report* at p. 1. Neither the report nor the American College of Trial Lawyers took a position on whether the diminution in real pay actually violated the Constitution.

   b. **Do you believe the current effect of inflation on the pay for judges, in the words of the *Atkins* court, "works in manner to attack their independence as Judges?"**

      Response: I do share the view that substantially reducing real pay for federal judges tends over time to diminish judicial independence just as our Founding Fathers feared and as Chief Justice Roberts has explained.

4. **While you were a member of its board, the American College of Trial Lawyers issued a report concerning judicial elections. I recognize that you did not directly participate in that report, but am curious as to your views. The report takes the view that judicial elections infringe on the independence of the judiciary. One example the report provides is the judicial election in Iowa that resulted in the defeat of three Iowa Supreme Court justices who imposed gay marriage on Iowans.**

   a. **Is it your view that citizens of a State should have no recourse against Judges who overstep their bounds by legislating from the bench?**

      Response: No.

b. **Do you believe that judges are subject to "checks and balances" by the other branches of government?**

Response: Yes.

5. **The report further spoke critically of the Supreme Court's decision in *Citizens United v. FEC* for "increase[ing] the pernicious influence of money and politics in the election of judges."**

a. **Many, including the President, have been highly critical of the Supreme Court's decision. Do you believe *Citizens United* was correctly decided?**

Response: Challenges to current and proposed campaign finance legislation in Maine and the resulting prospect of related litigation in the First Circuit in the near future make it particularly inappropriate for me to announce any personal views on the "correctness" of the Supreme Court's decision, even assuming I have formed any such considered views. I can certainly say that I would have no hesitancy in following the Supreme Court's holdings, as my role would require me to do so no matter what my personal views might be.

b. **The President has characterized the Supreme Court's decision as reversing a "century of law." Do you believe this is a fair and accurate characterization of the Supreme Court's decision? Why or why not?**

Response: For the reasons stated above, and other than noting the express reversal of *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), I do not think it appropriate to announce my personal views on any current debate concerning the extent to which the Court's holding reversed prior law. As a circuit judge, my obligation would be to follow the holding no matter how much prior precedent it reversed.

6. **At your confirmation hearing, I asked you about your representation of the City of Portland in a Second Amendment case. In response to my question regarding whether you argued the Second Amendment conferred only a collective right you responded in part by saying, "it's highly likely I would have raised the law as it existed at the time." Some have criticized the *Heller* decision as creating a right that did not previously exist. Do you believe *Heller* created a previously non-existent right or did the Court recognize a right that previously existed?**

Response: Overruling any prior authority to the contrary, including decisions by the lower federal courts, the Supreme Court in *Heller* for the first time recognized a right that was preserved by the Second Amendment to the Constitution at the time the amendment was ratified.

7. **Your brief in *Thomas v. City Council of Portland,* generally took the view that the Second Amendment only conferred a collective right. Your brief further argued**

that even if the Second Amendment conferred an individual right, it did not apply to handguns because they are not the "types of weapons that bear a 'reasonable relationship to the preservation or efficiency of a well-regulated militia'." Given the Supreme Court rulings in *Heller* and *McDonald*, what is your understanding of the types of weapons protected by the Second Amendment?

Response: *Heller* states that the Second Amendment covers "all instruments that constitute bearable arms." 128 S.Ct. at 2792. Such instruments include "even those that were not in existence at the time of founding." *Id.* This right does not apply to "any weapon whatsoever." *Id.* at 2816. Rather, "the sorts of weapons protected were those 'in common use at the time'," and apparently excluding "dangerous and unusual weapons," not of a type typically "possessed at home." *Id.* at 2817.

8. **What is the most important attribute of a judge, and do you possess it?**

Response: Impartiality untainted by hubris or a failure to clearly understand one's role in our unique and exceptional constitutional democracy. I hope that I possess this attribute as much as one can possess it.

9. **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 good judicial temperament, especially for an appellate judge, includes the modesty and patience required to entertain the competing arguments of the parties and one's colleagues, and the discipline required to harness one's skills and learning in an attempt to reach a fair and wise decision grounded in the law and facts. No one meets this standard completely, but I will strive to do so.

10. **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.

11. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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: The fact that precedent provides no clear answer does not mean that a judge looks to his or her own views to decide the case. Absent controlling precedent, one examines the text of the applicable law. Absent an answer in the text, one considers the parties' briefs, and any analysis offered by colleagues; one reasons by analogy to related

precedent, considering the underlying purposes sought to be furthered by the law; one tests that reasoning by examining where it would lead; and one tempers preliminary conclusions by subjecting them to the rigor of careful writing.

12. 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 best judgment of the merits to decide the case?

Response: I would be obligated to follow all Supreme Court precedent unless the precedent is overruled. I would be obligated to follow all prior First Circuit precedent except when sitting with the Court *en banc* or where the precedent has been undercut by subsequent Supreme Court holdings.

13. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Generally, assuming that jurisdiction exists, federal courts are expected to declare unconstitutional such statutes as are found to exceed Congress's constitutional authority or otherwise violate the Constitution.

14. 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: It is proper to do so only when required to do so by precedent. For example, the Supreme Court has instructed that consideration of English common law may provide guidance in understanding the meaning of the U.S. Constitution. *See, e.g., United States v. Jones*, 132 S.Ct. 945 (2012). Our laws express the will of the American people, not those of other countries.

15. 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: Circuit courts may overturn circuit precedent when sitting *en banc* or when the Supreme Court has trumped such precedent. When sitting *en banc* to consider reversing prior precedent, I would consider the benefits of *stare decisis*, and the strength of the arguments tendered for correcting course.

16. Please describe with particularity the process by which these questions were answered.

Response: I received the questions during the evening of March 21, 2012, prepared responses to the questions, reviewed my answers with a representative of the Office of Legal Policy of the Department of Justice on March 23, finalized my draft, and requested that my responses be submitted to the Senate Judiciary Committee.

17. Do these answers reflect your true and personal views?

Response: Yes.

William Kayatta

From: Ben H. Hill [bhh@hwhlaw.com]
Sent: Monday, May 02, 2011 6:45 PM
To: William Kayatta
Subject: RE: Invitation to meet with Advisory Committee

Bill – I have reviewed your proposed letter. It is consistent with the Rules of the ABA Standing Committee for the Federal Judiciary. I suggest that if the committee does invite you to appear, that you restate the Rule when you attend their meeting and advise that you are not seeking a judicial office at this time. If an opening exists after the one year anniversary of your completion of membership on the Federal Judiciary Committee, then you should be able to tell them that you would apply for the position at that time. - Ben

Benjamin H. Hill, III

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From: William Kayatta [mailto:wkayatta@pierceatwood.com]
Sent: Monday, May 02, 2011 6:35 PM
To: Ben H. Hill
Subject: Invitation to meet with Advisory Committee

Dear Ben,

Thank you for taking the time in your busy schedule to talk with me today concerning the efforts of an advisory committee set up by U.S Representatives Michael Michaud and Chellie Pingree to assist them in identifying a candidate to fill an opening that will occur on the U.S Court of Appeals for the First Circuit at the end of this year.

Attached is a copy of my letter to the representatives' staff members who are in charge of the advisory committee. I sent the letter after hearing from numerous people that I supposedly had applied for the position, and from others stating that they were wondering why I had not applied.

In response to that letter, a staff member for U.S. Representative Chellie Pingree has asked whether I could accept a *sua sponte* invitation from the advisory committee to come meet with the committee. After my talk with you today, I plan on telling her that I am allowed to accept that invitation as long as when I meet with the committee, I repeat what I stated in the attached letter concerning my present status.

I would appreciate it if you could confirm your guidance by reply email. For the record, I also confirm that I have done no work for the committee since leaving it, and while on the committee evaluated no one from Maine for any positions.

Thank you,

Bill Kayatta

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[Address Redacted]

Mr. Peter Chandler
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Ms. Jackie Potter
District Director/Senior Advisor
Office of Rep. Chellie Pingree
2 Portland Fish Pier
Portland, Maine 04101

April 29, 2011

Dear Mr. Chandler and Ms. Potter:

I am writing to you concerning your efforts to find a suitable candidate for Representative Michaud and Representative Pingree to recommend to the President as a successor to Judge Lipez as he assumes senior status on the United States Court of Appeals for the First Circuit.

Under the rules of the American Bar Association's Standing Committee on the Federal Judiciary, of which I was the First Circuit Representative for 2007-2010, I am not able to accept or seek a federal judicial nomination prior to August 7, 2011 (i.e., one year after my three-year tenure on that Committee expired). For that reason, I will not be submitting an application by the deadline currently announced by your offices. Come August 7, should the position still be open, I do intend to seek the support of Representatives Michaud and Pingree for the nomination.

Please feel free to call me if you have any questions about this letter.

Sincerely,

\s\

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Responses of Kevin McNulty
Nominee to be United States District Judge for the District of New Jersey
to the Written Questions of Senator Chuck Grassley

1. **You first interviewed with Senator Lautenberg's judicial selection committee on October 5, 2009. However, your name was not submitted for consideration until September 27, 2011. Do you know why there was a 2 year long evaluation process?**

   Response: Senator Lautenberg and his staff have not shared the internal workings of the selection process with me. I believe that the Senator's selection committee operates on a rolling basis to identify a pool of candidates for current and future vacancies. The District Court vacancies that occurred around the time of my initial round of interviews in 2009-2010 were filled by other candidates. In 2011, it became public that there would be two additional vacancies, and I was again considered.

   a. **Did either Senator Lautenberg or Senator Menendez raise any concerns regarding your nomination in your interviews with them?**

      Response: No.

   b. **Did you provide any new information or discuss new topics in your final interview with Senator Lautenberg on July 11, 2011 that were not covered in your initial interview? If so, please explain.**

      Response: In the second interview, I updated the Senator as to developments in my career since the first interview, but otherwise the two interviews were substantially similar.

2. **Some of your work as an attorney involves assisting clients with both government and internal investigations of securities and other types of fraud.**

   a. **The SEC came under heavy criticism for its failure to prevent the 2008 financial crisis and the frauds of Bernie Madoff and Enron. Do you think the SEC is effectively regulating the financial industry at present?**

      Response: I am aware that there has been criticism of the SEC's performance in this connection. I have not made a study of the effectiveness of SEC regulation, whether currently or in comparison with earlier periods. In the wake of the 2008 financial crisis, legislative and regulatory reforms have been proposed and, to some degree, enacted.

   b. **Do you think judicial and civil remedies are a more effective way of preventing and dealing with securities fraud than regulatory actions and executive branch investigations?**

Response: I have not made a study of the comparative effectiveness of judicial/civil, as opposed to regulatory/executive branch, proceedings. Our system as presently constituted clearly provides for both. One or the other might be more effective depending on the kind of case. Massive criminal activity, for example, would best be handled in the judicial system; simple disputes between private parties might best be handled elsewhere. If confirmed as a District Judge, I would faithfully apply the law, and would not attempt to insert myself into the legislative decisions and enforcement priorities committed to other branches of government.

3. **In *United States v. Umbrell, et al.*, you represented a client, the Vice President of Commerce Bank, accused of giving favors to the Philadelphia City Treasurer in exchange for preferential treatment for the bank. You also handled a similar case in *United States v. Murphy*. You worked on these cases before the Supreme Court released its notable decision, *Skilling v. United States*, which helped settle some questions regarding the "honest services statute."**

   a. **Following *Skilling*, what is your understanding of "honest services" in a bribery or corruption trial? Is that any different from what you argued in *Umbrell* or *Murphy*?**

   Response: *Skilling* "hold[s] that [18 U.S.C.] §1346 covers only bribery and kickback schemes." *Skilling v. United States*, 130 S. Ct. 2896, 2907 (2010). At the time of *Umbrell* and *Murphy,* Third Circuit precedent provided at a minimum that Section 1346 covered concealed self-dealing in violation of state criminal law, in addition to bribery and kickbacks. *See United States v. Panarella,* 277 F.3d 678, 694 (3d Cir. 2002). We argued -- successfully in *Murphy,* unsuccessfully in *Umbrell* -- that certain criminal activity alleged did not fall within the scope of Section 1346 as interpreted by *Panarella.*

4. **Justice Scalia vigorously dissented from the Majority in *Skilling*, noting that he would find the entire "honest services" statute unconstitutional.**

   a. **Justice Scalia wrote in his dissent: ". . . it is obvious that mere prohibition of bribery and kickbacks was not the intent of the statute." Do you agree?**

   Response: Regardless of any personal view I might hold as to whether Point III of the majority opinion or Justice Scalia's separate opinion better states the intent of the statute, Justice Ginsburg's majority opinion, joined by Chief Justice Roberts and Justices Stevens, Breyer, Alito and Sotomayor, constitutes binding precedent which, if confirmed as a district judge, I would follow.

5. **Justice Scalia asserted that the Majority essentially rewrote the law so that it would not be interpreted as constitutionally vague.**

a. **Do you think in an attempt to construe all statutes as constitutionally acceptable, courts should be able to take a general penal statute and "pare it down" in order to avoid unconstitutional vagueness?**

Response: In *Skilling,* six Justices assented to a "limiting construction" of the honest services statute that avoided unconstitutional vagueness, citing case law in support of that approach. *See* 130 S. Ct. at 2929-31 & footnotes thereunder. The *Skilling* Supreme Court precedent is binding upon the lower courts and, if confirmed, I would follow it. In general, a lower court judge should confine his or her consideration to whether a statute is constitutional as applied to the case at hand.

b. **Do you believe that is what the Court did in *Skilling*?**

Response: Please see responses to questions 3, 4 and 5(a), above. In *Skilling,* the majority interpreted the honest services statute to cover only bribery and kickbacks, stating that "[r]eading the statute to proscribe a wider range of offensive conduct ... would raise the due process concerns underlying the vagueness doctrine." 130 S. Ct. at 2931.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: Fairness, in the sense of impartiality and a sincere, humble commitment to decide cases based on the law and facts, without prejudgment or bias. I believe that I possess these qualities and, if confirmed, I will always strive to embody them.

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: A judge must be patient and open-minded; a judge must be respectful, both of the persons before the court and of their time; a judge must be willing to reconsider his or her point of view in light of the evidence and the law. The judge's modest demeanor and temperament should convey to any reasonable member of the public that all claims, whether successful or not, have received the scrupulous and honest attention of the court. I believe that 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. If confirmed as a district judge, I would follow the decisions of the United States Supreme Court and the United States Court of Appeals for the Third Circuit, as well as any other binding precedents, irrespective of my personal views.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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 the case of a federal statute, I would of course first consult the statutory text. Where the language is clear, it must be applied, and that ends the matter. If uncertain as to the meaning of the language of a particular section, I would try to ascertain its meaning from the context of the statutory scheme of which it is a part. I would apply analogous case law, first from higher courts, and then from lower courts. Only in cases of ambiguity would I, with caution, draw on legislative history. As for non-statutory issues, if I found no controlling case law from the United States Supreme Court or the Third Circuit (or State appellate courts, in the case of a state-law issue), I would consult persuasive authority from other courts and analogous case law.

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 best judgment of the merits to decide the case?**

Response: If confirmed as a district judge, I would follow the precedents of the United States Supreme Court, the United States Court of Appeals for the Third Circuit, and all other binding case law, irrespective of any personal disagreement with such precedents.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A statute enjoys a presumption of constitutionality, and should be declared unconstitutional only where Congress has exceeded its powers under the Constitution or has unlawfully infringed a Constitutional right.

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: If confirmed, I would enforce clear deadlines for pretrial discovery and motions. Our district has been fortunate in its Magistrate Judges, whose assistance I would use to expedite case processing, rule on nondispositive matters (or, with consent, on dispositive matters), and encourage the settlement of cases as appropriate. For my own part, I would rule expeditiously to the best of my ability.

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 strongly agree that judges have a responsibility to take on that role, given the ever-increasing size of federal dockets. Expeditiousness is an important component of justice. I would intervene early and often to keep cases on track. Judicious granting of motions to dismiss and for summary judgment, when and to the extent appropriate, also helps to ensure that the court's resources are most efficiently allocated to meritorious cases.

14. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on March 21, 2012. I drafted these responses on March 22, 2012, and subsequently reviewed them with a representative of the Department of Justice. On March 23, 2012, I authorized the Department of Justice to submit them to the Senate Judiciary Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Stephanie Marie Rose
Nominee to be United States District Judge for the Southern District of Iowa
to the Written Questions of Senator Chuck Grassley

1. **At your confirmation hearing, I asked you about the role Main Justice played in the Postville criminal cases. You responded in part that "the major decisions about what charges to offer, what kinds of provisions were going to go into...plea agreements...were made with [the] Department of Justice, either at their direction or with their blessing." However, at a 2008 House Judiciary Subcommittee hearing Ms. Deborah Rhodes, the Senior Associate Deputy Attorney General with the Department of Justice, testified that, "all of the charging decisions were made by the career prosecutors in the local office."**

   a. **Could you please clarify who was responsible for making the charging decisions?**

      Response: I was not involved in developing the fast-track proposal or the underlying charging strategy. However, it is my understanding that the major decisions about what charges to offer were made pursuant to a fast-track authorization program approved by the Deputy Attorney General. I also understand that the charging strategy was developed by the United States Attorney at the time and several career prosecutors in our office, after consulting with various components and offices of the Department of Justice and other United States Attorneys' Offices that had previously received fast-track approvals for worksite enforcement actions. In some cases, provisions of the proposed fast-track plea agreements were modified to address special circumstances in the cases of individual defendants encountered during the worksite enforcement action. I made some of these modifications in the fast-track plea agreements I signed on behalf of the office during my two-week involvement in the lengthy work-site investigation.

   b. **Who was responsible for making charging decisions in the local office?**

      Response: Please see above.

   c. **Were you ever consulted, or asked for your opinion, on charging decisions?**

      Response: I was not consulted, nor asked for an opinion, regarding the charging and case disposition plan. I was one of the prosecutors who implemented the approved fast-track plan once the enforcement action began in May 2008, and, as noted above, made some modifications to address special circumstances.

2. **What is the most important attribute of a judge, and do you possess it?**

Response: A judge must be capable of setting aside his or her personal opinions to render a fair and impartial decision based solely upon the facts of a particular case and existing law. Yes, I believe I possess that ability.

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 most effective judges possess a consistently calm and rational temperament. The most important elements of judicial temperament include the willingness and ability to treat all individuals who appear before the bench with respect, patience, dignity, and understanding. Yes, I believe I meet such a standard.

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 was dispositive on 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 involving the interpretation of a statute or Constitutional provision, I would first look to the text of the statute or provision to determine its plain and ordinary meaning. If the meaning of the statute or provision is clear, I would simply apply that meaning. If the meaning is unclear, I would look for analogous cases from the Supreme Court, the Court of Appeals for the Eighth Circuit, and other circuit courts to guide my decision.

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 best judgment of the merits to decide the case?**

Response: I fully recognize that a Southern District of Iowa district court judge is bound by the precedent of the Supreme Court and the Court of Appeals for the Eighth Circuit. In all matters, I would apply such existing precedent.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court could appropriately declare a statute enacted by Congress to be unconstitutional if the statute violated the plain and ordinary meaning of the Constitution, or if Congress exceeded its Constitutional authority when it enacted the provision.

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: As a district court judge, I would consistently and regularly monitor the cases on my caseload. I would work with the attorneys and parties in the district, the Clerk's Office, and the United States Probation Office to set reasonable and firm scheduling deadlines for all civil and criminal cases. I would rule on dispositive issues in a timely manner, and would ensure I was available to attorneys and parties as necessary to address issues that arose during the pendency of any case.

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 judges have a role in controlling the pace and conduct of litigation. As outlined in my response to Question 8, above, I would work with the attorneys and parties in the district, the Clerk's Office, and the United States Probation Office to set reasonable and firm scheduling deadlines for all civil and criminal cases. I would rule on dispositive issues in a timely manner, and would ensure I was available to attorneys and parties as necessary to address issues that arose during the pendency of any case.

10. **Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on March 21, 2012. I prepared my answers on March 22, 2012 and submitted them to the Department of Justice for submission to the Committee on March 26, 2012.

11. **Do these answers reflect your true and personal views?**

Response: Yes.

Responses of Michael A. Shipp
Nominee to be United States District Judge for the District of New Jersey
to the Written Questions of Senator Chuck Grassley

1. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor a little guy over a big guy?**

   Response: It is not the role of a judge to favor a little guy over a big guy. A judge should treat all litigants impartially, regardless of political beliefs, racial or ethnic backgrounds or status as little guy or big guy. A judge should base all decisions exclusively on the law. If confirmed as a district judge, I would treat all parties who come before me fairly and impartially, regardless of status.

   a. **At Justice Roberts' confirmation hearing he addressed this issue by saying that "If the Constitution says that the little guy should win, the little guy's going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy's going to win." Do you agree with Justice Roberts that the Constitution and the rule of law should always dictate who wins or loses?**

      Response: Yes, I agree with the statement made by Chief Justice Roberts. A judge's decision should always be rooted in the law.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is the ability to be impartial, evenhanded and fair. A judge must remain impartial and treat all litigants with respect. As a magistrate judge for the past five years, I have demonstrated that 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: The elements of judicial temperament that I consider most important are fairness, impartiality, respectfulness, and patience. I believe that I have demonstrated that I have met these standards as a magistrate judge, and I would continue to meet these standards if confirmed as a district judge.

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, I am committed to following the precedents of the Supreme Court and the Court of Appeals for the Third Circuit. If confirmed as a district judge, I would give full force and effect to their decisions and refrain from interjecting my personal beliefs when evaluating any matter before the Court.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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 as a district judge and faced with an issue of first impression, I would first look to whether the issue to be resolved arose from the application or interpretation of a statute. If so, I would examine the plain language of the provision of the statute. If the statute was ambiguous, I would then consider its legislative history. If the issue of first impression did not arise from the application or interpretation of a statute, I would look first and foremost to analogous Supreme Court and Third Circuit precedent. If neither Supreme Court nor Third Circuit cases addressed the issue, I would review the relevant decisions of courts of appeal outside the Third Circuit, and of other district courts, for guiding authority.

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 best judgment of the merits to decide the case?**

   Response: If confirmed as a district judge, I would faithfully apply the precedent of the Supreme Court and the Court of Appeals in order to ensure certainty and stability within the judicial system. I would be bound to adhere to such precedent without regard for my own judgment of the merits or my personal beliefs.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Congressional statutes are presumptively valid. In considering a constitutional challenge to a Congressional statute, a judge must decide whether Congress has exceeded its constitutional authority in enacting that statute, as well as determine whether the statute violates the Constitution.

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: As a magistrate judge for the last five years, I am familiar with the caseload in our federal courts and have confronted the pressures of managing a heavy docket. If confirmed, I would analyze the docket and make a determination as to which cases are ripe for dispositive consideration. Further, I would continue my practice of encouraging early settlement discussions and would work to ensure that the cases before me proceed in accordance with a timely and efficient scheduling order.

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 judges have a role in controlling the pace and conduct of litigation, while assuring each litigant's right to have his or her matter efficiently and fairly managed by the court. Following this premise, I would set reasonable, but firm scheduling deadlines, promptly decide motions, and facilitate early resolution through settlement discussions. With respect to conduct, judges must lead by example from the bench and demonstrate patience, attentiveness, and humility.

10. Please describe with particularity the process by which these questions were answered.

Response: I received and reviewed the questions on March 21, 2012 and prepared responses on March 22, 2012. I then reviewed my responses with representatives of the Department of Justice, finalized my responses and authorized transmittal to the Committee.

11. Do these answers reflect your true and personal views?

Response: Yes.

SUBMISSIONS FOR THE RECORD

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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

December 19, 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 Hon. John T. Fowlkes, Jr.
To the United States District Court for the Western District of Tennessee

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of the Hon. John T. Fowlkes, Jr. who has been nominated for a position on the United States District Court for the Western District of Tennessee. As a result of our investigation, the Committee is of the unanimous opinion that Judge Fowlkes is "Well Qualified" for the position.

A copy of this letter has been provided to Judge Fowlkes.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. John T. Fowlkes, Jr.
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

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AMERICAN BAR ASSOCIATION

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VIA EMAIL AND FIRST CLASS MAIL

January 24, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of William J. Kayatta, Jr.
To the United States Court of Appeals for the First Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of William J. Kayatta, Jr. who has been nominated for a position on the United States Court of Appeals for the First Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Kayatta is "Well Qualified" for the position.

A copy of this letter has been provided to Mr. Kayatta.

Sincerely,

Allan J. Joseph
Chair

cc: William J. Kayatta, Jr., Esq.
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

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VIA EMAIL AND FIRST CLASS MAIL

December 19, 2011

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

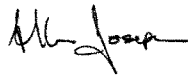
Re: Nomination of Kevin McNulty
To the United States District Court for the District of New Jersey

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Kevin McNulty who has been nominated for a position on the United States District Court for the District of New Jersey. As a result of our investigation, the Committee is of the unanimous opinion that Mr. McNulty is "Well Qualified" for the position.

A copy of this letter has been provided to Mr. McNulty.

Sincerely,



Allan J. Joseph
Chair

cc: Kevin McNulty, Esq.
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
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VIA EMAIL AND FIRST CLASS MAIL

February 6, 2012

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 M. Rose To the United States District Court for the Southern District of Iowa

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Stephanie M. Rose who has been nominated for a position on the United States District Court for the Southern District of Iowa. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Rose is "Well Qualified" for the position.

A copy of this letter has been provided to Stephanie M. Rose.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Stephanie M. Rose
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

February 6, 2012
Page 2

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 February 6, 2012.

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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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
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VIA EMAIL AND FIRST CLASS MAIL

August 10, 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 Hon. Michael A. Shipp
To the United States District Court for the District of New Jersey

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Hon. Michael A. Shipp who has been nominated for a position on the United States District Court for the District of New Jersey. As a result of our investigation, a Substantial Majority of the Committee is of the opinion that Judge Shipp is Qualified. A Minority of the Committee is of the opinion that Judge Shipp is Not Qualified for the position.

A copy of this letter has been provided to Judge Shipp.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Michael A. Shipp
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq.(via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

STATEMENT OF
SENATOR SUSAN M. COLLINS

Nomination Hearing of William J. Kayatta Jr.

March 14, 2012

Mr. Chairman, I am extremely pleased to appear before this distinguished committee today to recommend to you William J. Kayatta Jr., of Maine, who has been nominated to serve on the U.S. Court of Appeals for the First Circuit.

Bill is an attorney of exceptional intelligence, extensive experience, and demonstrated integrity, who is very highly respected in the Maine legal community. While I know the committee is familiar with his many qualifications, I would like to highlight a few.

He graduated *magna cum laude* from both Amherst College and Harvard University, where he served as a member of the school's law review.

After he graduated from law school, he clerked for the Chief Judge of the U.S. Court of Appeals for the First Circuit, Frank Coffin.

In 1980, he joined the firm of Pierce Attwood in Portland, Maine, where over the subsequent 32 years he has specialized in complex civil litigation at both the trial and appellate levels.

He has served as Chairman of both the Maine Professional Ethics Commission and the Maine Board of Bar Examiners, and as President of the Maine Bar Association.

In 2002, Bill was inducted into the American College of Trial Lawyers, and in 2010 he was elected by his peers to the College's Board of Regents.

Bill has simultaneously maintained a very substantial *pro bono* practice. In 2010, he received the Maine Bar Foundation's Howard H. Dana Award for career-long *pro bono* service on behalf of low-income Mainers.

In 2011, the U.S. Supreme Court appointed him a Special Master in *Kansas v. Nebraska and Colorado*, an original water rights case – an indicator of the Court's confidence in his legal abilities.

Finally, he has earned the American Bar Association's highest rating – "unanimously well-qualified" -- reflecting the ABA's assessment of his credentials, experience, and temperament.

Bill's impressive background makes him eminently qualified for a seat on the First Circuit. His thirty plus years of real world litigation experience would bring a much-needed perspective to the court.

Mr. Chairman, the First Circuit has the fewest judges of any Circuit, and consequently feels any vacancy the most acutely. On January 1, 2012, Judge Kermit Lipez took active senior status after decades of exemplary public service to Maine and the nation, for which I would like to thank him.

While Judge Lipez has agreed to carry a full case load over to his senior status, he will not carry it beyond September; at that point the caseload would have to be distributed among the remaining five judges. I urge the committee to act expeditiously on Mr. Kayatta's nomination to avoid this undesirable outcome.

Mr. Chairman, Maine has a long proud history of supplying superb jurists to the federal bench. I know that, if confirmed, Mr. Kayatta will continue in that tradition. I urge the Committee to act expeditiously on the nomination and to move it forward to the Senate Floor, where he deserves overwhelming, bipartisan support.

STEVE COHEN
9TH DISTRICT, TENNESSEE

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www.cohen.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–4209

COMMITTEE ON THE JUDICIARY

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CRIME, TERRORISM, AND HOMELAND SECURITY

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEES:
AVIATION
HIGHWAYS AND TRANSIT
RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

January 6, 2012

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing to offer my strongest support for President Obama's nomination of Judge John Fowlkes to serve as District Court Judge for the Western District of Tennessee. He has already distinguished himself as a judge of the Shelby County Criminal Court and his elevation to the federal bench is well deserved.

As "Vermont's other Congressman" I appreciate the strong working relationship we have developed. I particularly appreciated your help in passing our legislation, the SPEECH Act, and my legislation, the National Guard and Reservist Debt Relief Extension Act, through the Senate. I would appreciate your continuing help as Judge Fowlkes's nomination is considered by the Senate.

Judge Fowlkes is a superb lawyer and judge and has a sterling reputation in Memphis. Before recommending him to President Obama, I invited advice from a cross section of respected members of the legal community including the Memphis Bar Association, the Ben Jones Chapter of the National Bar Association, the Trial Lawyers Association, the Women's Bar Association, and others. Everyone consulted had the highest praise for Judge Fowlkes's legal acumen, unquestionable integrity and work ethic. There was not a dissenting voice in the Memphis community – Democrat or Republican – and I see no reason why his nomination should not cruise through the Senate.

I recognize that the Senate Judiciary Committee has a particularly busy agenda this year and that the judicial nomination process has enjoyed little bipartisan cooperation in this Congress. However, I respectfully request that you do all you can to ensure a smooth confirmation process for Judge Fowlkes. I have spoken personally with Senators Alexander and Corker and they have assured me that they both support his nomination.

PRINTED ON RECYCLED PAPER

If I can do anything to help as you consider Judge Fowlkes's nomination, please do not hesitate to contact me. Thank you for your leadership on this and so many issues.

As always, I remain,

Most sincerely,

Steve

Steve Cohen
Member of Congress
TN-9th Vermont 2

April 17, 2009

Senator Tom Harkin
United States Senate
731 Hart Senate Office Building
Washington, DC 20510

Re: Stephanie Rose Nomination for N.D. of Iowa U.S. Attorney

As criminal defense attorneys who are members of the Criminal Justice Act panel here in the Northern District of Iowa, and who had all participated in the representation of individuals prosecuted last May as part of the Agriprocessors Plant raid, we feel compelled to write your office on behalf of the Stephanie Rose nomination for U.S. Attorney for the Northern District of Iowa.

During the process of our representation of Postville clients Stephanie Rose was the primary contact for defense attorneys. She worked incredibly long hours and exhibited a level of competence and ability that would be hard to overstate. She was there on the Cattle Congress grounds virtually around-the-clock and showed familiarity with a number of individual client circumstances when contacted by defense counsel to discuss potential plea alternatives.

She described the areas where the local U.S. Attorney's Office was allowed to negotiate and vary from the plea proposals that had been approved at the national level. In those cases where adjustments could be made to accommodate particular circumstances, she did so in order to ensure that justice was done in each individual case.

Ms. Rose also ensured that defense counsel had complete access to their clients by acting as a buffer with Homeland Security, who were in charge of the housing and security of our clients. She further coordinated with the local jails that housed defendants to allow for maximum access by defense attorneys in order for us to provide complete representation.

Based upon our involvement in the Postville representation, it was not Stephanie Rose's decision to conduct the Postville Raid. She was not involved in the major policy decisions that led to the raid. She did not make the decision to fast track these cases, nor did she have any part in how the individuals were to be housed. In addition, she did not make the decision regarding what charges were to

be brought against these individuals. With the limited discretion that she had regarding the circumstances and particularly the plea agreements, Ms. Rose exercised her judgment admirably and very favorably to defendants.

Any criticism about Stephanie Rose apparently comes from those who have never had a criminal case with her, and instead represent a blanket disagreement with the Immigration policies and statutes of the United States.

Respectfully,

Alfred E. Willett

Stephen A. Swift

Michael K. Lahammer

John D. Jacobsen

Brian D. Johnson

Chris Clausen

Rick L. Sole

John Bishop

Anne Laverty

David Mullin

Michael Lindeman

Statement of Senator Chuck Grassley

Before the Committee on the Judiciary

On the Nominations of:

William J. Kayatta, Jr., to be United States Circuit Judge for the First Circuit

John Thomas Fowlkes, Jr., to be United States District Judge for the Western District of Tennessee

Kevin McNulty, to be United States District Judge for the District of New Jersey

Michael A. Shipp, to be United States District Judge for the District of New Jersey

Stephanie Marie Rose, to be United States District Judge for the Southern District of Iowa

March 14, 2012

Madam Chair:

I join you in welcoming the nominees who are appearing before us today, their friends and families. I would especially like to extend a warm Iowa welcome to Stephanie Marie Rose, her husband – Mr. Robert Rose, as well as other family and friends in attendance today or viewing the hearing elsewhere. The President has nominated Ms. Rose to serve as a United States District Judge for the Southern District of Iowa.

Ms. Rose is a Hawkeye through and through, receiving two degrees from the University of Iowa – her B.A in 1994 and her J.D. in 1996. Ms. Rose, I guess you were on the fast track for law school.

After her graduation from law school, Ms. Rose wisely chose to remain in Iowa. She first served as a law clerk in the United States Attorney's Office for the Northern District of Iowa. In 1997, she was hired as a full-time attorney in that office, where she has risen through the ranks and now heads the office.

She served as a Special Assistant United States Attorney from 1997 to 1999 and as an Assistant United States Attorney from 1999 to 2009. During this time, she was lead counsel in the prosecution of more than 250 cases. These cases spanned a wide range of legal issues from violent crimes and drug offense to immigration violations and money laundering. Additionally, she has handled approximately 45 federal civil cases. These cases have

included post-conviction relief and asset forfeiture matters, as well as Freedom of Information Act and property return lawsuits.

In 2009, Ms. Rose was confirmed by the Senate and appointed by President Obama to serve as the United States Attorney for The Northern District of Iowa. In this role, she oversees most every aspect of the office. This includes overseeing the civil and criminal work completed by office staff and making final determinations regarding charging decisions, plea offers, and civil settlements.

The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Ms. Rose as "Well Qualified" for this position.

I congratulate Ms. Rose and the other nominees on being nominated. I look forward to her testimony and that of the other nominees today.

William J. Kayatta, Jr., is nominated to be United States Circuit Judge for the First Circuit. Upon graduation from Harvard Law School in 1979, Mr. Kayatta served as a law clerk to Chief Judge Frank Coffin on the United States Court of Appeals for the First Circuit. Upon completion of his clerkship in 1980, he went to work as an attorney at the law firm of Pierce Atwood LLP, where he has remained, becoming a partner in 1986. He has worked on a mix of trial court and appellate matters, which have increased in size and complexity over the years. His work has involved a wide range of subject matters, including energy regulations and contracts, ERISA, antitrust, construction, banking, and class actions. With the exception of the occasional arbitration matter, the entirety of his practice has been in litigation.

Mr. Kayatta estimates that he has argued 37 appeals, including two cases before the Supreme Court of the United States. He estimates he has tried 24 cases to verdict, judgment or final decision. While Mr. Kayatta has never

served as a Judge, he was appointed by the Supreme Court of the United States to serve as Special Master in *Kansas v. Nebraska and Colorado*, No. 126 Orig. (U.S.), on April 4, 2011 and continues to hold this position.

The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Mr. Kayatta as "Well Qualified" for this position.

John Thomas Fowlkes, Jr., is nominated to be United States District Judge for the Western District of Tennessee. Judge Fowlkes received his B.A. from Valparaiso University in 1975 and his J.D. from University of Denver School of Law in 1977. From 1978 to 1979 he worked as an assistant public defender at the Shelby County Public Defender's Office, where he represented indigent defendants. In 1979, he joined the Shelby County District Attorney General's Office and served as an Assistant District Attorney for the next ten years. There he tried nearly 150 jury trials, handling homicide, assault, sex offense, robbery, and burglary cases.

In 1989, he became an Assistant United States Attorney, trying criminal cases until 2002. As an AUSA, he tried over 100 jury trials and handled all appellate level work. During his time at the Attorney's Office, Judge Fowlkes was a First Assistant for several years, directing day to day operations of the office. From 2002 to 2007, Judge Fowlkes was the Chief Administrative Officer for Shelby County. He was not engaged in the practice of law during this period.

In 2007, then-Governor Phil Bredesen appointed Judge Fowlkes to be a Criminal Court Judge for Division VI of the 30th Judicial District at Memphis. In November 2008, he was elected to a full, eight year term. In 2011, he was elected by judges of the 30th Judicial District to serve as presiding judge. Judge Fowlkes has presided over 85 jury trials.

The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Judge Fowlkes as "Well Qualified" for this position.

Kevin McNulty is nominated to be United States District Judge for the District of New Jersey. Mr. McNulty received his B.A. from Yale University in 1976 and his J.D. from New York University School of Law in 1983. Upon graduation, Mr. McNulty served as a law clerk to Judge Frederick B. Lacey, United States District Judge for the District of New Jersey. After his clerkship, Mr. McNulty began his legal career as a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison. From 1984 through 1987, he worked at the firm handling civil litigation and white-collar criminal defense in both state and federal court.

From 1987 to 1998, he was a federal prosecutor in the United States Attorney's Office for the District of New Jersey. In that office he served in a number of positions. He was a member of the Criminal Division; was selected to head the Organized Crime and Drug Enforcement Task Force; and then prosecuted large white-collar fraud cases in the Frauds Division. In 1992, he was appointed Deputy Chief of the Criminal Division. In 1995, he was named Chief of Appeals. In that position, he briefed and argued criminal appeals to

the United States Court of Appeals for the Third Circuit, supervised other attorneys in the division, served as Ethics Officer, and acted as general legal adviser to the Office and United States Attorney.

In 1998, Mr. McNulty joined Gibbons P.C., where he presently is a Director and chairs the firm's appellate practice. Nearly all of Mr. McNulty's legal practice has been in litigation, and he has appeared in court frequently. He has tried twelve cases to verdict

The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Mr. McNulty as "Well Qualified" for this position.

Michael A. Shipp is nominated to be United States District Judge for the District of New Jersey, where he presently serves as a Magistrate Judge. Judge Shipp received his B.S. from Rutgers University in 1987 and his J.D. from the Seton Hall University School of Law in 1994. Upon graduation, he clerked for the Honorable James H. Colman,

Jr., a Justice on the Supreme Court of New Jersey. After his clerkship, Judge Shipp joined Skadden, Arps, Slate, Meagher & Flom LLP as a litigation associate. There, he worked in general litigation matters, handling labor and employment work. He also developed an expertise in mass tort law and products liability litigation.

In 2003, Judge Shipp became an Assistant Attorney General in-charge of Consumer Protection with the Department of Law and Public Safety of New Jersey. There, he managed five practice groups: Consumer Fraud Prosecution, Insurance Fraud Prosecution (civil), Securities Fraud Prosecution, Professional Boards Prosecution, and Debt Recovery. In 2005, he was promoted to the Attorney General's front office, providing advice to the Attorney General on matters related to ethics and appointments.

In 2007, Judge Shipp was appointed as a United States Magistrate Judge for the District of New Jersey. As a Magistrate Judge, he presides over pre-trial proceedings in

civil cases and presides over civil actions in full when all parties consent. He also presides over the initial phase of all criminal matters, including bail hearings and initial appearances. According to his questionnaire, Judge Shipp has presided over 2 trials.

A substantial majority of the American Bar Association's Standing Committee on the Federal Judiciary gave Judge Shipp a rating of "Qualified." A minority of that Committee rated Mr. McNulty as "Not Qualified."

Statement by Senator Tom Harkin
Introducing Stephanie Rose
Nominee for District Court Judge in Iowa's Southern District
March 14, 2012

Madame Chair, it is a great privilege for me to be here to introduce Stephanie Rose to serve as a district court judge in Iowa's Southern District, and I urge her unanimous approval. I was honored to recommend this outstanding attorney to the President, and I thank him for nominating her.

Let me begin by thanking Senator Leahy for agreeing to such a prompt hearing. I also want to thank my senior colleague from Iowa, Senator Grassley, for his assistance in making this prompt hearing possible. For many years, Senator Grassley and I have cooperated in a collaborative spirit on judicial nominations in our state, and I am glad we are continuing Iowa's fine tradition regarding judicial selection.

Madam Chair, a U.S. Senator has few more important responsibilities than recommending to the President the person best qualified to serve in a lifetime position as a federal judge. I believe Stephanie Rose possesses all of the qualifications necessary to assume the very serious responsibilities carried out by a federal judge. In fact, the American Bar Association gave Ms. Rose a unanimous well qualified rating.

In 2009, the Senate unanimously confirmed Ms. Rose to become U.S. Attorney in the Northern District of Iowa, having previously served 12 years as an assistant U.S. Attorney. She is a superb attorney, and among jurists, prosecutors and defense bar she has a reputation as someone who is unfailingly fair and ethical, and who possesses exceptional legal ability, intellect and judgment. It is no surprise she enjoys wide, bipartisan support from the Iowa legal community. In fact, Charles Larson, former United States Attorney for the Northern District of Iowa under President George W. Bush, recently wrote the Committee stating that Ms. Rose "has all the requisite abilities and traits to serve all litigants of the Southern District of Iowa in the manner expected of a federal judge. Miss Rose would be a distinguished member of the judiciary."

Finally, Ms. Rose reflects very proudly on all of us who have chosen to be public servants. She earned her bachelor's degree, with honors, from the University of Iowa in just three years. She earned her J.D. from the University of Iowa College of Law in just two years, graduating in the top five percent of her class. She could easily have commanded a big salary with a top law firm. Instead, she opted for public service and long hours as a federal prosecutor, working to uphold the rule of law, making our neighborhoods safer, and advancing the cause of justice. We are fortunate that she seeks to continue her public service to Iowa and our nation by serving as a federal judge.

Madame Chair, it is often helpful to know some more personal background on a nominee. Ms. Rose was born in Topeka, Kansas, and moved to Mason City, Iowa, when she was four. Both of her parents were public school teachers. She and her husband Rob have two children: Kyle, age 13, and Missy, who is ten. Ms. Rose has two sisters, one of whom was adopted after coming to the family as a foster child, one of five foster children her parents welcomed into their home.

Before recommending Ms. Rose to the President, I reviewed an unusually strong field of candidates for this position. She stood out as a person of truly outstanding intellect and character. Stephanie Rose is exceptionally qualified to serve as United States District Judge for the Southern District of Iowa and I urge this Committee to act swiftly to approve her.

Senate should act on Rose judgeship

All Obama appointees deserve up-or-down votes

Des Moines Register 9:57 PM, Mar. 13, 2012 |

The U.S. Senate Judiciary Committee today is scheduled to take up the nomination of Stephanie Rose to serve as a federal judge in Iowa. Unless something emerges that raises doubts about Rose's fitness to serve on the federal bench, the committee should send the Rose nomination to the full Senate with its support.

Rose, the U.S. attorney for the Northern District of Iowa, has sterling credentials. She graduated from both the University of Iowa and the University of Iowa College of Law with honors. She has won accolades from Iowa lawyers, including defense attorneys who have been on the other side of criminal cases. The American Bar Association Standing Committee on the Federal Judiciary unanimously gave Rose its top rating.

Iowa Sen. Tom Harkin, who nominated Rose for both the U.S. Attorney's job and for the judgeship, noted that Rose was the first woman to be confirmed a U.S. Attorney in Iowa's Northern District. If confirmed, she would be the first female U.S. district judge in Iowa's Southern District, which is based in Des Moines.

Rose has not been without her critics, however. She was the deputy chief criminal prosecutor when the 2008 immigration raid was carried out at the Agriprocessors packing plant in Postville. That operation has been widely criticized for the nature of the mass arrests and the rapid-paced prosecutions that raised questions about due process rights of the accused.

Rose has vigorously defended the Postville operation, and eleven lawyers who represented defendants in the Postville prosecutions defended Rose's actions in a letter to Harkin when her confirmation as U.S. Attorney was before the Senate.

Rose's defenders say the Agriprocessors' raid and prosecutions were orchestrated by federal immigration authorities and by the U.S. Justice Department, and that Rose was just following orders. The Judiciary Committee should ask Rose to explain whether, looking back, she has any doubts about whether the mass arrest and expedited prosecution of nearly 300 immigrants allowed for the full protection of suspects' rights under American standards of criminal justice. Unlike her role as a deputy prosecutor, Rose would, as a federal judge, have the power to say whether that style of prosecution would be acceptable in her courtroom.

Beyond that question, the Senate should confirm her nomination, assuming nothing emerges to suggest she is unqualified. Indeed, every nominee from the White House deserves a Senate vote: Each senator has the right to vote yes or no, but every nominee deserves at least an up-or-down vote. Unfortunately, those votes are held hostage to politics.

This week, Senate Majority Leader Harry Reid, D-Nev., moved the nomination of 17 Obama administration appointees, daring the Republicans to continue using the Senate filibuster rule to stall on the appointments. Iowa Sen. Chuck Grassley, in a statement Monday, called the move a "political stunt" and said "the last thing the Senate should be doing is spending time on meaningless procedural votes."

Confirming judges to the federal courts, some of which have emergency vacancies for months is not meaningless. On the contrary, it is the Senate's constitutional duty, and the American people are sick of partisan games over presidential confirmation votes, regardless of which party is in power.

Grassley, the ranking Republican on the Judiciary Committee, is in a position to bring this to a close, and he should do just that by urging his Republican colleagues to vote on all Obama appointees.

The Gazette Opinion Staff jeff.tecklenburg@gazcomm.com

Opinion Page Editor, The Gazette
Updated: 14 March 2012 | 12:03 am in Gazette Guest Columnists

Rose's conduct during raid shows her qualifications to be judge

By Michael K. Lahammer

—

I feel compelled to respond to attorney Rockne Cole's criticism (March 9) of Stephanie Rose as a nominee for U.S. District Court judge, as I was one of more than a dozen federal criminal defense attorneys who defended the illegal aliens arrested during the raid in Postville on May 12, 2008.

Cole's comments reveal precisely the reason that Rose is well qualified for this lifetime appointment. He criticizes her for not injecting her personal opinions and bias into her role as one of several prosecutors who worked on this case. His complaints rise solely against the immigration policies that Congress has established as the laws of our country rather than in any actions by Rose.

Specifically, a federal judge must be free from bias, uninfluenced by personal opinions, and without any personal agenda in deciding the issues presented. Any exercised discretion must be within the confines of established legal and ethical boundaries. That is how Rose carried out her responsibilities regarding the Postville defendants. Those are the qualities that I, as a federal defense attorney, desire in every one of the judges that I appear in front of.

The statement that the defense attorneys who represented the Postville defendants are walking "in lock-step" supporting Rose demeans the extremely well-qualified, respected defense attorneys who worked tirelessly and diligently ensuring that the rights of each and every accused were protected during this difficult period.

Each of the defense attorneys, with unfettered access to our clients, was able to examine each individual client's situation including the specific evidence against each person. Based upon that

review, each defense attorney would then evaluate the government's case and determine whether the government could prove its case beyond a reasonable doubt. Only then was a recommendation made to each client individually whether to accept the plea terms or put the government to its burden of proof.

During every phase, Rose was available for clarifications, providing additional information where needed, and for presenting deviations from proposed plea agreements based on each individual's circumstances. She willingly exercised prosecutorial discretion where needed and where available. When requests went beyond her authority, she went to her supervisors to advocate for the changes to be made. As a result, defense attorneys were able to, among other concessions, waive automatic deportation for clients who had U.S.-born children.

Cole also criticized, unfairly, the rejection of humanitarian U-Visas by the U.S. Attorney's Office by Rose and others in her office. This ignores the strict requirements for the visas, which must be approved by the Department of Homeland Security and not the prosecutor. Further, only specific crimes are eligible, but not possessing false documents or illegal entry cases.

Finally, Cole cited in his criticism of Rose one of the interpreters, Erik Camayd-Freixas, who has been praised by humanitarian groups for speaking out against the "abuse" that he witnessed. Again, the interpreter's criticisms have been directed more toward his disagreement with the country's immigration policies than procedures of the Postville prosecutions. He also lacks the legal qualifications to fairly evaluate the process each defense attorney used.

I have known Rose since she first began her career with the U.S. Attorney's Office, have opposed her in numerous cases, and still believe her to possess each and every quality that every citizen should desire in a federal judge. Fair, unbiased, and free from any personal agenda.

Michael K. Lahammer is a federal attorney from Cedar Rapids. Comments: mlahamm@aol.com

DMR, 3-14

Rose eminently qualified for federal court

In a commentary critical of President Barack Obama's nomination of U.S. Attorney Stephanie Rose to become a federal judge in Iowa's Southern District, Erik Camayd-Freixas leveled misleading and inflammatory criticism of Rose based largely on her role in the investigation and prosecution of workers at the Agriprocessors plant in Postville ("Don't Rubber-Stamp Nominee for Judgeship," March 6).

As Iowa lawyers not involved in the Postville cases, we agree that the policies and procedures employed by all the participants — investigative agencies, prosecutors, defense lawyers and the courts — deserve to be scrutinized in appropriate forums.

Having defended federal criminal cases for more than 30 years, and having come to know Rose during her entire career as a federal prosecutor, we believe that she is extremely well-qualified and well-respected among judges, prosecutors and the defense bar. She not only meets but exceeds the standards by which a federal judge should be measured.

The Postville raid was initiated by the U.S. Department of Justice and Immigration and Customs Enforcement in Washington, D.C. Rose was one of several prosecutors involved in the prosecution. According to defense lawyers who represented Postville defendants, she did her best to ensure due process for all defendants and thoughtfully exercised the small amount of discretion available to her.

As a prosecutor and now head of one of the nation's busiest prosecutor's offices, Rose has consistently shown sensitivity to the human cost of the criminal justice system. Her great legal ability, intellect and keen sense of perspective have earned her a unanimous ranking of "well-qualified" from the American Bar Association, which evaluates all federal court nominees.

Highlighting Rose's qualifications does not in any way undermine the significance of the Postville raid or the impact it had on the community. But responsibility for that raid should not rest alone on the shoulders of one prosecutor. Stephanie Rose's career in public service shows that she has the aptitude, balance and compassion necessary to being an outstanding judge.

— Leon F. Spies, Iowa City, and Alfredo Parrish, Des Moines

BENNY AGOSTO, JR.
NATIONAL PRESIDENT

April 13, 2012

Via Electronic Mail
The Honorable Patrick Leahy
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Hispanic National Bar Association Endorsement of William Kayatta for the United States Court of Appeals for the First Circuit

Senator Leahy:

On behalf of the Hispanic National Bar Association ("HNBA"), I write to encourage the confirmation of William Kayatta to the United States Court of Appeals for the First Circuit. As you know, 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.

As required by its *Policies and Procedures Governing Endorsements,* the HNBA has conducted appropriate due diligence and has found William Kayatta to be a highly qualified candidate for the First Circuit Court of Appeals. We find that Mr. Kayatta has a combination of professional experience and a high level of respect amongst his peers and within the legal community.

Mr. Kayatta graduated *magna cum laude* from Harvard Law School in 1979, serving as an officer of the Harvard Law Review. He then began his legal career as a clerk to Chief Judge Frank M. Coffin of the United States Court of Appeals for the First Circuit. He then entered private practice in September 1980 at Pierce Atwood LLP in Portland, Maine. He has remained there to the present day, having become a Partner in 1986. He has worked on trial and appellate matters, including arguing 37 appeals, two of which were before the United States Supreme Court.

Mr. Kayatta has devoted significant time to pro bono work throughout his career. He served as Lead Counsel for over 4 years in the *Risinger v. Maine Department of Human Services,* which was described as an exemplary and significant victory for disabled children in Maine. He also served on several boards and foundations concerning other legal aid efforts over the years. In addition, in 2010, the Maine Bar Foundation recognized him for his efforts in providing over 30 years of pro bono work.

Last year, Mr. Kayatta was appointed by the United States Supreme Court to serve as a Special Master in *Kansas v. Nebraska and Colorado,* S.C. Original Action No. 126, a dispute between several states concerning their respective water rights in the Republican River Basin. A managing partner at Pierce Atwood stated that, "Bill Kayatta's appointment as Special Master is a testament to his exceptional legal expertise and reputation as a nationally respected trial and appellate lawyer."

When we reviewed his candidacy, we confirmed that William Kayatta is well-suited for the United States Court of Appeals for the First Circuit. Each reference stated that his professional demeanor, reputation, character and integrity were of the highest caliber. He has been described as a highly skilled lawyer with keen instincts, and that he would fit in the late Chief Judge Coffin's mold. He has also been described as being very respectful and a thoroughly decent man with an amazing intellect and a strong civic-mindedness.

Accordingly, the HNBA highly recommends William Kayatta's confirmation to the United States Court of Appeals for the First Circuit. We stand ready to assist in your deliberations should there be any questions. Please feel free to contact me through our national office at (202) 223-4777 or directly at (713) 222-7211. Thank you for your consideration.

Sincerely,

Benny Agosto Jr.
HNBA National President

cc: Mr. Peter M. Reyes, Jr., HNBA President-Elect
Mr. Robert Raben, Chair, Chair, HNBA Committee on Judicial Endorsements
Mr. Rene Ortega, HNBA Region I President

SENATOR FRANK R. LAUTENBERG
JUDICIARY COMMITTEE HEARING
ON THE NOMINATIONS OF
KEVIN McNULTY AND MICHAEL SHIPP

INTRODUCTION STATEMENT FOR THE RECORD
Wednesday, March 14, 2012

Madame Chairman,

I apologize that I will not be appearing in person for today's hearing on two excellent nominees for the United States District Court for the District of New Jersey. I am in New Jersey today to attend the funeral of my friend and colleague, Rep. Donald Payne. Given these circumstances, I hope you will include my written testimony strongly endorsing Kevin McNulty and Judge Michael Shipp for judgeships on the United States District Court for the District of New Jersey.

Kevin McNulty's qualifications for the federal bench were first brought to my attention in 2009 when he was recommended to me by one of New Jersey's most respected jurists, John Gibbons, former Chief Judge of the U.S. Court of Appeals for the Third Circuit. Since that time, I have met with Mr. McNulty on multiple occasions and learned of his outstanding reputation in the legal community in New Jersey.

Mr. McNulty currently leads the appellate practice group at Gibbons, a Newark-based law firm. He is a formidable litigator, having argued criminal, commercial, intellectual property, and pharmaceutical matters.

Prior to joining Gibbons, Mr. McNulty earned a reputation as a fair-minded prosecutor and respected leader with solid judgment. He spent more than a decade prosecuting criminal cases as an Assistant United States Attorney in New Jersey and was eventually promoted to Chief of the Appeals Division. Mr. McNulty also served as the Deputy Chief of the Criminal Division for several years. At the U.S. Attorney's office, Mr. McNulty worked under a number of U.S. Attorneys, including current Supreme Court Justice Samuel Alito.

He has developed a thorough understanding of the District Court of New Jersey, beginning with his clerkship for the Honorable Frederick B. Lacey.

Mr. McNulty's academic credentials are as impressive as his professional record. He received his law degree from New York University School of Law, where he was a member of the Law Review. And he received his undergraduate degree from Yale University.

Mr. McNulty was named Lawyer of the Year in 2008 by the New Jersey Law Journal. I am confident that, if confirmed, his work as a judge will earn him similar praise.

Judge Michael Shipp has equally impressive credentials. To start, he was born in my hometown of Paterson, New Jersey. Like other Paterson natives before him, Judge Shipp rose from humble beginnings to make an impact on his profession and the community.

Judge Shipp has served as a United States Magistrate Judge in the District Court for the District of New Jersey since 2007. In this capacity, he has conducted proceedings in both civil and criminal cases, including ruling on motions, issuing recommendations to District Court Judges, and performing district court judge duties in cases with magistrate jurisdiction.

Prior to serving as a Magistrate Judge, Judge Shipp worked in the New Jersey Attorney General's office, first as an Assistant Attorney General in charge of Consumer Protection and then as Counsel to the Attorney General. As Counsel, Judge Shipp was in charge of the day-to-day operations of the Department of Law and Public Safety, which included 10,000 employees, 800 of whom were attorneys.

Judge Shipp has also worked as a litigator at the law firm Skadden Arps and as a law clerk to New Jersey Supreme Court Justice James H. Coleman Jr.

Judge Shipp is a graduate of Rutgers University and Seton Hall University Law School, where he continues to teach as an adjunct law professor—a position he has held for more than a decade.

Madame Chairman, I am proud that the federal courthouse in Newark carries my name. When it was dedicated, I requested that an inscription be placed on the wall. It reads, "The true measure of democracy is its dispensation of justice." Mr. McNulty and Judge Shipp are two of the finest attorneys in New Jersey. I am confident both will dispense justice fairly and wisely, and will serve New Jerseyans exceptionally well.

I look forward to working with you, the other committee members, and the rest of the Senate to get these nominees confirmed as quickly as possible.

NOMINATION OF MICHAEL P. SHEA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT; GONZALO P. CURIEL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA; ROBERT J. SHELBY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH

WEDNESDAY, MARCH 28, 2012

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

The Committee met, pursuant to notice, at 3:07 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Richard Blumenthal presiding.

Present: Senators Grassley and Lee.

OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator BLUMENTHAL. I am very pleased. Good afternoon. I'm honored to preside at this meeting of the Senate Judiciary Committee, and I want to call this nominations hearing to order.

I'm grateful to the committee chairman, Senator Patrick Leahy, for asking me to chair it, and particularly glad to do my part in advancing the judicial nomination process, which has been so important to our country.

We need to move forward even more expeditiously than we have, and I think there is a growing sense, a bipartisan spirit of cooperation, thanks in no small part to Senator Grassley, the Ranking Member, who is here today and I want to thank him for his part in doing so. Nearly 1 out of every 10 Federal judgeships is vacant, and Republicans and Democrats, frankly, are working harder, and should work harder, to do more to fill those positions.

Having said that, I'd like to call on Senator Grassley to say whatever he might wish to do in opening the hearing.

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

Senator GRASSLEY. Yes. Later on this hour Senator Lee is going to be here and take over as ranking position so I can go do other things, but until he comes I am going to be here, because that is

my responsibility, and I take that opportunity to welcome the nominees who are appearing before us today, and of course their family and friends who are very proud of them for their selection by the President.

I note that we're making good progress on judicial nominations. Including this very day, we have been in session for 35 days this year. We have had five nomination hearings. This is an average of one hearing every seven of those days. This year we have heard from 20 nominees and I consider this excellent progress.

So, I welcome our nominees today and I put the rest of my statement in the record. The rest of the statement is things that you are going to hear about each of them anyway because it is their biography and their qualifications for the Presidential appointment.

Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you.

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

Senator BLUMENTHAL. Our first nominee to be welcomed today is Michael Shea. He happens to be from the State of Connecticut. I want to call on Senator Lieberman to introduce him to the committee.

PRESENTATION OF MICHAEL P. SHEA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, BY HON. JOE LIEBERMAN, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator LIEBERMAN. Thank you, Mr. Chairman, Senator Grassley. It's an honor to be before you to introduce Michael Shea to the committee as the president's nominee to be the U.S. District Judge for the District of Connecticut.

You'll forgive me if, on a point of personal privilege, I say that I have a tendency this year—which my colleagues I hope will understand—to view everything not only in the moment, but retrospectively as I go through my final year of privilege of serving in the Senate.

I know it's often said of presidents that in some ways the most important decisions they make are the people they put on the Federal bench, particularly the Supreme Court, because they go on and serve long after them.

To some extent I think we might say that of our own service as Senators, to the extent particularly with regard to the District Court, where Senators tend to have more influence in the selection than in the Circuit Court. This is a very important responsibility that we have.

As I look back over these 24 years, over the first part of it of course with Senator Dodd, and now with Senator Blumenthal, I'm grateful for the opportunities we've had, and frankly proud of the people that we've brought to service on the District Court of Connecticut. It's a strong, distinguished, and quite diverse group.

And so it is with this nominee, Michael Shea. Senator Blumenthal and I took this responsibility seriously. We brought together an advisory committee. It was actually a committee that

mostly, but we added some that had performed a similar function for Senator Dodd and me.

We had over 20 very serious candidates applying. They were interviewed, their records were reviewed. This nominee is really a merit selection, which is to say that he ranked right at the top based on the rankings of the group of people we had on the advisory committee. It's with that sense of background and confidence that I'm very proud to introduce him to you.

Michael Shea is from West Hartford, Connecticut. He's a graduate of Amherst College and Yale Law School, which the chairman and I will not hold against him, shall we say, speaking diplomatically. Since his graduation from law school he's served as a clerk for the Honorable James Buckley of the U.S. Court of Appeals for the District of Columbia, who sent a really obviously sincere letter of recommendation on Mr. Shea's behalf, which meant a lot to me.

He worked as an associate in anti-trust law, both here in Washington and for a while in Belgium. I gather he imported somewhat from Belgium, to the great benefit of the country and our country, his family, which is to say his lovely wife.

He is currently—and has been for quite a while—a partner in the Hartford law firm of Day Pitney. As such, he's argued in State and Federal courts across a range of civil and criminal cases and is highly regarded in the State for his extensive writing on legal matters. He's also been active in public service organizations, such as the Nutmeg Big Brothers and Big Sisters, and serves as treasurer of the Connecticut Supreme Court Historical Society.

He's been involved in some pro bono legal matters, representing indigent criminal defendants. In the particular case that earned him recognition from the Connecticut Bar Association, he protected a young mother from having to return her children to an abusive father who happened to have been abroad. So bottom line, Michael Shea is exceptionally well qualified, in my opinion, to serve on the Federal bench.

I don't want to end my introduction without expressing gratitude to President Obama for having nominated him for this position, and I proudly introduce him to the committee with great confidence that, if confirmed—and I hope when confirmed—he will be an outstanding member of the District Court and that our country and our system of justice will benefit from his service.

Thank you very much, Mr. Chairman, Senator Grassley, Senator Lee.

Senator BLUMENTHAL. Thank you, Senator Lieberman. I should say to everyone in attendance that Senator Lieberman, I understand, may have other commitments and he may have to leave before we finish this proceeding. I want to add to that introduction just briefly to say that Mr. Shea is a Hartford native, attended Amherst College before Yale Law School, and graduated summa cum laude from that excellent school.

I know that he has been extraordinarily highly regarded in his work as a lawyer. I know personally because I worked with him as Attorney General, served with him in a number of those pro bono groups, but also worked with him when he represented, for example, the Roman Catholic diocese of Bridgeport in a number of matters, and also St. Francis Hospital and Medical Center.

So, he comes to this process with a lot of really practical, hands-on experience and I would say to him and all the nominees and to their families, there is nothing more important than this job in our justice system. You will be the voice and face of justice for the people who come to your courtroom, as one who has practiced for a few decades and been in those courtrooms.

As Senator Lieberman knows also from his personal experience, people will be coming to you for justice, and for many of them you will be the final word in this process. So, both you and your families should be very, very proud of the service that you've given and the service that you will give, and I'm hopeful that we will move quickly to confirm every one of you.

PRESENTATION OF GONZALO P. CURIEL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT BY HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

I want to introduce now Judge Gonzalo Curiel, who also has been nominated to the United States District Court for the Southern District of California. I'm going to be introducing you because the two Senators from California could not be here. I know he's joined today by his family, as is Mr. Shea.

He was born in East Chicago, Indiana. He's the son of immigrant parents from Mexico, who came to this country with an elementary school education. He attended college in-state at the University of Indiana, graduated in 1976, and received his J.D. degree from the university 3 years later.

After graduating from law school, Judge Curiel worked for a decade as an associate in private practice, and he then spent 17 years as a Federal prosecutor in California. During his 27 years in practice he tried over 300 cases, the vast majority of them Federal criminal jury trials where he served as the sole or lead counsel. That's extraordinary experience.

One of the most significant cases involved the successful prosecution of the Arellano Felix drug cartel, a multi-billion dollar drug trafficking ring responsible for more than 100 murders in the United States and Mexico. He was also the lead attorney on the Presidential Organized Crime Drug Enforcement Task Force in 1999 to 2002.

Governor Schwarzenegger appointed Judge Curiel to the Superior Court of San Diego in November, 2006, and he was reelected to that position in 2008. During his tenure he has been exposed to a wide variety of cases, assigned to domestic violence, criminal cases, family court cases, civil cases, presiding over more than 40 that have gone to verdict or judgment.

He's also spent time giving back to his community. He serves as vice president of the board of trustees of the Urban Discovery Academy Charter School, and from 2003 to 2006 he participated in the Legal Enrichment and Decision-Making—it's called the LEAD program—organized by the Los Angeles District Attorney's Office.

He comes to us, in short, as a nominee with impressive—indeed, extraordinary—record of experience, public service, and I look forward to his swift confirmation. As Senator Lieberman did with Mr. Shea, I want to join in thanking President Obama for his nomina-

tion and for the nomination of Robert Shelby, who will be introduced to this committee by Senator Lee.

PRESENTATION OF ROBERT J. SHELBY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH BY HON. MIKE LEE, A U.S. SENATOR FROM THE STATE OF UTAH

Senator LEE. Thank you very much, Mr. Chairman, and thanks to all of you for joining us today. It's my pleasure to say a few words in support of the nomination of Robert Shelby to be a Federal District Court judge in the State of Utah.

Mr. Shelby is a preeminently qualified lawyer and he has a distinguished career of service, both within and outside of the legal profession. Mr. Shelby graduated from Utah State University and earned a law degree from the University of Virginia.

He served for nearly a decade in the Utah Army National Guard, the 19th Special Forces Group, 1457th Combat Engineer Battalion. At various times during his service Mr. Shelby entered active duty, including during Operation Desert Storm in 1991, during which he served in Germany as combat engineer.

In recognition of his service, Mr. Shelby received a number of military awards, including the United States Army Achievement Medal for Desert Storm and the National Defense Service Medal, and he was honorably discharged with the rank of Specialist 4th Class, E4.

After law school, Mr. Shelby served as a law clerk for the Honorable J. Thomas Green of the U.S. District Court for the District of Utah, the very same court for which he's now been nominated to serve.

His legal practice has included a wide range of both civil and criminal litigation, including white collar and criminal defense and catastrophic personal injury, and complex commercial litigation. He's an accomplished litigator and one who has tried about 35 cases to verdict. He has experience before Federal, State, and appellate courts.

In recognition of his distinguished status as an exception litigator, Mr. Shelby has received a number of awards and honors, including being named an Up and Coming Litigator by Chambers & Partners, and also including the coveted AV Preeminent rating from Martindale Hubble.

Over the course of his career Mr. Shelby has worked with distinction to serve the bar and the bench. He's served on the Salt Lake County Bar Association's Executive Committee since 2002, and he's also served as its vice chairman since 2011.

He's served on the David. K. Watkiss Southerland 2 American Inn of Courts since 1992, and also as its president from 2010 to 2011. That's significant in and of itself because I'm quite sure that that Inn of Court has the longest and most difficult-to-pronounce name of any Inn of Court in Utah, if not the entire intermountain west. He's also served on the Utah Supreme Court's Advisory Committee for Rules of Civil Procedure since 2010.

I'm confident of Mr. Shelby's qualifications, his experience, and his judgment and I'm certain that those will serve our country's judiciary well. I ask for your full consideration of this very outstanding nominee from the President.

Mr. Chairman, I'd also like to note that my friend and colleague, Senator Hatch, who was not able to be here with us today likewise supports Mr. Shelby's nomination, as I do, and I ask that his written statement be placed in the record.

Senator BLUMENTHAL. Hearing no objection, it is so ordered.

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

Senator BLUMENTHAL. I'd like to ask the nominees to now come forward and take your places at the witness table. We have a tradition. We have a rule that we swear our witnesses. So if you could please raise your right hand.

[Whereupon, the witness was duly sworn.]

Senator BLUMENTHAL. Please be seated. Each of you is afforded the opportunity to make a brief opening statement. We'll hear first from Mr. Shea, then go to Mr. Curiel and Mr. Shelby.

STATEMENT OF MICHAEL P. SHEA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

Mr. SHEA. Thank you, Senator Blumenthal, and thank you, Senator Lee, for giving me the opportunity to speak to you today. I'd like to begin also by thanking Senator Leahy and Ranking Member Grassley for convening this hearing. I would like to thank Senator Lieberman for his generous remarks in introducing me, and also you again, Senator Blumenthal. I would also like to thank the President for the honor of this nomination.

Briefly, I'd like to introduce the members of my family and some friends who are here today. With me today is my wife of 21 years, the love of my life, Frederique. Also with us today are our children, our twins Kevin and Lisa, age 16, and our daughter Annabelle, age 10.

Also with me today are my friends from college, Stu and Jamie Rennert, and my friend and law partner, David Doot.

Briefly, I'd like to just acknowledge some folks who may be watching on the webcast. First and foremost, my mother, whose 80th birthday we celebrated recently, and also my seven sisters: Susan, Kathleen, Margaret, Christina, Rosemary, Maura, and Julie.

I'd also like to acknowledge briefly someone who's no longer with us, my father, in whose footsteps as a judge I am hoping to follow.

Finally, I'd like to acknowledge my friends and colleagues at Day Pitney who are watching on the webcast as well.

Thank you very much. I'd be happy to answer any questions that you may have.

Senator BLUMENTHAL. We're going to go now to Judge Curiel. I just want to wish Mrs. Shea a very happy birthday, a happy 80th birthday. I was actually remiss. I should have mentioned that I appeared before your father, who was an extraordinarily distinguished member of our Bar and our court in the State of Connecticut.

Mr. SHEA. Thank you, Senator.

Senator BLUMENTHAL. So, thank you for reminding me about that fact.

Judge.

[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).

   Michael Peter Shea

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

   United States District Judge for the District of Connecticut

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.

   Day Pitney LLP
   242 Trumbull Street
   Hartford, Connecticut 06103

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

   1967; Hartford, Connecticut

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

   1990 – 1993, Yale Law School; J.D., 1993
   1985 – 1989, Amherst College; B.A. (*summa cum laude*), 1989
   1988, Harvard College (visiting student); no degree awarded

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
   Day Pitney LLP (formerly Day, Berry & Howard LLP)
   242 Trumbull Street
   Hartford, Connecticut 06103

Partner (2003 – Present)
Associate (1998 – 2002)

1994 – 1995; Summer 1998
Cleary, Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Associate

1995 – 1998
Cleary, Gottlieb Steen & Hamilton LLP
Rue de la Loi, 57
Brussels, Belgium 1040
Associate

1993 – 1994
U.S. Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001
Law Clerk to the Hon. James Buckley

1992 – 1993
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, Connecticut 06103
Law Clerk

Summer 1992
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, Connecticut 06103
Summer Associate

Summer 1992
O'Melveny & Myers LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
Summer Associate

Summer 1991
Wiggin & Dana LLP
One Century Tower
265 Church Street
P.O. Box 1832
New Haven, Connecticut 06508
Summer Associate

1989 – 1990
Congressional Quarterly (now known as CQ Roll Call)
77 K Street, N.E.
Washington, D.C. 20002
Editorial Assistant

1989 – 1990
Princeton Review
1776 Massachusetts Avenue, NW #125
Washington, D.C. 20003
Part-time Instructor (SAT and LSAT)

Summer 1989
Office of Congresswoman Barbara B. Kennelly
Longworth House Office Building
Washington, D.C. 20515
Lyndon Baines Johnson Fellow

Other Affiliations (Uncompensated):

2009 – Present
Connecticut Supreme Court Historical Society
The Society does not have an address
Treasurer

Approx. 2005 – Present
Yale Law School Alumni Association of Central Connecticut
The Association does not have an address
Vice-President

2004 – 2005
Connecticut Law Tribune
201 Ann Uccello Street, 4th Floor
Hartford, Connecticut 06103
Columnist

2003 – 2005
Nutmeg Big Brothers Big Sisters
30 Laurel Street, Suite 3
Hartford, Connecticut 06106
Board Member

1999 – 2002
Oliver Ellsworth Inn of Court

The Inn does not have an address
Secretary

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

   I have not served in the 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.

   Professional Honors/Awards:

   Recipient of 2008 Connecticut Bar Association Pro Bono Award
   Recipient of 2006 Hartford County Bar Association Pro Bono Award
   Listed in Best Lawyers in America (Antitrust and Appellate Practice)
   Listed in Best Lawyers in New York Region (Appellate Practice)
   Listed in New England and Connecticut Super Lawyers and Super Lawyers Corporate Counsel Edition (Appellate Practice)
   James W. Cooper Fellow, Connecticut Bar Foundation

   Academic Awards/Distinctions:

   Yale Law School:

   Recipient of Raphael Lemkin Prize for Best Paper in International Human Rights
   Senior Editor, Yale Law Journal

   Amherst College:

   Phi Beta Kappa
   Jeffrey J. Carre Award (for academic excellence in the French Department)

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
   - Antitrust Section (Approx. 2002 – Present)
   - Council of Appellate Lawyers (Approx. 2004 – Present)

Connecticut Bar Association
Antitrust Section, Chair (2008 – 2011)
Appellate Practice Committee

Connecticut Bar Foundation, James W. Cooper Fellows Program, Fellow

Connecticut Supreme Court Historical Society
Treasurer (2009 – Present)
Programs Committee Co-Chair (2005 – 2009)

Hartford County Bar Association

New England Legal Foundation, Connecticut Advisory Council (2009 – Present)

Oliver Ellsworth Inn of Court
Secretary (1999 – 2002)

Standing Committee on Recommendations for Admission to the Bar, Hartford County (2001 – 2009)

U.S. Court of Appeals, Second Circuit, Criminal Justice Act Panel (2004 – 2007)

U.S. District Court for the District of Connecticut, Criminal Justice Act Panel (2000 – 2005)

10. **Bar and Court Admission**:

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

Connecticut, 1993
District of Columbia, 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.

Supreme Court of the United States, 2005
United States Court of Appeals for the First Circuit, 2003
United States Court of Appeals for the Second Circuit, 2001
United States Court of Appeals for the Third Circuit, 2006
United States Court of Appeals for the Fourth Circuit, 2009
United States Court of Appeals for the District of Columbia Circuit, 2002

United States District Court for the District of Connecticut, 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.

American Civil Liberties Union (Approx. 2009 – 2010)

Nutmeg Big Brothers Big Sisters
Board Member (2003 – 2005)

Swift's Inn (Lunch group of lawyers and judges) (2011 – Present)

Winding Trails (Recreational Association) (Approx. 2005 – 2008)

Yale Law School Alumni Association of Central Connecticut
Vice-President (2005 – Present)

Yale Law School Association
Executive Committee (2010 – 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 in response to 11a 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.

The following list is complete, to the best of my knowledge, based on my recollection and thorough searches of my files and electronic databases.

With Elizabeth Leaderman, "Antitrust and Insurers: A World Without McCarran," *Insurance And Financial Services Committee Newsletter* (American Bar Association, Antitrust Section), Spring 2010. Copy supplied.

With Erick Sandler, "Is it Time to Change Certiorari Process at the Supreme Court?" *For The Defense*, Nov. 2009. Copy supplied.

With Erik Beard, "Resident Privilege: When Municipalities Favor Their Own in Granting Access to Public Spaces," *Municipal Lawyer*, Mar./Apr. 2009. Copy supplied.

"Allow Prompt Appeals," *National Law Journal*, Apr. 13, 2009. Copy supplied.

With Daniel Foster, "Putting the Horse Back in Front of the Cart: Reexamining the Joint Appendix Rule for Appeals in Federal Court," *For the Defense*, Apr. 2009. Copy supplied.

The Appellate Advocate, Day Pitney Newsletter (Editor), Feb. 6, 2009. Copy supplied.

With Daniel Foster, "Supreme Court Grants Certiorari to Clarify Appealability of Remand Orders," *Day Pitney Appellate Alert*, Oct. 16, 2008. Copy supplied.

The Appellate Advocate, Day Pitney Newsletter (Editor), Oct. 12, 2007. Copy supplied.

With Howard Fetner, "The Connecticut Supreme Court Confronts the Dilemma of 'General Economy' Damages and Duplicative Recoveries," *The Insurance Policy* (American Bar Association, Antitrust Section), Fall 2007. Copy supplied.

"Philip Morris: No U.S. Agent," *National Law Journal*, Apr. 23, 2007. Copy supplied.

The Appellate Advocate, Day Pitney Newsletter (Editor), Apr. 13, 2007. Copy supplied.

With Alfred Marks, "Life Without Interlocutory Relief," *New York Law Journal*, Oct. 11, 2005. Copy supplied.

"Interlocutory Review of Privilege Issues," *Connecticut Law Tribune*, Mar. 30, 2005. Copy supplied.

"Appealing Class Certification Rulings," *Connecticut Law Tribune*, Nov. 15, 2004. Copy supplied.

"Supreme Court Faces Tough Sentence Choice," *Connecticut Law Tribune*, Oct. 4, 2004. Copy supplied.

"When Less Is More: Picking Winning Issues," *Connecticut Law Tribune*, Aug. 30, 2004. Copy supplied.

"Lifting the No-Cite Rule," *Connecticut Law Tribune*, Aug. 9, 2004. Copy supplied.

"Justice Delayed is Justice Denied," *Connecticut Law Tribune*, July 28, 2004. Copy supplied.

"Martha Moves the Law," *Connecticut Law Tribune*, May 24, 2004. Copy supplied.

"What's Right with Our Legal System," *Hartford Courant*, May 14, 2004. Copy supplied.

"Certification of State Law Questions," *Appellate Advocacy Committee Newsletter*, Winter 2004. Copy supplied.

With Michael Parets, "Defending Against Pro Se Appeals in the Second Circuit," *New York Law Journal*, Oct. 14, 2003. Copy supplied.

"Back to the Wellspring: Does Extending Noerr-Pennington Immunity to Settlements Foster the First Amendment Right to Petition the Government?", *Exemptions & Immunities Committee Newsletter* (American Bar Association, Antitrust Section), Feb. 2003. Copy supplied.

Letter to the Editor, "Charter Editorial Raises Eyebrows," Hartford Courant, Nov. 28, 2000. Copy supplied.

With Stanley Twardy Jr., "Anti-Kickback Anxiety," *Business Law Today* May/June 2000. Copy supplied.

With Stanley Twardy Jr., "Kicking Back at Anti-Kickback," *Legal Times*, Sept. 20, 1999. Copy supplied.

"The Bench Jockey Rules," *Legal Times*, May 18, 1998. Copy supplied.

With Maurits Dolmans, "EC Competition Rules and Telecommunications," *International Computer Law*, Nov. 1997. I have been unable to obtain a copy.

"Turning Villains into Victims," *Legal Times*, May 5, 1997. Copy supplied.

"Attorney-Operated Jury Picking," *Legal Times*, July 15, 1996. Copy supplied.

With Mark Leddy, "Reaching Consent Under a Judicial Shadow," *Legal Times*, Apr. 10, 1995. Copy supplied.

"Expanding Judicial Scrutiny of Human Rights in Extradition Cases after Soering," *Yale J. of Int'l Law*, Winter 1992. Copy supplied.

"Capitol Hill Reaffirms Support for Mandela and Sanctions," *Congressional Quarterly Weekly Report*, June 30, 1990. Copy supplied.

"Targeting of Navy 'Homeports' Puts Politicians on Spot," *Congressional Quarterly Weekly Report*, May 26, 1990. Copy supplied.

"A Look at the 1990 Census," *Congressional Monitor*, Apr. 30, 1990. Copy supplied.

"Immigration Law Sanctions Hurt Minority Job Seekers," *Congressional Monitor*, Apr. 2, 1990. Copy supplied.

"House Panel Seeks Criminal Penalties," *Congressional Quarterly Weekly Report*, Mar. 31, 1990. Copy supplied.

"As Compact Comes Up Short, Islands in Holding Pattern," *Congressional Quarterly Weekly Report*, Mar. 10, 1990. Copy supplied.

"Pretoria's Reforms Take Sting Out of New Sanctions Drive," *Congressional Quarterly Weekly Report*, Feb. 10, 1990. Copy supplied.

"Indians Skeptical of Report Urging Program Overhaul," *Congressional Quarterly Weekly Report*, Jan. 13, 1990. Copy supplied.

"Former HUD Secretary Pierce May Face Special Prosecutor," *Congressional Quarterly Weekly Report*, Dec. 9, 1989. Copy supplied.

"Congress Finally Clears Way for Limited Independence," *Congressional Quarterly Weekly Report*, Dec. 2, 1989. Copy supplied.

With Phil Kuntz, "Pierce Again Cites Fifth Amendment," *Congressional Quarterly Weekly Report*, Oct. 28, 1989. Copy supplied.

"The D.C. Central Kitchen," *The Hill Rag*, Oct. 20, 1989. Copy supplied.

Letter to the Editor, "Commentary on Surrogacy Overlooked Several Points." *Connecticut Law Tribune*, July 31, 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.

Annual Report of the Antitrust & Trade Regulation Section of the Connecticut Bar Association (2008). Copy supplied.

Approx. 1997 or 1998: To the best of my recollection, I contributed to an analysis of the draft criminal code for the Republic of Lithuania by the Central and East European Law Initiative of the American Bar Association (now known as the ABA Rule of Law Initiative). I have been unable to obtain a copy of this report.

November 1997: I contributed to an analysis of the draft criminal procedure code for the Kyrgyz Republic by the Central and East European Law Initiative of the American Bar Association (now known as the ABA Rule of Law Initiative). Copy of the report 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.

March 11, 2009: On behalf of the Bridgeport Roman Catholic Diocese, I testified before the Judiciary Committee of the Connecticut General Assembly with regard to Raised Bill 1098, which would have amended Connecticut's religious corporation statutes to alter the governance structure of Roman Catholic parishes in Connecticut. A copy of my statement to the Committee 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.

I have spoken at various bar events on antitrust, appellate practice, and other topics, and I have introduced speakers at bar events. I have listed below all those I can remember after searching my calendars and personal files. It has not been my practice to write my remarks out verbatim in advance or to maintain the notes that I have prepared in advance of such talks. Where I have maintained copies of notes or outlines, I have so indicated below and supplied copies.

October 4, 2011: I spoke as a visiting lecturer in a class on appellate advocacy at Yale Law School. My remarks focused on preparing the record for appeal and appellate motions. Notes supplied.

October 27, 2010: I spoke as a visiting lecturer in a class on appellate advocacy at Yale Law School. My remarks focused on oral argument. Notes supplied.

May 13, 2010: I introduced candidates for Connecticut Attorney General at a forum sponsored by the Antitrust Section of the Connecticut Bar Association. My remarks provided a brief biographical sketch of each candidate before the candidate addressed the audience. I have no notes, transcript or recording. The Connecticut Bar Association is located at 30 Bank Street, P.O. Box 350, New Britain, Connecticut 06050.

May 12, 2010: CLE Client presentation on electronic discovery and document preservation. New York, New York. The materials are confidential.

April 13, 2010: Training session for Day Pitney associates on motion practice. My remarks focused on the basics of dispositive motion practice in the trial courts. I have no notes, transcript or recording. Day Pitney is located at 242 Trumbull Street, Hartford, Connecticut, 06103.

November 5, 2009: I introduced Leonard Gordon, Director, Northeast Regional Office, Federal Trade Commission, at a dinner meeting of the Antitrust Section of the Connecticut Bar Association. I provided a brief biographical sketch of Mr. Gordon before he addressed the audience. I have no notes, transcript or recording. The Connecticut Bar Association is located at 30 Bank Street, P.O. Box 350, New Britain, Connecticut 06050.

May 1, 2009: Training session for Day Pitney associates on appeals. My remarks for junior attorneys at the firm focused on the basics of appellate practice. I have no notes, transcript or recording. Day Pitney is located at 242 Trumbull Street, Hartford, Connecticut, 06103.

April 23, 2009: I introduced J. Thomas Rosch, Commissioner of the Federal Trade Commission, at a dinner meeting of the Antitrust Section of the Connecticut Bar Association. I provided a brief biographical sketch of Mr. Rosch before he addressed the audience. I have no notes, transcript or recording. The

Connecticut Bar Association is located at 30 Bank Street, P.O. Box 350, New Britain, Connecticut 06050.

October 23, 2008: I introduced the Hon. Peter Zarella, Associate Justice of the Connecticut Supreme Court, and Attorney Wesley Horton of Horton, Shields & Knox, at a meeting of the Connecticut Supreme Court Historical Society. I provided brief biographical sketches of Justice Zarella and Attorney Horton before they addressed the audience. I have no notes, transcript or recording. The Connecticut Supreme Court Historical Society does not have an address.

Approx. September 25, 2008: I spoke as a visiting lecturer to a University of Connecticut Law School class on insurance law. The focus of my remarks was antitrust issues raised by investigations of the insurance brokerage industry. Notes supplied.

Approx. May 2008: I introduced Jerry Farrell Jr., Commissioner of the Connecticut State Department of Consumer Protection, at a dinner meeting of the Antitrust Section of the Connecticut Bar Association. I provided a brief biographical sketch of Mr. Farrell before he addressed the audience. I have no notes, transcript or recording. The Connecticut Bar Association is located at 30 Bank Street, P.O. Box 350, New Britain, Connecticut 06050.

January 28, 2008: I introduced Kenneth Glazer, then-Deputy Director of the Federal Trade Commission's Bureau of Competition, at a dinner meeting of the Antitrust Section of the Connecticut Bar Association. I provided a brief biographical sketch of Mr. Glazer before he addressed the audience. I have no notes, transcript or recording. The Connecticut Bar Association is located at 30 Bank Street, P.O. Box 350, New Britain, Connecticut 06050.

October 11, 2007: I introduced the Hon. Henry Cohn, Judge of the Connecticut Superior Court, at a meeting of the Connecticut Supreme Court Historical Society. I provided a brief biographical sketch of Judge Cohn before he addressed the audience. I have no notes, transcript or recording. The Connecticut Supreme Court Historical Society does not have an address.

June 22, 2007: I was part of a panel presentation sponsored by the Fairfield County Bar Association entitled, "Appellate Tips for Family Lawyers." The substance of my remarks concerned appellate issues that commonly arise in family law cases. PowerPoint slides that include my notes supplied.

May 31 and June 18, 2007: I gave presentations for Day Pitney attorneys entitled, "Federal Appellate Practice for Trial Lawyers." PowerPoint slides that include my notes supplied.

May 10, 2007: I introduced Seth Waxman, former Solicitor General of the United States and a partner at Wilmer Hale LLP, as keynote speaker at the annual

meeting of the Connecticut Supreme Court Historical Society. A video recording of the event is available at:
http://www.jud.ct.gov/HistoricalSociety/event_archive.htm.

October 25, 2006: I was part of a panel presentation sponsored by the Connecticut Defense Lawyers Association and entitled, "Appellate Practice for Trial Lawyers." Cromwell, Connecticut. PowerPoint slides that include my notes supplied.

August 28, 2006: Presentation for Safeco Insurance attorneys on preserving appellate rights in civil jury trials. Farmington, Connecticut. Outline supplied.

May 16, 2006: I introduced Akhil Amar, Sterling Professor of Law, Yale Law School, as keynote speaker at the annual meeting of the Connecticut Supreme Court Historical Society. I provided a brief biographical sketch of Mr. Amar before he addressed the audience. I have no notes, transcript or recording. The Connecticut Supreme Court Historical Society does not have an address.

May 3, 2006: Training session for Day Pitney attorneys on preserving error in the trial court. My remarks focused on preserving the record. Notes supplied.

April 20, 2006: I gave a presentation at a seminar in Hartford, Connecticut sponsored by the National Business Institute and entitled, "Preserving Your Right to Appeal: Essential Trial and Post-Trial Motions in Connecticut Civil Practice." My remarks focused on post-verdict motions. Presentation materials supplied.

November 16, 2005 and November 14, 2006: Training session for Day Pitney associates on going to court. My remarks for junior attorneys at the firm focused on preparation techniques and what to expect in the courtroom. I have no notes, transcript or recording. Day Pitney is located at 242 Trumbull Street, Hartford, Connecticut, 06103.

November 2, 2005: I gave a presentation at a seminar sponsored by the Connecticut Defense Lawyers Association concerning interlocutory appeals. Hartford, Connecticut. Notes and PowerPoint slides supplied.

Approx. September or October 2005: I gave a presentation at a seminar sponsored by the Connecticut Defense Lawyers Association concerning appeals of discovery orders. Hartford, Connecticut. PowerPoint slides supplied.

February 24, 2005: I spoke at a dinner meeting of a Connecticut Bar Association section regarding *Kelo v. City of New London*. I have no notes, transcript or recording, and I do not remember the substance of the remarks or the identity of the Connecticut Bar Association section involved. The Connecticut Bar Association is located at 30 Bank Street, P.O. Box 350, New Britain, Connecticut 06050.

May 28, 2004: I spoke in remembrance of my father, the late Hon. David M. Shea, formerly Associate Justice of the Connecticut Supreme Court, at a memorial service held by the Hartford County Bar Association. I have no notes, transcript or recording. The Hartford County Bar Association is located at 100 Pearl Street, 4th Floor, Hartford, Connecticut 06103.

May 11, 2004: Training session for Day Pitney associates on appeals. My remarks focused on the basics of appellate practice. Copy of notes supplied.

Approx. Spring 2004: Presentation for St. Paul/Travelers attorneys on appellate issues in subrogation cases. Hartford, Connecticut. Materials supplied.

November 16, 2003: Training session for Day Pitney associates on motion practice. My remarks for junior attorneys at the firm focused on preparation techniques and what to expect in the courtroom during motion practice. I have no notes, transcript or recording. Day Pitney is located at 242 Trumbull Street, Hartford, Connecticut 06103.

October 30, 2003: Presentation on "Noerr-Pennington and Settlements" during a brown bag lunch event. American Bar Association Antitrust Section. I have no notes, transcript or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

Approx. October 2001: I gave a presentation to the Oliver Ellsworth Inn of Court on lawyers helping other lawyers who are impaired. Hartford, Connecticut. Notes supplied.

Approx. Winter 1998-1999: Training session for Connecticut paralegals group concerning responding to Government investigations. Cromwell, Connecticut. 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.

These articles and other materials reflecting interviews are those I have been able to find after a search of my personal records and electronic databases. I have not included articles that quoted statements I made in court or in publicly filed papers such as legal briefs.

Approx. May 9, 2011: I gave a brief television interview concerning a settlement of thirty-three cases against Saint Francis Hospital and Medical Center arising from allegations of sexual abuse by the late Dr. George Reardon. I do not recall

the name of the reporter to whom I spoke and I have been unable to obtain a copy of the video of the interview.

Thomas B. Scheffey, "Anatomy of A Firestorm," *Connecticut Law Tribune*, Mar. 16, 2009. Copy supplied.

Lisa van der Pool, *Survey: More Companies Will Move Legal Work In-House*, *Boston Business Journal*, July 14, 2008. Copy supplied.

Mark Zaretsky, "E. Haven Cops Cleared in Brutality Suit," *New Haven Register*, June 2, 2008. Copy supplied.

Ben Heath, "Kempner Wants Judge to Reconsider Greenwich Beach Ruling," *Stamford Advocate*, May 27, 2008 (reprinted in multiple outlets). Copy supplied.

Approx. April 16, 2008: I gave a brief television interview to Cable News Channel 12 concerning *Kempner v. Town of Greenwich*, a lawsuit challenging beach access fees in which I was representing the Town. I do not know the name of the reporter to whom I spoke, I do not know if the interview or any quote was ever aired, and I have been unable to obtain a copy of the video of the interview.

Michael Dinan, "Library to Allow Speaker's Visit," *Greenwich Time*, Feb. 14, 2008. Copy supplied.

October 6, 2007: I gave a radio interview on the program, "Law Talk," a program sponsored by the Hartford County Bar Association that aired on WTIC 1080 AM. My remarks concerned appeals and appellate practice. I have been unable to obtain any recording of the interview.

Alison Leigh Cowan, "Parish Falls Out of Step, and Favor, with Diocese," *New York Times*, July 7, 2007. Copy supplied.

Thomas B. Scheffey, "Mother's Helpers," *Connecticut Law Tribune*, July 31, 2006. Copy supplied.

Approx. July 2005: I gave a radio interview to a reporter for Connecticut Public Radio concerning the U.S. Supreme Court's decision in *Kelo v. City of New London*. I do not recall the name of the reporter and have been unable to obtain any recording of the interview.

Anthony Cronin, "Justice O'Connor Attacks Ruling in Stinging Dissent," *New London Day*, June 24, 2005. Copy supplied.

Kate Moran, "Handicapping the Kelo Case Is A Difficult Call," *New London Day*, June 12, 2005. Copy supplied.

Tony Mauro, "Supremes Take Bite Out of Sentencing Guidelines," *Connecticut Law Tribune*, Jan. 17, 2005. Copy supplied.

"Computer-Related Theft Provides Opportunity for Cyber Crooks," *Hartford Business Journal*, July 5, 2001. I have been unable to obtain a copy.

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:

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.

2001 – 2009
Standing Committee on Recommendations for Admission to the Bar, Hartford County, Member
First appointed by the Honorable Robert Beach, Judge, Connecticut Appellate Court; re-appointed by the Judges of the Superior Court

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 a paid position with any political campaign, organization or political entity. Over the years, I have volunteered for various activities and fundraising events on behalf of candidates for elective office. Specifically, I served on informal, ad hoc committees that sponsored fundraising events for United States Senate candidate Michael Bennet in 2009 and 2010. In the summer of 1988, I was a part-time volunteer for the United States Senate campaign of Joseph Lieberman, assisting with office tasks and administrative work at campaign appearances.

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

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

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

1993 – 1994: I served as a law clerk to the Honorable James L. Buckley, Judge of the United States Court of Appeals for the District of Columbia Circuit.

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

I have never practiced alone.

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

1994 – 1995; Summer 1998
Cleary Gottlieb, Steen & Hamilton LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C.
Associate

1995 – 1998
Cleary, Gottlieb Steen & Hamilton LLP
Rue de la Loi, 57

Brussels, Belgium 1040
Associate

1998 – Present
Day Pitney LLP (formerly known as Day, Berry & Howard LLP)
242 Trumbull Street
Hartford, Connecticut 06103
Associate (1998 – 2002)
Partner (2003 – 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 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.

In October 1994, I joined Cleary, Gottlieb Steen & Hamilton in Washington, D.C., where I worked primarily on civil and criminal antitrust matters. My responsibilities included drafting pleadings and coordinating responses to civil discovery and to a grand jury subpoena in a large criminal investigation of price fixing.

In October 1995, I was appointed to Clearly Gottlieb's Brussels, Belgium office, where I continued to work on antitrust matters, including European Union antitrust matters, as well as, to a lesser extent, international business transactions in Eastern Europe and Africa. My primary responsibilities included drafting briefs in antitrust matters with the European Commission and in an appeal to the European Court of First Instance. In the summer of 1998, I returned to Cleary's Washington, D.C. office, where I assisted in defending a corporate client in a large money-laundering prosecution.

In September 1998, I returned to Connecticut, accepting a position as an associate at Day, Berry & Howard, now known as Day Pitney. My career at Day Pitney has spanned a broad range of civil and criminal litigation. My practice has included trials and appeals in commercial, civil rights, personal injury, criminal, family, and other cases.

During my first six years at Day Pitney, I devoted at least half of my practice to criminal defense work, including representing corporations and individuals in the defense of white-collar criminal investigations and

prosecutions, and representing indigent criminal defendants on a pro bono basis and under the Criminal Justice Act. Since 2004, my practice has shifted away from criminal defense work, and is currently devoted almost exclusively to civil litigation.

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 Cleary Gottlieb, I represented large, corporate clients involved in antitrust litigation or investigations. I also represented an individual in a pro bono housing case in the D.C. Superior Court.

At Day Pitney, I have represented a wide range of clients, including large corporations, non-profit entities, municipalities, and individuals, including indigent individuals whom I have represented in pro bono matters.

My litigation practice at Day Pitney has been wide-ranging and has evolved over the years, but taken as a whole, it has focused on matters that can be grouped into five categories: (1) antitrust and health care litigation with governmental entities and private parties, and investigations by governmental entities (such as State Attorneys General and the Federal Trade Commission); (2) other commercial litigation, including contractual disputes and securities cases; (3) mass tort cases; (4) First Amendment cases; and (5) criminal matters, including grand jury investigations of corporations and individuals and representation of indigent criminal defendants in federal and state courts. I also currently serve as Chair of the firm's Appellate Practice Group. Since becoming a partner in January 2003, I have devoted a substantial portion of my practice to appeals, coupling this with trial work. In the past decade, I have argued twenty appeals, including six at the U.S. Court of Appeals for the Second Circuit.

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

About half of my practice at Cleary Gottlieb was devoted to litigation, with the other half consisting of antitrust counseling and business transactions.

At Day Pitney (and Day Berry & Howard), virtually all of my practice has been devoted to litigation, although I have occasionally done some antitrust and insurance regulatory counseling.

My practice at Day Pitney has been approximately half in the federal courts and half in the state courts. I appear regularly in court. In 2011, for example, I estimate that I appeared in court for substantive arguments (i.e., excluding status conferences and mediations) approximately eight times. For some years

(especially when I first arrived at the firm), the figure is lower; in years in which I have had long trials (e.g., 2001 and 2004), the figure is higher. I have also appeared at evidentiary hearings at the Connecticut Freedom of Information Commission and the Connecticut Insurance Department.

The percentages below reflect estimates of my practice over the past decade.

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

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

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

I have tried to verdict, judgment or final decision nine cases. I was sole counsel in one of these, chief counsel in four, and associate counsel in four.

Not included in these figures are another three cases (two jury cases and one non-jury case) that I tried but that settled after evidence began. In one of these cases, I was chief counsel; in the other two, I was associate counsel.

In all of these, I had a substantial courtroom role, including examining witnesses, giving the opening statement or closing argument, or arguing significant trial motions and jury instruction issues. I have not listed here any trials in which I was a member of the trial team but did not participate significantly in oral advocacy in the courtroom during the actual trial.

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 was the principal author of the amicus brief for the Connecticut Conference of Municipalities and the municipal leagues of thirty-one other states in *Kelo v. City of New London*, 545 U.S. 469 (2005). Copy of brief 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. *Connecticut State Medical Society v. Connecticut Department of Insurance et al.*, No. HHB-CV10 6003160S; Connecticut Superior Court, Judicial District of Waterbury; Hon. Carl J. Schuman; 2009 – 2010.

I was lead counsel for United Healthcare in an appeal of the Connecticut Insurance Department's decision to approve United Healthcare's acquisition of subsidiaries of Health Net of the Northeast, Inc. The appeal was brought by the Connecticut State Medical Society, which argued that the Department had failed to take account of certain factors and that the acquisition would have anti-competitive effects. The Connecticut Superior Court dismissed the appeal, accepting our argument that the Connecticut State Medical Society lacked standing. I argued the successful motion to dismiss the appeal for United Healthcare. Together with attorneys at Skadden, Arps, Slate, Meagher & Flom, I also represented United Healthcare in the underlying Department of Insurance proceeding at which the acquisition was approved. I gave the opening statement at the Insurance Department's hearing on the acquisition.

Co-counsel:

Assistant Attorney General Matthew Budzik, Esq. (Counsel for Department of Insurance)
55 Elm Street
P.O. Box 120
Hartford, CT 06141
(860) 808-5049

Robert Sullivan, Esq.
Skadden, Arps, Slate, Meagher & Flom
Four Times Square

New York, NY 10036
(212) 735-2930

Opposing counsel:

Gregory Pepe, Esq.
Neubert, Pepe & Monteith
195 Church Street, 13th Floor
New Haven, CT 06510
(203) 764-2825

2. *Parish of St. Paul's Episcopal Church v. Episcopal Diocese of Connecticut Donations & Bequest for Church Purposes, Inc.*, 3:05-cv-0105; District of Connecticut; Hon. Janet Bond Arterton; 2005 – 2007.

I was the lead attorney for the Episcopal Diocese of Connecticut and its then-Bishop, in a lawsuit brought by six Episcopal parishes challenging disciplinary and governance actions of the Diocese. The dispute arose from the Bishop's support of the 2005 decision of the national Episcopal Church to ordain an openly gay man as an Episcopal Bishop. The six parishes disagreed with that decision, and ultimately sought to secede from the Diocese and to take ownership of church buildings and property. The District Court granted our motion to dismiss the action, which was based on Supreme Court precedents holding that the First Amendment commits ecclesiastical disciplinary and doctrinal determinations of the type the plaintiffs were challenging to the sole discretion of the bishop and other church authorities. The plaintiffs appealed to the U.S. Court of Appeals for the Second Circuit, but after full briefing, withdrew their appeal. I was the architect of the litigation strategy and the primary author of all briefs, and I spoke on behalf of the clients at status and pre-filing conferences before Judge Arterton. There were no formal hearings in the matter.

Co-counsel:

Heather Anderson, Esq. (Counsel for Presiding Bishop of Episcopal Church of United States)
Goodwin Proctor
901 New York Avenue, N.W.
Washington, D.C. 20001
(202) 346-4188

Associate Attorney General Perry Zinn-Rowthorn, Esq. (Counsel for State of Connecticut)
55 Elm Street
P.O. Box 120
Hartford, CT 06141
(860) 808-5092

Opposing Counsel:

Ralph Dupont, Esq.
The Dupont Law Firm
1177 Summer Street, 6th Floor
P.O. Box 3325
Stamford, CT 06905
(203) 965-8355

3. *State of Connecticut v. Ross*, KNLCR84-20300; Connecticut Superior Court, Judicial District of New London; Hon. Patrick J. Clifford; 2005.

In 2005, the Connecticut Superior Court appointed my partner, Thomas Groark, as Special Counsel to assist it in a death penalty case, with the task of advocating that Ross, a serial killer who had been sentenced to death and had sought to forgo further challenges to his sentence, was not acting competently or voluntarily in his decision to waive his rights. The Court appointed a Special Counsel to play this role because Ross's chosen counsel was assisting him in his waiver of further challenges and the appointment allowed for an adverse presentation of the evidence bearing on the competency and voluntariness of Ross's decision.

Mr. Groark asked me to work with him, and we spent approximately three months litigating the case on a pro bono basis. The case involved a six-day evidentiary hearing. At the hearing, I conducted the direct examination of two fact witnesses and cross-examined Mr. Ross's psychiatric expert. The trial court ultimately decided that Mr. Ross was acting competently and voluntarily. I continued as Special Counsel in arguing the appeal of that determination in the Connecticut Supreme Court. The Supreme Court's decision affirming the trial court's ruling is reported at *State of Connecticut v. Ross*, 273 Conn. 684 (2005). Attorney Groark and I and our team received the Hartford County Bar Association's 2006 Pro Bono Award for our work on this case.

Opposing Counsel:

Kevin Kane, Esq. (Counsel for the State)
Chief State's Attorney
300 Corporate Place
Rocky Hill, CT 06067
(860) 258-5800

T.R. Paulding, Esq. (Counsel for Ross)
627 Main Street #2
Manchester, CT 06040
(860) 432-9813

4. *Kempner v. Town of Greenwich*, 3-06-CV-1393; District of Connecticut; Hon. Janet C. Hall; 2006 – 2008.

I was lead counsel for the Town of Greenwich, Connecticut, in a class action brought by a bicyclist challenging beach access fees charged to nonresidents that were greater than those that the Town charged its own residents. After working with our client to reduce the fees charged to nonresidents to an amount reflecting the per-visit cost of maintaining the beaches, we successfully defended the action. We defeated the plaintiff's motion to certify a class, *Kempner v. Town of Greenwich*, 249 F.R.D. 15 (D. Conn. 2008), and won summary judgment for the Town on the injunctive relief claims and all other claims except a nominal damages claim, based on the failure of the two named plaintiffs to demonstrate standing, *Schwarz v. Town of Greenwich*, 562 F. Supp. 2d 242 (D. Conn. 2008). I supervised all briefing and discovery in the case, and argued all motions before the Court in a series of hearings.

Opposing counsel:

J. Joseph Bainton, Esq.
Smith, Gambrell & Russell
250 Park Avenue, Suite 1900
New York, NY 10177
(212) 907-9700

5. *Data Support Associates, Inc. v. MGE UPS Systems, Inc. v. Enersys, Inc.*, 3:02CV1418; District of Connecticut; Hon. Ellen Bree Burns; 2002 – 2004.

I was lead counsel for MGE UPS Systems, Inc., in a commercial dispute over the sale of industrial batteries for so-called uninterruptible power systems. The plaintiff claimed that MGE UPS Systems had breached its obligations under the Uniform Commercial Code to sell batteries in good, working condition. Our client also brought a third-party claim against Enersys, Inc., the manufacturer of the batteries. The case settled after seven days of evidence in a bench trial before the Hon. Ellen Bree Burns. I supervised all briefing and discovery in the case, and I first-chaired the trial, giving the opening statement and examining most of the witnesses.

Opposing Counsel:

Gary Klein, Esq. (Counsel for Data Support Associates)
Sandak Hennessey & Greco LLP
707 Summer Street, Suite 300
Stamford, CT 06901
(203) 425-4200

Daniel Huyett, Esq. (Counsel for Enersys)
Stevens & Lee
111 North Sixth Street

P.O. Box 679
Reading, PA 19603
(610) 478-2000

6. *State of Connecticut v. Marsh & McLennan Companies, Inc.*, FST-CV-05-4004360-S (X05); Connecticut Superior Court, Judicial District of Stamford-Norwalk; Hon. John F. Blawie; 2005 – 2009.

I represented Marsh & McLennan in the Connecticut Attorney General's antitrust and unfair trade practices suit alleging bid rigging and illegal commissions in the insurance brokerage industry. I became lead counsel in the case in 2007. I supervised all briefing and discovery efforts, coordinated strategy with Marsh's counsel in a large federal Multidistrict Litigation raising similar issues, drafted briefs for Marsh for a similar lawsuit brought by state enforcement authorities in Florida, and argued various pre-trial motions in the Connecticut Superior Court. I also argued an interlocutory appeal in the Connecticut Supreme Court on an issue of first impression involving the availability of damages to the "general economy" of Connecticut. *State of Connecticut v. Marsh & McLennan Companies, Inc.*, 286 Conn. 454 (2008) (reversing trial court's interlocutory ruling dismissing claim for "general economy" damages under Connecticut Antitrust Act). The case settled in 2009 after four years of litigation.

Opposing Counsel:

Assistant Attorney General Matthew Budzik, Esq.
55 Elm Street
P.O. Box 120
Hartford, CT 06141
(860) 808-5049

7. *Daunis v. Daunis*, 3:06-CV-00710; District of Connecticut; Hon. Robert N. Chatigny; 2006 – 2007.

In 2006, Connecticut Legal Aid asked me and a colleague to represent a young mother whose estranged husband was seeking to require her and her minor children to return to Naples, Italy, where they had resided until she left him following marital discord, including domestic violence. I was lead counsel in the bench trial in the United States District Court, where we successfully defended against the husband's petition under the Hague Convention on the Civil Aspects of International Child Abduction. I first-chaired the trial, examining most of the witnesses and presenting the opening statement. The Second Circuit's decision affirming the District Court's decision to dismiss the petition brought against our client is reported at *Daunis v. Daunis*, 222 Fed. Appx. 32 (2d Cir. 2007). My colleague and I received the Connecticut Bar Association's 2008 Pro Bono Award for our work on this case.

Opposing Counsel:

Andrew D. Glasgow, Esq.
A.A.I. Law Firm
Penn Center West
Building Two, Suite 120
Pittsburgh, PA 15276
(412) 642-2023

8. *Cruz v. Kelly*, 3:06cv473; District of Connecticut; Hon. Mark R. Kravitz; 2007 – 2008.

In 2007, the United States District Court appointed me and a colleague to represent an incarcerated individual who was suing three East Haven, Connecticut police officers in a civil rights action alleging excessive force arising from an arrest. I supervised all discovery and briefing and first-chaired the ensuing jury trial, examining most of the witnesses and giving the closing argument. The jury returned a verdict for the defendants.

Opposing counsel:

Hugh Keefe, Esq.
Lynch, Traub, Keefe & Errante
52 Trumbull Street
P.O. Box 1612
New Haven, CT 06510
(888) 692-7403

9. *State of Connecticut v. Gregory C.*, SC 17611; Supreme Court of Connecticut; 2005 – 2006.

I represented, on a pro bono basis, Gregory C., a criminal defendant who was convicted of violating a protective order with respect to his wife. The case involved novel issues relating to Connecticut's adverse spousal privilege statute, Connecticut's use immunity statute, and prosecutorial misconduct. I argued the appeal in the Connecticut Supreme Court. After argument but before decision, the State approached me to resolve the matter. I negotiated a resolution in which the State immediately released Gregory C. from prison in exchange for his withdrawal of the appeal.

Opposing counsel:

Senior Assistant State's Attorney Robert Scheinblum, Esq.
300 Corporate Place
Rocky Hill, CT 06067
(860) 258-5807

10. *United States v. Hopson*, 3:99CR243; District of Connecticut; Hon. Janet C. Hall; 1999 – 2000.

In 1999 and 2000, along with my partner, Michael Considine, I represented Hopson, an indigent criminal defendant accused, along with three co-defendants, of conspiracy in connection with telemarketing activities. Although Mr. Considine was lead counsel appointed by the Court under the Criminal Justice Act, I argued most of the pre-trial motions and represented the client at multiple arraignments on successive indictments before all defendants opted to plead guilty. I also represented the client at his plea and sentencing hearings. At the sentencing, I advocated for a sentence of no jail time due to Mr. Hopson's family circumstances, including a disabled spouse and small children. The court sentenced Mr. Hopson to a period of home confinement followed by supervised release.

Co-counsel within Day Pitney:

Michael Considine, Esq.
Day Pitney
One Canterbury Green
201 Broad Street
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(203) 977-7300

Co-defendants' Counsel:

Ira Grudberg, Esq.
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(203) 772-3100

H. James Pickerstein, Esq.
McElroy, Deutsch, Mulvaney & Carpenter
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Southport, CT 06890
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Jonathan J. Einhorn, Esq.
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New Haven, CT 06511
(203) 777-3777

Opposing counsel:

Assistant United States Attorney Karen Peck, Esq.
Connecticut Financial Center

157 Church Street, Floor 23
New Haven, CT 06510
(203) 821-3700

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 Significant Litigation

1. *Attorney General of the State of Connecticut v. Health Net of the Northeast, Inc. and United Health Group, Inc.*, 3:10-CV-57 (District of Connecticut).

In 2010, I was lead counsel for United Health Group in a lawsuit arising from a large data breach at Health Net of the Northeast, which United Health had recently acquired. I supervised the preparation of pleadings and conducted negotiations with co-counsel and opposing counsel. The case, which involved the first use by a State Attorney General of the enforcement authority conferred by the 2009 federal HITECH Act, settled after extensive negotiations between the parties.

2. *Bridgeport Roman Catholic Diocesan Corp. v. Jones*, 3:09-cv-00851 (District of Connecticut).

In 2009, I was lead counsel for the Bridgeport Roman Catholic Diocese in a First Amendment challenge to a lobbying investigation by the Connecticut Office of State Ethics. The Office had begun an inquiry of the Diocese's activities in organizing a protest at the State Capitol against a bill that would have changed the governance structure of Roman Catholic parishes in Connecticut. I supervised the preparation of all pleadings and briefs, led discussions with counsel for amicus curiae, and conducted settlement negotiations with the Connecticut Attorney General's Office. With the assistance of the Connecticut Attorney General, we reached a successful resolution of the case in which the Office of State Ethics ceased its investigation.

3. *Roe, J. v. St. Francis Hospital*, UWY-CV-08-5008330-S (Connecticut Superior Court, Judicial District of Waterbury).

I am part of a team of attorneys at Day Pitney representing St. Francis Hospital and Medical Center in a series of lawsuits alleging sexual abuse by a physician employed by the hospital from the 1960s until the early 1990s. I have argued summary judgment motions, significant motions in limine, and trial motions concerning evidentiary and jury instruction issues. I have also represented the client at mediation sessions. These cases are ongoing.

Other Significant Legal Activities

Standing Committee on Recommendations for Admission. From 2001 until 2009, I was a Court-appointed member of the Standing Committee on Recommendations for Admission for Hartford County. The Committee holds hearings each month on candidates who are referred to it for further examination by the Statewide Bar Examination Committee, typically because of questions about their character or fitness to serve as attorneys or to determine whether they should be reinstated as attorneys following a suspension. The Committee makes recommendations to the Statewide Bar Examining Committee as to whether candidates should be admitted (or reinstated) to the bar.

Chair, Antitrust Section, Connecticut Bar Association. From 2008 to August 2011, I served as Chair of the Antitrust Section of the Connecticut Bar Association. As Chair, I presided over section meetings, arranged to bring in outside speakers, and organized a candidates forum for candidates for the Office of Connecticut Attorney General.

I have not performed any lobbying activities on behalf of a client or other organization.

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

    I have not taught courses.

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

    If confirmed, I will leave the partnership of Day Pitney LLP and will be paid an amount representing the capital I have invested in the firm. In accordance with the partnership agreement, that amount will be paid back in equal installments to be made over five years. I have made no arrangements to be compensated in the future for any financial or business interest.

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 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 current law firm, Day Pitney, 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 at least several years from all cases in which Day Pitney represented a party or appeared. In addition, cases in which prior clients of mine were parties would present a potential conflict of interest. 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.

    I do not believe that my family members are likely, either in the capacity of a party or counsel, to have cases in the federal courts.

    At the present time, I cannot think of a category of litigation which, by its nature, would present a conflict-of-interest problem for me. I would, of course, recuse myself from any case in which a credible claim of a financial interest on my part or my family's part could be made.

    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 address each potential conflict situation on the facts presented. If the situation involved one where my impartiality might reasonably be questioned, I would disclose the association or other reason for possible conflict on the record, and then permit the parties to confer with their counsel outside my presence. Only if all parties and counsel agreed in writing or on the record that

disqualification was not in order would I proceed to preside over the case. If I was uncertain about whether to recuse myself after conducting my own research or if I otherwise had conflicts-related questions, I would seek advice from the Committee on Codes of Conduct of the Judicial Conference of the United States.

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

I have maintained an active pro bono practice from the time I began practicing law. A summary of my pro bono work follows.

1994 – 1998: While an Associate at Cleary Gottlieb, I represented an elderly woman in an eviction case, winning summary judgment for her in D.C. Superior Court under Section 8 regulations and then negotiating a settlement that allowed her to stay in her home. In addition, while I was working in Cleary Gottlieb's Brussels, Belgium office, I provided commentary on the then-new proposed criminal procedure and criminal codes of Kyrgyzstan and Lithuania, respectively, as part of the American Bar Association's Central and East European Law Initiative. The Initiative (now known as the ABA Rule of Law Initiative) was a project in which the ABA arranged for American lawyers to provide legislative drafting advice to nations that were overhauling their legal codes after the collapse of the former Soviet Union.

1998 – Present:

I have served on the Criminal Justice Act (CJA) Panels of both the United States District Court for the District of Connecticut and the United States Court of Appeals for the Second Circuit, accepting court appointments to represent indigent criminal defendants in federal court. I have similarly represented indigent criminal defendants as a Special Public Defender in the state courts. (Although compensation is available for attorneys accepting assignments under the CJA and as Special Public Defenders, I have sought such compensation for my firm on only one occasion involving an especially time-consuming defense of a federal prosecution.) I have represented indigent criminal defendants in three federal criminal prosecutions in the United States District Court, in five appeals in the Connecticut Appellate and Supreme Courts, and in two appeals at the United States Court of Appeals for the Second Circuit. I have also supervised associates in the firm who have assisted me with these matters.

In addition, and as discussed more fully in response to question 17, during this time I handled, on a pro bono basis, *Dannis v. Dannis*, *Cruz v. Kelly*, and *State of Connecticut v. Ross*.

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 September 2011, I submitted a completed questionnaire to an advisory panel created by Senators Joseph Lieberman and Richard Blumenthal. I was interviewed by the advisory panel on October 1, 2011. I was interviewed by Senators Lieberman and Blumenthal on October 11, 2011. On October 31, 2011, I was informed by Senator Lieberman's office that I was one of two names being recommended to the White House for consideration.

Since November 3, 2011, I have been in contact with officials from the Office of Legal Policy at the U.S. Department of Justice. I interviewed with attorneys from the White House Counsel's Office and the Department of Justice on December 6, 2011. On February 2, 2012, 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
Shea, Michael P.	District of Connecticut	2/2/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	5a. Report Type (check appropriate type) ☑ Nomination, Date 2/2/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 1/1/2011 to 1/3/2012
7. Chambers or Office Address 242 Trumbull Street Hartford, CT 06103	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Day Pitney LLP
2.	Treasurer	Connecticut Supreme Court Historical Society
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 Shea, Michael P.	Date of Report 2/2/2012

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	Day Pitney LLP	$386,072.00
2. 2010	Day Pitney LLP	$358,711.00
3.		
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2011	Self-employed marriage and family therapist
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 Shea, Michael P.	Date of Report 2/2/2012

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 Shea, Michael P.	Date of Report 2/2/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. CHET Moderate Managed Allocation Option (529)		None	L	T					
2. CHET High Equity Option (529)		None	M	T					
3. Dreyfus Midcap Index Fund		None	K	T					
4. Fidelity Blue Chip Growth Fund	A	Dividend	K	T					
5. Fidelity Cash Reserves	A	Interest	J	T					
6. Fidelity Dividend Growth Fund		None	J	T					
7. Fidelity Growth & Income Fund	A	Dividend	J	T					
8. Fidelity Magellan Fund		None	J	T					
9. PIMCO Total Return Fund		None	K	T					
10. Schwab Stable Value Fund		None	K	T					
11. Schwab 100% Global Equity Index Option		None	L	T					
12. Schwab Global 100% Equity Option		None	L	T					
13. Schwab Aggressive Growth Option		None	M	T					
14. Schwab Income with Growth Option		None	K	T					
15. Schwab Moderate Growth Option		None	J	T					
16. Vanguard High-Yield Tax-Exempt Fund	A	Dividend	J	T					
17. Vanguard Institutional Index Fund		None	K	T					

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

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

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

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Shea, Michael P.	Date of Report 2/2/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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. Vanguard Emerging Markets Stock Index Fund	A	Dividend	J	T					
19. Bank of America Accounts	A	Interest	L	T					
20. Day Pitney Capital Account	C	Interest	M	U					
21.									

1. Income/Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$2,501 - $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 Shea, Michael P.	Date of Report 2/2/2012

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Shea, Michael P.	Date of Report 2/2/2012

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		92	693	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		650	606	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-add schedule			
Real estate owned – personal residence		382	900	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		26	000				
Cash value-life insurance							
Other assets itemize:							
Day Pitney Capital Account		106	753				
				Total liabilities			0
				Net Worth	1	258	952
Total Assets	1	258	952	Total liabilities and net worth	1	258	952
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	
Bank of America stock	$ 556
CHET Moderate Managed Allocation Option (529)	70,346
CHET High Equity Option (529)	137,710
Connecticut Bank & Trust Company stock	815
Dreyfus MidCap Index Fund	29,415
Fidelity Blue Chip Growth Fund	35,970
Fidelity Cash Reserves	2,988
Fidelity Connecticut Municipal Money Market Fund	5
Fidelity Dividend Growth Fund	7,386
Fidelity Growth & Income Fund	10,567
Fidelity Magellan Fund	2,613
PIMCO Total Return Fund	16,785
Schwab Stable Value Fund	16,766
Schwab 100% Global Equity Index Option	52,920
Schwab Global 100% Equity Option	83,755
Schwab Aggressive Growth Option	102,327
Schwab Income with Growth Option	32,973
Schwab Moderate Growth Option	7,466
Vanguard High-Yield Tax-Exempt Fund	6,358
Vanguard Institutional Index Fund	27,448
Vanguard Emerging Markets Stock Index Fund	5,437
Total Listed Securities	$ 650,606

AFFIDAVIT

I, Michael P. Shea, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/6/2012
(DATE)

(NAME)

(NOTARY)

D. BRETT DIMBERG
NOTARY PUBLIC
MY COMMISSION EXPIRES JAN. 31, 2017

STATEMENT OF GONZALO P. CURIEL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Judge CURIEL. Thank you. Good afternoon. Senator Blumenthal, thank you for presiding over this hearing. Thank you for the Ranking Member; Senator Lee also for being present.

Mostly I'd like to thank also President Obama for giving this honor to me, to my family. As I indicated previously, my parents came here from Mexico with a dream of providing their children opportunities and they've been able to do that with the opportunities that this country has to offer.

I'd like to thank Senator Boxer and Senator Feinstein for their support, for the Advisory Committee that recommended my name to Senator Boxer to pass forward. I'd like to take the time to introduce my family that was able to come today: my wife Trisha and my daughter Natalie.

Also, I'd like to acknowledge family members that weren't able to attend that were not able to travel here. That includes my brother in Indiana, Raul, my sister in Ohio, Maria, my father-in-law, Thomas Yamauchi, and a host of friends who are watching on the webcast.

Thank you for this distinction, this honor. With that, I'll conclude.

Senator BLUMENTHAL. Mr. Shelby. I want to add my thanks to you for your service to our Nation as a member of the military, as well as in the life of—the civic life of your community and professional life.

[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).

   Gonzalo Paul Curiel

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.

   Superior Court of the State of California
   County of San Diego
   220 West Broadway
   San Diego, California 92106

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

   1953; East Chicago, Indiana

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

   1976 – 1979, Indiana University; J.D., 1979
   1971 – 1976, Indiana University; B.A., 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.

   2006 – present
   Superior Court of California, County of San Diego
   220 West Broadway
   San Diego, California 92101
   Superior Court Judge

2002 – 2006
United States Attorney's Office, Central District of California
1500 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Assistant United States Attorney

1989 – 2002
United States Attorney's Office, Southern District of California
880 Front Street, #6293
San Diego, California 92101
Chief, Narcotics Enforcement Section (1999 – 2002)
Attorney detailed to Department of Justice, Office of International Affairs (1997 – 1998)
Deputy Chief, Narcotics Enforcement Section (1996 – 1997, 1998 – 1999)
Assistant United States Attorney (1989 – 2002)

1986 – 1989
Barbosa & Vera [Firm dissolved in 2000]
1000 Corporate Center Drive
Monterey Park, California 91754
Associate

1986
Los Angeles Daily Journal
213 South Spring Street
Los Angeles, California 90012
Case Summary Writer

1979 – 1986
James, James & Manning
200 Monticello Drive
Dyer, Indiana 46311
Associate

1984
East Chicago Human Rights Commission
1005 East Chicago Avenue
Riley Park Annex
East Chicago, Indiana 46312
Pro Tem Administrative Hearing Examiner

Spring 1979
Judge S. Hugh Dillin
Southern District of Indiana
46 East Ohio Street
Indianapolis, Indiana 46204
Legal Extern (uncompensated)

Summer 1978
United States Attorney's Office, Northern District of Illinois
219 South Dearborn Street, # 500
Chicago, Illinois 60604
Summer Law Clerk

1977 – 1978
Indiana University, Student Legal Services
703 East Seventh Street
Bloomington, Indiana 47408
Law School Intern

Summer 1977
Judge James Richards
Superior Court of Indiana, County of Lake
232 Russell Street
Hammond, Indiana 46320
Summer Law Clerk

Other Affiliations (uncompensated):

2008 – present
Urban Discovery Academy Charter School
2850 Sixth Avenue
San Diego, California 92103
Vice President, Board of Trustees

2008 – present
San Diego County Judges Association
No physical address
San Diego, California
Member, Board of Directors

2003 – 2006
Hollywood Heights Association
P.O. Box 931034
Los Angeles, California 90093
Board of Directors (2003 – 2006)
President (2005 – 2006)
Vice President (2004 – 2005)

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

   I have not served in the military. I registered for selective service in 1971.

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

   Director's Award for Superior Performance as Assistant United States Attorney (2000)

   United States Attorney's Office Special Act Awards (1997, 1998, 2002)

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
   Hispanic Advisory Committee of the Commission on Public Understanding about the Law (1993 – 1994)

   American Inns of Court, William B. Enright Chapter
   Master (2007 – present)

   California Judges Association

   Hispanic National Bar Association, Life-time Member

   La Raza Lawyers of San Diego

   Latino Judges Association

   National Hispanic Prosecutors Association

   San Diego County Judges Association
   Board of Directors (2008 – present)

San Diego Superior Court
Domestic Violence Committee (2007 – 2010)

State Bar of California
Criminal Law Advisory Commission (1994 – 1998)
Chair (1997 – 1998)
Vice Chair (1996 – 1997)

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, 1986
Indiana, 1980
Illinois, 1979

There were no lapses in membership for the California and Illinois State Bars from the date of my admission to the date I was appointed as a judge of the State of California in and for the County of San Diego. Under California law, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. As to the Indiana State Bar, my inactive membership lapsed in 2003 after Indiana initiated an annual fee for inactive attorneys and I was not notified of the change. Upon learning of my lapse in membership, I moved to restore my inactive membership and paid all inactive fees that were due. The State of Indiana waived late penalty fees for good cause, and restored my membership to inactive good standing status as of August 19, 2011.

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, 1990
United States Court of Appeals for the Seventh Circuit, 1980
United States District Court for the Southern District of California, 1989
United States District Court for the Central District of California, 1987
United States District Court for the Northern District of Indiana, 1979
California Supreme Court, 1986
Indiana Supreme Court, 1980
Illinois Supreme Court, 1979

As noted above, my Indiana inactive bar membership lapsed in 2003 after Indiana began charging an annual fee for inactive bar membership. I did not receive notice of the change in law and was unaware of the change until recently. The

lapse in membership was administrative, and not disciplinary, and affected a great number of inactive lawyers who did not receive notice of the change in law. I requested and received a waiver of penalties from the Indiana Supreme Court and was restored to inactive good standing as of August 19, 2011.

There were no lapses in membership from the date of my admission to the date I was appointed as a judge of the State of California in and for the County of San Diego. Under California law, a person servicing as a judge of a court of record is not considered to be a member of the State Bar while in office.

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.

BMW Car Club of America (2010 – present)

Hollywood Heights Association (2003 – 2006)
Board of Directors (2003 – 2006)
President (2005 – 2006)
Vice President (2003 – 2005)

Urban Discovery Academy Charter School Board of Trustees
Vice President (2008 – present)

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

To the best of my knowledge, none of the organizations listed in 11a 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.

In 1986, I worked as a case summary writer for the Daily Appellate Report of the Los Angeles Daily Journal. I do not have copies of my case summaries and have been unable to locate or obtain copies because the Report did not provide by-lines on summaries during the time I worked there.

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 Lead Attorney for the Presidential Organized Crime Drug Enforcement Task Force (OCDETF) from 1999 through 2002, I prepared reports and memoranda regarding a number of initiatives and task forces, including the Arellano Felix Task Force, the Maritime Drug Trafficking Task Force and the Border Corruption Task Force. I do not have copies of any such reports or memoranda. Following a review of their files by the United States Attorney's Office in San Diego and the National OCDETF offices in Washington, D.C., none of the reports or memoranda were maintained.

To the best of my recollection, I have not prepared any other 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.

In 2010, I endorsed Robert C. Longstreth and Stephen P. Clark to be elected judges for the Superior Court, County of San Diego. Their endorsement pages are supplied.

In 2008, I endorsed Evan Patrick Kirvin and Garry Haehnle to be elected judges for the Superior Court, County of San Diego. Their endorsement pages are supplied.

On May 13, 2008 and April 8, 2008, I spoke before the San Diego Unified School District about a charter petition for Urban Discovery Academy. Meeting minutes supplied and audio recordings available at http://www.sandi.net/page/3271. My comments on May 13 begin in Part 3 at 9:15. My comments on April 8 begin in Part 2 at 39:20.

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 list all speeches, talks, and presentations I have delivered based on thorough searches of my files and the internet. There may, however, be others I have been unable to remember or identify. Available audio recordings, course materials and prepared remarks have been supplied. For the remaining presentations, after a review of my files, I have not located any notes, statements or recordings. My practice as to preparing notes or outlines varied depending on the format of the presentation. In panel discussions, I would generally track the course materials and weave my professional experiences into the presentation. As to small bar and school events, I generally spoke without notes.

October 6, 2011: I was a guest speaker at the La Raza Lawyers of San Diego Membership Development Luncheon. The purpose of the luncheon was to encourage young attorneys to join La Raza Lawyers and to participate in the Legal Enrichment and Decision Making Program. I have no notes, transcripts or recordings. The address for La Raza Lawyers of San Diego is P.O. Box 125010, San Diego, CA 92112.

December 4, 2010: I was part of a CLE panel entitled "Post-Separation Disclosure Obligations – A View from the Bench" held by the Certified Family Law Specialists of the San Diego County Bar. The substance of the program was an overview of post-separation disclosure obligations and the effective use of formal and informal discovery tools to gather available discovery and disclosures. I have no notes, transcripts or recordings. The San Diego County Bar is located at 1333 Seventh Avenue, San Diego, CA 92101.

November 17, 2010: I was part of a CLE panel entitled "What Family Court Judges Want You to Know" held by the National Business Institute. A three-judge round table discussion and question and answer session focused on each judge's individual practices, pet peeves, and best practices suggestions. Audio recording supplied.

September 2, 2010: I administered the oath of office to United States Attorney Laura E. Duffy at her investiture. Prior to the oath, I made a brief statement. A copy of my remarks and the oath is supplied.

April 13, 2010: I was the keynote speaker at an induction ceremony for Spanish Honors Society (Sociedad Honoraria Hispanica) students at The Bishop's School in La Jolla, California. I have no notes, transcripts or recordings, but press coverage is supplied. The society does not have a physical address.

November 12, 2009: I made a presentation at a bi-national conference for judges and prosecutors in San Jose, Costa Rica. The conference was organized by the Department of Justice and United Nations Office on Drugs and Crime. I made a presentation and took questions regarding trial issues that arise in prosecutions involving trafficking of precursor chemicals used in the manufacture of illegal drugs. I have no notes, transcripts or recordings. The Department of Justice is located at 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

June 14, 2008: I was part of a CLE panel entitled "Evidence in Family Law Cases" held by the Certified Family Law Specialists of the San Diego County Bar. The substance of the seminar was application of the rules of evidence in family law hearings and trials. Audio recording and Powerpoint presentation supplied. My comments start at about 4h26m into the recording.

May 13, 2008 and April 8, 2008: I made presentations to the San Diego Unified School District board in support of the charter application of Urban Discovery Academy. Meeting minutes and audio recording supplied in response to 13c.

March 22, 2007: La Raza Lawyers of San Diego held a reception to honor my appointment to the bench of the San Diego Superior Court. I gave brief remarks thanking the organization for the reception. I have no notes, transcripts or recordings. The address for La Raza Lawyers of San Diego is P.O. Box 125010, San Diego, CA 92112.

March 17, 2005 and November 10, 2005: In my capacity as international coordinator of the United States Attorney's Office in Los Angeles, I taught recently hired Assistant United States Attorneys the basic law and procedures relating to mutual legal assistance requests and requests for provisional arrests. I have no notes, transcripts or recordings. The United States Attorney's Office is located at 312 North Spring Street, Los Angeles, CA 90012.

2000: I was part of a professional training program for Colombian prosecutors and law enforcement officers that was held in Bogota, Colombia. The seminar provided the participants strategies and tools in the investigation of money laundering. The training was authorized by the Department of Justice and coordinated by the Legal Attaché to Colombia. I have no notes, transcripts or recordings. The Department of Justice is located at 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

May 7, 1999: I participated, along with federal judges from the United States, in an international seminar for Mexican federal judges that was held in Vera Cruz,

Mexico. My recollection is that it was organized by the University of Texas Law School. The substance of my presentation was international extradition issues. I have no notes, transcripts or recordings. The University of Texas is located at 1 University Station, Austin, TX 78712.

March 11, 1999: In my capacity as the Professional Responsibility Officer for the United States Attorney's Office, I provided office-wide training addressing professional responsibility issues that arise in criminal investigations and prosecutions. The United States Attorney's Office is located at 880 Front Street, San Diego, CA 92101.

January 24-27, 1999: I was part of an American delegation organized by the Office of Professional Development and Training to provide legal instruction to Costa Rican magistrates and law enforcement officers. The topics of discussion included an explanation of the American legal justice system and identifying available means to successfully investigate and prosecute organized criminal organizations. The Department of Justice is located at 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Between 1991 and 2000, I participated in and taught at up to four bi-national conferences attended by prosecutors from the United States and Mexico. To the best of my recollection, they were held in Phoenix, Arizona (1991), Monterey, Mexico (1992), and Mexico City (1998 and 2000). The subject matter included introductions to the legal systems of both countries, and identifying tools to successfully investigate and prosecute international drug traffickers. All of the programs were organized or approved by the Department of Justice Executive Office and Office of International Affairs. I have no records of the precise dates of these programs, and I have no notes, transcripts or recordings. The Department of Justice is located at 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Since 1994, I have spoken to high school and grade school students on career days and as part of a mentor program at San Diego High School. In addition, from 2003 to 2006, I participated in the Legal Enrichment and Decision Making (LEAD) program organized and administered by the Los Angeles District Attorney's Office, which is designed for fifth-graders from elementary schools in lower economic areas. Over the course of a twenty-week program, the students are instructed on the legal system, how to avoid negative peer pressure, how to make good decisions, and how to deal with bullying. During these classes, four fellow Assistant United States Attorneys and I provided instruction, answered questions, and sought to present positive role models to the students. I have no notes, transcripts or recordings. However, the LEAD program curriculum is supplied.

In 2007, I worked with the San Diego District Attorney's Office to adopt the LEAD program in San Diego. Since then, I have participated in the LEAD program at Laura Rodriguez Elementary School at the first introductory class and

for the final class which involves a mock trial. I have no notes, transcripts or recordings. However, the LEAD program curriculum 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.

Richard Marosi, *A Determined Federal Prosecutor Targets the Tijuana Cartel*, Los Angeles Times, Sept. 28, 2010. Copy supplied.

Met News Staff Writer, *Federal Prosecutor from Los Angeles Gets San Diego Judgeship*, Metropolitan News-Enterprise, Nov. 4, 2006. Copy supplied.

I was interviewed by Deborah Amos, an ABC reporter, for an episode of *Nightline* that aired on September 19, 2002. I do not have a copy of the interview, but a transcript of the program is supplied.

Anne-Marie O'Connor, *Seduction of a Generation*, Los Angeles Times, July 28, 2002. Copy supplied.

Mark Fineman and Chris Kraul, *Deadly Messages to Mexico*, Los Angeles Times, May 15, 2002. Copy supplied.

Tim Weiner, *New Web of Trust Topples a Mighty Mexican Cartel*, New York Times, Apr. 26, 2002. Copy supplied.

Chris Kraul, *The Collapse of Mexico's 'Invincible' Drug Cartel*, Los Angeles Times, Mar. 16, 2002. Copy supplied.

S. Lynne Walker and Marisa Taylor, *Arrest of Benjamin Arellano Felix Provides Final Evidence Brother is Dead*, Copley News Service, Mar. 13, 2002. Copy supplied.

S. Lynne Walker and Marisa Taylor, *Drug Cartel Leader Arrested in Mexico City*, Copley News Service, Mar. 9, 2002. Copy supplied.

Sandra Dibble and Greg Moran, *Mexican Drug Kingpin Pleads Guilty*, San Diego Union-Tribune, Oct. 12, 2001. Copy supplied.

Kris Axtman, *For U.S., A Stronger Hand in Extraditing Drug Lords*, Christian Science Monitor, Sept. 25, 2001. Copy supplied.

Sandra Dibble, *Mexico OKs Handover of 'El Mayel'*, San Diego Union-Tribune, Aug. 23, 2001. Copy supplied.

Jill Leovy, *Raindrops in a Sea of Smuggling*, Los Angeles Times, July 21, 2001. Copy supplied.

Sandra Dibble and Anna Cearley, *Wanted Mexican Man Found in Prison with New Name, Face*, San Diego Union-Tribune, July 17, 2001. Copy supplied.

Drug Hauls Point to Russian Connection, South China Morning Post, May 20, 2001. Copy supplied.

James Sterngold, *12 Tons of Cocaine Are Seized*, New York Times, May 15, 2001. Copy supplied.

Robert Caldwell, *Paez Extradition Threatens the Tijuana Cartel*, San Diego Union-Tribune, May 13, 2001. Copy supplied.

Marisa Taylor, *Accused Trafficker Hurt in Mexico, Attorney Says*, San Diego Union-Tribune, May 8, 2001. Copy supplied.

Ben Fox, *Extradited Drug Suspect Pleads Innocent in U.S. Court*, Associated Press, May 7, 2001 (re-printed in multiple outlets). Copy supplied.

Mexico Extradites Accused Trafficker, Los Angeles Times, May 7, 2001. Copy supplied.

I was interviewed on May 7, 2001 by Tania Luviano, a reporter with Univision, regarding the extradition of Arellano Felix Organization lieutenant Arturo Paez from Mexico to the United States. I do not have any clips or transcripts of the interview.

Marisa Taylor, *Extradition Seen as Sign Drug Lords Can No Longer Hide*, San Diego Union-Tribune, May 6, 2001. Copy supplied.

Mexico Extradites Drug Suspect, Associated Press, May 5, 2001 (re-printed in multiple outlets). Copy supplied.

Marisa Taylor, *Drug-Case Defendant Flees – Then His Charges Are Dismissed*, San Diego Union-Tribune, Apr. 24, 2001. Copy supplied.

Ken Ellingwood, *Mexican President Reaffirms War on Crime*, Los Angeles Times, Feb. 1, 2001. Copy supplied.

S. Lynne Walker, *Mexican Authorities Square Off against Border Drug Traffickers*, Copley News Service, Jan. 20, 2001 (re-printed in multiple outlets). Copy supplied.

Anna Cearley, *'Traffic' Takes a Grim, Real-Life Look at the Border's Drug War*, San Diego Union-Tribune, Dec. 31, 2000. Copy supplied.

Tony Perry, *U.S. Captures Supply Ship for Drug Boats*, Los Angeles Times, Sept. 27, 2000. Copy supplied.

Robert Caldwell, *End Legal Sanctuary for Drug Kingpins*, San Diego Union-Tribune, July 16, 2000. Copy supplied.

Robert Caldwell, *The Arellano Felix Organization Rules Tijuana by Ruthless Terror*, San Diego Union-Tribune, July 9, 2000. Copy supplied.

Robert Caldwell, *'Silver or Lead'*, San Diego Union-Tribune, July 9, 2000 (quotations re-printed in multiple outlets). Copy supplied.

Marisa Taylor, *U.S. Gains Insight into Cartel Ranks*, San Diego Union-Tribune, June 11, 2000. Copy supplied.

Sandra Dibble and Marisa Taylor, *Major Drug Suspects Hit Hard by Mexico*, San Diego Union-Tribune, June 1, 2000. Copy supplied.

Ken Ellingwood, *U.S. Charges Expected against Mexican Drug Figure*, Los Angeles Times, May 6, 2000. Copy supplied.

Marisa Taylor, *U.S. Indicts Reputed Arellano Enforcer Nabbed in Ensenada*, San Diego Union-Tribune, May 6, 2000. Copy supplied.

Patrick S. Pemberton, *Marijuana Gives Him Freedom, Takes It Away*, San Luis Obispo County Tribune, Dec. 5, 1999. Copy supplied.

On August 31, 1999, I was interviewed by Lowell Bergman for a PBS Frontline documentary regarding the Arellano Felix cartel. Material from this interview was subsequently used in a story *America's Drug War*, from American Radio Works. A recording of the story is available here: http://americanradioworks.publicradio.org/features/drug_wars/. A copy of the news story, *Failures at the Border*, is supplied.

10 Arrested in Drug Smuggling Case, Contra Costa Times, June 12, 1999. Copy supplied.

Two Tons of Marijuana Seized, 10 People Arrested for Investigation of Drug Smuggling, Associated Press, June 11, 1999 (re-printed in multiple outlets). Copy supplied.

Brea Man Is One of 18 Arrested in Pot Ring, Orange County Register, June 11, 1999. Copy supplied.

Bob Egelko, *Extradition Upheld Despite Evidence of Torture*, Associated Press, Jan. 8, 1999. Copy supplied.

SD Meth Arrests, City News Service, Oct. 30, 1998. Copy supplied.

Dana Calvo, *Cartel Suspects Ordered Extradited*, Associated Press, Dec. 20, 1997. Copy supplied.

Anne-Marie O'Connor, *Privileged Youths Cave in to Drug Influences*, Los Angeles Times, Nov. 16, 1996. Copy supplied.

Tony Perry, *10 Colombians Convicted on Cocaine Charges*, Los Angeles Times, May 1, 1996. Copy supplied.

Tony Perry, *INS Inspector, 2 Others Guilty in Bribery, Drug Case*, Los Angeles Times, Jan. 30, 1996. Copy supplied.

3 Charged with Plot to Sell Pot, Los Angeles Times, Sept. 23, 1992. Copy supplied.

Bribery Suspect Pleads Innocent, Los Angeles Times, May 15, 1992. Copy supplied.

2 Arrested at Request of Mexico, Daily News, June 25, 1989. 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 November 3, 2006, Governor Arnold Schwarzenegger appointed me to the Superior Court for the State of California in and for the County of San Diego. I was then re-elected without opposition in November 2008. My current term of office expires December 31, 2014. I sit in a state trial court of general jurisdiction.

From November 2006 through January 2007, I participated in new judge orientation which consisted of a training program and three weeks of handling small claims and traffic matters. From January though December 2007, I was assigned to a Domestic Violence criminal assignment where I handled arraignments, changes of plea and sentencing, probation revocations and misdemeanor trials. Beginning in December 2007 and continuing to December 2010, I was assigned to the Family Court where I managed an independent calendar of family cases involving dissolution, child custody and visitation, paternity, community property division, and civil domestic violence proceedings.

In January 2011, I began an assignment handling civil trials, mandatory settlement conferences and criminal preliminary hearings. In this assignment, I have handled ten civil jury trials and one civil bench trial lasting an average of seven days in length.

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

I have presided over approximately 40 cases that have gone to verdict following a jury or bench trial.

i. Of these, approximately what percent were:

jury trials:	60%
bench trials:	40%
civil proceedings:	75%
criminal proceedings:	25%

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

As a state trial court judge, I have not written any published opinions. As to unreported opinions, there is no central repository for written orders. However, a search of the court computer system was conducted for cases that were taken under submission for purposes of preparing a written order or statement of decision. As a result of such search, the following cases were identified as ones where a written order or statement of decision were prepared and filed.

Family Court:
In re Marriage of Colton, Case No. D335946 (Cal. Super. Ct. 2009)
In re Marriage of Fuller, Case No. D383126 (Cal. Super. Ct. 2009)
In re Marriage of Estes, Case No. D409851 (Cal. Super. Ct. 2009)
In re Marriage of Frost, Case No. D428519 (Cal. Super. Ct. 2008)
In re Marriage of Geernaert, Case No. D435177 (Cal. Super. Ct. 2008)
In re Marriage of Berger, Case No. D438486 (Cal. Super. Ct. 2010)
In re Marriage of Darr, Case No. D444977 (Cal. Super. Ct. 2009)
In re Marriage of Magre, Case No. D454292 (Cal. Super. Ct. 2009)
In re Marriage of Ball, Case No. D461961 (Cal. Super. Ct. 2009)
In re Marriage of Noon, Case No. D468242 (Cal. Super. Ct. 2010)
In re Marriage of Sale, Case No. D470655 (Cal. Super. Ct. 2008)
In re Marriage of Decker, Case No. D472818 (Cal. Super. Ct. 2009)
In re Marriage of Ebbert, Case No. D483670 (Cal. Super. Ct. 2009)
In re Marriage of Maxwell, Case No. D485521 (Cal. Super. Ct. 2010)
In re Marriage of Chang, Case No. D489539 (Cal. Super. Ct. 2009)
In re Marriage of McNeil, Case No. D489859 (Cal. Super. Ct. 2009)
In re Marriage of Perea, Case No. D493408 (Cal. Super. Ct. 2008)
In re Marriage of West, Case No. D494820 (Cal. Super. Ct. 2009)

Kind v. Guo, Case No. D495368 (Cal. Super. Ct. 2009)
In re Marriage of Weiser, Case No. D499228 (Cal. Super. Ct. 2009)
In re Marriage of Hunley, Case No. D502754 (Cal. Super. Ct. 2009)
In re Marriage of Terrell, Case No. D503197 (Cal. Super. Ct. 2008)
Hodge v. Steinbauer, Case No. D503675 (Cal. Super. Ct. 2008)
In re Marriage of Pearson, Case No. D505326 (Cal. Super. Ct. 2010)
Principato v. Flemon, Case No. D505631 (Cal. Super. Ct. 2008)
In re Marriage of Koufoudakis, Case No. D507980 (Cal. Super. Ct. 2008)
In re Marriage of Bauman, Case No. D508439 (Cal. Super. Ct. 2009)
In re Marriage of Howell, Case No. D509228 (Cal. Super. Ct. 2009)
In re Marriage of Horton, Case No. D509891 (Cal. Super. Ct. 2009)
In re Marriage of Boyer, Case No. D511147 (Cal. Super. Ct. 2008)
In re Marriage of Lusk, Case No. D511245 (Cal. Super. Ct. 2010)
Hall v. Trujillo, Case No. D513117 (Cal. Super. Ct. 2009)
In re Marriage of Tracy, Case No. D513814 (Cal. Super. Ct. 2010)
Zirkle v. Gresham, Case No. D515938 (Cal. Super. Ct. 2009)
Trotter v. Rebeles, Case No. D517471 (Cal. Super. Ct. 2009)
In re Marriage of Albrecht, Case No. D517768 (Cal. Super. Ct. 2010)
In re Marriage of Harman, Case No. D520027 (Cal. Super. Ct. 2009)
In re Marriage of Morhaim, Case No. D520310 (Cal. Super. Ct. 2009)

Civil Court:
Parker v. First Advantage, Case No. 37-2008-0086379-CU-OE-CTL (Cal. Super. Ct. 2011)
Vigil v. Sony Online Entertainment, Case No. 37-2009-00104337-CU-OE-CTL (Cal. Super. Ct. 2011)
Boyd v. Rustin, Case No. 37-2009-00104446-CU-OE-CTL (Cal. Super. Ct. 2011)
Lopez v. M.A. Mortenson Company, Case No. 37-2010-00084921-CU-PO-CTL (Cal. Super. Ct. 2011)
Cammy Investments v. Rustad, Case No. 37-2011-00043415-CU-UD-CTL (Cal. Super. Ct. 2011)
Oakley v. Wood, Case No. 37-2008-00083732-CU-NP-CTL (Cal. Super. Ct. 2011)

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. *Vigil v. Sony Online Entertainment*, Case No. 37-2009-00104337-CU-OE-CTL (Cal. Super. Ct. 2011).

An employee brought an employment discrimination case against Sony Online Entertainment alleging denial of medical leave, retaliation for exercise of medical leave, denial of reasonable accommodations, and disparate treatment. The

primary issues involved whether the employee was afforded available accommodations; whether Sony Online Entertainment properly engaged in the interactive process to identify available accommodations; and whether the employee was a qualified individual with a disability. After an eight-day bench trial, I found in favor of Sony Online Entertainment where the employee was provided a reasonable accommodation for his medical condition; the employee failed to prove that other requested accommodations would permit him to perform the essential duties of his job; and there was insufficient evidence of disparate treatment. Statement of Decision supplied.

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2. *Baxter-White v. Board of Trustees of California State University, et al.*, Case No. 37-2009-00091681-CU-WT-CTL (Cal. Super. Ct. 2011).

An employee in the billing department for a student medical clinic at San Diego State University ("SDSU") filed a whistleblower case against California State University (SDSU is a campus of the California State University system). The employee alleged retaliation against her for reporting alleged billing irregularities to upper management at the university. After the report of billing irregularities, the university conducted an investigation and concluded that there were no billing irregularities. The employee challenged this conclusion and was terminated for insubordination. Following a nine-day jury trial, the jury found in favor of the defendants. Judgment was entered June 6, 2011.

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Counsel for Defendants:
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Shauna Sinnot
Andrews, LaGasse, Branch & Bell
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3. *In re Marriage of Howell*, Case No. D509228 (Cal. Super. Ct. 2009).

The wife filed a motion to bifurcate trial to determine the validity of a pre-marital agreement. Following a bench trial, I upheld the validity of the pre-marital agreement as to all of the provisions, except the spousal support waiver. I found that the wife failed to prove the agreement was unconscionable where it was twelve pages long, was not particularly complex, involved a small estate, was preceded by full disclosure of assets, and sought to protect the parties' separate property interests. As to the spousal support waiver, I found it invalid because it did not follow the wife's consultation with an attorney as required by a statute enacted after the execution of the pre-marital agreement. At trial, I found that Family Code § 4 and *In re Fellows* (2006) 39 Cal. 4th 179, supported retroactive application of this provision. Findings and Order supplied. On appeal, the Court of Appeals affirmed my decision upholding the validity of the pre-marital agreement and reversed in part. In a case of first impression, the Court of Appeals distinguished *In re Fellows*, *supra*, and held that the statute barring enforcement of a premarital spousal support waiver without independent counsel was not retroactive. *In re Marriage of Howell* (2011) 195 Cal. App. 4th 1062.

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4. *Lopez v. M.A. Mortenson Company*, Case No. 37-2010-00084921 (Cal. Super. Ct. 2011).

A cafeteria employee of the University of California, San Diego, filed a personal injury action against a third-party contractor for negligence in creating a dangerous condition that resulted in personal injuries incurred in a fall. After the injury, the employee received workers' compensation benefits from the university

for loss of wages at the cafeteria, medical expenses and therapy. The university sued the third-party contractor for amounts paid to the employee as workers' compensation benefits. Prior to trial, the university and third-party contractor settled their case and the university assigned its workers' compensation lien to the third-party contractor. At trial, the employee did not seek damages based on any losses that were covered by workers' compensation benefits provided by the university. Instead, the employee only sought and was awarded damages based on loss of wages from a second catering job, and pain and suffering. After a four-day trial, the jury awarded the employee $76,664 in damages for loss of wages from her second job, and pain and suffering. Following trial, the third-party contractor filed a motion to assert a lien based on the assigned workers' compensation lien. I found that the third-party contractor was only entitled to recover damages for which the university was liable. Under the workers' compensation laws, the university was not liable for damages for pain and suffering or loss of wages for the employee's second job. As such, I denied the motion to assert a lien. Order after Hearing supplied.

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Counsel for Defendant:
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Andrea B. Kaplan
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(858) 755-8500

5. *In re Marriage of Koufoudakis*, Case No. D507980 (Cal. Super. Ct. 2008).

The wife moved for a bifurcated trial to determine the validity of a pre-marital agreement that was prepared by the husband's attorney. The parties had met during a visit by the wife to the United States from Russia, her native country. The wife did not speak English and was provided a pre-marital agreement prepared by the husband's attorney which was changed on a number of occasions to eventually include a spousal support waiver. Following a bench trial, I found the pre-marital agreement to be invalid based upon the totality of circumstances, including the one-sided nature of the agreement and the procedural deficiencies. Findings and Order supplied.

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Counsel for Wife:
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6. *In re Marriage of Bauman*, Case No. D508439 (Cal. Super. Ct. 2009).

A bifurcated trial was held to determine the date of separation for purposes of calculating the wife's interest in the husband's pension. The husband claimed that the parties had legally separated in 1998 when they stopped sleeping together. The wife claimed that the parties were married until their dissolution action in 2008. Following a two-day trial, I found that the parties' date of separation was 2008 where the husband's actions proved that he did not intend to separate from his wife prior to 2008. These actions included the husband preparing and proposing an agreement in 2008 to divide his pension with his wife equally (50/50) with the understanding that the parties would remain married. Findings and Order supplied.

Counsel for Husband:
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Counsel for Wife:
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7. *In re Marriage of Magre*, Case No. D454292 (Cal. Super. Ct. 2009).

This case involved a marital settlement agreement where the parents of two children agreed to share the college costs and expenses for the children. I was required to determine the remaining time of the college support obligation under the agreement; compliance with the agreement by the parties; and the reimbursement amounts and obligations that were owed. Findings and Order supplied.

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Counsel for Wife:
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Carlsbad, CA 92008
(760) 729-0941

8. *In re Marriage of Chang*, Case No. D489539 (Cal. Super. Ct. 2009).

The husband filed a post-judgment motion to set aside a judgment based upon his wife's breach of fiduciary duty. After a hearing, I found that the wife had failed to comply with her legal duty to disclose a retirement account with a value of $191,000. Based upon the substantial breach, I granted the husband's motion and set aside the judgment. Findings and Order supplied.

Counsel for Husband:
Stuart Manroel
6540 Lusk Boulevard, Suite C228
San Diego, CA 92121
(858) 535-9222

Counsel for Wife:
Emory Boutilier
9939 Hilbert Street, #209
San Diego, CA 92131
(858) 566-3340

9. *In re Marriage of Kearns and Budzey*, Case No. D507980 (Cal. Super. Ct. 2009).

The husband filed a motion for a bifurcated trial to determine the validity of a pre-marital agreement. After a bench trial, I found that the wife failed to fully disclose Subchapter-S business assets that she owned at the time of the agreement, and that the husband was unaware of the value of the business assets. Under all of the circumstances, I found that the husband did not execute the pre-marital agreement voluntarily.

Counsel for Husband:
Daniel J. Martin
3160 Camino Del Rio South, #204
San Diego, CA 92108
(619) 531-3122

Counsel for Wife:
James R. Vercollone
600 B Street, Suite 2020
San Diego, CA 92101
(619) 232-9260

10. *In re Marriage of Keville*, Case No. D518012 (Cal. Super. Ct. 2010)

This was a high conflict case involving domestic violence orders, child custody issues, and community property management and division issues. The parties jointly owned rental units and a business buying, repairing and flipping homes. Numerous proceedings were held to determine the operation of the jointly owned and operated businesses. In addition, a civil case involving an investor in the house flipping venture was joined in the family law case to permit a full resolution of issues. Following a year of numerous contested proceedings, all issues were resolved without the need for trial.

Counsel for Husband:
Lisa Berg
940 C Street
San Diego, CA 92101
(619) 234-3838

Counsel for Wife:
Robert W. Lesh
610 West Ash, Suite 1503
San Diego, CA 92101
(619) 238-0882

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. *Vigil v. Sony Online Entertainment*, Case No. 37-2009-00104337-CU-OE-CTL (Cal. Super. Ct. 2011). Copy supplied in response to 13(c).

Counsel for Plaintiff:
Matthew P. Tyson
Zachary T. Tyson
2550 Fifth Avenue, 9th Floor
San Diego, CA 92103
(619) 237-9292

Counsel for Defendant:
Stacey E. James
Adam R. Rosenthal
Littler Mendelson, P.C.
501 West Broadway, Suite 900
San Diego, CA 92101
(619) 232-3577

2. *In re Marriage of Howell*, Case No. D509228 (Cal. Super. Ct. 2009). Copy supplied in response to 13(c).

Counsel for Husband:
Laura H. Miller
610 West Ash, Suite 1503
San Diego, CA 92101
(619) 595-1505

Counsel for Wife:
Matthew M. Kraemer
9655 Chesapeake Drive, Suite 310
San Diego, CA 92123
(619) 278-8080

3. *Lopez v. M.A. Mortenson Company*, Case No. 37-2010-00084921. (Cal. Super. Ct. 2011). Copy supplied in response to 13(c).

Counsel for Plaintiff:
Thomas E. Wenbourne
275 East Douglas Avenue, # 106
El Cajon, CA 92020
(619) 579-5101

Counsel for Defendant:
Petit Kohn Ingrassia & Lutz, P.C.
Andrew N. Kohn
Andrea B. Kaplan
11622 El Camino Real, Suite 300
San Diego, CA 92130
(858) 755-8500

4. *In re Marriage of Koufoudakis*, Case No. D507980 (Cal. Super. Ct. 2008). Copy supplied in response to 13(c).

Counsel for Husband:
Sharon Asaro
3033 Fifth Avenue, Suite 210
San Diego, CA 92103
(619) 291-5528

Counsel for Wife:
Harvey A. Ruben
2878 Camino del Rio South, Suite 200
San Diego, CA 92108
(619) 297-9111

5. *In re Marriage of Bauman*, Case No. D508439 (Cal. Super. Ct. 2009). Copy supplied in response to 13(c).

Counsel for Husband:
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San Diego, CA 92101
(619) 595-1505

Counsel for Wife:
Patrick Mazzei
1540 Sixth Avenue
San Diego, CA 92101
(619) 238-4290

6. *In re Marriage of Magre*, Case No. D454292 (Cal. Super. Ct. 2009). Copy supplied in response to 13(c).

Counsel for Husband:
Stephen Temko
1620 Fifth Avenue, Suite 800
San Diego, CA 92101
(619) 274-3538

Counsel for Wife:
Sarah Pinkerton
2755 Jefferson Street, Suite 200
Carlsbad, CA 92008
(760) 729-0941

7. *In re Marriage of Chang*, Case No. D489539 (Cal. Super. Ct. 2009). Copy supplied in response to 13(c).

Counsel for Husband:
Stuart Manroel
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San Diego, CA 92121
(858) 535-9222

Counsel for Wife:
Emory Boutilier
9939 Hilbert Street, #209
San Diego, CA 92131
(858) 566-3340

8. *In re Marriage of Fuller*, Case No. D383126 (Cal. Super. Ct. 2009). Findings and Order supplied.

Counsel for Husband:
Bruce Beals
550 West B Street
San Diego, CA 92101
(619) 231-6811

Counsel for Wife:
Leigh A. Kretzchmar
110 Juniper Street
San Diego, CA 92101
(619) 231-9323

9. *In re Marriage of Harman*, Case No. D520027 (Cal. Super. Ct. 2010). Judgment on Bifurcated Issue supplied.

Counsel for Husband:
Garrison Klueck
Ellen Swain
7435 University Avenue, # 201
La Mesa, CA 91941
(619) 448-6500

Counsel for Wife:
Thomas M. Hugenor
Linh Mai
4225 Executive Square, # 270
La Jolla, CA 92037
(858) 458-9500

10. *In re Marriage of Colton*, Case No. D335946 (Cal. Super. Ct. 2009). Findings and Order supplied.

Counsel for Husband:
Mary J. Nemish
3065 Rosecrans Place, Suite 100
San Diego, CA 92110
(619) 523-9900

Counsel for Wife:
Leah M. Boucek
Turning Point
10007 Riverford Road
Lakeside, CA 92040
(619) 270-7546

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

I have had no 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.

In re Marriage of Howell, Case No. D509228 (Cal. Super. Ct. 2009). This case involved a wife's challenge of a premarital agreement which excluded certain property as community property and provided for a waiver of spousal support. I found that the wife failed to prove the pre-marital agreement was unconscionable; that the wife entered the agreement voluntarily; and that it was valid in all respects except the spousal support waiver. I found that the premarital spousal support waiver was unenforceable based on the retroactive application of a statute requiring support waivers to follow consultation with independent counsel. Findings and Order supplied in response to 13(c). On appeal, the Court of Appeals affirmed in part and reversed in part. In a case of first impression, the Court held that the statute precluding enforcement of premarital spousal support

waivers without independent counsel was not retroactive. *See In re Marriage of Howell* (2011) 195 Cal. App. 4th 1062.

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

As a state court judge, I have not written any published opinions. From January 2007 through December 2007, I was assigned to a Domestic Violence criminal calendar with a heavy caseload involving change of plea hearings, probation revocation proceedings and jury trials. I did not prepare any opinions in this position and necessary findings by the court are contained in the minutes and forms in the case files. From January 2008 through December 2010, I handled a direct family calendar department with a caseload of more than 1,000 cases. In an average week, I handled a caseload of approximately 100 cases, including 80 noticed motions for support and custody orders, and 20 ex parte motions seeking immediate relief and requests for domestic violence restraining orders. Due to the volume of cases in family court, the vast majority of decisions are made on the record at the hearings and reduced to writing by minute orders or findings and an order after the hearing prepared by prevailing counsel. Unpublished opinions are filed and stored in the case file.

Beginning in 2011, I began a civil trial and criminal preliminary hearing assignment. All but one of the eleven civil trials was a jury trial and did not require a statement of decision by the court. Some of these civil cases resulted in post-trial motions. Unpublished opinions are filed and stored in the case file. In the criminal preliminary hearing cases, I made my findings regarding probable cause on the record.

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

Enrique M. v. Angelina V., Superior Court No. D053395. In this child custody dispute, the father argued that the federal constitutional due process clause required application of strict scrutiny analysis to any burden placed on the father's right to make decisions concerning the care, custody and control of his child. I denied the request to apply strict scrutiny where the parents shared joint custody over the child. The court of appeals affirmed in a partially published decision. *Enrique M. v. Angelina V.* (2009) 174 Cal. App. 4th 1148.

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

None.

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

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

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

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

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

I assess the necessity or propriety of recusal by reference to the Code of Judicial Conduct and California Code of Civil Procedure section 170.1, *et seq.* In addition to mandatory recusal provisions which apply where a conflict exists, under Code of Civil Procedure section 170.1(a)(6)(a), a judge has the discretion under California law to recuse himself if recusal would further the interests of justice or a person aware of the facts might reasonably entertain a doubt regarding the judge's impartiality. On the basis of the discretionary recusal provisions, I do not accept cases in which the parties are represented by close friends of mine or my family. I have provided the Court Clerk's Office a list of the names of attorneys whose friendship with me or my family warrant discretionary recusal.

Under the authority of section 170.1(a)(6)(a), I have recused sua sponte on the following cases:

Manchester v. Manchester, Case No. D516557 (Cal. Super. Ct. 2010) (close friend's law firm represented one of the parties)

In re Marriage of Kesselhaut, Case No. D510352 (Cal. Super. Ct. 2009) (mother of a close friend of my child represented one of the parties)

Riddle v. Brennan, Case No. 473551 (Cal. Sup. Ct. 2009) (fellow board member was identified as a witness at a scheduled custody trial)

In re Marriage of Castagnola, Case No. 507295 (Cal. Sup. Ct. 2008) (one of the parties in a dissolution/custody case was a bank officer that I had contact with in my capacity as a trustee for a charter school)

In the following case, I recused myself at the suggestion of the wife's counsel following the husband's ex parte communication to the court through the court clerk. The communication related to a claimed mistake in the court's calculation of child support. I recused myself to avoid the appearance of impropriety. *Caldwell v. Caldwell*, Case No. D436720 (Cal. Super. Ct. 2009).

California Code of Civil Procedure section 170.6 allows each party to exercise one peremptory challenge to any sitting judge without the need to show cause. The motions are fairly routine in the Superior Court. In San Diego County, the requests are processed as a matter of course. The Court does not maintain any data on such requests or file them in any particular way.

During my Domestic Violence Court assignment in 2007, I recall one peremptory challenge filed by the Public Defender. During my Family Court assignment from 2008 through 2010, I recall three or four peremptory challenges. These timely peremptory challenges were automatically granted.

In addition, I recall two to three untimely peremptory challenges being filed by pro per litigants after I had issued rulings in the case. Under California law, an automatic peremptory challenge is only available when it is made prior to the judge rendering a substantive order. Where a court has made a prior substantive order, the request for automatic recusal is denied. In the following cases, I denied untimely peremptory challenges:

Kearns v. Budzey, D502061 (Cal. Super. Ct. 2010) (I previously had held bifurcated trial on validity of pre-marital agreement)

In re Marriage of Baumann, D508439 (Cal. Super. Ct. 2011) (I previously had held bifurcated trial on the date of separation)

My current assignment is a civil trial department. In this capacity, all parties must agree to a civil trial department before the case is assigned for trial. I have learned that in one or two cases, all counsel did not agree to the assignment of their case to my department for trial.

California Code of Civil Procedure section 170.1 sets forth the procedure to challenge a judge for cause. Under this section, the party must file a written motion stating the grounds for the recusal. The judge must respond within 10 days in writing or the recusal must be granted. A judge outside of the county decides the motion. I do not recall ever having a litigant or party file a challenge for cause.

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

    a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or

appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office, other than judicial office, and 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.

In 2010, I endorsed Robert C. Longstreth and Stephen P. Clark to be elected judges for the Superior Court, County of San Diego.

In 2008, I endorsed Evan Patrick Kirvin and Garry Haehnle to be elected judges for the Superior Court, County of San Diego.

I have not held office 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 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 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.

1979 – 1986
James, James & Manning
200 Monticello Drive
Dyer, IN 46311
Associate

1986 – 1989
Barbosa & Vera [Firm dissolved in 2000]
1000 Corporate Center Drive
Monterey Park, CA 91754
Associate

1989 – 2002
United States Attorney's Office, Southern District of California
880 Front Street, #6293
San Diego, CA 92101
Chief, Narcotics Enforcement Section (1999 – 2002)
Attorney detailed to Department of Justice, Office of International Affairs (1997 – 1998)
Deputy Chief, Narcotics Enforcement Section (1996 – 1997, 1998 – 1999)
Assistant United States Attorney (1989 – 2002)

2002 – 2006
United States Attorney's Office, Central District of California
312 North Spring Street
Los Angeles, CA 90012
Assistant United States Attorney

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

Other than serving as a mandatory settlement conference judge, I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

I began my legal career as an associate at a private law firm specializing in civil and criminal litigation. I handled cases on behalf of plaintiffs, including cases involving highway design and products liability. I defended a municipality as co-counsel in a voting rights case filed in federal court. Also, I assisted a partner of the firm in two federal criminal trials. Finally, I wrote the appellate briefs in a federal criminal case and a civil personal injury case.

From 1986 to 1989, I was an associate at a private law firm specializing in representation of municipalities. In this capacity, I defended

municipalities in civil litigation involving highway design, personal injury, and police practices cases.

I left private practice to become an Assistant United States Attorney, first in San Diego (1989 – 2002) and then in Los Angeles (2002 – 2006). Throughout my career as a federal prosecutor, I investigated and prosecuted violations of federal law with an emphasis in narcotics and money laundering cases. In addition, beginning in 1994 and until 2002, I was assigned as the Professional Responsibility Officer for the U.S. Attorney's Office in San Diego. In this position, I provided assistance and training to federal prosecutors regarding their legal obligations as prosecutors in pre-trial discovery, at trial, and in their work with confidential informants.

From 1996 to 1997 and 1998 to 1999, I served as Deputy Chief of the Narcotics Enforcement Section. From 1999 to 2002, I was Chief of the Narcotics Enforcement Section where I supervised sixteen Assistant U.S. Attorneys and reviewed their proposed wiretap applications and grand jury indictments. From 1996 through 1997 and 1999 through 2002, I was coordinator of the Arellano Felix Task Force. In this capacity, I coordinated the efforts of four Assistant U.S. Attorneys and more than twenty federal agents in the investigation.

From 2004 through 2006, I was the International Coordinator for the U.S. Attorney's Office in Los Angeles overseeing the processing of mutual legal assistance requests from foreign countries and providing assistance to Assistant U.S. Attorneys in making and responding to requests for extradition to and from foreign countries.

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

From 1979 to 1986, my typical clients were consumer plaintiffs and federal criminal defendants.

From 1986 to 1989, I represented municipalities in police practices, highway design and personal injury cases. My clients were the city manager, city risk manager, and city employees involved in the underlying actions.

From 1989 through 2006, I was a federal prosecutor specializing in narcotics and money laundering prosecutions, and my client was the United States. I worked closely with the Drug Enforcement Administration, Federal Bureau of Investigation, Immigration and Customs Enforcement (formerly United States Customs Service, United

States Coast Guard, United States Marshal, Bureau of Alcohol, Tobacco and Firearms, and Internal Revenue Service.

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

From 1979 through 1986, my litigation experience consisted of one federal criminal trial as lead counsel, two federal criminal trials as associate counsel, and one federal civil rights trial as co-counsel. In addition, I handled a federal criminal appeal, including the oral argument.

From 1986 through 1989, I had an average of one or two appearances in court per month and no trials.

Upon my appointment as an Assistant United States Attorney in 1989, my appearances in court increased significantly. From 1989 through 1996, 100% of my practice was devoted to federal criminal litigation. I was sole counsel in approximately 20 jury trials of one to three days in length during this time and sole counsel in one non-jury trial. Also, I co-tried four jury trials that ranged in length from eight to twenty days. I appeared in court an average of 15 times per month.

From 1997 through 2002 while working with the United States Attorney's Office in San Diego, my practice was devoted to criminal litigation as attorney, supervisor of federal prosecutors, coordinator of task forces, and an instructor. During this time, in addition to my supervisory and administrative duties, I tried two cases of five days in length (one as co-counsel and one as lead counsel) and handled extradition proceedings related to two Arellano Felix assassins.

From 2002 through 2006 while working with the United States Attorney's Office in Los Angeles, I appeared in court an average of eight times per month and I co-tried three cases which were between six and eight days in length.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 5%
   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 tried one federal civil jury case to verdict as co-counsel. I tried approximately 32 federal criminal jury cases to verdict with 21 trials as sole counsel and 11 trials as lead or co-counsel. I tried one federal criminal non-jury case to verdict as sole counsel.

i. What percentage of these trials were:
   1. jury: 97%
   2. non-jury: 3%

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. Ramirez, et al.*, CR-04-01054-ER, United States District Court for the Central District of California; Hon. Edward Rafeedie; 2004 – 2006.

During a wiretap investigation of a street gang for racketeering violations, law enforcement officers identified a load car which was transporting cocaine. In order to avoid alerting the street gang of the ongoing investigation, law enforcement officers solicited the support of a traffic officer to develop independent grounds for a traffic stop of the load car. Following the traffic stop, eight kilograms of cocaine were seized and two occupants were arrested. The defendants sought to suppress the seizure of the eight kilograms of cocaine on the grounds that the individual traffic officer who stopped the load car lacked probable cause. I handled the prosecution and successfully opposed the motion to suppress evidence based on the collective knowledge of the investigating

officers that existed at the time of the traffic stop. The district court denied the motion to suppress the cocaine and the Ninth Circuit affirmed the decision on the basis of the "collective knowledge" doctrine. *United States v. Ramirez*, 473 F.3d 1026 (9th Cir. 2007). I was sole counsel representing the United States before the trial court and at the court of appeals.

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(310) 397-3910

Defense Counsel (Beltran)
Craig Harbaugh
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Los Angeles, CA 90012
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2. *United States v. Rodriguez, et al.*, CR 04-758-SJO, United States District Court for the Central District of California; Hon. S. James Otero; 2005.

The case involved an international drug transportation ring that imported multiple tons of cocaine in modified load cars with built-in secret compartments. The investigation relied on multiple wiretaps and historical drug seizures and resulted in the indictment of 11 defendants on drug and money laundering charges, and forfeitures of property with a value of six million dollars. Seven defendants, including the lead defendant, pled guilty to the most significant drug charges and two defendants (Rodriguez and Gonzalez) proceeded to trial which ended in a hung jury. Subsequently, the trial court granted a motion for acquittal for defendant Gonzalez and ordered a retrial as to defendant Rodriguez. After a retrial of Rodriguez, the jury found him guilty of drug and money laundering charges. I was assigned to the case a couple of months before the indictment and was involved in grand jury proceedings, defending the wiretaps at pre-trial proceedings, negotiating change of pleas for defendants, and presenting the case at two trials.

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Victor Sherman
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Defense Counsel (Gonzalez)
John Robertson
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Co-Counsel
Rob B. Villeza, Deputy Chief, Narcotics Section
United States Attorney's Office
1400 United States Courthouse
312 North Spring Street
Los Angeles, CA 90012
(213) 894-6579

3. *United States v. Mohammed, et al.*, CR 02-003-CAS, United States District Court for the Central District of California; Hon. Christina A. Snyder; 2005.

The indictment in this case charged 41 defendants with conspiracy to aid and abet the manufacture of methamphetamine, and involved the trafficking of multiple tons of pseudoephedrine. A multi-state wiretap investigation identified an international network of traffickers of pseudoephedrine, a primary precursor chemical used in producing methamphetamine. The pseudoephedrine was imported into the United States from Canada and distributed to methamphetamine manufacturing organizations in southern California. All but two apprehended defendants pled guilty. The two remaining defendants (S. Aziz and R. Aziz) were former government cooperators who proceeded to trial relying on a government authority defense. Following a four-week trial which resulted in a hung jury, both defendants pled guilty to drug charges. I was assigned to the case after the indictment of the 41 defendants and was involved in trial preparation over the course of more than a year, including the interview of numerous cooperating defendants, which ultimately led to the guilty pleas of all except two defendants. At trial, I presented witnesses who testified as to a number of pseudoephedrine seizures.

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Defense Counsel (R. Aziz)
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Lead Counsel
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Associate Counsel
Assistant U.S. Attorney Christopher Brunwin
United States Attorney's Office
1400 United States Courthouse
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Los Angeles, CA 90012
(213) 894-4242

4. *United States v. Morant, et al.*, CR 00-465-GHK, United States District Court for the Central District of California; Hon. George H. King; 2002 – 2006.

This case involved a nationwide wiretap investigation of a Jamaican marijuana drug trafficking organization responsible for distributing more than 30 tons of marijuana from California to the East Coast using FedEx couriers who knowingly delivered drugs for the organization. In 2000, twenty-five defendants were indicted and six defendants proceeded to a jury trial handled by former Assistant United States Attorney and current federal magistrate judge Patrick J. Walsh. In 2002, I took over the case. From 2002 through 2006, I handled all proceedings related to this case. These included motions for new trial filed by six defendants, sentencing hearings for ten defendants, appeals by four defendants, plea disposition for two defendants, and the extradition pleadings for two defendants apprehended in Jamaica. The appellate court affirmed the appealed convictions in *United States v. Kizzee*, 2005 WL 3481496, 159 Fed. Appx. 805 (9th Cir. 2005). I was sole counsel representing the United States from 2002 through 2006.

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Defense Counsel (Passley)
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(949) 250-6097

5. *United States v. Villanueva, et al.*, CR 99-1581-NJ, United States District Court for the Southern District of California; Hon. Napoleon Jones; 1999 – 2002.

I handled this Federal Bureau of Investigation undercover investigation of a Mexican drug trafficking organization responsible for importing or attempting to import 15 tons of marijuana. As a result of the two-year investigation, 11 tons of marijuana were seized and 19 defendants were indicted. All but two of the apprehended defendants entered pleas of guilty to drug charges. Defendant Villanueva maintained the stash house where the marijuana was kept after it was imported into the United States. Defendant Alvarez was alleged to have provided financial support to Chan-Amador, the head of the transportation ring. Following a two-week jury trial, Villanueva was convicted on all charges and Alvarez was acquitted. At trial, I handled the opening and closing arguments, examined most of the witnesses and handled the sentencing hearings for the defendants who pled guilty. Finally, I handled Villanueva's sentencing and his appeal before the Ninth Circuit, which denied a motion to suppress evidence, affirmed the conviction, and remanded to the trial court so that it could make an individualized determination of the amount of drugs for which Villanueva was responsible. *United States v. Villanueva*, 43 Fed. Appx. 16 (9th Cir. 2002).

Defense Counsel (F. Villanueva)
Ward Stafford Clay
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San Diego, CA 92101
(619) 234-1353

Defense Counsel (Alvarez)
Michael Pancer
105 West F Street, 4th floor
San Diego, CA 92101
(619) 236-1826

Associate Counsel for United States
Roopal Shah (Former Assistant U.S. Attorney)
Current contact information unavailable

6. *United States v. Perez-Aguilar, et al.*, CR 97-1351-IEG, United States District Court for the Southern District of California; Hon. Irma E. Gonzalez; 1999.

This was a wiretap investigation of a large scale methamphetamine distributor supplied by a major Mexican methamphetamine producing and trafficking organization. Perez-

Aguilar was the subject of a wiretap investigation which led to multiple seizures of methamphetamine. Perez-Aguilar proceeded to trial and was convicted following a two-week trial. I presented the case on behalf of the government and handled the sentencing hearing following his conviction.

Defense Counsel
Jerome A. Kaplan
Kaplan, Kenegos, & Kadin
9150 Wilshire Boulevard, #175
Beverly Hills, CA 90212
(310) 859-7700

7. *In the Matter of the Extradition of Mainero*, 96-MG-1798 (AJB), 990 F. Supp. 1208 (S.D. Cal. 1998); Hon. Anthony Battaglia, formerly United States Magistrate Judge and currently United States District Court Judge (extradition proceedings 1996 – 1998); and 97-CV-2292-MLH, Hon. Marilyn Huff (habeas corpus proceedings 1998); and *Gregg v. Mainero*, 164 F.3d 1199 (9th Cir. 1999) (appeal 1998 – 1999).

This case involved a request by the Republic of Mexico for the extradition to Mexico of two alleged assassins of the Arellano Felix cartel for multiple homicides, including the murder of the Deputy Chief of the Mexican National Anti-Drug Agency. Numerous legal issues and evidentiary challenges were raised in proceedings before the magistrate judge, district court judge and appellate court which are set out in the two published decisions. Former U.S. Magistrate Judge and current U.S. District Court Judge Anthony Battaglia found the two assassins extraditable; District Court Judge Huff denied a petition for habeas corpus relief; and the Ninth Circuit affirmed the district court's decision. I was sole counsel for the United States at every stage of this case. I prepared and submitted the extradition request, and argued the case at the extradition hearing before the magistrate judge. Following the magistrate judge's decision to extradite, I prepared the opposition to a petition for habeas corpus and argued on behalf of the government at the hearing before the district court. Finally, I wrote the government's brief and argued the case before the Ninth Circuit.

Defense Counsel (Valdez and Hodoyan)
Michael Pancer
105 West F Street, 4th floor
San Diego, CA 92101
(619) 236-1826

8. *United States v. Klimavicius-Viloria, et al.*, CR 95-1421-MH; United States District Court for the Southern District of California; Hon. Marilyn Huff; 1996.

After a three-day consensual boarding and search by the U.S. Coast Guard of a fishing vessel sailing near the Galapagos Islands, the U.S. Coast Guard discovered twelve tons of cocaine concealed in secret compartments built within fuel tanks. The ten crew members were charged with a maritime drug conspiracy and all proceeded to trial and were

convicted after a two-week trial. The defendants unsuccessfully challenged the sufficiency of the evidence and the power of a U.S. court to exercise jurisdiction over the defendants where the cocaine was seized near the Galapagos Islands. On appeal, the convictions were affirmed by the Ninth Circuit in *United States v. Klimavicius-Viloria*, 144 F.3d 1249 (9th Cir. 1998). Co-counsel and I shared equal responsibility for preparing and presenting the case through each stage of the litigation, including the investigation, pre-trial, trial, sentencing and the appeal.

Defense Counsel (Klimavicius-Viloria)
Juanita R. Brooks
Fish & Richardson
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(858) 678-4377

Defense Counsel (Lerma-Lerma)
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Defense Counsel (Caicedo-Pineda)
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Defense Counsel (Ferraro-Montesdeoca)
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Defense Counsel (Rivas-Lerma)
D. Wayne Brechtel
Worden Williams APC
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(858) 755-6604

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Defense Counsel (Palma-Robayo)
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Defense Counsel (Payan-Solis)
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Defense Counsel (Rojas-Renteria)
William R. Burgener
1775 Hancock Street, #285
San Diego, CA 92101
(619) 291-8565

Co-Counsel
Hon. William V. Gallo (former Assistant United States Attorney)
United States Magistrate Judge
940 Front Street
San Diego, CA 92101
(619) 557-6524

9. *United States v. Ayala, et al.*, CR 94-0476-IEG, United States District Court for the Southern District of California; Hon. Irma E. Gonzalez; 1995 – 1996.

I led an FBI investigation of Ayala, a former Immigration and Naturalization Service employee, who corrupted five border inspectors to permit cocaine loads to enter the United States from Mexico without inspection. Eventually, a related investigation of two inspectors was joined which resulted in a consolidated indictment of Ayala, two border inspectors (Garcia and Mejia), drug load drivers, and others. Four defendants including Ayala and the border inspectors proceeded to trial. Following a two-month trial, Ayala and border inspector Garcia were convicted on cocaine importation charges. The jury hung as to border inspector Mejia. Following a retrial, Mejia was convicted of conspiring to import marijuana. After the consolidation of the two investigations, co-counsel and I equally shared the responsibilities for trial preparation, presentation of witnesses, and presenting opening and closing arguments. In addition, we jointly handled the sentencing hearings and appeals of the convicted defendants.

Defense Counsel (Ayala)
Nicholas Reyes
1107 R Street
Fresno, CA 93721
(559) 259-4287

Defense Counsel (Garcia)
Michael Pancer
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San Diego, CA 92101
(619) 236-1826

Defense Counsel (Mejia)
Jan Ronis
105 West F Street, 3rd floor
San Diego, CA 92101
(619) 236-8344

Defense Counsel (Calderon)
Enrique Miguel Ramirez
74-923 Highway 111 #150 (last known address)
Indian Wells, CA 92210

Co-Counsel
Assistant U.S. Attorney Cynthia L. Millsaps
United States Attorney's Office
880 Front Street, Room 6293
San Diego, CA 92101
(619) 557-5530

10. *United States v. Medina*, CR 93-1485-IEG, United States District Court for the Southern District of California; Hon. Irma E. Gonzalez; 1993 – 1994.

This case was related to the Ayala FBI investigation of drug trafficking and bribery of inspectors which is referenced above. The defendants in this case, Medina and Herrera, were employees of Ayala's immigration consulting office. Medina and Herrera attempted to bribe a border inspector to permit cocaine to enter the United States without inspection. After an undercover investigation, the defendants were arrested and charged with a conspiracy to import cocaine and attempted bribery of a federal law enforcement officer. Following a two-week jury trial, Medina and Herrera were convicted on all charges.

Defense Counsel (Medina)
Lynn H. Ball
1560 Scott Street
San Diego, CA 92106
(559) 259-4287

Defense Counsel (Herrera)
Enrique Miguel Ramirez
74-923 Highway 111 #150 (last known address)
Indian Wells, CA 92210

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 2006, while working as an Assistant U.S. Attorney in Los Angeles, I initiated a wiretap investigation targeting members of the Jorge Cuevas-Mares Drug Trafficking Organization. During the investigation, I met with law enforcement agents, prepared multiple applications for wiretap applications, and obtained court-authorization for wiretaps which led to the seizure of more than 455 kilograms of cocaine in Paramount, California. As a result of my appointment to the superior court bench in November 2006, I was not involved in the take down of the investigation in 2007.

From 1996 to 1997 and from 1999 to 2002, I worked as attorney coordinator with the Arellano Felix Task Force. In this capacity, I coordinated the efforts of four prosecutors who were targeting different wings of the Arellano Felix cartel. I also worked with the Drug Enforcement Administration, United States Customs Service, Federal Bureau of Investigation and the United States Marshal Service in San Diego and in Mexico City in the investigation, apprehension, and extradition of key members of the Arellano Felix cartel. In addition, I coordinated with the U.S. Department of Justice Criminal Division and Office of International Affairs on efforts to extradite the leaders of the cartel. Finally, I worked with the Mexican Attorney General's office in targeting the Arellano Felix members and coordinating international cooperation efforts relating to mutual legal treaty requests and extradition requests by the respective countries.

From 1994 to 1997, I served as member, vice chair and chair of the State of California State Bar, Criminal Law Advisory Commission. The Commission is responsible for administering the certification exam for criminal law specialists and for vetting the applicants. During my term with the commission, I prepared questions that were included in the criminal law certification exams.

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.

    I do not have any plans, commitments or agreements to pursue outside employment during my service with the Court.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I do not have any financial arrangements that would present potential conflicts-of-interest.

My wife is currently employed by the United States Probation Office as Deputy Chief. I would recuse in any case in which my wife would be involved. Also, I will avoid discussing any specific case with my wife. Finally, I will remain vigilant to identify any other situations which require disclosure to the parties or additional steps to avoid the appearance of impropriety.

Since 2008, I have been on the Board of Trustees of a California 501(c)(3) non-profit public benefit corporation which operates Urban Discovery Academy, an elementary school for grades kindergarten through eighth grade. Under state law, my service on the board is permitted by California Code of Judicial Ethics, Canon 4C(3)(b) which provides "a judge may serve as an officer, director, trustee or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for profit." Moreover, in my assignments as a family law and civil trial judge I have not had any occasion to consider or rule on any conflict of interest created by being on the board. However, if I am confirmed, I would likely step down from the board to avoid the appearance of impropriety or future conflicts in any cases where public school issues are raised.

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

On a case by case basis, I will remain vigilant of my obligation to be fair and neutral and to avoid conflicts and the appearance of impropriety. If a potential conflict of interest arises, I will review the Judicial Code of Conduct and the rules under 28 U.S.C. sections 144 and 455a. After reviewing the applicable rules, I will consult, as appropriate, colleagues on the bench or representatives with the Administrative Office of the United States Courts.

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

Legal Enrichment and Decision Making (LEAD) Program – East Los Angeles

From 2003 to 2006, I was an instructor at an East Los Angeles school class of fifth graders as part of a 20-week program operated by the Los Angeles District Attorney's Office. The program introduced the children to the legal system and provided tools on how to make good decisions in life and how to avoid peer pressure, truancy, bullies, drugs, and gangs. During this time, I participated as an instructor at 50 one-hour classes.

Beginning in 2007, I worked with the San Diego District Attorney's Office to establish the LEAD program in San Diego Unified School District schools. In 2007, the program was adopted at Laura Rodriguez, a school located in Barrio Logan, and Johnson Elementary, a lower economic area school. Since 2007, I have participated as an

instructor at the opening class and as a presiding judge at a mock trial which is the culmination of the program. I have devoted more than 30 hours to this program since 2007.

Kid's Turn – San Diego

This program is coordinated by the San Diego District Attorney's Office and Rady Children's Hospital and seeks to introduce child victims of crimes to the experience of being in a courtroom. From 2007 to 2011, I have assisted as a volunteer in the courtroom exercises on approximately eight occasions for a total of more than 15 hours.

26. **Selection Process**:

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

I was contacted in May 2011 by Senator Barbara Boxer's Judicial Advisory Committee regarding the open District Court position. On May 4, 2011, I met with members of the Senator's committee, to discuss my interest in the position. On May 20, 2011, I spoke with a member of Senator Boxer's staff regarding my interest in the position and on May 23, 2011, I advised him that I was submitting my judicial application.

On June 28, 2011, I was interviewed by the Senator's committee, chaired by Candace M. Carroll. Since July 11, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 22, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 10, 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
Curiel, Gonzalo P.	U.S. District Court, Southern District of California	11/10/2011
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
Article III judge nominee	☑ Nomination, Date 11/10/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 10/31/2011
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.	
220 West Broadway San Diego, CA 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.	Trustee	Urban Discovery Academy Charter School
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 Curiel, Gonzalo P.	Date of Report 11/10/2011

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 California - salary	$196,968.00
2. 2010	State of California - salary	$192,343.00
3. 2009	State of California - salary	$193,201.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Curiel, Gonzalo P.	Date of Report 11/10/2011

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
Curiel, Gonzalo P.	11/10/2011

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. Family Trust # 1					Exempt				
2. - First Credit Union	A	Interest	K	T					
3. - Wells Fargo Bank	A	Interest	K	T					
4. - Maui, HI real property		None	N	W					
5. - Glendale, AZ real property parcel #1		None	M	W					
6. - Glendale, AZ real property parcel #2	B	Rent	M	W					
7. - Various boats		None	L	U					
8. - Various vehicles		None	K	U					
9. California Retirement System II	D	Interest	L	T					
10. American Funds Moderate Allocation Portfolio	A	Dividend	J	T					
11. MFS Emerging Markets Portfolio	A	Dividend	J	T					
12. MFS Research International Portfolio	A	Dividend	J	T					
13. PIMCO Inflation Protected Portfolio	A	Dividend	J	T					
14. PIMCO Total Return Portfolio	A	Dividend	J	T					
15. T. Rowe Price Mid Cap Growth Fund	A	Dividend	J	T					
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 Curiel, Gonzalo P.	Date of Report 11/10/2011

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

Wife is a co-trustee and co-beneficiary of Family Trust #1 which is a revocable living trust funded by my wife's father. As a co-trustee, my wife shares unlimited access and full control of the trust assets.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Curiel, Gonzalo P.	Date of Report 11/10/2011

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		3	925	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		52	436	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 – see schedule	1	398	351
Real estate owned – personal residence	1	500	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		94	300	Car lease		15	445
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		766	778				
California Retirement System II		69	827				
				Total liabilities	1	413	796
				Net Worth	1	073	470
Total Assets	2	487	266	Total liabilities and net worth	2	487	266
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 Moderate Allocation Portfolio	$ 5,244
MFS Emerging Markets Portfolio	7,865
MFS Research International Portfolio	10,487
PIMCO Inflation Protected Portfolio	10,487
PIMCO Total Return Portfolio	10,487
T. Rowe Price Mid Cap Growth Fund	7,865
Total Listed Securities	$ 52,435

Real Estate Mortgages Payable	
Personal residence	$ 1,286,951
Home equity line of credit	111,400
Total Real Estate Mortgages Payable	$ 1,398,351

California Retirement System II: My employer has contributed $152,000 to this retirement plan, which will vest on November 13, 2011.

AFFIDAVIT

I, Gonzalo P. Curiel, do swear that the information proviced in this statement is, to the best of my knowledge, true and accurate.

November 11, 2011
(DATE)

(NAME)

(NOTARY)

State of California
County of San Diego
Subscribed and sworn to (or affirmed) before me on this 11th day of Nov, 20 11
by GONZALO P. CURIEL
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____ (Seal)

OFFICIAL SEAL
MIR ALI
NOTARY PUBLIC-CALIFORNIA
COMM. NO. 1817852
SAN DIEGO COUNTY
MY COMM. EXP. NOV. 12, 2012

STATEMENT OF ROBERT J. SHELBY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH

Mr. SHELBY. That's very kind of you, Senator. Thank you. Good afternoon.

In lieu of formal statement this afternoon I'd like to take just a moment and thank the President for the honor of this nomination. I'd also like to thank Senator Hatch for recommending me to the President and for the support he and his staff have shown to me throughout this process.

Senator Lee, also thank you to you and your staff, who have been tremendous. We appreciate—I very much appreciate you supporting my nomination and the support that your staff has—has shown to me. Also, thank you very much for those kind words this afternoon.

I'd like to thank all of the members of the committee for their consideration. Finally, I'd like to thank the members of the District Court at home in Utah, the judges and their staffs, the Clerk of Court and his staff. Everyone has really just been terrific and very supportive of this nomination, and that's particularly true of our chief judge, Ted Stewart, and the newest member of our District Court bench, David Nufer. Judge Nufer was elevated by the Senate with his confirmation hearing last week.

I, too, have some family members with me, some special guests, and am honored to introduce them today. My college sweetheart and wife of almost 20 years, Angela, is here, as are our children: my 8-year-old daughter Amelia and my 6-year-old son George. Also with us today is my dear, dear friend, my law partner and my colleague, Juli Blanch.

My parents are unable to be here today, but George and Marla are at home watching on the webcast, along with many other friends and colleagues. Senators, I'm honored and humbled to be here this afternoon and I look forward to answering any questions you may have.

[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).

   Robert James Shelby

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.

   Snow, Christensen & Martineau
   10 Exchange Place, 11th Floor
   Salt Lake City, Utah 84111

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

   1970; Fort Atkinson, Wisconsin

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

   1995 – 1998; University of Virginia School of Law; J.D., 1998

   1989 – 1993; Utah State University; B.A., 1994

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.

   2011 – Present
   Snow, Christensen & Martineau
   10 Exchange Place, 11th Floor
   Salt Lake City, Utah 84111
   Shareholder

2005 – 2011
Burbidge Mitchell & Gross
215 South State Street, Suite 920
Salt Lake City, Utah 84111
Partner

2000 – 2004
University of Utah
Division of Continuing Education
1901 East South Campus Drive
Salt Lake City, Utah 84112
Instructor

2000 – 2005
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, Utah 84111
Associate Attorney

1999 – 2000
The Honorable J. Thomas Greene
United States District Judge, District of Utah
350 South Main, #421
Salt Lake City, Utah 84101
Law Clerk

1997 – 1998
Virginia Commonwealth Attorney's Office, Fluvanna County
P.O. Box 116
Palmyra, Virginia 22963
Student Prosecutor, University of Virginia Prosecution Clinic

Summer 1997
United States Attorney's Office, District of Montana
2929 Third Avenue North
Billings, Montana 59102
Summer Clerk

1988 – 1996
Utah Army National Guard
12953 South Minuteman Drive
Draper, Utah 84020
Specialist

Summer 1996
The Honorable Jay T. Swett
Chief Judge, Charlottesville Circuit Court
606 East Market Street
P.O. Box 2677
Charlottesville, Virginia 22902
Summer Law Clerk

Summer 1995
Holiday Inn Reservation Center
1275 West 2240 South
West Valley City, Utah 84119
Reservations Sales Agent

1994 – 1995
Snappy Car Rental
651 South West Main Street
Salt Lake City, Utah 84101
Assistant Office Manager

1994
Agency Rent-A-Car
307 West 200 South, Suite 1001
Salt Lake City, Utah 84101
Office Manager

1993 – 1994
Utah State University
Department of Languages and Philosophy
0720 Old Main Hill
Logan, Utah 84322
Lecturer

1993 – 1994
Macey's
981 South Main Street
Logan, Utah 84321
Night Manager

Other Affiliations (uncompensated):

2009 – Present
Salt Lake County Bar Association
No physical address
Vice President (2011 – Present)
Secretary (2010 – 2011)
Treasurer (2009 – 2010)

2008 – 2011
American Inns of Court, David K. Watkiss-Sutherland II Inn
No physical address
President (2010 – 2011)
Vice President (2009 – 2010)
Treasurer (2008 – 2009)

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.

March 1988 – March 1996
Utah Army National Guard
19th Special Forces Group
1457th Combat Engineer Battalion
Activated for Operation Desert Storm, 1991
Honorable Discharge
Registered for Selective Service

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

Professional

Martindale-Hubbell: Rated AV Preeminent

Chambers and Partners: Litigation: General Commercial (2011)

Super Lawyers Business Edition, Litigation (2011)

Elected a Fellow, *American Bar Foundation* (2010)

Chambers and Partners: Litigation: Up and Coming (2009, 2010)

Mountain States Super Lawyers: Litigation (2008 – Present)

Utah Business Magazine: Utah's Legal Elite, Business Litigation (2007 – Present)

Military

United States Army Achievement Medal, Desert Storm (1991)

Education

Elected to International Legal Fraternity of Phi Delta Phi, Minor Inn at the University of Virginia School of Law (1996)

Twice Elected Student-Body Vice President, Utah State University

Student Leader of the Year, Utah State University (1992)

Bill Robbins Memorial Award Finalist (for outstanding achievement as a student), Utah State University (1993)

Man of the Year Finalist, Utah State University (1993)

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 (2000 – Present)

American Inns of Court, David K. Watkiss-Sutherland II Inn (1999 – Present)
- President (2010 – 2011)
- Vice President (2009 – 2010)
- Treasurer (2008 – 2009)

Salt Lake County Bar Association, Executive Committee (2002 – Present)
- Vice President (2011 – Present)
- Secretary (2010 – 2011)
- Treasurer (2009 – 2010)
- Bar & Bench Subcommittee (dates unknown)
- CLE Subcommittee (dates unknown)
- Socials Subcommittee (dates unknown)

Utah Bar Association (1998 – Present)

Utah Supreme Court's Advisory Committee, Rules of Civil Procedure (2010 – Present)

Utah Supreme Court's Ethics and Discipline Committee (2006 – Present)

Utah Supreme Court's New Lawyer Training Program, Mentor (2009 – Present)

10. **Bar and Court Admission**:

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

Utah, 1998

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 Tenth Circuit, 2001
United States District Court for the District of Utah, 1998
Utah Supreme Court, 1998
Federal Trade Commission, 2005

I have not renewed my admission to practice before the Federal Trade Commission, as we have no cases presently pending before the Commission. 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.

DRI (formerly the Defense Research Institute) (Approx. 2000 – 2005)

National Association of Criminal Defense Lawyers (Approx. 2000 – 2006)

Utah Association for Justice (Approx. 2006 – 2010)

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 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.

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.

As a member of the Utah Supreme Court's Advisory Committee on Rules of Civil Procedure since 2010, I have occasionally made comments during meetings. 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.

November 18, 2011: Presenter during Nuts & Bolts seminar, Application of the New Rules of Civil Procedure: Part III, Expert Discovery, Utah State Bar Association. PowerPoint presentation supplied.

September 27, 2011: Panelist for "Careers in Litigation," S.J. Quinney College of Law at the University of Utah. I have no notes, transcript or recording. The address of the College of Law is 332 South 1400 East, Salt Lake City, Utah 84112.

2010: As president of the David K. Watkiss – Sutherland II Inn of Court, I gave opening and closing remarks during each meeting. I have no notes, transcripts or recordings. The Inn of Court does not have a physical address.

From about 1999 through 2009, before becoming an officer of the Inn, I participated once annually in pupilage group presentations in the David K. Watkiss – Sutherland II Inn of Court. These presentations, approximately 45 minutes in duration, focused on various aspects of trial practice, professional development, and ethical considerations for trial lawyers. The presentations were designed to further the objectives of the American Inns of Court to assist in the training and development of ethical trial attorneys. The specific subject matter of each presentation varied, and was largely driven by the program theme for each particular year. I have no notes, transcripts or recordings. The Inn of Court does not have a physical address.

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.

Mike Gorrell, *Fraud Victims to Get $4.1M*, Salt Lake Tribune, May 29, 2008. Copy supplied.

Paul Rolly, *Should the Rich Be On the Hook?*, Salt Lake Tribune, Jan. 22, 2007. Copy supplied.

To the best of my recollection, I spoke briefly to the media following our successful defense of the so-called Olympic Bribery trial relating to Salt Lake City's bid to host the 2002 Winter Olympic Games. I also spoke briefly to a local television news crew concerning parking policies in Salt Lake City. Neither clips nor transcripts of these interviews are available.

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 not held a judicial office.

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

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

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

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

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

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

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 office 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 served from 1999 to 2000 as law clerk to the Honorable J. Thomas Greene, United States District Judge for the District of Utah.

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.

2000 – 2005
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, Utah 84111
Associate Attorney

2005 – 2011
Burbidge Mitchell & Gross
215 South State Street, Suite 920
Salt Lake City, Utah 84111
Partner

2011 – Present
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 4500
Salt Lake City, Utah 84111
Shareholder

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.

Following completion of my federal clerkship, I began working at Snow, Christensen & Martineau. My early practice focused largely on defense of both white-collar and so-called street crime matters. This work included cases ranging from complex securities fraud, tax fraud, and mail and wire

fraud, to rape of a child, embezzlement, theft and other offenses. My work included a high profile jury trial in defense of the so-called Olympic Bribery case, relating to Salt Lake City's bid to host the 2002 Winter Olympic Games. I also argued before the Tenth Circuit Court of Appeals concerning the adequacy of the government's service of process on a criminal defendant in foreign custody. As is my practice today, I also handled a number of pro bono cases, including several criminal defense matters.

I worked on white-collar criminal defense cases more or less continuously throughout my time at Snow, Christensen & Martineau, but my practice quickly expanded into other areas, including general commercial litigation, pharmaceutical product liability, medical malpractice defense, legal malpractice defense, premises liability, constitutional claims, municipal defense and mass torts. Throughout my time at Snow, Christensen and Martineau, my practice focused exclusively on litigation and the appeals that naturally arose out of those cases. That work caused me to make regular appearances before federal, state and appellate courts.

After moving to Burbidge Mitchell & Gross in 2005, my practice focused on complex commercial litigation and catastrophic personal injury cases. I performed that work on behalf of both plaintiffs and defendants in state, federal and administrative courts throughout the country. My commercial litigation practice included cases involving civil fraud, class action lawsuits, patent and trademark litigation, contracts, advertising claims, shareholder disputes, complex insurance coverage issues, injunctive relief, administrative proceedings before federal and state agencies, franchise disputes and general business litigation. Additionally, I worked in defense of legal liability claims asserted against other Utah firms.

Plaintiff-related work at Burbidge Mitchell & Gross varied from wrongful death and catastrophic personal injury – including brain injury and permanent disability cases – to commercial plaintiff cases for intellectual property theft, breach of contract, shareholder disputes, civil fraud and other actions. All of my work at Burbidge Mitchell & Gross focused exclusively on litigation and trial practice, together with appeals that arose from those cases.

Since returning to Snow, Christensen & Martineau earlier this year, my practice has largely mirrored the work I performed at Burbidge Mitchell & Gross. At present, I am managing the defense of a national class action case, preparing for filing a commercial matter seeking hundreds of millions in damages, have been retained to prosecute a plaintiffs' national class action matter, and continue to work on several matters that moved with me from Burbidge Mitchell & Gross.

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

I have represented over the course of my career an enormously broad range of clients, from indigent defendants in criminal proceedings to multi-national, billion dollar corporations in civil disputes.

During my first period of employment with Snow, Christensen & Martineau, areas of specialization included white-collar criminal defense, medical malpractice defense and mass tort work. Typical clients included business leaders; health care providers, including the University of Utah Hospitals and Clinics, and Mountain Star facilities (including, for example, St. Mark's Hospital, Ogden Regional Medical Center, Pioneer Valley Hospital, Jordan Valley Medical Center and Mountainview Hospital); and multi-national pharmaceutical companies, including Pfizer and some of its subsidiaries, and American Home Products (now Wyeth).

From about 2005, when I joined Burbidge Mitchell & Gross, and continuing since my return to Snow, Christensen & Martineau earlier this year, I have focused my practice on complex commercial litigation and catastrophic personal injury litigation. Typical clients in our plaintiff practices included family members and estates of deceased, as well as seriously injured individuals and their dependents.

We also prosecuted and defended cases on behalf of businesses, business owners, investors and inventors. Typical clients in commercial cases included: Trend Micro Devices (a Taiwanese computer security company), Vantage Controls, Utah Medical Products, Net Japan (a Japanese software company), ClearOne Communications, U.S. Synthetic Corporation, Legacy Resources, Energy Claims Limited (a Bahamian company) and Basic Research.

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

Virtually all of my practice has focused on litigation and trial practice in federal and state courts. I also work on appeals that arise from our cases. By virtue of the nature of my practice, I have made regular appearances in court throughout my career. Variance in the regularity of those appearances is a function of the nature and procedural posture of the cases on which I was working at any given time. For example, the frequency of appearances has gradually decreased as my practice has shifted from criminal matters to civil matters. The frequency of court appearances has also decreased as the complexity of the cases on which I work has increased. This is primarily a function of handling fewer, more complex cases at any given time.

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: 65%
   3. other courts: 0%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 85%
   2. criminal proceedings: 15%

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 I have tried approximately 35 cases to verdict, judgment or final decision. The great majority of those were criminal cases I tried as sole or chief counsel. I have also served as associate counsel in several trials, including a six week jury trial in federal court.

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. *United States v. Welch*, Case No. 2:00-CR-0324 DS, United States District Court for the District of Utah

I served as associate counsel in this case, representing one of two former Salt Lake City bid officials in a federal prosecution alleging criminal conduct in connection with Salt Lake City's bid for the 2002 Winter Olympic Games. The government alleged violations of Utah's commercial bribery statute, the Travel Act, and federal mail and wire fraud statutes. We successfully moved the trial court for dismissal of the case in its entirety. The trial court's decision was reversed on appeal to the Tenth Circuit Court of Appeals. A six week jury trial followed, ultimately resulting in a Rule 29 acquittal in favor of our client. I participated in the case from shortly after its inception until the successful conclusion of the trial, including work on the motion to dismiss, the Tenth Circuit appeal, preparing the case for trial, and as associate counsel during the trial. I sat third chair during the trial. This work was performed between approximately 2000 and the conclusion of the trial in December 2003.

Presiding Judge:
The Honorable David Sam
Senior United States District Judge for the District of Utah

Reported Decisions:
United States v. Welch, 327 F.3d 1081 (10th Cir. 2003)
United States v. Welch, 201 F.R.D. 521 (D. Utah 2001)

Co-Counsel (Representing a Co-Defendant):
William W. Taylor III
Blair G. Brown
Amit P. Mehta
Zuckerman Spaeder LLP
1800 M Street, NW
Washington, DC 20036
(202) 778-1800

Opposing Counsel:
Richard N. Wiedis
John W. Scott
United States Department of Justice
Criminal Division, Fraud Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 514-7023

2. *Russo v. Ballard Medical Products*, Case No. 2:05-CV-59 TC, United States District Court for the District of Utah

This was an intellectual property theft case brought on behalf of an independent medical device inventor. We asserted against Kimberly Clark and Ballard Medical Products claims for intellectual property theft under the Utah Trade Secrets Act, as well as claims for conversion and unjust enrichment. We successfully obtained a $20 million verdict at the conclusion of a two week jury trial. The verdict was upheld on appeal to the Tenth Circuit Court of Appeals. I worked extensively on the case from its inception, including substantial work in discovery and motion practice, and preparing the case for trial. I did not participate directly in the trial, though I provided extensive assistance with motions in limine, jury instructions, preparing witnesses, and assisting with witness examination outlines. I also assisted with the successful defense of the verdict on appeal. This work was performed from approximately 2004 through the final appeal in December 2008.

Presiding Judge:
The Honorable Tena Campbell
United States District Judge for the District of Utah

Reported Decisions:
Russo v. Ballard Medical Products, 550 F.3d 1004 (10th Cir. 2008)

Co-Counsel:
Joseph A. Kelly
Paula Kelly
Carroll, Kelly & Murphy
One Turks Head Place, Suite 400
Providence, RI 02903
(401) 331-7272

Opposing Counsel:
Brett L. Foster
Mark A. Miller
Holland & Hart
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
(801) 799-5800

Daniel T. Flaherty
Godfrey & Kahn
100 West Laurence Street
Appleton, WI 54911
(920) 830-2800

3. *ClearOne Communications, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, Case No. 2:04-CV-119 TC, United States District Court for the District of Utah

This matter primarily focused on an insurance carrier's refusal to honor a claim made by our client, ClearOne Communications, pursuant to a director and officer policy issued by defendants. The case involved parallel investigations by federal agencies, extensive litigation in federal courts concerning the scope and applicability of the policies at issue, an appeal to the Tenth Circuit Court of Appeals of a ruling granting a motion for summary judgment shortly before trial, and ultimately a related federal prosecution of several of our client's former principals. Save for the criminal proceedings, in which our firm did not participate, I was heavily involved in the litigation upon arriving at Burbidge Mitchell & Gross in 2005, and continued my extensive involvement until after our appeal was resolved. Among other things, I took numerous depositions of key third party witnesses around the country, provided significant work on briefing for cross motions for summary judgment, participated in oral argument on several motions, and was involved in preparing the case for trial before it was ultimately dismissed by the trial court. I also assisted with the briefing on appeal.

Presiding Judge:
The Honorable Tena Campbell
United States District Judge for the District of Utah

Reported Decisions:
ClearOne Communications, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 494 F.3d 1238 (10th Cir. 2007)

Lower Court Decision (Not Reported):
ClearOne Communications, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 2005 WL 2716297 (D. Utah)

Opposing Counsel:
Phillip S. Ferguson
Christensen & Jensen PC
15 West South Temple, Suite 800
Salt Lake City, UT 84101
(801) 323-5000

Anneliese C. Booher
Director of Professional Development
S.J. Quinney College of Law at the University of Utah
332 South 1400 East
(801) 581-8700
(Formerly with Christensen & Jensen, PC)

Douglas R. Irvine
Lewis, Brisbois, Bisgaard & Smith LLP
221 North Figueroa Street, Suite 1200
Los Angeles, CA 90012
(213) 250-1800

4. *Miller v. Basic Research, et al.*, Case Number 2:07-CV-871 TS, United States District Court for the District of Utah

In this case, we are defending numerous entities and individuals named in a national advertising class action lawsuit. Plaintiffs seek hundreds of millions of dollars in damages in connection with claims asserted under the Utah Consumer Sales Practices Act, Utah's Pattern of Unlawful Activity Act, and federal RICO, as well as claims for unjust enrichment and fraud. The case has been very heavily litigated since its inception. The parties have engaged in extensive motion practice and discovery related to class and merits issues. Among other things, we successfully petitioned the court for dismissal of several parties and claims. The case also involved a Rule 23(f) petition to the Tenth Circuit Court of Appeals for interlocutory appellate review of the trial court's order certifying a class, and a subsequent motion for reconsideration. I have had primary responsibility for the day-to-day activity in the case throughout most of its duration, beginning in 2007. This includes overseeing and conducting discovery, including taking and defending numerous fact and expert depositions, providing argument at hearings, and generally overseeing the course of the litigation and the strategies employed. The case is set for trial in late 2012.

Presiding Judge:
The Honorable Ted Stewart
United States District Judge for the District of Utah

Related Decisions:
Miller v. Basic Research, Inc., 2011 WL818150 (D. Utah), March 2, 2011 (Not Reported)
Miller v. Basic Research, Inc., 2008 WL 4755787 (D. Utah), RICO Bus. Disp. Guide 11, 573 (Not Reported)

Opposing Counsel:
Jon V. Harper
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50 West Broadway, Suite 700
Salt Lake City, UT 84101
(801) 534-1700

Scott R. Shepherd
James C. Shah
Nathan C. Zipperian
Shepherd Finkelman Miller & Shah LLP
35 E State Street
Media, PA 19063
(610) 891-9880

Kevin P. Roddy
Daniel R. Lapinski
Wilentz Goldman & Spitzer, PA
90 Woodbridge Center Drive, Suite 900
P.O. Box 10
Woodbridge, NJ 07095
(732) 855-6066

5. *Lutron v. Vantage*, Case Number 2:03-CV-488 TC, United States District Court for the District of Utah

Our firm represented Vantage Lighting Controls in defense of patent infringement and related claims. We asserted and prosecuted counterclaims for declaratory judgment that the asserted patents were invalid, and for a declaration of non-infringement. The case involved complex and heavily contested issues concerning patent claim interpretation and application to certain lighting control devices manufactured by our client. The case was ultimately resolved by the parties in the very late stages of the litigation. From my arrival at Burbidge Mitchell & Gross through final resolution of the case, I was extensively involved in both fact and expert discovery, including preparing witnesses, defending and taking numerous fact and expert depositions, coordinating work with our experts, as well as substantial work on the voluminous motion practice that continuously arose throughout the case.

Presiding Judge:
The Honorable Tena Campbell
United States District Judge for the District of Utah

Related Decisions:
Vantage Controls Co., v. Lutron Electronics Co., Inc., 2006 WL 539517 (D. Utah) (Not Reported)

Co-Counsel:
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William D. Sims, Jr.
Scott W. Breedlove
Vinson & Elkins, LLP
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6. *NetJapan v. StorageCraft Technology Corp.*, Case No. 060920091, Third Judicial District Court, Salt Lake County, Utah

   Our firm represented a Japanese software manufacturer in a dispute with a Utah company. The case involved affirmative claims for fraud, negligent misrepresentation and various breaches of contract. We also defended several counterclaims relating to the same transactions. The case was aggressively litigated through the eve of trial, and settled shortly after the trial court continued the trial approximately two days before it was set to begin. I was extensively involved in fact and expert discovery, as well as significant motion practice throughout the case. Together with my law partner, I prepared the case for presentation to a jury before the court continued the trial. I was designated to sit second chair for the trial.

Presiding Judges:
The Honorable Vernice S. Trease
Third District Judge

The Honorable Robert K. Hilder
Presiding Third District Judge

Opposing Counsel:
Alan L. Sullivan
Snell & Wilmer
15 West South Temple, Suite 1200
Salt Lake City, UT 84101
(801) 257-1900

Hon. Todd M. Shaughnessy
Third District Court Judge
450 South State Street
P.O. Box 1860
Salt Lake City, UT 84114
(801) 238-7300
(Formerly with Snell & Wilmer)

7. *Ekstrom v. Trend Micro Devices*, Case No. 050907533, Third Judicial District Court, Salt Lake County, Utah

Our firm was brought into this case several months before trial to represent the co-founders of Trend Micro Devices, a Taiwanese network security company in a dispute with a former consultant seeking tens of millions of dollars in monies allegedly owing under the terms of an oral agreement. We coordinated closely with co-counsel representing the corporation, conducted expedited discovery and prepared the case for presentation to a jury. The matter was resolved days before trial was set to begin. Respecting the representation of our clients, I was responsible for handling the day-to-day activity in the case, including preparing witnesses, taking depositions of fact and expert witnesses, overseeing the pre-trial motion practice, and related activities. I also conducted the settlement negotiations that ultimately concluded with a global resolution of all claims as to all parties on the eve of trial. Virtually all of the trial work was completed before the case settled. My work on the case was largely performed in 2007 and 2008.

Presiding Judge:
The Honorable John Paul Kennedy
Third District Court Judge

Co-Counsel:
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Salt Lake City, UT 84101
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(Formerly with Holme Roberts & Owen, LLP)

Robert P.K. Mooney
Law Office of Robert P.K. Mooney
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(Formerly with Holme Roberts & Owen, LLP)

Opposing Counsel:
Kevin N. Anderson
Rachel G. Terry
Fabian & Clendenin
215 South State Street, Suite 1200
Salt Lake City, UT 84111
(801) 531-8900

8. *Coxey v. Fraternal Order of Eagles*, Case No. 980907047, Second Judicial District Court, Weber County, Utah

This was a premises liability case involving two jury trials and an appeal to the Utah Court of Appeals. I was brought in as associate counsel for the second jury trial. We represented the Fraternal Order of Eagles in defense of claims asserted by a former Ogden City police officer arising out of injuries allegedly sustained while visiting our client's property. We successfully persuaded the trial court to dismiss the case with prejudice during the trial on the basis that plaintiff's former attorneys had willfully secreted and failed to produce evidence we requested in discovery years earlier. The trial court's decision was upheld on appeal after I left my former firm. My involvement in the matter was primarily limited to preparing the case for the second jury trial, and participating in the trial as the second chair. I conducted live witness examination in the trial prior to the court's ruling dismissing the case. To the best of my recollection, that work was largely performed in 2004.

Presiding Judge:
The Honorable Pamela G. Heffernan
Second District Judge

Opposing Counsel:
James R. Hasenyager
Peter W. Summerill
Hasenyager & Summerill
1004 24th Street
Ogden, UT 84401
(801) 621-3662

Reported Decisions:
Coxey v. Fraternal Order of the Eagles, 112 P.3d 1244 (Utah App. 2005)

9. *Bilanzich v. Lonetti*, Case No. 010500411, Fifth Judicial District Court, Washington County, Utah

I was brought into this case to prepare and conduct a trial upon remand from the Utah Supreme Court. The underlying litigation involved a complex series of guarantees, notes and agreements relating to a several million dollar loan secured by real property. Our firm represented the plaintiff, on whose behalf our firm filed an action seeking a declaration that our client's personal guarantee was unenforceable, and asserting claims for rescission and unjust enrichment. The defendant asserted counterclaims. The claims were eventually resolved through settlement after we successfully obtained partial summary judgment. We then filed a petition for attorneys' fees and costs, which the trial court denied. Appeals followed to the Utah Court of Appeals, and eventually the Utah Supreme Court, which reversed the trial court and remanded for a trial on issues relating to the petition for attorneys' fees and costs. I was not involved in the preliminary work or the appeal, but was brought in as lead counsel to prepare and try the case on remand. Following additional discovery and a bench trial, we prevailed on our claims. My work on this case was largely performed in 2007.

Presiding Judge:
The Honorable James L. Shumate
Fifth District Court Judge

Opposing Counsel:
Stephen R. Marshall
Bryan J. Pattison
Durham Jones & Pinegar
111 East Broadway, Suite 900
Salt Lake City, UT 84111
(801) 415-3500

10. *Bad Ass Coffee Co. of Hawaii, Inc. v. J.H. Nterprises, LLC*, Case number: 2:09-CV-452 CW, United States District Court, District of Utah

The Bad Ass Coffee Company of Hawaii, a national franchisor and one of the largest importers of specialty Kona Coffee in the United States, retained our firm to seek injunctive relief against a Florida franchisee who was unlawfully competing with our client in violation of a non-compete agreement. Acting as lead counsel, I prepared and filed a Complaint, and sought and obtained a permanent injunction against the defendants, preventing them from operating in competition with our client. The case was handled on an expedited basis and involved an evidentiary hearing following discovery and briefing. I conducted all of the discovery, and put on all of the evidence at trial, including all of the witness examinations. I also provided all of the argument to the Court on behalf of our client. My work in this case was performed in 2009.

Presiding Judge:
The Honorable Clark Waddoups
United States District Judge for the District of Utah

Reported Decision:
Bad Ass Coffee Co. of Hawaii, Inc. v. J.H. Nterprises, LLC, 636 F. Supp. 2d 1237 (D. Utah 2009)

Opposing Counsel:
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Salt Lake City, UT 84101
(801) 799-5800

Matthew J. Kreutzer
Holland & Hart
3800 Howard Hughes Parkway
Las Vegas, NV 89169
(702) 669-4600

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

Outside of litigation, my most significant legal activities have involved bar related service, including work with the American Inns of Court and several bar committees.

The American Inns of Court focuses on mentoring and training young trial lawyers, and reinforcing the highest ethical standards for the practice of law. I have been a member of the local Inn for the last 13 years. For many of those years, I served as a pupilage group leader, organizing and planning pupilage group presentations on various professional and ethical topics. In addition, I served as an officer of our local Inn for three years between 2008 and 2011, culminating in a term as president of the Inn for the 2010 to 2011 program. Among other things, that work involved developing and preparing the materials for use by our pupilage groups throughout the year.

I have also invested significant time serving our State and local bar organizations. Since 2002, I have been a member of the Salt Lake County Bar Association Executive Committee. That organization plans and sponsors continuing legal education events, supports local pro bono initiatives, and fosters professionalism and collegiality among the local bar. I have been an officer of the Salt Lake County Bar Association for each of the last three years. I am the vice president this year, and am set to be sworn-in as president of the organization in June 2012.

In addition, the Utah Supreme Court has appointed me to two select bar committees. The first is the Utah Supreme Court's Ethics and Discipline Committee. This body hears cases filed against lawyers for alleged violations of the Utah Rules of Professional Conduct. Now in my sixth year on the committee, my work involves sitting on panels that review briefs and party submissions, hear live testimony, examine parties and witnesses, make factual findings, and, depending on the severity of violations, select appropriate sanctions or makes recommendations to state trial courts for the same. This committee plays an essential role in self-policing the professional conduct of the Utah Bar, as well as instilling in the community confidence in the ethical and professional standards among Utah lawyers. The Utah Supreme Court also appointed me in 2010 to its Advisory Committee on the Rules of Civil Procedure. This body is responsible for evaluating the rules of civil procedure and making recommendations concerning proposed revisions. The Utah Supreme Court made effective on November 1, 2011, a sweeping set of revisions to the rules of civil procedure recommended by our committee. The changes, focused on fundamental changes to discovery practice, are designed to make access to courts more affordable for a wide range of civil disputes. Finally, I am certified by the Utah Supreme Court as a mentor for new lawyers, and am currently mentoring a new lawyer as part of Utah's New Lawyer Training Program.

I have performed no lobbying activities.

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

2000 – 2004
LSAT Preparatory Course Instructor
University of Utah
Division of Continuing Education

I taught this course for the University of Utah approximately 12 times between 2000 and 2004. The course was designed to prepare University of Utah students for the Law School Admission Test. The course focused on education and practical skills training in logical reasoning, analytical reasoning and reading comprehension. I no longer have a syllabus for this course.

Fall 1993 – Spring 1994
Philosophy Lecturer
Utah State University
Department of Languages and Philosophy

I taught *Deductive Logic* and *Introduction to Problems* courses at Utah State University. The *Introduction to Problems* course included exploration of several classic philosophical topics, including ethics, the mind-body problem, God and religion, and existentialism. *Deductive Logic* focused on the study of deductive arguments and techniques for evaluating their validity. This involved symbolizing English sentences and arguments to make their meanings more precise. We also studied logical fallacies in reasoning. I did not retain my syllabus for either course.

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

    I have made no arrangements for future compensation.

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

    I have no such plans.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If confirmed, I will carefully assess all actual or potential conflicts of interest in accordance with a careful and diligent application of Canon 3 of the Code of Conduct for United States Judges, together with all laws, rules and practices governing such circumstances. For a significant period of time, I anticipate recusing myself from all cases involving my current law firm, Snow, Christensen & Martineau. I also anticipate recusing for a period of time from all cases involving my former law firm, Burbidge Mitchell & Gross. If confirmed, I intend to recuse myself for a significant period of time from all cases involving clients I have served during my tenures with both Snow, Christensen & Martineau, and Burbidge Mitchell & Gross. Further, I will recuse myself from all cases involving Wells Fargo, as a subsidiary of that company manages diversified mutual funds held in my retirement account. In all respects, I would be vigilant about avoiding any conflicts of interest or the appearance of any such conflicts.

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

       If confirmed, I will vigorously apply all relevant guidelines, including Canon 3 of the Code of Conduct for United States Judges and other applicable statutes, with sensitivity that a federal judge must avoid both actual conflicts, as well as the appearance of conflicts. I also anticipate soliciting advice as necessary from available resources, including the Codes of Conduct Committee of the Judicial Conference. Finally, I expect I would consult with my colleagues as appropriate to ensure compliance with local custom and practice above and beyond the standards applicable under 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.

It has been my practice throughout my career to provide legal services at no charge or for a substantially reduced rate for financially disadvantaged clients. The majority of that work early in my career entailed providing representation to criminal defendants. During my first period of employment at Snow, Christensen & Martineau, I estimate I handled on a pro-bono basis approximately two criminal matters a year. Those cases included criminal prosecutions for theft, embezzlement, assault, probation violations, and other offenses. In addition, I prepared and tried a number of small claims cases for individuals in need. I estimate I handled approximately one small claims trial a year in addition to the criminal defense work provided.

Because I no longer handle criminal defense matters, my pro-bono work at Burbidge Mitchell & Gross related exclusively to civil disputes. I estimate I handled on average one to two pro-bono cases a year while with that firm. Some of those matters involved pre-litigation assistance resolving disputes, and others involved formal appearances in litigation, primarily in state courts. My most recent pro-bono cases involved assisting with a homeowner's association dispute, handling a residential property dispute with a local municipality, and trying a small claims property damage case for a student. In addition, I have also handled several cases at a significantly reduced rate, including construction disputes.

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.

Sometime in or about September 2010, I submitted copies of my materials to Senator Orrin Hatch and Congressman Jim Matheson. I forwarded with those materials copies of letters of recommendation from several very prominent Utah trial attorneys.

Since December 16, 2010, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 18, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On September 19, 2011, I had a telephone interview with an official from the White House Counsel's Office. I interviewed with Senator Mike Lee on September 27, 2011. On November 30, 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
Shelby, Robert J.	United States District Court for the District of Utah	11/30/2011
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
District Court Judge	☑ Nomination, Date 11/30/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 11/23/2011
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.	
Snow, Christensen & Martineau 10 Exchange Place, 11th Floor Salt Lake City, UT 84111	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	Snow, Christensen & Martineau
2.	President	Robert J. Shelby, Inc.
3.	Vice President	Salt Lake County Bar Association
4.	President	David K. Watkiss-Sutherland II Inn of Court
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 Shelby, Robert J.	Date of Report 11/30/2011

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. 2009	Burbidge Mitchell & Gross	$450,951.00
2. 2010	Burbidge Mitchell & Gross	$211,253.00
3. 2011	Burbidge Mitchell & Gross	$325,000.00
4. 2011	Snow, Christensen & Martineau	$94,545.00

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.	
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 Shelby, Robert J.	Date of Report 11/30/2011

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.	United States Department of Eductation	Student Loan for Law School	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Shelby, Robert J.	Date of Report 11/30/2011

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. Snow, Christensen & Martineau Profit Sharing Acct.		None	L	T	Exempt				
2. Turner Midcap Growth Fund		None	J	T					
3. Artisan Int'l Fund		None	K	T					
4. Invesco Van Kampen Small Cap Growth Fund		None	J	T					
5. Vanguard 500 Index Fund Adm	A	Dividend	L	T					
6. Utah Educational Savings Plan Inst. Index - S&P 500	A	Dividend	K	T					
7. Bank of the West Account		None	J	T					
8. Mountain America Credit Union Accounts	A	Int./Div.	K	T					
9. JP Morgan US Treasuries Securities	A	Int./Div.	L	T					
10. Barclay's Bank CD	A	Int./Div.	K	T					
11. Blackrock Global Alloc. Institutional	A	Int./Div.	K	T					
12. Diamond Hill Small Cap Fund		None	J	T					
13. Dodge & Cox FDS Int'l Fund	A	Int./Div.	K	T					
14. Europacific Growth Growth Fund	A	Int./Div.	K	T					
15. Fidelity Advisor Midcap II Fund		None	J	T					
16. Growth Fund America CL F1 Fund	A	Int./Div.	K	T					
17. Ivy FDS Inc Asset Strategy Fund	A	Int./Div.	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Shelby, Robert J.	11/30/2011

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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. Janus Invt. Perkins Midcap Value Fund	A	Int./Div.	J	T					
19. T Rowe Price New Horizons Fund		None	J	T					
20. Vanguard/Windsor II Fund	A	Int./Div.	K	T					

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

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

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Shelby, Robert J.	Date of Report 11/30/2011

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Shelby, Robert J.	Date of Report 11/30/2011

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

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		83	130	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 – personal residence		863	145
Real estate owned – personal residence	1	550	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		26	500	Education loans		17	780
Cash value-life insurance							
Other assets itemize:							
Retirement Account – see schedule		422	575				
Utah Educational Savings Plans		24	286				
				Total liabilities		880	925
				Net Worth	1	225	566
Total Assets	2	106	491	Total liabilities and net worth	2	106	491
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts				Are any assets pledged? (Add schedule)	No		
Legal Claims				Are you defendant in any suits or legal actions?	Yes		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	No		
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Retirement Account Holdings	
Snow, Christensen & Martineau Profit-Sharing Plan	$54,278
Turner Midcap Growth Fund	10,984
Artisan International Fund	20,969
Vanguard 500 Index Fund	74,041
JP Morgan 100% U.S. Treasuries	65,397
Barclays Bank CD	25,363
Blackrock Global Allocation Instit.	23,343
Diamond Hills Sm. Cap. Fund Class A	6,375
Dodge & Cox Int'l Stock Fund	15,905
Europacific Growth Fund Class F-1	15,827
Fidelity Mid-Cap II Fund Class I	9,581
Growth Fund America Class F-1	23,854
Ivy FDS Inc. Asset Strategy Fund Class I	24,569
Janus INVT Fd. Perkins Mid-Cap Value Fund	9,612
T Rowe Price New Horizons Fund	6,540
Vanguard Windsor II Portfolio	23,962
Invesco Van Kampen Small Cap Growth Fund	11,975
Total Retirement Account Holdings	$422,575

AFFIDAVIT

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

30 Nov. '11
(DATE)

Robert J. Shelby
(NAME)

SHAUNA WADA
Notary Public State of Utah
My Commission Expires on:
July 20, 2014
Comm. Number: 583373

Shauna Wada
(NOTARY)

Senator BLUMENTHAL. Thank you to each of you. I have just a few questions. You should understand that the brevity of our questions is sometimes a very good thing, not a bad thing, because it may indicate—I don't want to speak for anyone else on the panel who's here now or who may come—that we're satisfied about your qualifications.

But let me just begin. Mr. Shea, you've had a lot of experience as a lawyer in litigation. Maybe you could say for the record how you think that experience will help you as a member of the court.

Mr. SHEA. Sure.

Senator BLUMENTHAL. Or will help you, if you are confirmed as a member of the court.

Mr. SHEA. Sure, Senator. Thank you. I've been fortunate in my career to have worked on a wide variety of cases, cases both on the criminal side and on the civil side. And on the civil side, also a broad array, ranging from commercial cases to personal injury cases to civil rights cases and other types of cases.

I think that the breadth of that litigation experience would serve me well as a District Court judge if I were fortunate enough to be confirmed, because of course judges too face a broad array of cases and must in many ways be generalists. So I think that background would serve me well, if I were confirmed.

Senator BLUMENTHAL. And Judge Curiel, let me ask you as someone who has served as a judge, whether you—how you see the role of a district judge versus the appellate court, and whether you would have any trouble following the rulings of the Federal appellate court, the 9th Circuit in the case of your U.S. District court, if you are confirmed.

Judge CURIEL. Well, as a trial judge I recognize that I'm not there to make the law, I'm not there to interpret the law, I'm there to follow the law as established by the precedent of our Supreme Court. The Court of Appeals in the State of California, if I became a District Court—if I was that fortunate, I would then be bound by the opinions of the 9th Circuit and the U.S. Supreme Court.

I've done that in terms of following precedent in my present position, and I would be in a position to continue to do that, Senator.

Senator BLUMENTHAL. And Mr. Shelby, if I may ask you how your involvement, both in the military and in civic life of your community, and also your service in private practice would affect your philosophy of judging as well as your qualifications when you have, as I expect you will be, the honor of serving in the U.S. District Court?

Mr. SHELBY. Well, thank you, Senator. I have a deep love of this country and it's part of what motivated me to join the military in the 1980's in a time when I think it wasn't particularly popular to do so. It's the same spirit that I bring with me into this endeavor. If I'm fortunate enough to be confirmed, I look forward to serving the citizens of the State of Utah.

That experience would have no impact on my duties as a judge as I see it, except of course to work hard to make sure I can do the best job that I can. As I see it, the role of a trial court is to decide only those cases and issues before the court based on the factual record developed, and while demonstrating a strict adher-

ence and fidelity to the rule of law. That's exactly how I would intend to operate, if I'm fortunate enough to be confirmed.

Senator BLUMENTHAL. Thank you. That concludes my questions.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

Mr. Shea, you wrote an amicus brief that was submitted in connection with *Kelo* vs. *City of New London* a few years ago. In that brief you make a number of arguments about the need of municipal governments to be able to exercise their eminent domain powers.

Much of your argument focused on the need to defer to legislative bodies. I just want to talk about sort of the limits on that. Is there risk inherent in deferring too much to a legislative body in connection with litigation involving the constitutionality of an act undertaken by a legislative body?

Mr. SHEA. Senator, with regard to determinations as to constitutionality of statutes, each statute carries with it a presumption of constitutionality and the burden rests on the party challenging the statute to establish that it is unconstitutional, if in fact that's what the claim is.

In addition, of course, courts use the canon of Constitutional Avoidance in dealing with challenges—constitutional challenges to statutes, by which I mean, of course, that if the statute is ambiguous then—and capable or susceptible reasonably of two interpretations, then it's the court's obligation to adopt an interpretation that would render the statute constitutional.

But if the plain language of the statute contravenes the text of a constitutional provision as interpreted by the Supreme Court, or if I were confirmed the 2nd Circuit, then of course the duty of the District Court judge, or any judge, is in those circumstances to declare the statute unconstitutional.

Senator LEE. Which one presents the greater threat of violence to the Constitution, excessively aggressive review of legislative bodies' power or inadequate review? I mean, is one worse than the other or are they both the same?

Mr. SHEA. Senator, I don't think—I think that U.S. Supreme Court precedent, 2nd Circuit precedent, set forth the standard for review of statutes, which I indicated involves a presumption of constitutionality. I don't think it would be appropriate for a judge to deviate either way with regard to the strength of that presumption.

Senator LEE. Right.

Mr. Shelby, you served under a great District Judge in Utah, Judge Green, who was loved by all who knew him, I think, and worked with him. Do you have a judicial role model other than Judge Green, who obviously is somebody whose friendship you cherish to this day?

Do you have a judicial role model who has served on the Supreme Court, let's say, just to make it interesting? Somebody who's served in the last 100 years, but is not still alive? That way we avoid Chief Justice Marshall. Everyone will refer to Chief Justice Marshall if we allow you to go all the way back to the 1790's.

Mr. SHELBY. Well, you've stolen my thunder, Senator.

[Laughter.]

Mr. SHELBY. You know, I really don't think I could identify a single justice. I have—I think the judges that I have—have most ad-

mired and respected have been those that I worked most closely with, either Judge Green of course in my clerkship, and other judges in Utah that I've seen and interacted with regularly, including Judge Winder, who I think you know well from your experience in Utah as well.

Senator LEE. What is about, say, Judge Winder, who—what is it about his jurisprudential approach that you admire so much?

Mr. SHELBY. Well, I think—I think Chairman Blumenthal has it correct. I think that for most litigants, the trial court judge, in State court or in Federal court, is really the face of the judiciary. For the reason, I think it's imperative that a trial court judge conduct himself or herself at all times in a manner that inspires trust and confidence in the judicial system and in the judiciary. Of course, that was Judge Winder.

He was eminently well-prepared. He was unbiased and impartial and respectful toward the parties and their lawyers, and rigorously adhered to the rule of law. I think that was apparent to everyone who went before him. So, litigants felt they had a full and fair opportunity to be heard and a judge who would hear them out.

Senator LEE. Have you ever—have you ever heard people refer to the risk of "trial by attrition", referring to the tendency of trial court judges to avoid wherever possible the granting of a dispositive motion, recognizing that it's a lot easier to allow the case to move forward, perhaps to trial, perhaps to settlement, than it is to issue a lengthy summary judgment ruling or other dispositive motion ruling that has to be written, possibly published, inevitably challenged on appeal, and possibly reversed?

Mr. SHELBY. Well, I don't know that I've heard that phrase associated with that. As a practitioner, of course——

Senator LEE. It has a lot of names. Some people use much less flattering terminology.

[Laughter.]

Mr. SHELBY. As a practitioner, of course, I've witnessed firsthand that some courts seem more inclined to grant summary judgment than others. If I have the good fortune of being confirmed I think I'll be guided exclusively by Rule 56 and the standard established therein, and the case law interpreting it.

Senator LEE. That's a great answer. I wish we could explore that more. My time has expired. Maybe next time around.

Mr. SHELBY. Thank you, Senator.

Senator LEE. The benevolent Chairman has given me a little bit more time.

So is there—is there any way to identify which is worse? In other words, being too trigger happy on a Rule 12 B6 or a Rule 56, or something else, too happy to grant the Motion to Dismiss or for summary judgment, or too reluctant? Is one worse than the other? If so, why is one worse?

Senator BLUMENTHAL. You may regret his having taken more time.

[Laughter.]

Mr. SHELBY. Thank you, Mr. Chairman.

Senator BLUMENTHAL. And you have a right to remain silent.

[Laughter.]

Mr. SHELBY. Well, if that's true I think it'd be best if I invoked that.

[Laughter.]

Senator BLUMENTHAL. Just kidding.

Mr. SHELBY. I don't know that I think one is better or worse than the other. I just think that a court is charged with applying the law as it's written and it's interpreted by the courts and the appellate courts above that trial court.

I do think that, having represented parties, that granting summary judgment oftentimes enables the parties to better direct their conduct going forward rather than sort of waiting or hearing it out and putting off some resolution of those factual disputes—well, not the factual disputes, but the dispute in general—until the end of the litigation.

It seems to me that many parties with whom I've worked can—can deal with a win or a loss. They just hope to get a ruling and then they can move forward.

Senator LEE. That's great. Thank you very much.

Thank you, Chairman.

Senator BLUMENTHAL. Thank you, Senator Lee.

No other members of the panel have come, but I want to say to you and your families how much we appreciate your being here. This is an essential part of the process, and I'm particularly glad that you have brought your families.

Thank your families because, if you have the honor to be confirmed as I hope you will be, you'll be spending a lot of time in the courthouse rather than at home, and even at home, a lot of time working rather than with your family. So I thank you and your families in advance, should you have that honor.

With that, I will close this hearing and keep the record open for a week. Thank you, Senator Lee and Senator Grassley, for being here.

This hearing is adjourned. Thank you.

[Whereupon, at 3:40 p.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Gonzalo P. Curiel
Nominee to be United States District Judge for the Southern District of California
to the Written Questions of Senator Chuck Grassley

1. **In your career as an Assistant U.S. Attorney, you focused your energy extensively on drug traffickers along the Tijuana corridor. According to a 2002 report from ABC's Nightline, you were even targeted by a cartel assassination plot in the 1990s following your attempts to secure extradition of two cartel members from Mexico. We thank you for your work and personal sacrifice.**

   It is worth noting that the reputed head of the cartel that targeted you, Benjamin Arellano Felix, was extradited to the United States and has recently been sentenced to a 25 year term in prison. One issue regarding Mexico's extradition policy is its apparent ban on extraditing any criminals who may face the death penalty in the U.S.

   a. **Is this your current understanding of U.S.-Mexican extradition policy?**

      Response: Under Article 8 of the Extradition Treaty between the United States and Mexico, each country has the right to refuse extradition where the offense for which extradition is requested is punishable by death under the laws of the requesting party and the laws of the requested party do not permit such punishment for that offense. Each country may exercise its discretion to permit such extradition if the requesting country provides sufficient assurances that the death penalty will not be imposed. It is my understanding that, relying on the treaty, Mexico requires such assurances prior to extraditing an individual facing the death penalty.

   b. **When you served as a prosecutor, is it correct that Mexico also barred the extradition of any citizen facing life imprisonment?**

      Response: Article 9 of the Extradition Treaty between the United States and Mexico provides that neither country is bound to extradite its own nationals. When I was a prosecutor, the Republic of Mexico agreed to extradite its nationals as long as there were sufficient assurances that a term of life imprisonment would not be imposed.

   c. **How did you deal with this legal hurdle?**

      Response: In general, we provided the assurances required to secure extradition but still sought a sufficient term of incarceration that would impose an appropriate punishment for the criminal conduct, ensure the safety of the community, provide necessary deterrence, and prevent the defendant from returning to a life of crime.

d. **As a federal judge in Southern California, you may have issues such as these come up in your courtroom. How would you approach sentencing if the death penalty was not a punishment option as a result of treaty policy?**

Response: A federal judge is duty bound to follow the laws of the United States as set forth in the Constitution, statutes, treaties and case law. My approach to sentencing would be to determine and follow the appropriate sentencing laws of the United States.

e. **To what extent should U.S. judges consider foreign law in making rulings or decisions?**

Response: First, foreign law does not constitute binding precedent for a U.S. judge. Second, in general, foreign law should not be considered in making decisions or rulings. However, in certain limited circumstances, such as international commerce cases involving contracts governed by laws of other countries, it may become necessary to consider foreign law to properly decide a case.

2. **For a majority of your career you practiced criminal law in the U.S. Attorney's Office. Your civil litigation experience is primarily limited to your time presiding over family court matters as a California State Court judge. Please describe your civil litigation experience and how you will be prepared to handle federal civil litigation if you are confirmed as a judge.**

Response: If I am confirmed as a federal judge, I believe that my career has prepared me to handle federal civil litigation. Prior to becoming a prosecutor, I practiced civil law for 10 years. In addition, since becoming a state judge, I have presided over civil family law cases for three years and civil unlimited jurisdiction cases for one year and three months. During my civil tenure, I have handled 16 civil trials including 11 jury trials with an average length of eight days. These civil trials include cases involving intellectual property law, employment law, and wage and hour law. Also, since January 2012, I have managed a civil docket consisting of more than 600 cases and am responsible for handling all aspects of the cases, including discovery matters, summary adjudication motions, trials, and post-trial motions.

3. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. Justice Roberts addressed this issue at his hearing saying that "If the Constitution says that the little guy should win, the little guy's going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy's going to win."**

a. **To what extent does empathy have a place in the judicial process?**

Response: The judicial process must be administered fairly without regard to a person's background, economic situation or personal situation. Cases must be decided based upon admissible evidence and the applicable law. Empathy does not play a role in the judicial process.

b. In your view, what is determinative as to who wins or loses?

Response: The admissible evidence and applicable law in a case determines who wins or loses.

c. In your opinion, what is the role of the judge in protecting the interests of the "little guy?"

Response: A judge protects the "little guy" (and the "big guy") by applying the law fairly and evenhandedly to all of the parties whether they are "little" or "big."

4. What is the most important attribute of a judge, and do you possess it?

Response: In my view, respect for the judicial process is the most important attribute of a judge. Respect for the judicial process entails: (1) providing the parties a fair opportunity to be heard; (2) determining and faithfully applying legal precedent; and (3) explaining a court's reasons for its decisions. I strive to attain this attribute in my work every day.

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: In my view, the appropriate temperament of a judge consists of a number of elements including patience, humility, respect, courage and impartiality. These elements permit the parties to have their positions considered fairly and openly. I have and will continue to work towards meeting and maintaining this 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, I am committed to following precedent faithfully even if I disagree with such precedent.

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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 look to the text of the applicable law and aim to give effect to the words of the statute, rule or regulation. In so doing, I would consider the arguments of the parties and follow the canons of statutory construction. For guidance and instruction, I would look for cases from the U.S. Supreme Court and Ninth Circuit addressing analogous issues. In the event that there were no cases, I would look to the decisions of the other courts of appeals on the same or analogous issue.

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 best judgment of the merits to decide the case?**

Response: As a district court judge, I would apply all precedent from the U.S. Supreme Court or the Court of Appeals faithfully without regard to personal feelings or opinions that a case was decided incorrectly.

9. **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 in very limited situations. A statute is presumed to be constitutional. In the event that a canon of constitutional avoidance did not apply, I would strike down a law if Congress exceeded its authority in enacting the law or the law is in conflict with a constitutional right.

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: If confirmed, I will put in place a timeline for monitoring and managing cases expeditiously to ensure that cases are moving forward towards trial or settlement. As a part of this system, I will use case management conferences to set a schedule for discovery, summary adjudication motions, mediation and trial. As to discovery matters, I will aim to have discovery matters resolved quickly so as to avoid delays. Also, I will confer with the chief judge and my colleagues to identify the causes of the pressures and determine what solutions the district and individual judges have implemented. I will adopt the district wide solutions and seek to identify additional means to reduce the pressures.

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: Judges play a significant role in controlling the pace and conduct of litigation. If confirmed, I would take the specific steps outlined in my response to question 10.

12. Please describe with particularity the process by which these questions were answered.

Response: After reviewing the questions, I prepared a draft answer to each question. Afterwards, I reviewed my answers with the Office of Legal Policy of the Department of Justice and thereafter finalized my answers.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Gonzalo P. Curiel
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: To the extent that I have a judicial philosophy, it is premised on respect. I have an abiding respect for the parties, their cases, and the rule of law. The role of a judge in our constitutional system is to apply the law fairly and faithfully in an open and transparent process.

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 rule of law requires that all litigants be treated fairly and impartially regardless of their beliefs, wealth or status. I am committed to upholding the rule of law.

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 bound by the doctrine of stare decisis. The doctrine of stare decisis applies to all courts but with particular vigor in the case of a trial court. A trial court is primarily the trier of fact and is expected to follow the law as articulated by the United States Supreme Court and the appellate courts.

Responses of Michael P. Shea
Nominee to be United States District Judge for the District of Connecticut
to the Written Questions of Senator Chuck Grassley

1. **You submitted an amicus brief on behalf of the Connecticut Conference of Municipalities in the landmark Supreme Court case *Kelo v. New London*, decided in 2005. In this brief, you wrote that the "taking of some of the petitioners' homes" is "undeniably a genuine cost of realizing the City's goal of improving the economic well-being of its citizens."**

   a. **After *Kelo*, the project that purportedly justified the taking failed, and the property was turned into a dump. Did this result change your views on the policy of eminent domain in any way?**

   Response: The Connecticut Conference of Municipalities hired my firm to represent its interests as amicus curiae in the Supreme Court in *Kelo v. New London*. In the above-quoted amicus brief, I advocated the position of the Conference and other state municipal leagues. If confirmed as a district court judge, my role in any eminent domain case would, of course, not be to advocate a client's position but to follow the law, including the Supreme Court's decision in *Kelo*, any other applicable precedents of the Supreme Court or Second Circuit, and any applicable statutes that might restrict the exercise of eminent domain powers. *Kelo v. City of New London*, 545 U.S. 469, 489 (2005) ("We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose 'public use' requirements that are stricter than the federal baseline."). A judge should not allow any personal views on eminent domain he or she might hold to interfere with his or her application of the law to the particular facts of the case.

   b. **Do you think the government has the power to seize the property of private parties for the economic well being of the community as a whole?**

   Response: Citing its "longstanding policy of deference to legislative judgments in this field," *Kelo v. New London*, 545 U.S. 469, 480 (2005), the Supreme Court held in *Kelo* that the "public use" requirement of the Fifth Amendment did not prohibit a municipality – acting in accordance with a state statute that authorized the use of eminent domain to promote economic development – from taking land, for just compensation, as part of an economic development plan. The Court noted, however, that the Fifth Amendment would prohibit the government from taking private property either "for the purpose of conferring a private benefit on a particular private party" or "under the mere pretext of a public purpose, when [the government's] actual purpose was to bestow a private benefit." 545 U.S. at 477-78. In addition, as noted above, the Court made clear that states are free to adopt laws that restrict the taking of private property for economic development. *Id.* at 489 & nn. 22 & 23. If confirmed as a district court judge and faced with a challenge to the government's eminent domain authority, I would follow *Kelo*,

any other applicable precedents of the Supreme Court and Second Circuit, and any statutes imposing restrictions on the government's taking authority.

2. **In 2005, the Connecticut Supreme Court appointed your partner, Thomas Groark, to serve as Special Counsel for Michael Ross. Mr. Groark was charged with advocating that Mr. Ross was not acting competently or voluntarily in his decision to waive his rights and to forgo further challenges to his death sentence. At Mr. Groark's request, you assisted in this litigation, including conducting direct examination of two witnesses and cross-examination of Mr. Ross's psychiatric expert. Mr. Ross was found competent and later executed.**

   a. **Do you think a defendant's desire to forgo further appeals in a death penalty case should ever be considered a de facto "suicide" attempt?**

      Response: The law does not treat a decision to forgo further appeals in a death penalty case as being akin to a de facto suicide attempt. A defendant is free to choose to forgo further appeals in a death penalty case as long as he or she is competent to make that choice. *Rees v. Peyton*, 384 U.S. 312, 314 (1966) (where question of death-sentenced habeas petitioner's competence was raised in connection with his direction to counsel to forgo further legal proceedings, District Court was directed to determine "whether [petitioner] has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises."). By contrast, the law has long recognized suicide as wrong, and some states still treat it as a crime. *Washington v. Glucksberg*, 521 U.S. 702, 711 (1997) (noting that "for over 700 years, the Anglo-American common-law tradition has punished or otherwise disapproved of both suicide and assisting suicide."); *Wackwitz v. Roy*, 418 S.E.2d 861, 864 (Va. 1992) (noting that "[s]uicide … remains a common law crime in Virginia as it does in a number of other common-law states," and citing cases.)

   b. **In your view, is it ever appropriate for a judge to accuse a lawyer of being proximate cause in his or her client's death?**

      Response: I cannot think of a situation in which it would be appropriate for a judge to accuse a lawyer who was acting in accordance with his or her professional obligations of being the proximate cause of his or her client's death.

   c. **How would you approach a case, if confirmed, where a defendant wanted to forgo all appeals?**

      Response: I would apply binding precedent of the Supreme Court and Second Circuit to the particular facts of the case. This would include careful consideration of the Supreme Court's decision in *Rees v. Peyton*, 384 U.S. 312 (1966), in deciding any issue of the defendant's mental competence to waive his

or her rights, as well as any subsequent decisions that provided further guidance on the scope of *Rees*. (The Supreme Court recently granted certiorari in a case in which the questions presented involve the scope of *Rees*. *See Tibbals v. Carter*, S.C. Docket No. 11-218, http://www.supremecourt. gov/qp/11-00218qp.pdf.) If the case involved review of a state court's determination, I would apply appropriate deference to that determination, in accordance with applicable federal statutes and Supreme Court precedent. *See* 28 U.S.C. § 2254(d) & (e); *Demonsthenes v. Baal*, 495 U.S. 731, 735 (1990) (state court finding of competence to waive challenges to death sentence entitled to presumption of correctness in federal habeas proceedings).

3. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. Justice Roberts addressed this issue at his hearing saying that "If the Constitution says that the little guy should win, the little guy's going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy's going to win."**

   a. **To what extent does empathy have a place in the judicial process?**

      Response: A judge should decide issues by applying the law to the particular facts established by the evidence, and should not allow sympathy or feelings for either party or his or her own personal views to interfere.

   b. **In your view, what is determinative as to who wins or loses?**

      Response: The law – applied carefully and fairly to the particular facts established by the evidence – should determine who wins or loses a case.

   c. **In your opinion, what is the role of the judge in protecting the interests of the "little guy?"**

      Response: A judge's role is not to protect the interests of any party in litigation; that is the role of the party's attorney. The judge's role is to uphold the rule of law fairly and impartially.

4. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is a deep commitment to applying the law fairly and faithfully, without regard to the identities of the parties and without regard to the judge's own personal views. I believe I possess this attribute.

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 demonstrate patience and open-mindedness, a willingness to listen carefully to the parties' arguments, and a respectful demeanor. The most important element of a good judicial temperament is humility, a quality that captures each of the foregoing traits and also embodies an appreciation of the court's limited role in our system of government. I believe I meet this 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 was dispositive on 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 case involved the interpretation of a statute, I would examine closely the text of the statutory provision at issue and its relationship to surrounding provisions. If the text of the statute was clear, I would apply the plain language of the statute to resolve the issue. If the text was ambiguous, I would consult other sources to ascertain the statute's meaning, including any precedents from the Supreme Court and Second Circuit addressing similar statutory provisions, any decisions from federal courts outside the Second Circuit that addressed the statute at issue, and any legislative history that was sufficiently clear to provide insight into the meaning of the text. The principle that would guide me would be to apply the law fairly and faithfully, without regard to my personal views.

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 best judgment of the merits to decide the case?**

   Response: I would follow and faithfully apply Supreme Court or Second Circuit precedent even if I believed it to be seriously in error.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Statutes carry a presumption of constitutionality, and the party challenging the statute bears the burden of establishing that the statute violates a provision of the Constitution. Further, when a statute is ambiguous such that there are two plausible constructions, one of which would raise constitutional problems, the court must adopt the construction that would render the statute constitutional, under the canon of constitutional

avoidance. If the plain language of the statute contravenes a constitutional provision, or if Congress has exceeded its authority in enacting the statute, however, it is the court's duty to declare the statute unconstitutional.

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: If confirmed, I will use all the tools available to district court judges actively to manage my docket, including holding early Rule 16 conferences to set firm but realistic deadlines for each case, exploring early on in litigation, and at later stages as well, the possibility of settlement, and making myself available to decide issues promptly. I would also use procedures to make the discovery process more efficient, such as having the parties resolve routine discovery disputes in appropriate cases by submitting short letters to the court setting forth their positions, rather than proceeding with full-scale motion practice.

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, I do believe that judges should play an active role in helping the parties move their cases to resolution expeditiously and fairly. If confirmed, I would monitor my docket carefully and use the tools described in response to question 10 to carry out this role.

12. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on April 4, 2012. I then drafted my responses. I reviewed my responses with a representative of the Department of Justice and then asked him to forward my responses to the Committee.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Michael P. Shea
Nominee to be United States District Judge for the District of Connecticut
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: A judge should adjudicate cases fairly and promptly by applying binding precedent to the particular facts of each case, without regard to his or her own personal views, and should treat the parties, counsel, witnesses, jurors and court staff with dignity and respect. The role of a district court judge in our constitutional system is an important but limited one. It includes presiding over trials fairly and deciding issues within the court's jurisdiction by applying precedent of higher courts to the particular facts of each case.

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 will take an oath, among other things, to "administer justice without respect to persons, and do equal right to the poor and to the rich." I would regard adherence to that oath as a solemn commitment that was central to my day-to-day duties and critical to the rule of law in our society. I also note that, as a practicing attorney, I have had the opportunity to represent a broad range of clients – from indigent individuals to large corporations, and both plaintiffs and defendants.

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: Stare decisis promotes stability in the law, helps ensure that courts respect the limits on their authority, and is a critical principle in a society based on the rule of law. All judges – but especially district court judges, who are required to follow precedent of the Supreme Court and Courts of Appeals – are bound by the principle of stare decisis. The Supreme Court, and Courts of Appeals sitting en banc, may on rare occasions overrule their own decisions, and have articulated the narrow circumstances in which it is appropriate for them to do so.

Responses of Robert J. Shelby
Nominee to be United States District Judge for the District of Utah
to the Written Questions of Senator Chuck Grassley

1. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. Justice Roberts addressed this issue at his hearing saying that "If the Constitution says that the little guy should win, the little guy's going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy's going to win."**

   a. **To what extent does empathy have a place in the judicial process?**

      Response: I believe judges should be diligent, humble, respectful, patient and civil. Understanding that the cases presented are of great importance to the parties, and that the judicial process often is intimidating, may serve to reinforce the importance of appropriate judicial temperament. Empathy for the parties or their interests may play no role whatsoever in the determination of the issues presented.

   b. **In your view, what is determinative as to who wins or loses?**

      Response: I believe judges should decide only those issues presented in the cases before them, based solely on the facts presented, and while demonstrating a strict adherence and fidelity to the rule of law.

   c. **In your opinion, what is the role of the judge in protecting the interests of the "little guy?"**

      Response: I do not believe it is the proper role of a judge to seek to protect interests of any parties, irrespective of whether those parties might be described as "big guys" or "little guys." To the contrary, I believe it is the judge's responsibility to reach decisions based exclusively on the application of established precedent to the specific facts presented.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe integrity is the most important attribute of a judge. This includes an unwavering commitment to exercising only those limited powers vested in the judiciary, while adhering at all times to the rule of law. 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: Given their frequent and direct interaction with parties and the public, I believe it is essential that trial court judges conduct themselves at all times in a manner that inspires trust and confidence in the judicial process. Inherent in this notion is the responsibility to ensure that all parties believe they have been afforded a full and fair opportunity to be heard by a judge who is well prepared, impartial, respectful, patient, and firmly committed to deciding issues based exclusively on the applicable legal doctrine. If confirmed, I am committed to this approach as a trial judge.

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 was dispositive on 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: After ensuring I understood fully the specific facts at issue, I would carefully examine Supreme Court and Tenth Circuit cases in analogous areas. If it was warranted, I would further research instructive or persuasive appellate and trial court decisions in other federal and state jurisdictions. If the issue presented was one involving a statute, I would begin with the express language of the statute. If the text was unclear, I would examine other related provisions in the statute for guidance.

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 best judgment of the merits to decide the case?**

   Response: My personal views and judgments concerning the appellate decision would be entirely irrelevant to my decision making duties as a district court judge. I would faithfully apply the precedent established by the Supreme Court and the Tenth Circuit.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Federal courts are instructed to avoid deciding questions concerning the constitutionality of a statute if there exist other bases on which the issue presented may be resolved. In the event the constitutionality of a statute must be decided,

Congressional enactments are afforded a strong presumption of constitutionality. As such, statutes are appropriately found unconstitutional only where they contravene a provision of the Constitution, or where Congress has acted outside its enumerated powers by enacting the statute.

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 intend to meet with my colleagues on the district court bench to discuss practices for case docketing and management. To the extent the judges on our bench employ different case management methods, I intend to educate myself about the techniques used by each, and to select the process I deem best suited to actively monitoring and managing caseloads. Among other things, I would utilize technologies and tools available to the courts, in concert with active coordination with my designated case manager and law clerks.

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 judges play an important role in controlling the pace and conduct of litigation before the courts. My experience as a practitioner is that parties generally desire assistance from the courts both in terms of moving cases towards resolution, and with timely consideration of motions. If confirmed, I would follow the course described in my response to Question 8 above.

10. Please describe with particularity the process by which these questions were answered.

Response: I received these questions Wednesday, April 4, 2012. I prepared and submitted answers to the Department of Justice the following day. I briefly reviewed my answers with a representative of the Justice Department on April 6, before authorizing their submission to the Senate Judiciary Committee.

11. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Robert J. Shelby
Nominee to be United States District Judge for the District of Utah
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 believe judges should decide only those issues presented in the cases before them, based solely on the facts presented, and while demonstrating a strict adherence and fidelity to the rule of 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: Given their direct interaction with parties and the public, I believe it is essential that trial court judges conduct themselves at all times in a manner that inspires trust and confidence in the judicial process. Inherent in this notion is the responsibility to ensure that all parties believe they have been afforded a full and fair opportunity to be heard by a judge who is well prepared, impartial, respectful, patient, and firmly committed to deciding issues based exclusively on the applicable legal doctrine. If confirmed, I am committed to this approach as trial court judge.

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: As I understand it, there are certain narrow and limited circumstances in which the Supreme Court and the courts of appeals may revisit prior decisions. This principle does not apply to district courts, which are bound to follow the established precedents of the appellate courts. It would constitute a violation of a district judge's oath to depart from this duty.

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AMERICAN BAR ASSOCIATION
Standing Committee on
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VIA EMAIL AND FIRST CLASS MAIL

November 10, 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 Gonzalo P. Curiel
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 Gonzalo P. Curiel 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, a Substantial Majority of the Committee is of the opinion that Judge Curiel is "Well Qualified." A Minority of the Committee found Judge Curiel "Qualified" for this position.

A copy of this letter has been provided to Judge Curiel.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Gonzalo P. Curiel
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
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VIA EMAIL AND FIRST CLASS MAIL

February 6, 2012

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 P. Shea
To the United States District Court
for the District of Connecticut

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Michael P. Shea who has been nominated for a position on the United States District Court for the District of Connecticut. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Shea is "Qualified" for the position.

A copy of this letter has been provided to Michael P. Shea.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Michael P. Shea
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

February 6, 2012
Page 2

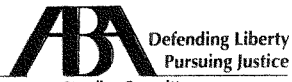
This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on February 6, 2012.

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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AMERICAN BAR ASSOCIATION

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VIA EMAIL AND FIRST CLASS MAIL

December 1, 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 Robert J. Shelby
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 Robert J. Shelby 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 Mr. Shelby is "Qualified" for this position.

A copy of this letter has been provided to Mr. Shelby.

Sincerely,

Allan J. Joseph
Chair

cc: Robert J. Shelby, Esq.
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

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06051 for 30 Bank Street
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fax (860)223-4488

MAR 30 12 PM 2:51

March 23, 2012

The Honorable Patrick Leahy
Chairman of the Senate Judiciary Committee
United States Senate
437 Russell Senate Bldg.
Washington, DC 20510

Re: Nomination of Attorney Michael P. Shea to be a United States District Judge

Dear Senator Leahy:

I am pleased to inform you that the Federal Judiciary Committee of the Connecticut Bar Association ("CBA") has voted to rate Attorney Michael P. Shea, the President's nominee to be a Judge for the United States District Court, as "qualified" by a unanimous vote.

The twelve members of the Committee are charged with responsibility for evaluating and reporting on the suitability of the Connecticut nominees to the federal bench. The Committee rates all such nominees as either "qualified" or "not qualified". (There is no "highly qualified" rating available.)

The Committee reviewed and discussed the nominee's background and qualifications and interviewed Attorney Shea on March 12, 2012. Once the Committee determined that no further information or interviews were required, it voted on Attorney Shea's qualifications.

The CBA appreciates the opportunity to participate in the federal judicial nominee review process. The CBA looks forward to Attorney Shea's confirmation by the Senate and to his service to the public and legal community as a Judge of the United States District Court for the District of Connecticut.

Very truly yours,

Keith Bradoc Gallant
President

42732566.1

Statement of Senator Chuck Grassley
Before the Committee on the Judiciary
On the Nominations of:

Michael P. Shea, to be United States Circuit Judge for the District of Connecticut

Gonzalo P. Curiel, to be United States District Judge for the Southern District of California

Robert J. Shelby, to be United States District Judge for the District of Utah

March 28, 2012

Mr. Chair:

I join you in welcoming the nominees who are appearing before us today, their friends and families. I note that we are making good progress on judicial nominations this year.

Including today, we have been in session for 35 days. We will have had five nominations hearings. This is an average of one hearing for every 7 of those days. This year we will have heard from 20 nominees. I consider this to be excellent progress. So I welcome the nominees today.

Michael Shea is nominated to be a United States District Judge for the District of Connecticut. Upon graduation from Yale Law School in 1993, Mr. Shea clerked for James Buckley, United States Circuit Judge for the District of Columbia Circuit. After his clerkship, he worked as an associate at Clearly, Gottllieb Steen & Hamilton on antitrust matters. In 1998, he moved to Day Berry & Howard in Connecticut and became a partner in 2003. His career there has spanned a broad range of civil and criminal litigation. Mr. Shea has tried nine cases to verdict and has argued twenty appeals, including six at the U.S. Court of Appeals for the Second Circuit.

The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Mr. Shea as "Qualified" for this position.

Gonzalo P. Curiel is nominated to be United States District Judge for the Southern District of California. Upon graduation from Indiana University Law School in 1979, he

worked as an associate at the law firm James James & Manning, specializing in civil and criminal litigation. In 1986, he became an associate at Barbosa & Vera, specializing in the representation of municipalities in cases concerning highway design, personal injury and police practice.

Judge Curiel left private practice in 1989 to become an Assistant U.S. Attorney, first in San Diego, then in Los Angeles. As a federal prosecutor, he specialized in narcotics and money laundering cases, serving as Deputy Chief of the Narcotics Enforcement Section for many years. Judge Curiel has tried approximately 33 cases to verdict.

In 2006, then Governor Arnold Schwarzenegger appointed Judge Curiel to the Superior Court for the State of Califronia, County of San Diego. He was re-elected in November 2008. He sits in a state trial court of general jurisdiction.

A majority of the American Bar Association's Standing Committee on the Federal Judiciary rated Judge Curiel as "Well Qualified" for this position and a minority rated him as "Qualified".

Robert J. Shelby is nominated to be United States District Judge for the District of Utah. Upon graduation from University of Virginia School of Law in 1998, Mr. Shelby clerked for J. Thomas Greene, District Judge for the District of Utah. In 2000, he joined Snow Christensen & Martineau as an associate attorney. There, he primarily handled cases involving defense of white-collar defendants but also handled defense of crimes involving fraud, rape, embezzlement, and theft. Mr. Shelby joined Burbidge Mitchell & Gross in 2005. There, his practice focused on catastrophic personal injury cases and complex commercial litigation. He returned to Snow Christensen and Martineau in 2011 and has managed the defense of a national class action case. He has tried approximately 35 cases to verdict.

The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Mr. Shelby as "Qualified" for this position.

Statement of Sen. Orrin G. Hatch
Before the Senate Judiciary Committee
Regarding the nomination of Robert Shelby to the U.S. District Court
March 28, 2012

Mr. Chairman, I want to join my fellow Senator from Utah and Judiciary Committee colleague, Senator Lee, in commending Robert Shelby to the Committee. Utah is a busy, fast-growing state and, not surprisingly, the U.S. District Court in Utah has a busy, fast-growing docket. Even a single vacancy can have a real impact on a court with just five active judgeships.

Bob Shelby received his undergraduate degree from the University of Utah and has been an active member of the bar at the county, state, and national levels since graduating from the University of Virginia Law School in 1998. After clerking for U.S. District Judge J. Thomas Greene, Bob has spent the last dozen years in private practice. Bob has also served on the Utah Supreme Court's Advisory Committee on Rules of Civil Procedure and its Ethics and Discipline Committee. His courtroom experience includes both civil and criminal case, before both state and federal courts, and in both trial and appellate courts. This breadth of experience will help Bob be an effective judge.

This is not Bob's only public service. He served in the Utah Army National Guard from 1988 to 1996, serving on active duty during operation Desert Storm and receiving several military awards. I want to thank him for being willing to serve once again and believe he will be a judge committed to fairness and the rule of law. I support his nomination, commend him to my Committee colleagues, and hope that the Senate will approve his nomination as soon as possible.

NOMINATIONS OF ROBERT E. BACHARACH, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT; PAUL WILLIAM GRIMM, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND; JOHN E. DOWDELL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA; MARK E. WALKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA; AND, BRIAN J. DAVIS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA

WEDNESDAY, MAY 9, 2012

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

The Committee met, pursuant to notice, at 2:30 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Lee and Coburn.

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

Senator WHITEHOUSE. This hearing will come to order. And I wish everyone good afternoon.

Today we will consider five nominees to the Federal bench. Judge Robert E. Bacharach has been nominated to the U.S. Court of Appeals for the Tenth Circuit. Judge Paul William Grimm has been nominated to the U.S. District Court for the District of Maryland. John E. Dowdell has been nominated to the U.S. District Court for the Northern District of Oklahoma.

Judge Mark E. Walker has been nominated to the U.S. District Court for the Northern District of Florida. And, Judge Brian J. Davis has been nominated to the U.S. District Court for the Middle District of Florida.

I welcome each of the nominees and their families and friends to the U.S. Senate and to the Judiciary Committee.

I also would like to welcome my colleagues who are here to introduce their home state nominees.

Voting to confirm an individual to the Federal bench is one of the most important and lasting decisions that a Senator can make. Every day Federal judges make decisions that affect the lives of Americans in all walks of life. In doing so, judges must respect the role of Congress as representatives of the American people, decide cases based on the law and the facts, not prejudge any case, but listen to every party that comes before them, respect precedent, and limit themselves to the issues that the court must decide.

I hope that each judicial nominee we hear from today understands the importance of those core principles.

Judicial nominees also must have the requisite legal skill to serve as a Federal judge. Each of today's nominees has an impressive record of achievement.

As a result, I believe that each nomination deserves prompt consideration. We need good judges in adequate number for our system of justice to function.

In the interest of logistics, let me outline how the hearing will proceed. After the Ranking Member's remarks, home State Senators in attendance will, by almost order of seniority, introduce the nominees. We then will have two panels. The first will be Judge Bacharach, the circuit court nominee, and the second will be the four nominees for district court judgeships.

Senators on the Committee will have 5-minute rounds in which to question each panel.

I would like to have the Senators from the home States speak together. So I am going to jump the junior member to tail their senior member. So it will go Mikulski, Cardin, Inhofe, Coburn, and then Nelson, Rubio, if that is agreeable to everyone.

With that, I turn to my Ranking Member, Senator Mike Lee.

STATEMENT OF HON. MIKE LEE, A U.S. SENATOR FROM THE STATE OF UTAH

Senator LEE. Thank you, Mr. Chairman.

As we begin today, I would like to say just a brief word about some statements made in recent days by the White House and by some of my Democratic colleagues regarding judicial nominations.

There has been some suggestion of record judicial vacancies resulting from unwarranted obstruction in the Senate by means of unprecedented delays and filibusters. Of course, none of this happens to be true.

I would like to set the record straight. The reality is that judicial vacancies are down by 20 percent from last year and, in fact, they are at their lowest level in nearly 3 years.

The vast majority of current vacancies remain for one reason—President Obama simply has not nominated individuals for those judgeships.

With respect to the current 76 judicial vacancies in our Federal judicial system, the Obama Administration has made only 29 nominations. And I would note that a number of those nominations are so recent that the Judiciary Committee has yet to have even the chance of holding hearings. We are doing so today for five recent nominees.

The Senate has already confirmed more than 80 percent of President Obama's judicial nominees, approving a larger share without a roll call vote than the Senate did under President Bush.

To date, the Senate has confirmed 143 of President Obama's district and circuit court judges. That is significantly more judicial confirmations in the first 3 or so years of the Obama Administration than the 120 that this body confirmed during the previous years of President Bush's second term. And we continue, moreover, to confirm more as we move on.

So far this year, we are well above the historical standards. The average number of confirmations by May 9 for a Presidential election year is 11. We have already confirmed 21 judges this year. That is almost double the normal pace.

Finally, the suggestion of unprecedented filibusters is simply ridiculous. During President Bush's first 3 years, Senate Democrats forced 19 cloture votes on judicial nominees, 19 votes to filibuster judges. During President Obama's first 3 years, the Senate took only six such votes.

We have treated President Obama's nominees better than the Democrats treated President Bush's nominees. For the White House or Senate Democrats to suggest otherwise is false and hypocritical.

With that introduction, I welcome today's nominees and their families and look forward to a lively discussion with you today.

Thank you.

Senator WHITEHOUSE. Suffice it to say that there are differing views with regard to the Minority Leader's point of view that, but I do not think this forum is the appropriate venue to continue that discussion.

So I will yield now to Senator Mikulski, followed by Senator Cardin, to introduce the Maryland nominee, Paul William Grimm.

PRESENTATION OF PAUL WILLIAM GRIMM, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND BY HON. BARBARA MIKULSKI, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you very much, Senator Whitehouse, Senator Lee, Senator Coburn.

It is with a great deal of enthusiasm and pride that I am here to both introduce really highly recommend Judge Paul Grimm to serve on the district court of Maryland, to nominate him for a seat to be soon vacated by Judge Benson Legg, a distinguished Federal jurist who has chosen to move to senior status.

Mr. Chairman and colleagues, I take this honor to recommend people for the Federal judiciary, to both President Obama and to bring them to you, very seriously.

I have four criteria. Our judicial nominee must have absolutely high personal integrity, must bring judicial competence and temperament, have a commitment to core constitutional principles, and a history of civic engagement in Maryland.

I outline these standards because I believe that Judge Paul Grimm brings these standards to this job. He is, first of all, a person of incredible competence and temperament. The ABA has given

him the highest rating by stating that he is unanimously well qualified.

Judge Grimm has come to Maryland really by a route—he is not a native-born Maryland guy. He comes with a background in public service. His father was in the United States Military. He grew up outside of Maryland, but also went to law school at the University of—he went to school on attending ROTC scholarships.

He then joined the Army and served in the JAG corps. That brought him to Maryland, where, for 3 years, he worked at Aberdeen Proving Ground and even was so highly sought out for his skills, worked at the Pentagon.

He went on to serve as a JAG officer for 22 years while maintaining full employment as a practicing attorney and on to other judicial duties.

His life and resume really speak for themselves. He has been a trailblazer in the Maryland legal community, well respected for not only his extensive writing and teaching, but his commitment to the improvement of the practice of law and the administration of justice.

He has already served the court by working for 16 years as a U.S. magistrate. Six of these last years he spent as the chief magistrate.

Prior to this, he spent 13 years as a litigator in private practice and, also, served as assistant attorney general. Most recently, he has served on the advisory Committee on the Federal Rules of Civil Procedure and was later designated as the chair of the discovery subcommittee.

He has been honored by just about every legal professional organization in Maryland. This speaks to his incredible competence.

But I also want to make a note about his background in terms of civic engagement. And why is this important? We do not want our judges to have lived in a bubble. They have to be in touch with the fabric of our society. And Judge Grimm has been a church volunteer. He has been active in the Boy Scouts. He has worked in terms of improving the legal community by giving courses to everyone from paralegals all the way up to these professional associations.

You can ask anyone in the Maryland legal community and they point to—if you say, "Name the top three who you would say really belong on the Federal bench," Paul Grimm is at the top of this list.

I am honored to bring him to you today, and I know he will introduce his own wife here. But behind every great guy there is an entire family that supports them, and I am sure you will note the presence of it.

I would hope that the Committee would confirm and recommend to the full Committee the approval of Judge Grimm and that we are able to move expeditiously to confirm him in the Senate.

Senator WHITEHOUSE. Thank you, Senator Mikulski.

I will now recognize your junior colleague, Senator Cardin, to complete the Maryland delegation.

PRESENTATION OF PAUL WILLIAM GRIMM, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND BY HON. BENJAMIN CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Senator Whitehouse, Senator Lee, Senator Coburn, thank you very much. And I am honored to join Senator Mikulski in highly recommending Judge Grimm for confirmation to the district court for Maryland.

Let me first thank Judge Grimm for his public service. He has been a distinguished magistrate judge in Maryland for over 15 years. I want to thank him, and I want to thank his family, because we all know public service is a sacrifice for a family and cannot be done without the support he has from his family and I want to thank them all.

Mr. Chairman, I would ask that my written statement be made part of the record.

Senator WHITEHOUSE. Without objection.

Senator CARDIN. And let me just underscore some of the points that Senator Mikulski made about Judge Grimm.

His military record is distinguished, and, to me, that is an important point raised to the Committee. He was a captain in the U.S. Army. He has given back greatly to his community. He has served in the private sector as a lawyer. He is an assistant attorney general. He has been a magistrate judge now for over 15 years, and he is the chief magistrate judge in the Maryland division.

He has demonstrated the judicial temperament, the competency, the integrity, and the good judgment. His reputation among judges, among lawyers is of the highest order. He has received the highest rating from the Bar Association on recommending that he be confirmed as a district court judge.

As Senator Mikulski pointed out, Chief Justice Roberts appointed Judge Grimm to serve as a member of the advisory Committee for the Federal Rules of Civil Procedure in 2010. He was designated as chair of the civil rules committee's discovery subcommittee.

Now, for those of us who have gone through law school, someone who can specialize in civil procedures has our greatest respect. So I just want to acknowledge his expertise in this area of law that does not get the type of publicity that it deserves.

He has written numerous authoritative opinions, books and articles on the subjects of evidence, civil procedures, and trial advocacy. In other words, he is a judge's judge. He understands what this is about and he has a proven record of being able to achieve the type of respect in the legal community that I think we all want from our district court judges.

But it goes beyond that. He has taught classes at both of our two law schools in Maryland, and has been awarded the title as an outstanding adjutant faculty member. So he has demonstrated himself, also, in taking responsibility to train the next group of attorneys.

I think he is highly qualified. I am proud to recommend his confirmation and do so on behalf of the people of Maryland.

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

Senator WHITEHOUSE. Thank you, Senator Cardin.

I am now honored to recognize my Ranking Member on the Environment and Public Works Committee and the senior member of the Oklahoma Senate Delegation, Senator Jim Inhofe.

PRESENTATION OF JOHN E. DOWDELL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA BY HON. JIM INHOFE, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Thank you, Mr. Chairman, Senator Lee, and Senator Coburn.

I am here actually to introduce two, Judge Robert Bacharach and John Dowdell. It is unusual we get two at the same time, but I am very pleased.

Judge Bacharach has been nominated for the vacancy of the tenth circuit court, which has been traditionally held by an Oklahoman. I believe that Judge Bacharach would continue the strong service Oklahomans have provided the tenth circuit.

Throughout his career and education, he has distinguished himself. In 2007, the *Oklahoma City Journal Record* profiled Judge Bacharach as an example of leadership in law, where he simply stated that as a future goal, he intends to improve. Always working to improve has defined Judge Bacharach.

He graduated in the top 4 percent of his class, received multiple academic awards, and maintained memberships in the highest orders of law school students.

He began his legal scholarship on law review and has continued writing in a number of law reviews. Judge Bacharach has multiple years of litigation experience, working for Crowe & Dunlevy, a very large firm in Oklahoma City, and in service as a Federal magistrate for the U.S. District Court for the Western District in Oklahoma City.

However, he actually began his legal career with service to the tenth circuit, working as a law clerk for the chief judge of the tenth circuit. As evidence of his career of distinction, when Judge Bacharach was chosen as a magistrate for the western district, among many good candidates, in 1999, the chief judge for the western district characterized the decision to choose Judge Bacharach as an easy one.

Since that time, his colleagues have characterized his service as remarkable, demonstrating superb judicial temperament, and a real asset to the western district court family and their legal community.

So I appreciate the opportunity to introduce him this afternoon.

Also, Mr. Dowdell has been nominated for the vacancy of the U.S. District Court for the Northern District of Oklahoma, which sits in my hometown of Tulsa. After graduating from the University of Tulsa's College of Law, Mr. Dowdell also began his legal career as a clerk to the chief justice of the tenth circuit court of appeals.

Since 1983, Mr. Dowdell has accumulated extensive State and Federal litigation experience, representing a variety of clients, working at the same Tulsa firm in which he is a named partner.

Mr. Dowdell is a native Tulsan, has been extensively involved in the community, in addition to being widely recognized for his work on behalf of his clients.

I received a number of letters from members of the legal community through Tulsa highlighting Mr. Dowdell's work ethic, his character, his abilities as an advocate for his clients.

Mr. Dowdell already has experience as a mediator and arbitrator and has served as an adjunct settlement judge in the northern district for the past nearly 14 years.

He and his wife of 24 years, Rochelle—like my wife, Kay, we have—he has four kids and when he is my age, he may have 20 kids and grandkids like I do, in which case he will continue to improve.

So it is my honor to recommend him to this Committee.

Senator WHITEHOUSE. Thank you, Senator Inhofe.

With Senator Nelson's kind permission, I will now turn to the junior member of the Oklahoma delegation, Senator Tom Coburn.

Senator COBURN. Mr. Chairman, thank you. I would ask that my written statements be part of the record, and, also, ask that——

Senator WHITEHOUSE. Without objection.

Senator COBURN [continue.] Into the record be placed the recommendations of various and sundry significant individuals from Oklahoma, as well as bar associations, in terms of their commendations in support of this nomination, including that of Judge Lagrange in Oklahoma City.

Senator WHITEHOUSE. Also, without objection.

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

Senator COBURN. I think our two nominees are a great example of how we have chosen to work with the Administration on getting quality candidates for Federal positions.

I am pleased to support both of these nominations not because of their legal excellence necessarily, not because of what other people have said about them in terms of their legal capability, but what other people have said about their character and their integrity. And if there is one quality that I believe is most important in terms of capturing the essence of what it means to be American, a free and plentiful access to the rule of law for everybody, that has to come when you have character and integrity in those that are making those decisions.

So I am very pleased. There is only one drawback on John Dowdell in that he has a friendship and relationship with Senator Burr, as they played football together at Wake Forest. I told him that was the only negative that I knew of him. However, I say that in jest.

I have had great conversations with both of these nominees and I have talked to literally hundreds of people in Oklahoma who sincerely back and believe in their character and integrity, as well as their unqualified support by the ABA.

So with that, I would tell you that I support their nominations and hope that we can move them through the process.

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

Senator WHITEHOUSE. Thank you, Senator Coburn.

For the record, Senator Burr actually came to this hearing in order to let me know of his longstanding friendship with Mr. Dowdell and his absolute support for his candidacy, as well. So I was delighted that Senator Burr took that trouble for his friend and classmate.

And I now turn to the senior Senator of the Florida Delegation, Senator Bill Nelson.

PRESENTATION OF MARK E. WALKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA; AND BRIAN J. DAVIS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA BY HON. BILL NELSON, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator NELSON. Thank you, Mr. Chairman. And as you and the Ranking Member, Senator Lee, know, we have a process in Florida that is not only bipartisan, it is nonpartisan.

Senator Rubio and I appoint a judicial nominating commission for each of the three Federal judicial districts and they do all of the applications. They do the interviews and they do the selection of at least three.

Well, because of that process, what comes to us are three nominees that any one of them would be an excellent Federal judge, and we have an agreement with the White House whereas the President can accept—he can pick whoever he wanted to—he will agree to pick from among the names that Senator Rubio and I send to him.

This has been done now for several decades in Florida between the two Senators. And so Senator Rubio and I come to you in that vein now with two vacancies, one in the middle district and one in the northern district.

And we want you to know that this is an important time and it is an important time, as said by Senator Coburn, that the rule of law is upheld. And that is what makes our country so much different from so many other countries on the face of Planet Earth.

So I am pleased to introduce Judge Mark Walker and Judge Brian Davis. Judge Walker is nominated in the northern district. He was born in Wintergarden, which is in central Florida. He received his bachelor's degree from the University of Florida, graduating first in his class.

He continued and earned his law degree at the University of Florida. He has clerked for a Supreme Court justice in the Florida Supreme Court and Judge Hinkle of the northern district. And if the Senate confirms Judge Walker, he will sit with the very judge that he clerked for in the northern district.

He served as an assistant public defender of Florida's second judicial circuit from 1997 to 1999, before then spending a decade in private practice, where he specialized in civil litigation and criminal defense. And since 2009, he has had an outstanding record as a circuit judge, living in Tallahassee.

And he is joined by many of his family, including his wife, Karen; his daughters, Sarah and Emily; his parents, Joe and Dorothy; his sister, Elizabeth, and her husband, Tom Conway; and, also, joined by a close family friend, Ryan Andrews.

His brother, an active duty lieutenant colonel, Larry Walker, is on active duty and, therefore, not able to attend.

Our second vacancy is in the middle district, and that is Judge Brian Davis. He is a native of Florida, born in Jacksonville. He attended Princeton, which was no little task, coming out of the schools of Florida back in the 1960s and going to the Ivy League.

He studied psychology and then he went to the University of Florida for his law degree, where he was a member of the law review. He practiced law first and then in the state attorney's office in Jacksonville. And Judge Davis was the first African-American to be the chief assistant state attorney in the State of Florida.

A little personal note. The former state attorney—and in our State, they are elected—came to Judge Davis back then and said, "I want you to be my chief assistant," when Judge Davis had already been an assistant state attorney and was getting ready to go back into private law practice and make some money. And because of the call of public service, Judge Davis accepted the state attorney's insistence and he came on as chief assistant.

Since 1994—so this is a long time, 18 years—he has served as a circuit judge in Nassau County, which is just to the north of Jacksonville, where he presides over family law, civil, and juvenile cases. And he is a member, of course, of the Jacksonville Bar Association and so many other organizations.

And he is here today with his family, his wife, Tanya; his daughter, Cicely; his granddaughter, Brynne; his god daughter, Sonya; his cousin, Roberta Balthrop; his niece and nephew, Natasha and Reginald, and their daughter, Gabrielle. And that is the best behaved baby back there, as well as this one right here.

So it is a pleasure for Senator Rubio and me to be here on behalf of these two outstanding nominees.

Senator WHITEHOUSE. Well, Senator Nelson, we particularly appreciate your recommendation of these folks, as someone who sat next to you on the Intelligence Committee for 4 years.

We went to the same law school, and I was always very proud of Senator Nelson's abilities, because you would get a witness in from time to time and the Intelligence Committee is, of course, very private, there is no audience, but we learned about each other and every once in a while you would hear Senator Nelson say, "I am just a country lawyer from Florida."

[Laughter.]

Senator WHITEHOUSE. And all of the members' ears would perk up and they would start paying particular attention, because they knew they were about to be treated to a particularly classic, rigorous, pointed cross-examination of a witness.

I will turn to your junior colleague now, Senator Marco Rubio.

Senator Rubio.

PRESENTATION OF MARK E. WALKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA; AND BRIAN J. DAVIS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA BY HON. MARCO RUBIO, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator RUBIO. Thank you. And Florida's favorite country lawyer has covered well the nominees that we have here today. So I just wanted to add to that a couple of things.

First, this Committee has an extraordinary calming effect on children.

[Laughter.]

Senator RUBIO. So I may need you from time to time in my own home. But thank you for this opportunity to be here.

Just to be brief, Senator Nelson has done a great job of outlining the process we have in the State. And one of the pleasant surprises in this job is the quality of individuals that offer themselves for public service and the quality of individuals that we have been able to forward to the President and to the White House, today being no exception.

Senator Nelson has covered both of these gentlemen's backgrounds, and I would just point out that we are pretty proud of the kind of folks that offer themselves up for judicial nominations out of our State.

As you can see, their records are pretty impressive, and I encourage you to give them full consideration. They are pretty typical of the kind of nominees we have been able to bring before this Committee, both in their educational backgrounds and then in their private practice or as lawyers, practitioners, as clerks, and, obviously, experience that they have on the bench, both of whom now are currently bringing to the table experience on the bench.

So it is typical of the kind of nominees we have been able to bring. And I am bragging on our State a little bit and on our bar, but we are proud to have that kind of lawyer coming out of our State, as you have experienced firsthand in the Intelligence Committee.

So with that, I just want to thank you all for the consideration you are going to give to our nominees, and I am proud to be here with them today and with their families.

Thank you.

Senator WHITEHOUSE. Let me thank the panel of Senators for coming forward to speak on behalf of their nominees. I hope people who are watching this understand how very busy it is to be in the Senate while the Senate is in session and for each of them to come and give their time to support their nominees is a powerful testament to the quality of the different nominees and their commitment to getting them passed rapidly through this Committee and through the floor, as well.

So I will excuse my colleagues now so that we can reset for our first witness, who will be Judge Bacharach, followed by a panel of the four district court nominees.

Before you are seated, would you raise your right hand?

[Nominee sworn.]

Senator WHITEHOUSE. Thank you, Judge Bacharach. Please be seated. And welcome to the Committee. If you would like to make any form of opening statement or, as is the tradition, introduce friends and family who are here with you, we would be delighted to have you do that now.

STATEMENT OF JUDGE ROBERT E. BACHARACH, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT

Judge Bacharach. Thank you, Mr. Chairman.

First, I would like to express my gratitude to the President of the United States for the great and awesome honor and responsibility from his nomination.

I would also like to thank you, Mr. Chairman, Senator Lee, Dr. Coburn, and each member of this Committee for the opportunity to appear before you today.

I would also like to express my deepest gratitude to Senator Inhofe and Senator Coburn for their fairness in their consideration of my nomination, their great courtesy, and, of course, their support and their very generous remarks this afternoon.

I would also like to briefly introduce my family and friends that are here today, starting with my wonderful wife, Rhonda Bacharach. And at the risk of waking up my 3.5-year-old little girl, I'd like to introduce her, as well. She is a great blessing in our lives. Her name is Olivia Harper Bacharach. She is 3.5. And this is a great moment in our family's life.

I would also like to introduce, briefly, some wonderful friends that are here today, starting with the honorable Ralph Thompson. For some 32 years, Judge Thompson served as a true exemplar of what every Federal judge should strive to be, and I am greatly honored by his presence today.

I also have some other wonderful friends that are present today. Jack Lockridge, Bill LaForge, Bruce Moyer, Lauren Fuller, and Jim Scott, and I am grateful for their great friendship, and, also, for the meaningful gesture that they have taken in appearing as my guests today.

I have a number of friends and family back home that are watching this via Webcast.

And with that, Mr. Chairman, I would be delighted to answer whatever questions you and other members of the Committee might have.

Senator WHITEHOUSE. Thank you, Judge Bacharach.

I just want to let you know that I was the attorney general of Rhode Island for 4 years and I have done some independent research on you through my attorneys general network. I was actually an attorney general while your attorney general, Drew Edmondson, was the head of the National Association of Attorneys General, and he thinks very highly of you, I want you to know. And so I am delighted to pass on his good wishes and goodwill on this nomination.

In my opening statement, I mentioned a couple of what I think are baseline notions that judges should respect; that judges are obliged to recognize the role of Congress as the elected representatives of the American people; that they are obligated to decide cases based on the law and the facts; that they are obligated to not

prejudge any case, but listen fairly to every party who comes before them; that they are obliged to respect precedent; and, that they are obliged to limit themselves to the issues properly presented to the court in the matter that is presently before them.

And I said I hope each judicial nominee will respect and adhere to those principles. And I would like to ask you if you have any disagreement with any of that. That seems pretty baseline stuff, but I think it is worth hearing from you on that.

Judge Bacharach. Absolutely. Senator Whitehouse, I completely subscribe to the ideal that you identified. A judge's function is not to write the law, not to impose his or her own ideology or philosophy, but simply to abide by the statute, by the Constitution, and I completely agree with the remarks that you made.

Senator WHITEHOUSE. And let me ask you just a quick question about juries. The Constitution and the Bill or Rights recognize the American jury in three separate places. And the great commentator on American democracy, de Tocqueville, in *Democracy in America*, reflected on the jury as one of the means of the sovereignty of the people.

So it has not only a fact-finding function, but, also, according to de Tocqueville and Blackstone and others, a function in the structure of American government and democracy.

And I wonder if you have any comment on that view of the American jury.

Judge BACHARACH. I agree, Senator. I am always struck when individuals sacrifice their time to serve on juries, how impressed they are with the judicial system, and how they take their responsibilities so seriously.

And it is an indispensable attribute of our judicial system. I completely agree that it is an honor. It is a responsibility that every citizen has, and it is indispensable to our criminal and civil justice system.

It is an attribute that sets our system apart from many other countries and it is very important.

Senator WHITEHOUSE. With that, I will turn to my Ranking Member, Senator Lee, and then I will recognize your home State Senator, Senator Coburn.

Senator LEE. Thank you very much, Judge Bacharach, for joining us today.

You have been appointed to the U.S. Court of Appeals for the Tenth Circuit, a court that I know well and have appeared many times before, and I commend you for that and wish you well in that endeavor, should you be confirmed.

I notice you clerked for Judge Holloway for 2 years, as I recall; is that right?

Judge BACHARACH. Yes.

Senator LEE. My late father, who was also a lawyer, used to say that that is a particularly good deal for the judge if you can get a clerk to stay for 2 years. I assume it was a good deal for Judge Holloway, in your case.

Judge BACHARACH. I hope so.

Senator LEE. I always found him to be very well prepared for oral argument, and I am sure you helped set the stage for that, although I guess we could point out he had been on the bench almost

20 years by the time you got there. Probably one of the longest-serving judges in the Federal judiciary. I think he was put on there in 1968, took senior status in 1992, but still sits.

I think I argued a case in front of him just a few years ago. That is quite a legacy.

Anything in particular that you learned from Judge Holloway that you would take to the bench with you?

Judge BACHARACH. Senator Lee, there are so many things that I learned from my first and greatest mentor, Judge Holloway, but I would mention two. The first are his qualities as a human being. He has an unparalleled humility, modesty, gentility, and respect for every human being.

I think that enables him to take to the bench many personal qualities that do facilitate his ability to adjudicate cases, his ability to listen, his ability to respect the views of his colleagues for whom he may disagree.

Those are qualities that set him apart as a human being, but it also enables him to decide cases in a superior way.

The second quality that I would mention, Senator Lee, is simply his ability to carry out the simple, but indispensable tasks of any good judge; his ability to apply the law to the facts in every case, without regard to his ideology or philosophy or his personal sympathies; his ability to simply apply the law to the facts, albeit simple, is important. It is a defining characteristic of a judge, and he did that in a remarkable way.

And those two qualities are things that I feel very privileged to have witnessed firsthand for those 2 years.

Senator LEE. There is one aspect of your job that will be new, that will be different both from the manner in which you have served as a magistrate judge and that will be one of the few things you did not get to see as a law clerk, and that is the part of your job that would involve sitting on a panel, generally a three-judge panel, except in those rare instances where the tenth circuit is sitting en banc.

How do you approach that as a potential member of this court, the idea of serving with more senior judges? Initially, you will be the most junior member of that court. How will you approach that without surrendering your own individual view of a case?

I assume it is inevitable that there will be times even in your first year on the court where you will disagree with two more senior colleagues. How will you approach that in such a way that will ensure that you do not give in?

Judge BACHARACH. Well, I think one of the important attributes of any good judge, whether it's a senior judge or a young judge, is the ability to listen, the ability to learn.

I am honored by what Senator Inhofe mentioned, my lifelong ideal is to improve, and I plan—if I were so fortunate as to be reported out of this Committee and confirmed by the U.S. Senate—to continue to improve, to continue to listen, to collaborate with other judges, senior or junior to myself. And when I think they are right, I think that it is important for a judge to surrender one's ego and to do what they believe ultimately is correct.

If a judge, after applying the law to the facts, after listening intently and considering the views that may be expressed contrary to

one's own expressed views, continues to believe that he or she is correct, it is the responsibility of any judge to abide by his or her oath and to do what they ultimately conclude is the legally correct decision after the application of the law to the facts.

So it is a long-winded way, Senator, of saying I would listen to others, but ultimately I would make my own independent decision, as is my oath.

Senator LEE. Just a quick follow-on, yes or no question. I assume from your answer you would agree with me that the law generally supplies an answer, a right answer to a case. The answer may be difficult to find, but there is a right answer.

It may be one that your colleagues disagree with you on, but there is a right answer.

Judge BACHARACH. That is my view, Senator.

Senator LEE. Thank you.

Senator WHITEHOUSE. Senator Coburn.

Senator COBURN. Thank you. Welcome, again.

Judge BACHARACH. Thank you.

Senator COBURN. Welcome to your family, and congratulations.

I have had conversations with you, so my questions are going to be really limited.

In your questionnaire, you noted that you drafted a section on appeals in civil and habeas cases in the tenth circuit court of appeals for a treatise on Oklahoma appellate practice.

You also participated in the *Suiter* v. *Mitchell Motorcoach Sales* and *Burkhart* v. *Restaurants* and *McAllister* v. *McAllister*, among other cases.

Can you discuss your appellate experience further and how will that experience help you if you are voted out of the Committee and confirmed by the full Senate?

Judge BACHARACH. During my career at Crowe & Dunlevy, for 12.5 years, I had the great fortune to spend a great deal of time both at the State court level and at the Federal court level in participating in a number of appeals.

The cases that you mention are cases in which I conducted the oral argument as lead counsel in the tenth circuit court of appeals. I think there were several cases that you mentioned. In addition, I had a number of opportunities to participate in drafting briefs.

Typically, the State appellate courts, the Oklahoma Court of Civil Appeals and the Oklahoma Supreme Court, generally do not entertain oral argument. So in a number of cases, in the State appeals, both at the intermediate appellate level and the State's highest court, I participated by submitting briefs.

I also, of course, submitted a number of briefs in other cases in the tenth circuit court of appeals, in addition to the ones that I orally argued.

I also, as you mentioned, did the principal drafting for the—I would say a draft that was edited by the two authors of that treatise that you mentioned, Clyde Muchmore and Harvey Ellis, and I don't recall exactly how long it was. I know it was a lot of pages. But I did the work, the principal work for the first draft of that.

And that, I think, is a fair summary of my appellate practice, and, of course, in addition, as Senator Lee mentioned, my 2 years under the mentorship of Judge Holloway.

Senator COBURN. In *Federalist 45*, James Madison wrote, "The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State governments are numerous and infinite."

Do you agree with Madison that the powers of the Congress are fundamentally limited?

Judge BACHARACH. Absolutely, Dr. Coburn.

Senator COBURN. What do you see as those limits?

Judge BACHARACH. Well, there are nine sources of legislative power in the Constitution. There is, of course, the first 17 clauses of Article 1, Section A. There are the eight enforcement provisions, the 13th Amendment, Section 2, the 14th Amendment, Section 5, the 15th Amendment, Section 2, the 18th Amendment, the 19th Amendment, the 23rd Amendment, and the 24th Amendment, and, last, the 26th Amendment.

Those are all of the sources of legislative power in the Constitution.

The text of the Tenth Amendment reserves the powers that are not enumerated in those—at the time that the Tenth Amendment was drafted, of course, there was only Article 1, Section A. But the text of the Tenth Amendment reserves all powers not enumerated in the Constitution or prohibited to the States—to the States, respectively, or the people. And that is the guidepost that implements essentially what Madison said in *Federalist 45*.

Of course, Madison was the principal architect of the Tenth Amendment. And in addition to Madison's prescription, of course, Chief Justice Marshall expressed much of the same thing in *Marbury* v. *Madison*, when he said the powers of the legislature are limited.

So I completely agree with what you express, Doctor.

Senator COBURN. Thank you. One other question, and I ask every judge this question. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the U.S. Constitution?

Judge BACHARACH. Without criticizing other judges, for me, I do not believe that it is appropriate for Bob Bacharach to ever rely on any foreign source to determine the meaning of the Constitution. So in my view, it is unequivocally improper for me to do that.

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

Senator WHITEHOUSE. Judge Bacharach, congratulations on your nomination. Mike Lee and I looked at each other as you rattled off without notes the enumerated powers in the Constitution and thought, "You know, that's not bad."

[Laughter.]

Senator COBURN. I would tell the Committee I did not prep the witness for that question.

[Laughter.]

Senator WHITEHOUSE. Even if he knew that question was coming, that was still a pretty good answer.

So congratulations to you. Thanks to your family for attending. It is always important to us when family can attend. Your daughter has been both adorable and quiet, a new personal best for me in terms of youthful behavior in this Committee.

And I want to make sure that you do not feel discouraged that there has not been greater attendance at the Judiciary Committee hearing. What you want is uneventfulness, and the perfect set of attendees for you is a chairman, a ranking member, and your home State Senator.

[Laughter.]

Senator WHITEHOUSE. So may your nomination continue to be uneventful, and best wishes as you go forward.

Judge BACHARACH. Thank you, Mr. Chairman.

[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).

   Robert Edwin Bacharach

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

   United States Circuit Judge for the Tenth 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.

   Federal Courthouse
   200 Northwest Fourth Street, Room 1305
   Oklahoma City, Oklahoma 73102

   Residence: Edmond, Oklahoma

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

   1959; Clarksdale, Mississippi

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, Washington University School of Law; J.D., 1985

   1978 – 1981, University of Oklahoma; B.A. (with high honors), 1981

   1977 – 1978, Washington University, 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.

1999 – present
United States District Court for the Western District of Oklahoma
Federal Courthouse
200 Northwest Fourth Street, Room 1305
Oklahoma City, Oklahoma 73102
United States Magistrate Judge

1987 – 1999
Crowe & Dunlevy, P.C.
20 North Broadway, Suite 1800
Oklahoma City, Oklahoma 73102
Associate (1987 – 1994)
Shareholder (1994 – 1999)

1997 – 1999
University of Oklahoma School of Law
300 West Timberdell Road
Norman, Oklahoma 73071
Adjunct Professor

1985 – 1987
United States Court of Appeals for the Tenth Circuit
Federal Courthouse
200 Northwest Fourth Street, Room 2301
Oklahoma City, Oklahoma 73102
Law Clerk to the Honorable William J. Holloway, Jr.

Summer 1984
McAfee & Taft
Two Leadership Square, Tenth Floor
211 North Robinson
Oklahoma City, Oklahoma 73102
Summer Associate

Summer 1983
Fagin, Hewett, Mathews & Fagin
Bank of Oklahoma Tower, 26th Floor
Oklahoma City, Oklahoma 73102
Summer Associate

Spring and Summer 1982
Stanley Kaplan Test Preparation
5117 North Shartel Avenue
Oklahoma City, Oklahoma 73118
L.S.A.T. Course Instructor and Clerk

Other Affiliations (uncompensated):

2011 – present
LHL Foundation
Oklahoma Bar Association
119 North Robinson, Suite 240
Oklahoma City, Oklahoma 73102
Board of Directors

2004 – present
Federal Bar Association
1220 North Fillmore Street, Suite 444
Arlington, Virginia 22201
Vice-President for the Tenth Circuit (national) (2007 – present)
President, Oklahoma City Chapter (2005 – 2006)
Vice-President, Oklahoma City Chapter (2005)
Board of Directors, Oklahoma City Chapter (2004 – 2005; 2006 – 2009)

2004 – 2007
Oklahoma County Bar Association
119 North Robinson, Suite 240
Oklahoma City, Oklahoma 73102
Board of Directors

1998 – 2001
Big Brothers Big Sisters of Greater Oklahoma City
4101 Perimeter Center Drive, Suite 235
Oklahoma City, Oklahoma 73112
Director, Executive Committee Member

1998 – 2001
Temple B'nai Israel
4901 North Pennsylvania
Oklahoma City, Oklahoma 73112
Board of Trustees

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 in 1959, as I was, 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.

Professional Honors

Leadership in Law Award, The Journal Record (2007)
Earl W. Kintner Award for Distinguished Service, Federal Bar Association (2006)
Special President's Award, Federal Bar Association (2006)

Law School Honors:

Order of the Coif
Executive Editorial Board & Developments Editor, *Washington University Law Quarterly*
Mary Collier Hitchcock Prize (best writing for the law review)
Honor Scholar Awards (two) (achievement in the top 10% in the first and second years in law school)
Breckenridge Scholarship (second highest grade point average in third year of law school)
American Jurisprudence Awards (two) (Civil Procedure, Professional Responsibility)
Order of the Barristers
Golden Gavel Award, Wiley Rutledge Moot Court Competition (1984)

Undergraduate Honors:

Tom Lottinville Award (outstanding essay in the History Department of the University of Oklahoma)
Graduated with High Honors
Honors Club

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
- Vice-President for the Tenth Circuit (national) (2007 – present)
- Chairperson, Chapter Activity Grant Committee (national) (2010 – present)
- President, Oklahoma City Chapter (2005 – 2006)
- Vice-President, Oklahoma City Chapter (2005)
- Board of Directors, Oklahoma City Chapter (2004 – 2005; 2006 – 2009)

Federal Magistrate Judges Association

Oklahoma Bar Association
Lawyers Helping Lawyers ("LHL") Assistance Program Committee (2011)
LHL Foundation, Board of Directors (2011)

Oklahoma County Bar Association
Board of Directors (2004 – 2007)

The Ruth Bader Ginsburg American Inn of Court

Supreme Court Historical Society

United States District Court for the Western District of Oklahoma
Chairperson, A.D.R. Advisory Group (2005 – 2010)
Chairperson, Criminal Justice Act Committee (2002 – 2005)
Chairperson, Local Civil Rules Committee (2006 – 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.

Oklahoma, 1985

There have been no lapses in membership.

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

Supreme Court of the United States, 1989
United States Court of Appeals for the Tenth Circuit, 1986
United States District Court for the Southern District of Texas, 1996

There have been no lapses in membership.

11. **Memberships**:

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

Big Brothers Big Sisters of Greater Oklahoma City (1998 – 2001)
Director, Member of the Executive Committee (1998 – 2001)

The Greens Country Club (2005 – present)

Temple B'nai Israel (1969 – present)
Board of Trustees (1998 – 2001)

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 Question 11a 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.

Robert Bacharach, *Spotlight on San Nguyen, Court Clerk's Office, Western District of Oklahoma*, The Federal Bar Association Oklahoma City Chapter (Jan. 20, 2012). Copy supplied.

Robert Bacharach, *Spotlight on Carrie McKee—Human Resources Administrator, Western District of Oklahoma*, The Federal Bar Association Oklahoma City Chapter (Dec. 1, 2011). Copy supplied.

Robert Bacharach & Lyn Entzeroth, *Judicial Advocacy in Pro Se Litigation: A Return to Neutrality*, 42 Ind. L. Rev. 19 (2009). Copy supplied.

Federal Bar Association Is On the Move, Briefcase (published by Oklahoma County Bar Association) (Dec. 2008). Copy supplied.

FBA Chapter Provides Needed Legal Assistance, 78 Okla. Bar J. 731 (2007). Copy supplied.

A Message from the Chapter President, Federal Bar Association, Oklahoma City Chapter (2006). Copy supplied.

Motions in Limine in Oklahoma State and Federal Courts, 24 Okla. City U. L. Rev. 113 (1999). Copy supplied.

Section 1983 and an Administrative Exhaustion Requirement, 40 Okla. L. Rev. 407 (1987). Copy supplied.

Section 1983 and the Availability of a Federal Forum: A Reappraisal of the Police Brutality Cases, 16 Memphis St. U. L. Rev. 353 (1986). Copy supplied.

Post-Trial Juror Interviews by the Press: The Fifth Circuit's Approach, 62 Wash. U. L.Q. 783 (1985). Copy supplied.

Dirks v. SEC*'s Footnote Fourteen: Horizontal and Vertical Reach*, 62 Wash. U. L.Q. 477 (1984). Copy supplied.

In addition to the above, I drafted a section on appeals in civil and habeas cases in the Tenth Circuit Court of Appeals for a treatise on Oklahoma Appellate Practice. Clyde Muchmore & Harvey Ellis, *Oklahoma Appellate Practice* (1999). My work was acknowledged by the authors in prefatory remarks, stating that I had provided "almost all of the initial drafting of the lengthy chapter on Tenth Circuit appellate procedure." I do not know the extent to which this section was edited or redrafted by the authors. Copy of the section supplied, annotated to indicate those portions of the section that I am certain I did not draft.

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 the chairperson of the Western District of Oklahoma's Local Civil Rules Committee, I drafted annual reports in 2006, 2007, 2008, and 2009. The recommendations reflect approval by a majority of the committee members. Inclusion in the annual report does not necessarily indicate my approval of individual recommendations. Copies of the four annual reports and the amended reports are supplied.

In 2008 and 2009, the Federal Bar Association – Oklahoma City Chapter requested that the national organization clarify several provisions in the Bail Reform Act and Prison Litigation Reform Act. On behalf of the chapter, I drafted the two letters. Copies supplied.

In 2008, I signed the Sedona Conference Cooperation Proclamation. 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.

To the best of my recollection, I have not given testimony, made official statements, or engaged in communications relating, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials.

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 the 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. It is possible I have omitted presentations for which I did not retain records.

October 20, 2011: Presentation of Book to Judge Holloway, Federal Bar Association – Oklahoma City Chapter, Sixth Annual William J. Holloway, Jr. Lecture. The book presented to Judge Holloway consisted of tributes by over 40 of his former and current law clerks. Remarks supplied.

October 4, 2011: Presentation at District Court Workshop, Western District of Oklahoma, regarding the Federal Bar Association – Oklahoma City Chapter. In this presentation, I discussed the upcoming "Holloway Lecture" by Jonathan Turley and the status of the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma.

July 28, 2011: Remarks regarding magistrate judges, Federal Bar Association – Oklahoma City Chapter, Summer Associates Courthouse Tour. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 3, 2011: Introduction and Closing Remarks, Federal Bar Association – Oklahoma City Chapter, Program by Mickey Edwards. I have no notes,

transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

December 10, 2010: Federal Bar Association – Hawaii Chapter, "Ethical Issues in Judicial Settlement Conferences," (presented jointly with Magistrate Judge Michelle Burns). The sponsor was the Federal Bar Association – Hawaii Chapter. Written materials supplied.

October 27, 2010: Presentation for Judge Barbara Swinton's Class at Oklahoma City University Law School. The presentation covered suggestions for interviewing and tips for legal practice. Remarks supplied.

October 19, 2010: Presentation at District Court Workshop, Western District of Oklahoma, regarding the Federal Bar Association – Oklahoma City Chapter. Remarks supplied.

August 27, 2010: Participation in Naturalization Ceremony, Western District of Oklahoma. Remarks supplied.

August 19, 2010: Remarks regarding magistrate judges and question-and-answer session, Third Thursday Lunch with Judge Bacharach. The sponsor was the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 29, 2010: Remarks regarding magistrate judges, Federal Bar Association – Oklahoma City Chapter, Summer Associates Courthouse Tour. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 13, 2010: Presentation for Speaker Series, Federal Bar Association – Student Chapter, Oklahoma City University School of Law. The presentation covered suggestions for interviewing and tips for legal practice. I used the same materials as supplied for the Oct. 27, 2010 event.

December 14, 2009: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter, Fourth Annual William J. Holloway, Jr. Lecture. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 5, 2009: Speaker at Federal Bar Association – Oklahoma City Chapter, Attorney Admissions Swearing-In Ceremony regarding judicial settlement conferences. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

July 16, 2009: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, Third Thursday Lunch with Judge Bacharach. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 21, 2009: Speaker at Attorney Admissions Swearing-In Ceremony regarding the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 24, 2009: Presentation at Federal Bar Association, Leadership Training Program, "Issues, Concerns and Opportunities." Presentation slides supplied.

March 12, 2009: Presentation for Judge Barbara Swinton's Class at Oklahoma City University School of Law. This presentation generally involved the function of magistrate judges. I have no notes, transcript, or recording. The School of Law is located at 2501 North Blackwelder, Oklahoma City, Oklahoma 73106.

February 25, 2009: Presentation on Local Civil Rules Report for Crowe & Dunlevy Litigation Section Meeting. I have no notes, transcript, or recording. The sponsor was Crowe & Dunlevy, 20 North Broadway, Suite 1800, Oklahoma City, Oklahoma 73102.

December 30, 2008: Presentation at Federal Bar Association – Oklahoma City Chapter Program, entitled "Habeas Corpus and Other Prisoner Litigation." This presentation was part of the general program entitled "The Tenth Circuit's 2008 Decisions." My presentation addressed *Crawley v. Dinwiddie*, 533 F.3d 1226 (10th Cir. 2008), and *Kilgore v. Attorney General of Colorado*, 519 F.3d 1084 (10th Cir. 2008). I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 13, 2008: Remarks at Federal Bar Association – Oklahoma City Chapter, Third Annual William J. Holloway, Jr. Lecture. At this event, I made a tribute to Judge Holloway and presented him with a presidential letter of congratulations. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 6, 2008: Speaker at Federal Bar Association – Oklahoma City Chapter, Attorney Admissions Swearing-In Ceremony regarding judicial settlement conferences. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

October 23, 2008: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Mock Oral Argument on the Constitutionality of the Death Penalty." My remarks involved an introduction of the participants and presentation of thank-you gifts at the conclusion. I have no notes, transcript, or

recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

October 21, 2008: Presentation at District Court Workshop, Western District of Oklahoma, regarding Local Civil Rules Update. I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma 73102.

June 13, 2008: Presentation for Central Oklahoma Association of Legal Assistants. The remarks involved the importance of teamwork between attorneys and paralegals in litigation. Remarks supplied.

April 25, 2008: Presentation at Federal Bar Association, Leadership Training Program, "Bench Bar Relationships." Presentation slides supplied.

April 25, 2008: Presentation at Federal Bar Association, Leadership Training Program, "Best Practices and Best Programs." I have no notes, transcript, or recording. Federal Bar Association, 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

April 4, 2008: Introductory Remarks at Federal Bar Association – Northern/Eastern Oklahoma Chapter Seminar, "The Constitution: Does It Matter Any More?" My remarks involved an introduction of the speaker and presentation of a thank-you gift at the conclusion. I have no notes, transcript, or recording. The Federal Bar Association – Northern/Eastern Oklahoma Chapter has no physical address.

March 19, 2008: Remarks at Federal Bar Association – Northern/Eastern Oklahoma Chapter Seminar, "Famous Oklahoma Cases by the Attorneys in *National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma, et al.*, 468 U.S. 85 (1984); *Karen Silkwood v. Kerr-McGee Corp.*, 485 F. Supp. 566 (W.D. Okla. 1979); and *United States v. Governor David Hall*, 424 F. Supp. 508 (W.D. Okla. 1975)." My remarks included an introduction of the speakers and expression of gratitude at the conclusion of the program. Remarks supplied.

January 15, 2008: Presentation at Oklahoma City Commercial Law Attorneys Association Program, "Ethical Issues in Settlement Negotiations." The presentation involved an interactive dialogue with the attendees about ethical issues in judicial settlement conferences. Written materials supplied.

December 18, 2007: Presentation at Oklahoma County Bar Association Program, "Ethical Issues in Settlement Negotiations." This presentation involved an interactive dialogue with the attendees about ethical issues in judicial settlement conferences. I have no notes, transcript, or recording. The sponsor was the

Oklahoma County Bar Association, 119 North Robinson, Suite 240, Oklahoma City, Oklahoma 73102.

November 9, 2007: Remarks regarding magistrate judges, Federal Bar Association – Student Chapter of Oklahoma City University School of Law, "Lunch with the Judges." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

October 25, 2007: Presentation at District Court Workshop, Western District of Oklahoma, "Update on New Federal Rules." I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma 73102.

October 24, 2007: Co-moderator of "Open World Program" discussion between Russian Judges and Criminal Jurors. Judge Stephen Friot and I led a discussion between visiting Russian judges and a number of individuals who had recently served as jurors in criminal cases. I have no notes, transcript, or recording. The sponsor was the Open World Leadership Center, 101 Independence Avenue SE, John Adams Building, Room 144, Washington, D.C. 20540.

July 26, 2007: Remarks regarding magistrate judges, Federal Bar Association – Oklahoma City Chapter, Summer Interns Courthouse Tour. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 28, 2007: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Visual Aids in the Courthouse: A Hands-On Primer" by Rhonda Reynolds, Chief Deputy, Court Clerk for the Western District of Oklahoma and Legal Graphics. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 27, 2007: Presentation at Federal Bar Association, Leadership Training Program, "Bench Bar Relationships." Presentation slides supplied.

March 6, 2007: Presentation at Lions Club Luncheon. My remarks involved the function of magistrate judges. I have no notes, transcript, or recording. The sponsor was the Oklahoma City Downtown Lions Club, 520 West Main Street, Oklahoma City, Oklahoma 73102.

December 22, 2006: Speaker at Crowe & Dunlevy Christmas Breakfast. Remarks supplied.

December 15, 2006: Presentation at Oklahoma Employment Lawyers Association Program, "Ethical Issues in Settlement Negotiations." My presentation involved an interactive dialogue with the attendees about ethical

issues in judicial settlement conferences. I have no notes, transcript of recording. The Oklahoma Employment Lawyers Association has no physical address.

October 16, 2006: Presentation at District Court Workshop, Western District of Oklahoma, "Local Civil Rules." Outline supplied.

September 19, 2006: Participated in Federal Bar Association – Oklahoma City Chapter Colloquium with the Russian Judiciary (five Russian judges and Professor Jonathan Turley and Professor Susan Estrich). Professors Estrich and Turley and the Russian judges discussed their respective legal systems with respect to civil procedure and commercial litigation. My remarks consisted of introductory and closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

September 14, 2006: Introductory Remarks at Federal Bar Association – Northern/Eastern Oklahoma Chapter Program, "With Justice For All." I introduced the speaker and expressed appreciation to him at the conclusion of the program. I have no notes, transcript, or recording. The Federal Bar Association – Northern/Eastern Oklahoma Chapter has no physical address.

August 30, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter, "Visual Aids in the Courthouse: A Hands-On Primer." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

August 26, 2006: Acceptance Speech for the Earl W. Kintner Award for Distinguished Service, Federal Bar Association. I have no notes, transcript, or recording. The sponsor was the Federal Bar Association, 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

July 20, 2006: Remarks regarding magistrate judges, Federal Bar Association – Oklahoma City Chapter, Summer Associates Courthouse Tour. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

July 7, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "DNA Evidence – From the Crime Scene to the Courtroom - Identifying Issues in DNA Evidence." I introduced the speaker and presented a thank-you gift at the conclusion. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 29, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "The New Oklahoma Uniform Arbitration Act." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 1, 2006: Speaker at Attorney Admissions Swearing-In Ceremony, regarding the Federal Bar Association – Oklahoma City Chapter. I provided a background on the Federal Bar Association. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 23, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Mock Oral Argument on Whether *Roe v. Wade/Planned Parenthood v. Casey Should Be Overturned*." I introduced the program and the participants and provided closing remarks upon the conclusion of the mock oral argument. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 16, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter, William J. Holloway, Jr. Lecture. I introduced the program and the special guests, made a tribute to Judge Holloway, and provided closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 3, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Do's and Don'ts for Social Security Practice." I introduced the program and speakers and provided closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 19, 2006: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, "Lunch with the Judges," for Oklahoma University Law Students at Oklahoma University Law School. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 12, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Dealing with Inappropriate Conduct in Depositions." I introduced the speakers and expressed appreciation to them at the conclusion of the program. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 4, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, Presentation by Seth Waxman, 41st Solicitor General of the United States. I introduced the speaker and expressed appreciation to him at the conclusion of the program. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

March 26, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Judicial Reception. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

March 23, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Effective Pretrial Practice in Federal Court." My remarks included introduction of the program and speakers and presentation of closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

March 15, 2006: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, "Lunch with the Judges," for Young Lawyers. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 22, 2006: Presentation at Federal Bar Association – Oklahoma City Chapter Program, "Ethical Issues in Settlement Negotiations." I conducted an interactive dialogue with the attendees about ethical issues in judicial settlement conferences. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 16, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Lunch with the Law Clerks." My remarks included introduction of the speakers and closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 10, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "The Domestic War on Terror: Challenges and Pitfalls at Home," with Governor Frank Keating. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 7, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Lunch with the Law Clerks." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

January 24, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Recollections of the McVeigh Case." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

December 19, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "A Review of the Tenth Circuit's Decisions in 2005." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

December 2, 2005: Remarks at Federal Bar Association – Oklahoma City Chapter Program, Debate About the Patriot Act. My remarks included introduction of the program and closing remarks. I have no notes, transcript, or

recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 17, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program. Debate About the Death Penalty. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 17, 2005: Speaker at Attorney Admissions Swearing-In Ceremony, regarding the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

October 27, 2005: Presentation at District Court Workshop, Western District of Oklahoma, "ADR." Outline supplied.

October 7, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "A Review of the Supreme Court's 2004-05 Term and a Preview of 2005-06." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

September 14, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "*Booker* and Beyond." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

August 18, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "Recollections of *United States v. David Hall*." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

July 22, 2005: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, Summer Intern Tour of Courthouse. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 2, 2005: Presentation at Oklahoma Bar Association Program, "The Criminal Justice Act Panel – How to Get On It and What To Do Once You're There." I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

June 2, 2005: Speaker at Attorney Admissions Swearing-In Ceremony, regarding the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

March 10, 2005: Welcoming Remarks, Federal Bar Association – Oklahoma City Chapter, Tenth Circuit CLE Program. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 28, 2005: Presentation for Judge Robin Cauthron's class at the University of Oklahoma School of Law, "Trial Practice in the Western District." Oklahoma University Law School. My remarks involved suggestions for effective discovery practice. Outline supplied.

January 20, 2005: Master of Ceremonies for Joint Program of the Tenth Circuit Historical Society and the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address. The address for the Tenth Circuit Historical Society is 1550 Seventeenth Street, Number 500, Denver, Colorado 80202.

December 10, 2004: Presentation at Federal Bar Association – Oklahoma City Chapter Seminar, "Ethical Issues in Judicial Settlement Conferences." Written materials supplied.

December 6, 2004: Presentation at Bricktown Rotary Club, "Functions of U.S. Magistrate Judges." I have no notes, transcript, or recording. The Bricktown Rotary Club has no physical address.

October 19, 2004, Presentation at Oklahoma City Commercial Law Attorneys Association. I conducted an interactive dialogue with the attendees about ethical issues in judicial settlement conferences. I have no notes, transcript, or recording. The Oklahoma City Commercial Law Attorneys Association has no physical address.

October 1, 2004: Presentation at Oklahoma Bar Association Program, "Judicial Settlement Conferences," as part of the program, "Civil Pretrial Practice in Federal Court: A Practitioner's Guide." Outline supplied.

May 7, 2004: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, "Lunch with the Judges." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

December 9, 2003: Panel Discussion by Magistrate Judges on settlement conferences. I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

December 1, 2003: Presentation at Oklahoma County Bar Association Program, "Judicial Settlement Conferences: Effective Techniques." I have no notes.

transcript, or recording. The sponsor was the Oklahoma County Bar Association, 119 North Robinson Avenue, Suite 240, Oklahoma City, Oklahoma 73102.

January 24, 2003: Presentation at Federal Bar Association – Oklahoma City Chapter Program, "Prisoner Rights Litigation: Nuts and Bolts." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 7, 2002: Speaker at Attorney Admissions Swearing-In Ceremony, regarding magistrate judges in the Western District of Oklahoma. I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma 73102.

October 7, 2002: Presentation at District Court Workshop, Western District of Oklahoma, "Diversity." My remarks summarized the level of diversity among courthouse employees in the Western District of Oklahoma. Written materials supplied.

September 13, 2002: Presentation for Central Oklahoma Association of Legal Assistants, "Practice Before a U.S. Magistrate." Video recording supplied.

June 20, 2002: Presentation at Federal Bar Association – Oklahoma City Chapter Luncheon regarding work as a magistrate judge. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 23, 2002: Presentation at Kingfisher County Bar Association, "Settlement Conferences in the Western District of Oklahoma." I have no notes, transcript, or recording. The Kingfisher County Bar Association has no physical address.

November 2, 2001: Presentation at Oklahoma Bar Association Seminar, Federal Magistrate Judge Panel Discussion: "Understanding the Changing Practice Before the U.S. Magistrate Judges." I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

October 16, 2001: Presentation at Oklahoma City Commercial Law Attorneys Association, "Ethical Issues in Settlement Negotiations." I conducted an interactive dialogue with the attendees about judicial settlement conferences in the Western District of Oklahoma. I have no notes, transcript, or recording. The Oklahoma City Commercial Law Attorneys Association has no physical address.

April 27, 2001: Presentation at Federal Civil Litigation Seminar. I have no notes, transcript, or recording. I do not recall the entity that sponsored this program.

April 11, 2001: Presentation for Oklahoma University Law School ADR Class, "Judicial Settlement Conferences in the Western District of Oklahoma." I have no notes, transcript, or recording. The sponsor was the University of Oklahoma School of Law, 300 West Timberdell Road, Norman, Oklahoma 73071.

December 21, 2000: Presentation at Oklahoma Bar Association Seminar on Advanced Litigation, "New Approaches in Federal Court Settlement Conferences and ADR." I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

May 25, 2000: Speaker at Attorney Admissions Swearing-In Ceremony, "Magistrate Judges in the Western District of Oklahoma." I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma 73102.

February 16, 2000: Presentation at Bohanon Inn of Court. My remarks involved the function of magistrate judges. I have no notes, transcript, or recording. The Bohanon Inn of Court has no physical address.

November 4, 1999: Presentation at Crowe & Dunlevy Litigation Section Meeting, "Settlement Conferences in the Western District of Oklahoma." I have no notes, transcript, or recording. The sponsor was Crowe & Dunlevy, 20 North Broadway, Suite 1800, Oklahoma City, Oklahoma 73102.

September 21, 1999: Presentation at Oklahoma Employment Lawyers Association Event, "Meet the New Magistrates." I have no notes, transcript, or recording. The Oklahoma Employment Lawyers Association has no physical address.

March 26, 1999: Presentation at Oklahoma Bar Association Seminar, "A New Look for the U.S. Magistrates – Meet the Magistrate Judges and the Magistrate Nominees." I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

February 19, 1999: Presentation at Oklahoma Bar Association Program on Effective Discovery and Winning Motion Practice in Civil Cases, "Motions in Limine." I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

May 25, 1988: Presentation at Oklahoma Association of Municipal Attorneys, Spring Workshop, "Oklahoma City Police Brutality Cases Since 1985 (*Tennessee v. Garner*)." I have no notes, transcript, or recording. The Oklahoma Association of Municipal Attorneys has no physical address.

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.

Professor Jonathan Turley Delivers the Sixth Annual Holloway Lecture, The Federal Bar Association Oklahoma City Chapter (Nov. 28, 2011). Copy supplied.

Nicholas J. Patterson, *Hon. William J. Holloway Jr.: Senior U.S. Circuit Judge, Tenth Circuit Court of Appeals*. Fed. Law. (Nov./Dec. 2008). Copy supplied.

Kevin Gordon, *A Lawyer Loving Retirement: L.E. 'Dean' Stringer*, Briefcase (published by Oklahoma County Bar Association) (Mar. 2008). Copy supplied.

Staff, *Okla. Leadership in Law Profile: Hon. Robert Bacharach, U.S. District Court, Western District*, J. Record (Oklahoma City, OK) (May 1, 2007). Copy supplied.

Lyn Entzeroth, *Hon. Bana Roberts: U.S. Magistrate Judge, Western District of Oklahoma*, Fed. Law. (May 2007). Copy supplied.

Regan Beatty, *FBA Pro Bono Program Seeks Volunteer Lawyers*, Briefcase (published by Oklahoma County Bar Association) (Apr. 2007). Copy supplied.

Sharon O'Roke, *Hon. Doyle W. Argo: U.S. Magistrate Judge, Western District of Oklahoma*, Fed. Law. (Nov./Dec. 2006). Copy supplied.

Christina Good Voice, *Civil Rights Advocate Speaks to Lawyers*, Associated Press (Sept. 15, 2006) (reprinted in multiple outlets). Copy supplied.

A. John Norberto, *Who's Who*, Western Wire, U.S. Probation Office for the Western District of Oklahoma (June 2001). Copy supplied.

John Perry, *STOP Taxes Goes Too Far*, Southwest Jewish Chron. (Sept. 1990). 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.

Since March 29, 1999, I have served as a United States Magistrate Judge for the Western District of Oklahoma. This position was appointed. In this district, United States Magistrate Judges are generally granted jurisdiction that is coextensive with the powers authorized under the Federal Magistrates Act, 28 U.S.C. § 636(b)-(c) (2006).

Magistrate Judges in this district have jurisdiction to enter a report and recommendation in all dispositive matters in every non-capital habeas proceeding, prisoner civil rights case, social security appeal, and post-judgment proceedings. For all nondispositive matters in these areas, magistrate judges are authorized to enter orders. Upon consent of the parties and transfer by the district judge, magistrate judges enjoy authority to conduct trials and enter judgment in civil cases.

In felony cases, magistrate judges have jurisdiction to issue warrants and conduct a variety of pretrial proceedings, including detention hearings, preliminary examinations, and identity hearings. In addition, magistrate judges are authorized to conduct all proceedings in misdemeanor cases upon the parties' consent.

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

   i. Of these, approximately what percent were:

jury trials:	33%
bench trials:	67%
civil proceedings:	100%
criminal proceedings:	0%

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 of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

   1. *Giannetti v. City of Stillwater*, Case No. CIV-04-926-BA (W.D. Okla.). The Tenth Circuit Court of Appeals affirmed my summary judgment ruling. *See Giannetti v. City of Stillwater*, 216 Fed. Appx. 756 (10th Cir. 2007) (unpublished op.).

   An arrestee died while in police custody, and her personal representative attributed the death to "positional asphyxiation" as a result of overly aggressive conduct by law enforcement officers. The claims arose under 42 U.S.C. § 1983 and Oklahoma law. I issued rulings on the admissibility of expert testimony and ultimately granted summary judgment to the defendants on all claims. *See Giannetti v. City of Stillwater*, Case No. CIV-04-926-BA, 2006 WL 5100544 (W.D. Okla. Jan. 26, 2006) (unpublished op.) (admissibility of expert testimony);

Giannetti v. City of Stillwater, Case No. CIV-04-926-BA, 2006 WL 290583 (W.D. Okla. Feb. 6, 2006) (unpublished op.) (summary judgment ruling).

Counsel for Plaintiff: Jeremy Beaver
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Counsel for Defendant: David W. Lee
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2. *Stanphill v. Health Care Service Corp.*, Case No. CIV-06-985-BA (W.D. Okla.).

This case involved a labor dispute. The employer reorganized, terminating the plaintiff and refusing to rehire her. She sued, claiming discrimination in her termination and refusal to rehire her. The parties consented to trial by a magistrate judge, and I denied the employer's motion for partial summary judgment and granted the employee's motion for sanctions based on spoliation of evidence. *See Stanphill v. Health Care Service Corp.*, Case No. CIV-06-985-BA, 2008 WL 2359730 (W.D. Okla. June 3, 2008) (unpublished op.) (sanctions for spoliation of evidence); *Stanphill v. Health Care Service Corp.*, 627 F. Supp. 2d 1244 (W.D. Okla. 2008) (summary judgment ruling); *Stanphill v. Health Care Service Corp.*, Case No. CIV-06-985-BA, 2008 WL 4056284 (W.D. Okla. Aug. 22, 2008) (unpublished op.) (summary judgment ruling). The case ultimately settled.

Counsel for Plaintiff: Mark E. Hammons
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Counsel for Defendant: Elaine Turner
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3. *Pierce v. Gilchrist*, Case No. CIV-05-1519-C (W.D. Okla.).

This civil rights action was brought by a man sentenced to 65 years in prison for rape. He was exonerated by D.N.A. testing after he had spent twelve years in prison. The suit arose under 42 U.S.C. § 1983 and the defendants included a long-time district attorney, the City of Oklahoma City, and a former chemist who had worked for the city for ten years. The chemist's work was questioned by federal investigators in numerous cases. Shortly before the trial, I conducted a day-long judicial settlement conference. The case settled at the conference.

Counsel for Plaintiff:	Clark O. Brewster Brewster & DeAngelis 2617 East 21st Street Tulsa, OK 74114 Telephone: (918) 742-2021
	Guy A. Fortney Brewster & DeAngelis 2617 East 21st Street Tulsa, OK 74114 Telephone: (918) 742-2197
Counsel for Defendant Gilchrist:	Melvin Hall Riggs Abney Neal Turpen Orbison Lewis 5801 North Broadway Avenue Oklahoma City, OK 73118 Telephone: (405) 843-9909
Counsel for Defendant Macy:	Honorable John Jacobsen Special Judge, Oklahoma County Oklahoma County District Court Oklahoma County Courthouse 321 Robert S. Kerr Avenue Oklahoma City, OK 73102 Telephone: (405) 713-1722
Counsel for Defendant City of Oklahoma City:	Richard C. Smith Municipal Counselor's Office The City of Oklahoma City 200 North Walker Avenue Suite 400 Oklahoma City, OK 73102 Telephone: (405) 297-2451

4. *Meyer v. City of Buffalo*, Case No. CIV-02-1691-F (W.D. Okla.).

This action involved tort claims against law enforcement officers arising out of the plaintiff's forced admission to a psychiatric hospital. She sued the county and a number of county officials for violation of her civil rights and state law. The presiding district judge granted summary judgment to the defendant, and the Tenth Circuit Court of Appeals reversed. After the reversal, I conducted multiple settlement conferences and a summary jury trial. The case settled shortly after the summary jury trial was conducted.

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Counsel for Defendant: Jodi Casey
Collins, Zorn, and Wagner
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Second Floor
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5. *Kishore v. Federal Bureau of Investigation*, Case No. CIV-06-330-BA (W.D. Okla.).

This case involved a civil rights claim regarding a failure to advise an Austrian citizen of his rights under the Vienna Convention on Consular Relations after an arrest. I conducted a bench trial and entered judgment for the two agents of the Federal Bureau of Investigation, finding that they had orally advised the plaintiff of his right to consular notification. Order supplied.

Counsel for Plaintiff: Christine M. Cave
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Counsel for Defendant: Steven K. Mullins
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6. *Vague v. City of Shawnee*, Case No. CIV-02-910-BA (W.D. Okla.).

This action involved a claim for overtime pay under the Fair Labor Standards Act. The issue involved the characterization of time spent in the care and maintenance of police dogs. After conducting a bench trial, I found that the city had not violated the Fair Labor Standards Act because it had complied with the terms of a collective bargaining agreement. Order supplied.

Counsel for Plaintiff: Robert L. Mitchell
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Counsel for Defendant: Margaret McMorrow-Love
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7. *Morris v. Crete Carrier Corp.*, Case No. CIV-04-888-T (W.D. Okla.).

This case involved a serious vehicle accident. A driver crossed the center median on a busy interstate, resulting in a collision. At some point, this driver died. Another driver, injured in the accident, sued. The central factual issue was whether the first driver had crossed the center median because he had fallen asleep or had experienced a heart attack. To facilitate settlement, I conducted a summary jury trial shortly before the conventional trial was scheduled. The case settled upon the conclusion of the summary jury trial.

Counsel for Plaintiff: Robert C. Smith, Jr.
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Counsel for Defendant: Robert B. Mills
Earl D. Mills Attorney at Law
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8. *Petzold v. Jones*, Case No. CIV-06-1317-HE (W.D. Okla.).

This case involved a habeas petition by a state prisoner. He claimed ineffective assistance at trial and at a hearing on his motion to withdraw a guilty plea. I conducted an evidentiary hearing and recommended denial of habeas relief. *Petzold v. Jones*, Case No. CIV-06-1317-HE (W.D. Okla. Aug. 29, 2008); *Petzold v. Jones*, Case No. CIV-06-1317-HE (W.D. Okla. Sept. 26, 2008). The presiding district judge agreed and adopted my report and recommendations. *Petzold v. Jones*, Case No. CIV-06-1317-HE, 619 F. Supp. 2d 1143 (W.D. Okla. Dec. 18, 2008). The Tenth Circuit Court of Appeals affirmed and the Supreme Court denied *certiorari*. *Petzold v. Jones*, Case No. 09-6002, 349 Fed. Appx. 295 (10th Cir. 2009), *cert. denied*, 130 S. Ct. 3394 (2010). My orders are supplied.

Counsel for Petitioner: Honorable Howard R. Haralson
Special District Judge
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Counsel for Respondent: Diane L. Slayton
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9. *Goodner v. Parker*, Case No. CIV-08-1095, 2009 WL 2003395 (W.D. Okla. May 29, 2009).

In a state court trial, the judge granted the defendant's motion for a mistrial. The second trial resulted in a conviction, and the defendant sought habeas relief on grounds of a double jeopardy violation. His theory was that he had been goaded into the request for a mistrial by the prosecutor's misconduct. I conducted an evidentiary hearing and, based on the evidence elicited, rejected the double jeopardy claim. *Goodner v. Parker*, Case No. CIV-08-1095-R (W.D. Okla. May 29, 2009). The district judge adopted my report and recommendation. *Goodner v. Parker*, Case No. CIV-08-1095, 2009 WL 2003395 (W.D. Okla. July 2, 2009).

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Counsel for Respondent: Donald D. Self
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10. *Chrisman v. Mullins*, Case No. CIV-04-1226-L (W.D. Okla.).

This action involved a habeas claim for ineffective assistance of counsel and involuntariness of a guilty plea. I conducted an evidentiary hearing and rejected the claims based on the evidence presented. *Chrisman v. Mullins*, Case No. CIV-04-1226-L (W.D. Okla. Dec. 30, 2004) (evidentiary hearing); *Chrisman v. Mullins*, Case No. CIV-04-1226-L (W.D. Okla. Aug. 30, 2005) (recommended denial of habeas relief). The Tenth Circuit Court of Appeals affirmed, and the Supreme Court denied *certiorari*. *Chrisman v. Mullins*, Case No. 06-6182, 213 Fed. Appx. 683 (10th Cir. 2007), *cert. denied*, 551 U.S. 1150 (2007). My opinions are supplied.

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Counsel for Respondent: Diane L. Slayton
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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. *Fleming v. Miller*, Case No. CIV-05-690-C, 2008 WL 4866167 (W.D. Okla. Sept. 26, 2008).

Counsel for Petitioner: Joseph L. Wells
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2. *Walck v. Edmondson*, Case No. CIV-05-430-R, 2005 WL 1356481 (W.D. Okla. June 7, 2005).

Counsel for Petitioner: Steven M. Presson
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Counsel for Respondent: Diane L. Slayton
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John J. Foley
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3. *Threadgill v. Boone*, Case No. CIV-99-1887-T (W.D. Okla. May 31, 2001) (Doc. 31). Opinion supplied.

Counsel for Petitioner: Steven M. Presson
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Counsel for Respondent: James E. Kelly
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4. *Moore v. Newton-Embry*, Case No. CIV-09-985-C, 2011 WL 5143080 (W.D. Okla. Sept. 7, 2011); (W.D. Okla. Sept. 7, 2011) (Doc. 132). Order supplied.

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5. *Worthen v. Wackenhut Correctional Corp.*, Case No. CIV-99-1417-W (W.D. Okla. Sept. 29, 2000) (Doc. 93). Opinion supplied.

Plaintiff: Sidney Allen Worthen, Deceased

Counsel for Defendant: Barbara C. Stoner
Federal Courthouse
200 Northwest Fourth Street
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Oklahoma City, OK 73102
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6. *Petzold v. Jones*, Case No. CIV-06-1317-HE (W.D. Okla. Aug. 29, 2008) (Doc. 63). Opinion supplied in response to 13(c).

Counsel for Petitioner: Honorable Howard Haralson
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Counsel for Respondent: Diane L. Slayton
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7. *Chrisman v. Mullins*, Case No. CIV-04-1226-L (W.D. Okla. Aug. 30, 2005) (Doc. 49). Opinion supplied in response to 13(c).

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8. *Goodner v. Parker*, Case No. CIV-08-1095-R, 2009 WL 2003395 (W.D. Okla. May 29, 2009).

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9. *Suarez-Tejeda v. United States*, Case No. CIV-01-96-F (W.D. Okla. July 30, 2002) (Doc. 61). Opinion supplied.

Counsel for Petitioner: Susan M. Otto
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Counsel for Respondent: Papu Sandhu
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H. Lee Schmidt
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10. *Stamphill v. Health Care Service Corp.*, Case No. CIV-06-985-BA, 2008 WL 2359730 (W.D. Okla. June 3, 2008).

Counsel for Plaintiff: Mark Hammons
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Counsel for Defendant: Elaine Turner
Hall Estill
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e. Provide a list of all cases in which certiorari was requested or granted.

Certiorari Granted

None.

Certiorari Pending

Kerchee v. Smith, Case No. CIV-11-459-C (W.D. Okla.), Case No. 11-6058 (10th Cir.), *petition for cert. filed*, Case No. 11-7042 (Oct. 18, 2011). (This case has not

been adjudicated by the Tenth Circuit Court of Appeals. The petitioners are *pro se* litigants.)

Certiorari Denied

Knox v. Workman, Case No. 10-1181-W (W.D. Okla. Jan. 14, 2011), *adopted* (W.D. Okla. Feb. 11, 2011), *aff'd*, Case No. 11-6042 (10th Cir. June 13, 2011), *cert. denied*, __U.S. __, __ S. Ct. __, 2011 WL 4534902 (U.S. Oct. 3, 2011).

White v. Mullin, Case No. CIV-10-1114-M (W.D. Okla. Dec. 23, 2010), *adopted* (W.D. Okla. Jan. 19, 2011), *aff'd*, Case No. 11-6024 (10th Cir. May 31, 2011), *cert. denied*, __ U.S. __, __ S. Ct. __, 2011 WL 4536089 (U.S. Oct. 3, 2011).

Bell v. LeSure, Case No. CIV-08-1255-R (W.D. Okla. Apr. 30, 2009), *adopted* (W.D. Okla. May 6, 2009), *aff'd*, Case No. 09-6099 (10th Cir. June 25, 2009), *cert. denied*, __ U.S. __, 130 S. Ct. 221 (U.S. Oct. 5, 2009).

Breedlove v. Costner, Case No. CIV-08-1065-D (W.D. Okla. Dec. 8, 2009), *adopted* (W.D. Okla. Jan. 11, 2010), *aff'd*, Case No. 10-6043 (10th Cir. Dec. 16, 2010), *cert. denied*, __ U.S. __, 131 S. Ct. 2162 (U.S. Apr. 25, 2011).

Staten v. Parker, Case No. CIV-08-655-F (W.D. Okla. Feb. 3, 2009), *adopted* (W.D. Okla. Mar. 2, 2009), *aff'd*, Case No. 09-6050, 334 Fed. Appx. 166 (10th Cir. June 18, 2009), *cert. denied*, __ U.S. __, 130 S. Ct. 628 (U.S. Nov. 16, 2009).

Mukes v. Warden, Case No. CIV-08-560-W (W.D. Okla. June 27, 2008), *adopted* (W.D. Okla. Aug. 5, 2008), *aff'd*, Case No. 08-6182 (10th Cir. Dec. 3, 2008), *cert. denied* (U.S. Apr. 20, 2009).

Clark v. Jones, Case No. CIV-08-05-C (W.D. Okla. July 22, 2009), *adopted* (W.D. Okla. Sept. 14, 2009), *aff'd*, Case No. 09-6219 (10th Cir. Dec. 29, 2010), *cert. denied* (U.S. May 2, 2011).

Rockwell v. Parker, Case No. CIV-07-330-R (W.D. Okla. June 19, 2007), *adopted* (W.D. Okla. Aug. 17, 2007), *aff'd*, Case No. 07-6222, 267 Fed. Appx. 783 (10th Cir. Feb. 29, 2008), *cert. denied*, 555 U.S. 878 (U.S. Oct. 6, 2008).

Petzold v. Jones, Case No. CIV-06-1317-HE (W.D. Okla. Sept. 26, 2008), *adopted* (W.D. Okla. Dec. 18, 2008), *aff'd*, Case No. 09-6002, 349 Fed. Appx. 295 (10th Cir. Oct. 15, 2009), *cert. denied*, __ U.S. __, 130 S. Ct. 3394 (U.S. June 7, 2010).

Barber v. Jones, Case No. CIV-06-1260-W (W.D. Okla. May 3, 2007), *adopted* (W.D. Okla. July 10, 2007), *aff'd*, Case No. 07-6170, 279 Fed. Appx. 710 (10th Cir. May 28, 2008), *cert. denied*, __ U.S. __, 129 S. Ct. 461 (U.S. Oct. 20, 2008).

Parker v. Jones, Case No. CIV-06-1107-T (W.D. Okla. Dec. 20, 2006), *adopted* (W.D. Okla. Mar. 20, 2007), *aff'd*, Case No. 07-6068, 260 Fed. Appx. 81 (10th Cir. Jan. 7, 2008), *cert. denied*, 553 U.S. 1082 (U.S. June 2, 2008).

Terry v. Jones, Case No. CIV-06-840-F (W.D. Okla. Jan. 8, 2007), *adopted* (W.D. Okla. Mar. 30, 2007), *aff'd*, Case No. 07-6099, 259 Fed. Appx. 85 (10th Cir. Dec. 13, 2007), *cert. denied*, 554 U.S. 924 (U.S. June 23, 2008).

VanDusen v. Mullin, Case No. CIV-06-295-M (W.D. Okla. Nov. 7, 2006), *adopted* (W.D. Okla. Dec. 14, 2006), *aff'd*, Case No. 06-6376 (10th Cir. July 27, 2007), *cert. denied* (U.S. May 12, 2008).

Clark v. State of Oklahoma, Case No. CIV-05-1285-C (W.D. Okla. Dec. 30, 2005), *adopted* (W.D. Okla. Jan. 10, 2006), *aff'd*, Case No. 06-6046, 468 F.3d 711 (Nov. 13, 2006), *cert. denied*, 551 U.S. 1149 (U.S. June 25, 2007).

Folsom v. State of Oklahoma, Case No. CIV-05-1240-W (W.D. Okla. Apr. 28, 2006), *adopted* (W.D. Okla. May 9, 2006), *aff'd*, Case No. 06-6172 (May 17, 2007), *cert. denied* (U.S. Jan. 7, 2008).

Worthen v. Franklin, Case No. CIV-05-1090-C (W.D. Okla. Jan. 9, 2006), *adopted* (W.D. Okla. Jan. 25, 2006), *aff'd*, Case No. 06-6058, 186 Fed. Appx. 835 (June 30, 2006), *cert. denied*, 549 U.S. 1034 (U.S. Nov. 13, 2006).

Moyer v. Miller, Case No. CIV-05-1085-R (W.D. Okla. Oct. 28, 2005), *adopted* (W.D. Okla. Nov. 15, 2005), *aff'd*, Case No. 06-6119 (Apr. 12, 2006), *cert denied*, 549 U.S. 959 (U.S. Oct. 10, 2006).

Collins v. State of Oklahoma, Case No. CIV-05-585-W (W.D. Okla. Jan. 31, 2006), *adopted* (W.D. Okla. Feb. 24, 2006), *aff'd*, Case No. 06-6106, 200 Fed. Appx. 827 (Oct. 17, 2006), *cert. denied*, 549 U.S. 1215 (U.S. Feb. 20, 2007).

Bullock v. Franklin, Case No. CIV-05-215-W (W.D. Okla. Nov. 23, 2005), *adopted* (W.D. Okla. Jan. 18, 2006), *aff'd*, Case No. 06-6051 (10th Cir. Oct. 24, 2006), *cert. denied*, 549 U.S. 1309 (U.S. Mar. 26, 2007).

Rich v. Peterson, Case No. CIV-05-65-C (W.D. Okla. Feb. 23, 2005), *adopted* (W.D. Okla. Mar. 14, 2005), *aff'd*, Case No. 05-6171, 158 Fed. Appx. 160 (10th Cir. Jan. 6, 2006), *cert. denied*, 547 U.S. 1120 (U.S. May 1, 2006).

Chrisman v. Mullins, Case No. CIV-04-1226-L (W.D. Okla. Aug. 30, 2005), *adopted* (W.D. Okla. Apr. 26, 2006), *aff'd*, Case No. 06-6182, 213 Fed. Appx. 683 (10th Cir. Jan. 17, 2007), *cert denied*, 551 U.S. 1150 (U.S. June 25, 2007).

Breedlove v. Mullin, Case No. CIV-04-826-F (W.D. Okla. Nov. 24, 2004), *adopted* (W.D. Okla. Jan. 3, 2005), *aff'd*, Case No. 05-6026, 148 Fed. Appx. 728 (10th Cir. Sept. 20, 2005), *cert. denied*, 547 U.S. 1133 (U.S. May 15, 2006).

Harmon v. Booher, Case No. CIV-04-235-C (W.D. Okla. Aug. 30, 2006), *adopted* (W.D. Okla. Apr. 12, 2007), *aff'd*, Case No. 07-6117, 271 Fed. Appx. 704 (10th Cir. Mar. 25, 2008), *cert. denied*, __ U.S. __, 129 S. Ct. 197 (U.S. Oct. 6, 2008).

Dawson v. Miller, Case No. CIV-03-1161-T (W.D. Okla. Nov. 23, 2004), *adopted* (W.D. Okla. Apr. 28, 2005), *aff'd*, Case No. 05-6182, 171 Fed. Appx. 739 (10th Cir. Mar. 22, 2006), *cert. denied*, 549 U.S. 924 (U.S. Oct. 2, 2006).

Walters v. Guilfoyle, Case No. CIV-01-1690-R (W.D. Okla. Aug. 28, 2002), *adopted* (W.D. Okla. Jan. 8, 2003), *aff'd*, Case No. 03-6022, 68 Fed. Appx. 939 (10th Cir. July 21, 2003), *cert. denied*, 540 U.S. 1117 (U.S. Jan. 12, 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.

To the best of my recollection, none of my orders have been reversed.

When a party objects to a report, the district judge typically determines whether to adopt or decline my recommendation. The decision to "decline" my suggested ruling does not operate as a reversal. Many times, for example, the district judge may decline to adopt my recommendation based on newly presented information. Below I have listed those instances in which a district judge has reached a different outcome or expressed significant criticism of my analysis.

Parker v. Standifird, Case No. CIV-10-1395-W, 2011 U.S. Dist LEXIS 129966, 2011 U.S. Dist LEXIS 130107 (W.D. Okla. Apr. 8, 2011). I recommended denial of a motion to dismiss, reasoning that the petitioner had asserted a "class of one" equal protection theory and that the petitioner's allegations would reasonably support liability for purposes of Fed. R. Civ. P. 12(b)(6). The district judge disagreed.

Johnson v. Astrue, Case No. CIV-10-487-M (W.D. Okla. Jan. 28, 2011). In a report, I concluded that the Court should affirm the administrative law judge's finding in a social security case. I concluded that the judge had considered all of the probative evidence and had a substantial record to support this finding. The district judge disagreed. Opinions supplied.

Thornton v. Hill, Case No. CIV-08-575-D, 2009 U.S. Dist. LEXIS 81651, 2009 U.S. Dist. LEXIS 81256 (W.D. Okla. May 27, 2009). I construed the complaint

to include official capacity claims. The district judge disagreed with this reading of the complaint based on a subsequently filed document.

Kincannon v. Astrue, Case No. 07-563-D, 2008 U.S. Dist. LEXIS 1640 (W.D. Okla. Nov. 29, 2007). I concluded that the administrative agency had erred and recommended a remand with instructions to award benefits because of exceptional circumstances. The district judge disagreed with the remedy that I had recommended. A copy of my opinion is supplied.

Rockwell v. Parker, Case No. CIV-07-330-R, 2007 U.S. Dist. LEXIS 64539, 2007 U.S. Dist. LEXIS 60721 (W.D. Okla. June 19, 2007). I recommended denial of the respondent's motion to dismiss on timeliness grounds. I reasoned that the petitioner had alleged facts which, if proven, could have supported equitable and statutory tolling. The district judge agreed that some equitable tolling was warranted, but believed that I had allowed too much time. The district judge concluded that the petitioner had become aware of counsel's abandonment on a date certain and had not been diligent in seeking leave to appeal out of time.

Jolly v. Astrue, Case No. CIV-07-243-HE, 2007 U.S. Dist. LEXIS 96109, 2008 U.S. Dist. LEXIS 7779 (W.D. Okla. Nov. 21, 2007). I concluded that the administrative agency had erred and recommended a remand with instructions to award benefits based on exceptional circumstances. The district judge disagreed with my recommendation to award benefits.

Jones v. State of Oklahoma, Case No. CIV-05-630-L (W.D. Okla. Aug. 26, 2005). In this habeas action under 28 U.S.C. § 2254, I recommended denial of the respondent's motion for summary judgment on grounds of timeliness. In particular, I relied on the petitioner's certification of mailing, which indicated that he had "filed" the petition on a date certain under the "mailbox rule." In his objection, the respondent provided evidence that petitioner had not actually mailed his petition on that date. Additionally, the district judge regarded the petitioner's declaration as inadequate. Consequently, the district judge declined to adopt the report and recommendation. Opinions supplied.

Deatherage v. Workman, Case No. CIV-04-1716-L (W.D. Okla. Feb. 24, 2005). I recommended dismissal of a habeas petition as untimely, rejecting the petitioner's claims of equitable tolling. The district judge disagreed, finding that the petitioner had demonstrated active pursuit of judicial remedies. Opinions supplied.

Thomas v. Jordan, Case No. CIV-04-876-R (W.D. Okla. Apr. 25, 2005). I recommended denial of the prison officials' motion for summary judgment, concluding that a genuine dispute of material fact existed regarding whether the defendants had been aware of a substantive risk of harm from exposed wires. The district judge disagreed, concluding that a reasonable juror could not have found culpability on the part of prison officials. Opinions supplied.

Ball v. Fatkin, Case No. CIV-02-610-HE (W.D. Okla. Nov. 19, 2002). A prisoner filed a civil rights claim after being found guilty of a prison disciplinary misconduct. In part, the plaintiff sought expungement of the misconduct conviction and restoration of earned credits which had been revoked as punishment. I recommended dismissal of these claims because the proper remedy could only be obtained if the plaintiff had sought a writ of habeas corpus. The district judge declined to adopt my recommendation. Instead, he liberally construed the complaint and recharacterized it as one seeking habeas relief. Opinions supplied.

Henry v. Stewart, Case No. CIV-01-1374-R (W.D. Okla. Sept. 10, 2003). In my report and recommendation, I concluded that the plaintiff's allegations and evidence were sufficient on the claims against ten defendants with respect to interference with court access, retaliation, conspiracy, denial of equal protection, and intentional infliction of emotional distress. The district judge disagreed with these conclusions and believed that the plaintiff's allegations were insufficient on the claims involving denial of court access and that the evidence was insufficient on the claims involving retaliation, conspiracy, denial of equal protection, and intentional infliction of emotional distress. Opinions supplied.

Umoren v. McPharron, Case No. CIV-01-1071-M (W.D. Okla. Aug. 21, 2001). In a report, I recommended denial of class certification, concluding that the plaintiffs could not adequately represent the class. Subsequently, I entered an order denying the plaintiffs' motion for appointment of counsel, concluding that the claims were not sufficiently complex to merit counsel. The plaintiffs appealed that ruling. The district judge concluded that the issues involving class certification and appointment of counsel were interrelated and should be decided together. Thus, the district judge declined to adopt my recommendation concerning class certification and remanded the matter for reconsideration of both issues. Opinions supplied.

Brookman v. Apfel, Case No. CIV-00-876-C (W.D. Okla. Feb. 28, 2001). In a report, I recommended partial reversal and remand of an administrative decision to deny disability benefits. In the administrative decision, the agency had considered the claim for disability benefits by proceeding through a five step sequential analysis. I recommended a remand at step four. The district judge adopted my recommendation to reverse and remand, but concluded that the remand should not be limited to reconsideration at step four. Opinions supplied.

Washington v. Oklahoma State Department of Corrections, Case No. CIV-00-836-A (W.D. Okla. Oct. 24, 2000). In a report, I recommended dismissal without prejudice for failure to timely effect service on the defendant. The district judge declined to adopt the recommendation, concluding that good cause existed to allow additional time for service. Opinions supplied.

Green v. Owens, Case No. CIV-99-1827-L (W.D. Okla. May 12, 2000). In a report, I recommended dismissal of claims for monetary and injunctive relief based on the plaintiff's failure to exhaust administrative remedies prior to filing the lawsuit. The district judge disagreed with my conclusion regarding the monetary claims and declined to adopt my recommendation with respect to those claims. Opinions supplied.

Harvey v. State of Oklahoma, Case No. CIV-99-1807-A (W.D. Okla. Sept. 13, 2000). In this civil rights case by an inmate, one defendant filed a motion to dismiss based on the plaintiff's failure to exhaust the available administrative remedies. I declined to address this portion of the motion to dismiss, as dismissal was appropriate on other grounds. The defendant objected and the district judge concluded that determination of the issue was appropriate and that the motion to dismiss should be granted for failure to exhaust available administrative remedies. Opinions supplied.

Davenport v. Stradley, Case No. CIV-99-1457-R (W.D. Okla. May 18, 2000). I recommended summary judgment to the defendants on the plaintiff's claim that his constitutional rights had been violated through the prison's restrictions on visitation between the plaintiff/pre-trial detainee and the plaintiff's children. The district judge declined to adopt this portion of my recommendation, concluding that the restriction violated the Fourteenth Amendment and that the restriction was not reasonably related to a legitimate governmental objective. Opinions supplied.

Powers v. Apfel, Case No. CIV-99-1170-L (W.D. Okla. Sept. 22, 2000). In a report, I recommended affirmance of the administrative decision to deny benefits. The district judge declined to adopt my recommendation, concluding that the administrative law judge had erred in his analysis of subjective complaints and the opinion of a treating physician. Opinions supplied.

Scarberry v. Blanchard Police Department, Case No. CIV-98-1300-L (W.D. Okla. June 8, 1999). In this suit, I required the plaintiff to show cause why the claims against one defendant should not be dismissed for lack of service and capacity to be sued. Thereafter, the plaintiff sought voluntary dismissal as to that defendant and I recommended that the Court grant the motion. The district judge believed that dismissal should instead be based on the lack of service and the defendant's lack of capacity to be sued. 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: In accordance with the practice in our district, I have not authorized publication in the conventional reporter system. One decision – *Petzold v. Jones*, 619 F. Supp. 2d 1143 (W.D. Okla. 2008) – has been published. Virtually all of

my other decisions are publicly available through the court's electronic filing system.

Criminal: As a magistrate judge I preside over a broad range of matters, such as preliminary hearings, detention hearings, and presentation of applications for warrants. In the Western District of Oklahoma, none of these decisions have been published in the conventional reporter system. Unless sealed, however, these decisions are publicly available through the court's electronic filing system.

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

Since March 1999, I have issued hundreds of opinions on constitutional issues. Most of these opinions could arguably be considered "significant" on issues involving the federal constitution. I have tried to be selective and list only those which are particularly significant.

1. *Walck v. Edmondson*, Case No. CIV-05-430-R, 2005 WL 1356481 (W.D. Okla. June 7, 2005) (Doc. 25), *adopted*, Case No. CIV-05-430-R, 2005 WL 1907347 (W.D. Okla. Aug. 10, 2005), *aff'd*, 472 F.3d 1227 (10th Cir. 2007).

2. *Threadgill v. Boone*, Case No. CIV-99-1887-T (W.D. Okla. May 31, 2001), *adopted*, Case No. CIV-99-1887-T (W.D. Okla. July 6, 2001), *aff'd*, 49 Fed. Appx. 773 (10th Cir. 2002). My opinion was supplied in response to 13(d) and the District Judge's opinion is supplied.

3. *Suarez-Tejeda v. United States*, Case No. CIV-01-96-F (W.D. Okla. July 30, 2002), *adopted*, Case No. CIV-01-96-F (W.D. Okla. Aug. 29, 2002), *appeal dismissed*, Case No. 02-6341, 2004 WL 68758 (10th Cir. 2004). My order was supplied in response to 13(d) and the District Judge's opinion is supplied.

4. *Lemes v. Ashcroft*, Case No. CIV-02-890-HE (W.D. Okla. Dec. 11, 2002), *adopted*, Case No. CIV-02-890-HE (W.D. Okla. Jan. 31, 2003). Copies of these opinions are 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.

The Western District of Oklahoma employs an "automatic" recusal system. Under this system, the assigned judge receives a report stating whether a potential issue of disqualification exists. However, I do not rely solely on this system.

When a case is referred or transferred to me, I review the parties and counsel to consider the possibility of a disqualifying association. When a potential issue arises, I review the Code of Judicial Conduct and the pertinent advisory opinions. I also have consulted informally with officers of the General Counsel's Office for the Administrative Office of the United States Courts.

In *Lampley v. United States*, Case No. CIV-01-976-T (W.D. Okla.), a *pro se* plaintiff moved for my recusal on grounds that I had "determined to prejudicially view this Case, outside properly enacted laws of the Constitution for the United States of America; codes, rules, and regulations which have never conformed to the Contractual Agreement of that Constitution . . . ." Motion to Correct the Record and Motion for the Recusal of Magistrate Judge, *Lampley v. United States*, Case No. CIV-01-976-T (W.D. Okla. July 13, 2001). I denied the motion for recusal. *Lampley v. United States*, Case No. CIV-01-976-T (W.D. Okla. July 16, 2001).

In *Evitt v. Durland*, Case No. CIV-98-1712-A (W.D. Okla.), the plaintiff requested recusal. The matter involved post-judgment proceedings to collect on a judgment. According to the plaintiff, the judgment debtor – Jack Durland, Jr. – had boasted of his close relationship with me when the two of us were practicing law at Crowe & Dunlevy. Mr. Durland was an attorney at Crowe & Dunlevy for a few years while I was there, but the two of us barely knew one another. I denied the motion for recusal because there was no basis for disqualification.

In *Moore v. Newton-Embry*, Case No. CIV-09-985-C (W.D. Okla. July 19, 2011), the respondent filed a limited motion for recusal. At the time, I was considering

the petitioner's request for an evidentiary hearing. The respondent stated that if an evidentiary hearing were required, it would need to call my sister-in-law as a witness. Thus, the respondent conditionally moved for recusal in the event that an evidentiary hearing were ordered. I separately denied the petitioner's motion for an evidentiary hearing. As a result, the limited motion for recusal became moot and I denied it on this ground. Order: Limited Motion for Recusal, *Moore v. Newton-Embry*, Case No. CIV-09-985-C (W.D. Okla. Sept. 7, 2011); *see Moore v. Newton-Embry*, Case No. CIV-09-985-C (W.D. Okla. July 15, 2011) (my disclosure of my sister-in-law's involvement in the underlying events based on my review of the parties' exhibits).

In *Clapp v. National Bureau of Collections, Inc.*, Case No. CIV-01-331-P (W.D. Okla.), I recused because the defense attorney's wife had previously employed my wife.

For several years following my resignation from Crowe & Dunlevy, I recused from cases involving my former law firm. These cases included *Knight v. Conner*, Case No. CIV-00-621-R (W.D. Okla. July 10, 2000), *Hampton v. Keating*, Case No. CIV-00-2061-T (W.D. Okla. Aug. 15, 2001), *Nautilus Insurance Co. v. SOL & Sons Corp.*, Case No. CIV-01-826-BA (W.D. Okla. Sept. 27, 2001), *Jones v. Pace American, Inc.*, Case No. CIV-99-1368-A (W.D. Okla. Aug. 3, 2000), and *Shamrock Drilling Fluids, Inc. v. Oklahoma Federal Savings & Investment Association*, Case No. CIV-89-1818-A (W.D. Okla. Sept. 23, 1999).

Approximately three years after my appointment, I employed the remittal procedure in Canon III(D) of the Code of Judicial Conduct when my former law firm, Crowe & Dunlevy, was involved. *Doe 1 v. Dominion, Inc.*, Case No. CIV-01-1855-F (W.D. Okla. Feb. 11, 2002), and *Doe 1 v. Dominion, Inc.*, Case No. CIV-01-1855-F (W.D. Okla. Mar. 5, 2002). In this case, the parties jointly consented – outside of my presence – to my participation and I continued participation as the assigned judge. Joint Consent, *Doe 1 v. Dominion, Inc.*, Case No. CIV-01-1855-F (W.D. Okla. Mar. 27, 2002). When fewer than all parties consented in *Scott v. John Alden Life Insurance Co.*, Case No. CIV-03-880-T (W.D. Okla. May 13, 2004), I recused.

I also employed this procedure in *Clark v. Penn Square Mall Limited Partnership*, Case No. CIV-10-29-C (W.D. Okla. July 11, 2011). This case was referred to me for discovery disputes. One of the disputes involved the plaintiff's request for documents involving other crimes at a mall owned by Simon Properties Group, Inc. While I was in private practice, I had represented Simon Properties Group, Inc. in a case involving a similar discovery dispute. I disclosed the prior representation and stated that I would recuse unless all parties filed a joint remittal of the disqualification. *Id.* The parties filed a joint consent, and I continued to act as the assigned judge. Joint Remittal of Disqualification, Order, *Clark v. Penn Square Mall Limited Partnership*, Case No. CIV-10-29-C (W.D. Okla. July 15, 2011).

For similar reasons, I employed the remittal procedure in *Pendergraft v. Simon Property Group, Inc.*, Case No. CIV-04-1450-T (W.D. Okla. Sept. 2, 2005). Because fewer than all parties consented, I recused. Joint Response, *Pendergraft v. Simon Property Group, Inc.*, Case No. CIV-04-1450-T (W.D. Okla. Sept. 15, 2005); Order, *Pendergraft v. Simon Property Group, Inc.*, Case No. CIV-04-1450-T (W.D. Okla. Sept. 19, 2005).

This procedure was also employed in *Reinhardt v. Brinker Oklahoma, Inc.*, Case No. CIV-10-549-BA (W.D. Okla.). My wife had recently been involved in a vehicle accident and the other driver and her husband had been represented by the attorney representing the plaintiff in *Reinhardt v. Brinker Oklahoma, Inc.*, Case No. CIV-10-549-BA (W.D. Okla.). I disclosed this situation to the attorneys and announced that I would recuse in the absence of a joint remittal of disqualification. Order, *Reinhardt v. Brinker Oklahoma, Inc.*, Case No. CIV-10-549-BA (W.D. Okla. June 17, 2011). The parties filed a joint remittal of disqualification, and I continued to act as the assigned judge. Joint Remittal of Disqualification, *Reinhardt v. Brinker Oklahoma, Inc.*, Case No. CIV-10-549-BA (W.D. Okla. July 1, 2011).

I recused in *Chesapeake Panhandle Limited Partnership v. Kinder Morgan, P.C.*, Case No. CIV-00-397-F (W.D. Okla. Nov. 30, 2001). I had presided over a judicial settlement conference, and one party moved for enforcement of the settlement agreement. This referral was erroneous because I was not the assigned magistrate judge and I had expressed an opinion on the issue to counsel during my efforts to resolve the dispute by agreement.

I recused in *Environmental Safety & Health, Inc. v. Integrated Pro Services, LLC*, Case No. CIV-08-1215-BA (W.D. Okla. Sept. 2, 2011), because of my association with one of the attorneys in the case.

I recused in *Logsdon v. Harvanek*, Case No. CIV-11-1471-F (W.D. Okla. Dec. 19, 2011). This habeas action was brought by a person convicted on charges involving fraudulent conduct. A friend of mine was one of the alleged victims, and he and I had discussed some of the underlying incidents prior to the filing of the habeas action.

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

a. List chronologically any public officers 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.

My only public office has involved service as a United States Magistrate Judge. 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.

In about 1998, I served on the Finance Committee for Ms. Laura Boyd, who was the Democratic nominee for governor. My wife was a volunteer for Ms. Boyd, and I agreed to serve on the Finance Committee. My responsibility involved solicitation of funds for Ms. Boyd's campaign. I do not recall the dates of my involvement on this committee, but believe that it covered a few months in 1998.

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 1987, I served as a law clerk to the Honorable William J. Holloway, Jr., Circuit Judge of the United States Court of Appeals for the Tenth Circuit. At the time of my clerkship, Judge Holloway was serving as the Chief Judge for the court.

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.

1987 – 1999
Crowe & Dunlevy
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
Associate (1987 – 1994)
Shareholder (1994 – 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 have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

Throughout my tenure at Crowe & Dunlevy, I practiced primarily in commercial litigation, focusing largely on antitrust and franchise litigation. From 1996 to 1998, I also handled a considerable number of cases involving the Employee Retirement Income Security Act.

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

In my work involving commercial litigation, my typical clients involved large businesses such as Simon Properties Group, Inc., Continental Illinois National Bank, Liberty National Bank, and NEC Corporation. A typical client, when I handled ERISA litigation, would have been an insurer such as MetLife Insurance Company or John Alden Life Insurance Company.

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

My practice was exclusively in litigation from 1987 to 1999.

From 1987 to about 1990, I did not frequently appear in court because most of my practice involved legal research and writing. From about 1990 to 1999, I appeared in court with increasing frequency.

From 1994 to 1999, I appeared in federal court occasionally. In federal district court, the judges did not frequently entertain oral argument. Thus, my federal court appearances generally involved trial participation. During this period, I also appeared frequently in state court.

i. Indicate the percentage of your practice in:

1. federal courts: 50%
2. state courts of record: 50%

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 have tried approximately ten cases to verdict. In two, I served as sole counsel. In roughly eight other cases, I served at trial as associate counsel.

i. What percentage of these trials were:

1. jury: 90%
2. non-jury: 10%

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

In the United States Supreme Court, I have filed only one *certiorari* petition for a former client, Mr. Lawrence Wolfberg. I believe this document was filed in the late 1980s, and I have not been able to obtain a copy. I have never presented oral argument in the Supreme Court.

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. *Herron v. Herron Lumber, Inc.*, Case No. C-88-505 (McCurtain Co. Dist. Ct., State of Okla.).

This case involved a dispute between two factions of a family. Our clients were limited partners of a limited partnership. This entity owned 26,775 acres of timberlands in Oklahoma and Arkansas. From its inception, the limited partnership was managed by its general partner, Herron Lumber, Inc. The officers of Herron Lumber, Inc. (the general partner) were the principal defendants. Herron Lumber, Inc. bought timber from the limited partnership. We claimed that: (1) the officers had manipulated the timber prices – as principals of both the buyer and seller – to exclude our clients from a fair share of the profit: (2) the defendants took advantage of business opportunities that should have been made available to the limited partnership: (3) the officers jeopardized the assets of the limited partnership by executing a guaranty on behalf of that entity even though it had been excluded from any of the profits for the relevant business venture; and (4) the defendants breached their fiduciary duties by withholding distributions and secretly purchasing life insurance for one of the officers out of the limited partnership's assets.

The representation covered the period December 1988 to May 1992. I participated as associate counsel in the trial and was one of the attorneys of record. However, my principal role in the case involved briefing on the numerous legal issues prior to and during the trial. After approximately one week of trial, the parties settled.

The case was assigned to Judge Hack Welch.

Contact Information

Co-Counsel for Plaintiffs:	D. Kent Meyers Crowe & Dunlevy 20 North Broadway Suite 1800 Oklahoma City, OK 73102 Telephone: (405) 235-7700
	John Shipp, Deceased
Counsel for Defendants:	Joe Stamper, Deceased
	Michael Burrage Whitten & Burrage 1215 North Classen Drive Oklahoma City, OK 73103 Telephone: (405) 516-7800

2. *Dollar Systems, Inc. v. Bluewater Leasing, Inc.*, Case No. 92-CV-1118 (N.D. Okla.).

From approximately November 1992 to January 1995, I served as lead counsel for the franchisor, Dollar Systems, Inc., in this action and was counsel of record. The suit began as a collection matter on Dollar's part. The franchisee filed a substantial counterclaim and aggressively pursued various tort theories against Dollar. Through informal investigation, I discovered that the franchisee had actively concealed the existence of several rent-a-car locations in order to avoid payment of franchise fees. This discovery led to the franchisee's relinquishment of its counterclaim and consent to a judgment in Dollar's favor.

Co-Counsel for Plaintiff: Michael Gibbens
Crowe & Dunlevy
321 South Boston Avenue
Suite 500
Tulsa, OK 74103
Telephone: (918) 592-9800

Counsel for Defendant: Charles Shipley
Shipley Law Firm
1800 South Baltimore
Suite 900
Tulsa, OK 74119
Telephone: (918) 582-1720

Doug Inhofe
One West Third Street
Tulsa, OK 74103
Telephone: (918) 582-0410

3. *Suiter v. Mitchell Motor Coach Sales, Inc.*, Case Nos. 96-5152, 96-5159 (10th Cir.).

From early 1996 to late 1998, I served as lead counsel for the plaintiff in this case, which involved claims under the Motor Vehicle Information and Cost Savings Act (commonly known as the "Odometer Act"). I was hired to defend the plaintiff's favorable judgment on appeal. Our client purchased a motor coach, and the odometer understated the actual mileage by at least 42,000 miles. My work involved supervision of the drafting of appellee's brief and presentation of oral argument in the Tenth Circuit Court of Appeals. My client's judgment was affirmed in *Suiter v. Mitchell Motor Coach Sales, Inc.*, 151 F.3d 1275 (10th Cir. 1998).

Counsel for Defendant: James Tilly
Tilly Law Firm

1639 South Carson Avenue
Tulsa, OK 74119
Telephone: (918) 583-8868

4. *Burghart v. Frisch's Restaurants, Inc.*, Case No. 86-2045 (10th Cir.).

The underlying suit involved a claim under the state's forcible entry and detainer statutes. I was asked to represent the landlord after the underlying judgment had already been affirmed. The landlord sought recovery for losses by the tenant's continued presence on the property during the pendency of the prior appeal. The defendant had lost this issue in the federal district court prior to my engagement in the case. At that point, the plaintiff's lead counsel asked me to prepare the brief for the second appeal and to present oral argument in the Tenth Circuit Court of Appeals. I did so, but the effort was unsuccessful. *See Burghart v. Frisch's Restaurants, Inc.*, 865 F.2d 1162 (10th Cir. 1989) (*per curiam*).

Co-Counsel for Plaintiff: David L. Thomas
Thomas & Terrell
4000 North Classen Center
Suite 100 South
Oklahoma City, OK 73118
Telephone: (405) 286-6353

Counsel for Defendant: Robert H. Warren
Warren, Ricks & Associates
430 Northwest Fifth Street
Oklahoma City, OK 73102
Telephone: (405) 232-3441

5. *Bucklin Equipment Co. v. John Deere Industrial Equipment Co.*, Case No. 84-1602-P (W.D. Okla.).

My law firm represented the plaintiff in three trials. The first trial ended in a defense verdict, and the second and third trials resulted in awards of $1,000,000 and $850,000 for our client. I represented the plaintiff in the second and third trials, but not in the first one.

Our client, Bucklin Equipment Co., was a distributor for John Deere Industrial Equipment Co. The owner was convicted of a felony involving bribery, and John Deere terminated his dealership. I was not involved in the first trial. At that trial, Bucklin Equipment's theory involved wrongful termination. There was a defense verdict, but the Tenth Circuit Court of Appeals reversed and remanded for a new trial.

In 1986, Tony Rupert and I became the new attorneys for Bucklin Equipment. We declined to pursue the theory of wrongful termination. Instead, we relied on a

promise to reasonably approve prospective purchasers and to assist in a sale of the business as a going concern. John Deere rejected a prospective buyer as a dealer, and we argued that this decision was unreasonable. We also claimed that John Deere had undermined Bucklin's ability to sell his business to another dealer. After a six-day trial, the jury returned a verdict of $1,000,000 for our client.

The federal district court granted a new trial based on a determination that the verdict was against the greater weight of the evidence. Mr. Rupert and I again represented the plaintiff at the third trial, which resulted in another favorable verdict. This time, the award totaled $850,000. The defendant agreed to pay this judgment, and our client agreed to forego an appeal on the vacatur of the earlier award of $1,000,000. My representation ended on November 1, 1989.

Co-Counsel for Plaintiff: Anton J. Rupert
Crowe & Dunlevy
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
Telephone: (405) 235-7700

Counsel for Defendant: John C. Harrington, Jr.
Lytle Soule & Curlee
119 North Robinson
Suite 1200
Oklahoma City, OK 73102
Telephone: (405) 235-7471

6. *McAlister v. McAlister*, Case No. 88836 (Okla.).

From January 1997 to April 1998, I represented the mother in an appeal over the loss of custody of her son. At trial, the mother sought to present evidence that her ex-husband was unfit for custody because he had abused her during their marriage. The trial judge excluded the evidence.

I served as lead counsel for the mother in an appeal. The intermediate appeals court affirmed, and the state supreme court denied *certiorari* in a 5-4 decision. *See* Docket Sheet at p. 4, *McAlister v. McAlister*, Case No. DF-88836 (Okla.).

Counsel for Defendant: Arnold Fagin
1218 East Ninth Street
Suite 3
Edmond, OK 73034
Telephone: (405) 341-6565

7. *Comcoa Inc. v. NEC Telephones Inc.*, Case No. CIV-85-1436-C (W.D. Okla.).

This case involved a suit for price-discrimination under the Robinson-Patman Act and tort theories under state law. I served as associate counsel for the defendant, NEC Telephones, Inc., from the Fall of 1987 to January 1994. I had substantial involvement in the extensive briefing prior to trial, during the trial, and on an appeal to the Tenth Circuit Court of Appeals. In addition, I participated in the two trials conducted in this case.

Prior to trial, the federal district court granted summary judgment to the defendant on the claim involving breach of the implied duty of good faith and fair dealing. The trial resulted in a defense verdict on the claims involving price-discrimination and intentional interference with prospective economic relations. The summary judgment ruling was reversed on appeal. *Comcoa v. NEC Telephones, Inc.*, 931 F.2d 655 (10th Cir. 1991). At the retrial, the plaintiffs obtained a judgment for $2,690,000. *See* Docket Sheet at p. 12 No. 524, *Comcoa v. NEC Telephones Inc.*, Case No. CIV-85-1436 (W.D. Okla. June 25, 1992). I drafted the brief on the second appeal. The case settled during the pendency of this appeal.

Counsel for Plaintiff: (Second Trial)	John T. Edwards Monnet Hayes Bullis Thompson & Edwards 120 North Robinson Suite 1719W Oklahoma City, OK 73102 Telephone: (405) 232-5481
(First Trial)	Joseph Giffin (retired) Chicago, IL
Co-Counsel for Defendant:	D. Kent Meyers Crowe & Dunlevy 20 North Broadway Suite 1800 Oklahoma City, OK 73102 (405) 235-7700
	Mack J. Morgan III Crowe & Dunlevy 20 North Broadway Suite 1800 Oklahoma City, OK 73102 (405) 235-7700

8. *John A. Henry & Co. v. T.G. & Y. Stores Co.*, 941 F.2d 1068 (10th Cir. 1991).

From approximately 1990 to 1991, I served as associate counsel for the plaintiff, John A. Henry & Co., the landlord for a large local retailer. The landlord claimed breach of contract and wrongful interference with contract. According to the landlord, the retail tenant withheld lease payments to obtain consent to cancel the lease.

In federal district court, we obtained a jury verdict for $100,000 in actual damages and $2,000,000 in punitive damages. I participated in the trial and did virtually all of the briefing in the federal district court and in the appeal. Our $2,100,000 judgment was affirmed in *John A. Henry & Co. v. T.G. & Y. Stores Co.*, 941 F.2d 1068 (10th Cir. 1991).

Co-Counsel for Plaintiff:	Anton J. Rupert Crowe & Dunlevy 20 North Broadway Suite 1800 Oklahoma City, OK 73102 (405) 235-7700
Counsel for Defendant:	John T. Edwards Monnet Hayes Bullis Thompson & Edwards 120 North Robinson Suite 1719W Oklahoma City, OK 73102 Telephone: (405) 232-5481

9. *Cassan Enterprises Inc. v. Dollar Systems Inc.*, Case No. 93-CV-1077-BJR (W.D. Wash.).

From approximately 1993 to 1996, I served as associate counsel for Dollar Systems Inc. in a suit brought by its earliest franchisee for statutory and common law tort claims under Washington law. According to the franchisee, the franchisor failed to provide support for a bid to maintain a presence at the Seattle airport. I had principal responsibility for the extensive briefing prior to and during the trial, for preparing our witnesses prior to and during the trial, for preparing the requested jury instructions and objections to the plaintiffs' proposed jury instructions, and for conducting oral argument on these issues. However, I did not participate in the trial.

The trial resulted in a substantial judgment for the plaintiffs. However, that judgment was overturned on appeal. *Cassan Enterprises, Inc. v. Dollar Systems, Inc.*, 131 F.3d 145 (9th Cir. 1997). I did not participate in the appeal.

Counsel for Plaintiff:	Floyd Newland (retired) Seattle, WA
Co-Counsel for Defendant:	James L. Kincaid Crowe & Dunlevy 321 South Boston Avenue Suite 500 Tulsa, OK 74103 Telephone: (918) 592-9800
	Michael Gibbens Crowe & Dunlevy 321 South Boston Avenue Suite 500 Tulsa, OK 74103 Telephone: (918) 592-9800

10. *Continental Illinois National Bank v. Bell*, Case No. CIV-84-2386-C (W.D. Okla.).

My law firm represented Continental Illinois National Bank in a suit brought against a guarantor on a loan that was in default. Beginning in October 1987, when I joined Crowe & Dunlevy, I had principal responsibility for the extensive briefing in federal district court. However, I did not participate in the two trials that took place. Our client sued on various guaranties, and the guarantor counterclaimed on various theories of lender liability.

The first trial resulted in an award of $51,604,074 for the guarantor on his counterclaim against Continental Illinois National Bank. This judgment was appealed, but I did not participate at that stage. In the appeal, the judgment was vacated and remanded for retrial on damages on a claim involving nonregistration of securities. *See FDIC v. Bell*, 1990 WL 58108 (10th Cir. Apr. 24, 1990) (unpublished op.).

At the second trial, the court found no damages for the guarantor. In a subsequent appeal, I was substantially involved in the briefing. That effort proved successful, as the Tenth Circuit Court of Appeals affirmed. *See Continental Bank v. Burke*, 1993 WL 360664 (10th Cir. Sept. 14, 1993) (unpublished op.). My involvement in the case ended with the second appellate decision in September 1993.

Counsel for Plaintiff: (First Trial)	Murray Cohen (retired)
	Paul Tobin 801 Northwest 46th Street Oklahoma City, OK 73118 Telephone: (405) 557-0404

(Second Trial)	Joe Edwards Crowe & Dunlevy 20 North Broadway Suite 1800 Telephone: (405) 235-7700
	Ricki V. Sonders 9020 North May Avenue Suite 200 Oklahoma City, OK 73120 Telephone: (405) 810-2200
Co-Counsel for Defendant:	D. Kent Meyers Crowe & Dunlevy 20 North Broadway Suite 1800 Oklahoma City, OK 73102 Telephone: (405) 235-7700
	Anton J. Rupert Crowe & Dunlevy 20 North Broadway Suite 1800 Oklahoma City, OK 73102 Telephone: (405) 235-7700
	Mack J. Morgan III Crowe & Dunlevy 20 North Broadway Suite 1800 Oklahoma City, OK 73102 Telephone: (405) 235-7700

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 organization(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, outside of the cases I have handled in private practice and as a judge, involve mentoring, legal writing, and participation in bar activities.

I have served for approximately three years on the Oklahoma Bar Association's committee, "Lawyers Helping Lawyers." I also have been recently appointed as a director for a related foundation, called "LHL Foundation." Lawyers Helping Lawyers is devoted to assisting attorneys who are experiencing personal problems. These problems include depression, alcoholism, and drug dependency. I have served as a mentor for several young men, and this experience has proven to be an invaluable learning experience for me. I hope it has helped these young men as well.

I also greatly enjoy the academic aspect of the law and have engaged in extensive legal writing outside of my legal practice or judicial service. For example, I have authored or coauthored six law review articles and drafted a section for a legal treatise on "Oklahoma Appellate Practice," authored by two fellow shareholders at Crowe & Dunlevy.

Finally, I have spent considerable time and energy in various bar organizations. This work has included presidency of the local chapter of the Federal Bar Association. In this capacity, I increased the membership of the organization from roughly 140 members to over 330 members in less than eighteen months. For my service as the president of the Federal Bar Association – Oklahoma City Chapter, I was awarded the national organization's most prestigious honor, the Earl Kintner Award. In addition, I have served on the county bar's board of directors and the national leadership of the Federal Bar Association. Through these bar activities, I have tried to promote the ideals of civility and professionalism that are natural by-products of organizations that unite lawyers in a common purpose.

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

I was a co-instructor in 1997, 1998, and 1999 for "Civil Pretrial Litigation" at the University of Oklahoma School of Law. I have not retained a syllabus for this class.

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 arrangement, stocks, options, uncompleted contracts or other future benefits that I expect to derive from previous business relationships, 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 do not currently have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

I do not anticipate conflicts of interest from family members or other persons, parties, categories of litigation, or financial arrangements. If confirmed, I would carefully review cases and parties to determine if any actual or potential conflicts of interest were present. I would adhere to the Code of Conduct for United States Judges and the pertinent advisory opinions.

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 and the pertinent advisory opinions. I would continue to recuse when appropriate.

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

I have attempted to fulfill this obligation through bar activities and representation of individuals without compensation.

I have served on the Oklahoma Bar Association's committee, "Lawyers Helping Lawyers," for approximately three years. Through this committee, I have served as a mentor for several young men experiencing personal problems involving alcoholism, marital conflict, bipolar disorder, and lack of professional guidance. I meet periodically with these young men and try to provide encouragement, advice, and friendship. In this manner, I have tried to help attorneys disadvantaged by personal difficulties.

When I was in private practice, I also provided *pro bono* representation to a number of individuals. For example, at the request of different federal judges, I agreed to represent three prisoners in civil rights cases. One went to trial, and two settled. I spent roughly 550 hours on these cases without any compensation.

I also provided *pro bono* representation for a mother who had lost custody of her minor son. At trial, her counsel attempted to present evidence of domestic abuse to demonstrate her ex-husband's lack of fitness as a sole custodian. The evidence was excluded. I agreed to represent her, without pay, in an appeal. For the appeal, I not only drafted the briefs for the mother but also solicited an *amicus* brief by the Family Violence and Sexual Assault Institute and Oklahoma Coalition Against Domestic Violence. After an unsuccessful result in the state's intermediate court, I petitioned for *certiorari* in the Oklahoma Supreme Court. That court denied *certiorari* in a 5-4 decision. In this case, I spent approximately 118 hours without any compensation.

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 the State of Oklahoma for federal judicial vacancies.

In January 2010, I wrote to Attorney General Holder, expressing an interest in the position. This letter was referred to the Justice Department Office of Legal Policy.

I met with Congressman Boren in approximately February 2010, Governor Henry on March 2, 2010, Congressman Cole on August 9, 2011, Congressman Sullivan on August 23, 2011, and Congressman Lankford on September 30, 2011. I had

initiated each meeting to request consideration for the vacancy in the Tenth Circuit Court of Appeals.

I spoke with an attorney from the White House Counsel's Office on October 19, 2011. Since October 31, 2011, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On December 1, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On January 23, 2012, 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
Bacharach, Robert E.	Western District of Oklahoma	01/23/2012
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. Magistrate Judge-fulltime	☑ Nomination, Date 01/23/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 12/31/2011
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.**	
200 NW 4th Street Room 1305 Oklahoma City, OK 73102	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.	10th Circuit Vice President	National Federal Bar Association
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting Bacharach, Robert E.	Date of Report 01/23/2012

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.		
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 Bachurach, Robert E.	Date of Report 01/23/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 9

Name of Person Reporting	Date of Report
Bacharach, Robert E.	01/23/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. VARIABLE ANNUITY #1					Exempt				
2. - Vanguard Equity Index Portfolio	A	Int./Div.	K	T					
3. - Vanguard Diversified Value Portfolio	A	Int./Div.	K	T					
4. - Vanguard Growth Portfolio	A	Int./Div.	K	T					
5. - Vanguard International Portfolio	A	Int./Div.	L	T					
6. - Vanguard Mid-Cap Index Portfolio	A	Int./Div.	L	T					
7. - Vanguard REIT Index Portfolio	A	Int./Div.	K	T					
8. IRA #1									
9. - American Funds EuroPacific Growth Fund	A	Int./Div.	J	T					
10. - Columbia Mid Cap Index Fund	A	Int./Div.	J	T					
11. - DFA International Small Cap Portfolio	A	Int./Div.	J	T					
12. - DFA US Large Company Portfolio	A	Int./Div.	J	T					
13. - Longleaf Partners Fund	A	Int./Div.	J	T					
14. - Schwab Money Market Fund	A	Int./Div.	J	T					
15. - Weitz Value Fund	A	Int./Div.	K	T					
16. IRA #2									
17. - American Funds The Growth Fund of America	A	Int./Div.	K	T					

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

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

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Bacharach, Robert E.	01/23/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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. - DFA Emerging Markets Value Portfolio	B	Int./Div.	K	T					
19. - DFA International Small Cap Portfolio	A	Int./Div.	K	T					
20. - DFA US Large Company Portfolio	A	Int./Div.	K	T					
21. - DFA US Small Cap Value Portfolio	B	Int./Div.	L	T					
22. - Legg Mason Capital Management Value Trust	A	Int./Div.	J	T					
23. - Schwab Money Market Fund	A	Int./Div.	J	T					
24. - Selected American Shares Fund	A	Int./Div.	K	T					
25. - Weitz Value Fund	A	Int./Div.	K	T					
26. IRA #3									
27. - DFA International Value Portfolio	B	Int./Div.	K	T					
28. - DFA Real Estate Securities Fund	A	Int./Div.	K	T					
29. - Dodge & Cox International Fund	A	Int./Div.	J	T					
30. - Eaton Vance Floating-Rate Fund	A	Int./Div.	K	T					
31. - Invesco Equally-Weighted S&P 500 Fund	A	Int./Div.	K	T					
32. - Legg Mason Capital Management Value Trust	A	Int./Div.	J	T					
33. - Loomis Sayles Bond Fund	B	Int./Div.	K	T					
34. - Longleaf Partners Fund	B	Int./Div.	K	T					

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

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Name of Person Reporting	Date of Report
Bachmann, Robert E.	01/23/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
35. - Pimco Total Return Fund	A	Int./Div.	J	T					
36. - Schwab Money Market Fund	A	Int./Div.	J	T					
37. - Selected American Shares Fund	A	Int./Div.	K	T					
38. - TCW Select Equities Fund	A	Int./Div.	K	T					
39. - Transamerica WMC Diversified Growth Fund	A	Int./Div.	K	T					
40. IRA #4									
41. - Schwab Money Market	A	Int./Div.	J	T					
42. - DFA International Value Portfolio	A	Int./Div.	J	T					
43. BROKERAGE ACCOUNT #1									
44. - American Funds The Growth Fund of America	A	Int./Div.	J	T					
45. - DFA International Small Cap Portfolio	B	Int./Div.	K	T					
46. - DFA Internationall Value Portfolio	A	Int./Div.	J	T					
47. - DFA Tax-Managed US Marketwide Value Portfolio	A	Int./Div.	L	T					
48. - DFA US Large Company Portfolio	A	Int./Div.	J	T					
49. - DFA US Small Cap Value Portfolio	A	Int./Div.	K	T					
50. - Schwab Money Market Fund	A	Int./Div.	J	T					
51. - Vanguard Mid-Cap Value Index Fund	A	Int./Div.	K	T					

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

FINANCIAL DISCLOSURE REPORT Page 7 of 9	Name of Person Reporting Bacharach, Robert E.	Date of Report 01/23/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
52.									
53.									
54.									

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 Bacharach, Robert E.	Date of Report 01/23/2012

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

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Bacharach, Robert E.	Date of Report 01/23/2012

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 Robert E. Bacharach

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		10	634	Notes payable to banks-secured (auto)		3	598
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		980	851	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		228	260
Real estate owned – personal residence		278	213	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		37	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		231	858
				Net Worth	1	074	840
Total Assets	1	306	698	Total liabilities and net worth	1	306	698
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		20	000				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds EuroPacific Growth Fund	$ 6,483
American Funds The Growth Fund of America	29,539
Columbia Mid Cap Index Fund	7,448
DFA Emerging Markets Value Portfolio	46,783
DFA International Small Cap Portfolio	50,340
DFA International Value Portfolio	67,320
DFA Real Estate Securities Fund	26,194
DFA Tax-Managed US Marketwide Value Port.	51,707
DFA US Large Company Portfolio	40,899
DFA US Small Cap Value Portfolio	130,771
Dodge & Cox International Fund	12,684
Eaton Vance Floating-Rate Fund	11,605
Invesco Equally-Weighted S&P 500 Fund	30,216
Legg Mason Capital Management Value Trust	23,554
Longleaf Partners Fund	38,444
Loomis Sayles Bond Fund	21,968
PIMCO Total Return Fund	14,578
Selected American Shares Fund	50,483
TCW Select Equities Fund	31,500
Transamerica WMC Diversified Growth Fund	27,725
Vanguard Diversified Value Portfolio	24,706
Vanguard Equity Index Portfolio	28,705
Vanguard Growth Portfolio	25,117
Vanguard International Portfolio	51,014
Vanguard Mid-Cap Index Portfolio	54,893
Vanguard Mid Cap Value Index Fund	22,683
Vanguard REIT Index Portfolio	15,189
Weitz Value Fund	38,303
Total Listed Securities	$ 980,851

AFFIDAVIT

I, Robert E. Bacharach, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 24, 2012
(DATE)

Robert E. Bacharach
(NAME)

Ann Baskin
(NOTARY)

My Commission Expires:
3/25/2015

Senator WHITEHOUSE. You are excused.

We will take just 1 minute and call up the next panel.

[Pause.]

Senator WHITEHOUSE. I welcome all the nominees, and ask that you all stand to be sworn.

[Nominees sworn.]

Senator WHITEHOUSE. Thank you very much. Please be seated. And welcome.

In no particular order of rank or seniority or priority, but simply going across the panel, let me ask, first, Judge Grimm, then Mr. Dowdell, then Judge Walker, and then Judge Davis to offer any opening remarks that they may wish to make and to take this opportunity to introduce any family or friends who may be visiting with you today.

STATEMENT OF JUDGE PAUL WILLIAM GRIMM, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

Judge GRIMM. Thank you, Mr. Chairman, Senator Whitehouse, Ranking Member Lee, and Senator Coburn.

I would like to take the opportunity to thank the President of the United States for the honor of nominating me for this position; my home State Senators, Senators Mikulski and Cardin, for recommending my name and, also, being here today to speak on my behalf and for the example of public service that they set for every public servant in Maryland, and me particularly, in terms of what it means to dedicate your all in the service to the people of this country and your State.

I am very pleased to introduce some family members and some friends who are here. My wife, Lynne, without whose love and support for many, many years it would be impossible for me to be here, sitting here with me today. My son, John, who, in about 2 weeks, will start as an assistant public defender in Baltimore County, Maryland; my daughter, Gia, who is graduating from high school shortly and will be heading down to Clemson to study law and legal policy down there. My daughter, Samantha, is not here today corporeally, but in spirit perhaps, because she is taking exams and getting ready to start Air Force ROTC summer camp in about 10 days. So she is eating power bars and doing pushups right now probably.

In addition, my brother-in-law, Tommy Ward, is here. Two of my dearest friends, Dave Gilliss and Ray Peroutka. Lisa Bergstrom and Heather Williams, my extraordinary law clerks, are here, as well. And some other family and friends are here, but in deference to time, I won't introduce them.

I want to thank, last, but by no means least, you and Ranking Member Lee and Senator Coburn for allowing this hearing to take place and for your service to the people of the United States of America.

Senator WHITEHOUSE. Thank you, Judge Grimm.

Mr. Dowdell, you are recognized.

[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).

   Paul William Grimm

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

   United States District Judge for the District of Maryland

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

   United States District Court for the District of Maryland
   Garmatz Federal Courthouse
   101 West Lombard Street, Chambers 8B
   Baltimore, Maryland 21201

   Residence: Towson, Maryland

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

   1951; Yokohama, Japan

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 New Mexico School of Law; J.D. (*magna cum laude*), 1976

   1969 – 1973, University of California, Davis; B.A. (*summa cum laude*), 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.

   1997 – Present
   United States District Court for the District of Maryland
   Garmatz Federal Courthouse

101 West Lombard Street
Baltimore, Maryland 21201
Chief United States Magistrate Judge (2006 – present)
United States Magistrate Judge (1997 – 2006)

2004 – Present
Shemer Bar Review
P.O. Box 623
Lutherville, Maryland 21094
Instructor (Evidence, Civil Procedure)

1997 – Present
University of Baltimore School of Law
1415 Maryland Avenue
Baltimore, Maryland 21201
Adjunct Professor of Law

1990 – Present
University of Maryland Francis King Carey School of Law
500 West Baltimore Street
Baltimore, Maryland 21201
Adjunct Professor of Law

1991 – 1997
Niles, Barton & Wilmer
111 South Calvert Street
Baltimore, Maryland 21202
Partner, Chief of the Litigation Department

1987 – 1991
Jordan, Coyne, Savits & Lopata
201 East Baltimore Street
Baltimore, Maryland 21202
Managing Partner, Baltimore Branch

1988 – 1997 (active duty two weeks per year and one day per month)
Office of the Judge Advocate General, Administrative Law Division
The Pentagon, Army Navy Drive & Fern Street
Washington, DC 22031
Reserve U.S. Army Judge Advocate General's Corps Officer
(As I was promoted to major and lieutenant colonel, I was assigned as an acting branch chief in the Administrative Law Division.)

1982 – 1996, 1998 (approx.)
Villa Julie College (now Stevenson University)
1525 Greenspring Valley Road

Stevenson, Maryland 21153
Part-Time Instructor (Constitutional Law)

1987 – 1989
Maryland Home Improvement Commission
Department of Licensing and Regulation
501 Saint Paul Place
Baltimore, Maryland 21202
Commissioner

1984 – 1987
Niles, Barton & Wilmer
929 North Howard Street
Baltimore, Maryland 21201
Partner (1985 – 1987)
Associate (1984 – 1985)

1981 – 1984
Assistant Attorney General, State of Maryland
Department of Licensing and Regulation
501 Saint Paul Place
Baltimore, Maryland 21202
Chief of Litigation and Administration

Note: There was a very brief period of time from November 3 to November 11, 1983 that I left the Attorney General's Office and went to work as a litigation associate at the Baltimore Law Firm of Anderson, Coe and King, but I left after one week to return to the Attorney General's Office. Because I was at the firm for such a short period of time, I declined to accept any pay.

1980 – 1981
Assistant State's Attorney, Baltimore County, Maryland
Baltimore County Courthouse
400 Washington Avenue
Towson, Maryland 21204
Prosecutor (District and Circuit Courts of Baltimore County)

1979 – 1980
Daniels & Grimm, Attorneys at Law
305 West Chesapeake Avenue
Towson, Maryland 21204
Partner

1977 – 1979
U.S. Army Judge Advocate General's Corps
Office of the Judge Advocate General, Administrative Law Division

The Pentagon, Army Navy Drive & Fern Street
Washington, DC 22031
Attorney Advisor

1976 – 1977
U.S. Army Judge Advocate General's Corps
Aberdeen Proving Ground, Maryland
Captain

1973 – 1976
U.S. Army Judge Advocate General's Corps
Fort Bliss, Texas 79916
(During academic recesses while in law school, I went on active duty and served as a prosecutor in courts martial.)

Other Affiliations (uncompensated unless otherwise indicated):

2005 – Present (approx.)
Sedona Conference
5150 North 16th Street, Suite A-215
Phoenix, Arizona 85016
Judicial Advisory Board

2006 – 2008
North East Isles Condominium Association
c/o John Mastriana, Property Manager
Mastriana Property Management
5500 Skyline Drive, Suite 6
Pike Creek Professional Center
Wilmington, Delaware 19808
Board of Directors

1994 – 1997 (approx.)
Maryland Institute for Continuing Professional Education of Lawyers (MICPEL)
c/o Maryland State Bar Association (which subsumed MICPEL as of February 2010)
520 West Fayette Street
Baltimore, Maryland 21201
Board of Directors

1980 – 1983
Saint Margaret's Episcopal Church
1834 East Joppa Road
Parkville, Maryland 21234
Member of the Vestry

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.

   Currently: I am a member of the U.S. Army, retired.

   1988 – 2001
   United States Army Reserve, Captain, JAGC
   (Had Reapplied for Reserve Commission in 1986)
   Placed in Retired Reserve, Rank of Lieutenant Colonel, in 2001

   1979 – 1984
   United States Army Reserve, Captain, JAGC
   Resigned Reserve Commission in 1982

   1976 – 1979
   Promoted to Captain, JAGC
   Honorably Discharged in 1979

   1973 – 1976
   Regular Army Second Lieutenant, Field Artillery
   Permanent Assignment to Judge Advocate General's Corps

   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.

   Fellow, American Bar Foundation (1995 – Present)
   Peter A. DiRito Award for Outstanding Leadership in the Administration of Justice, Federal Bar Association, Maryland Chapter (2010)
   Appointed by the Chief Justice of the United States to serve as a member of the Advisory Committee for the Federal Rules of Civil Procedure (2009); later designated as Chair of the Civil Rules Committee's Discovery Subcommittee (2010)
   Outstanding Adjunct Faculty Member, University of Maryland School of Law (2002, 2006)
   Leadership in Law Award, The Maryland Daily Record (2004)
   Meritorious Service Medal (With Oak Leaf Cluster), U.S. Army (2002)
   Volunteer Parent Award for Contribution to the Law and Public Policy Program, Towson High School (2002)
   Award for Professional Excellence for Advancement of Professional Competence, Maryland Bar Foundation (2001)
   Distinguished Service Award, Maryland Institute for Continuing Professional Education of Lawyers, Inc. (1998)

U.S. Army Achievement Medal, U.S. Army (1994)
U.S. Army Reserve Medal, U.S. Army (1994)
Exceptional Service Award, Maryland Attorney General's Office (1982)
Meritorious Service Medal, U.S. Army (approximately 1979)
U.S. Army Commendation Medal, U.S. Army (approx. 1976 – 1977)
Outstanding Graduate of the Class of 1976, New Mexico Bar Foundation (1976)
Order of the Coif, University of New Mexico School of Law (1976)
Comment and Note Editor, New Mexico Law Review (1975 – 1976) (two case notes published)
National Defense Service Medal, U.S. Army (approximately 1973 – 1976)
Excess Leave Program, U.S. Army (1973 – 1976) (service as U.S. Army prosecutor during law school)
Phi Kappa Phi, University of California, Davis (1973)
Herbert A. Young Award for Outstanding Graduate, College of Letters & Science, University of California, Davis (1973)
Republic of India Visitation Award (1973) (one of two U.S. college students selected to represent the United States at India's Republic Day Ceremonies)
Cadet Brigade Commander, Army ROTC (1972 – 1973)
Army ROTC, University of California, Davis (Four-Year Scholarship) (1969 – 1973)
Parachutist's Badge, U.S. Army Airborne School, Fort Benning, Georgia (Summer 1972)
Commander, 6th U.S. Army's Award for Outstanding Graduate, ROTC Summer Camp, Fort Lewis, Washington (Summer 1972)
Phi Beta Kappa, University of California, Davis (1972)

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 Committee for the Federal Rules of Civil Procedure (2009 – Present)
Chair, Discovery Subcommittee (2010 – Present)
American Bar Association (approx. 1987 – 1997, 2004 – 2005)
American Bar Foundation, Fellow (1996 – Present)
Chair, Fidelity and Surety Subsection, Torts and Insurance Practice Section (1989 – 1990)
Bar Association of Baltimore City (1993 – 1997)
Committee Reviewing Maryland Criminal Pattern Jury Instructions (2010 – Present)
Federal Bar Association, Maryland Chapter (2005 – Present)
Board of Governors (2008 – Present)
Federal Court Liaison Committee, Litigation Section Council (mid-1990's)
Iowa State Bar Association (1976 – 1987)
Maryland Institute for Continuing Professional Education of Lawyers
Board of Directors (approx. 1994 – 1997)
Maryland State Bar Association (1977 – 1983; intermittently between 1984 and 2007; 2010 – Present)
Litigation Section Council (mid-1990's)
Chair, Fidelity and Surety Subcommittee (1992 – 1997)

Co-Chair, Federal District Court Committee (1992 – 1997)
Discovery Subcommittee (1992 – 1997)
Mediator/Arbitrator, MSBA Lawyer Dispute Resolution Program (1990 – 1997)

Sedona Conference
Working Group 1 (approx. 2005 – Present)
Judicial Advisory Board (approx. 2005 – Present)

United States District Court for the District of Maryland
Ad-hoc joint bar–court committee, operating through the Court's Rules and Forms Committee (2006)
Courthouse Facilities Committee (approx. 2006 – Present)
Clerk's Office Operations Liaison (approx. 2006 – Present)
Strategic Planning Committee (approx. 1997 – Present)
Rules and Forms Committee (approx. 1997 – Present)

10. **Bar and Court Admission**:

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

Maryland, 1977
Iowa, 1976

I am currently on inactive/retired status in Iowa. 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, 1987
United States Court of Appeals for the Fourth Circuit, 1981
United States Court of Appeals for the Armed Forces, 1976
United States District Court for the District of Columbia, 1987
United States District Court for the District of Maryland, 1976
United States District Court for the Southern District of Iowa, 1976
Maryland Court of Appeals, 1977
Supreme Court of Iowa, 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.

Boy Scouts of America, Den 7, Pack 439, Den Leader (1993)
Chi Phi Fraternity, University of California, Davis (1970 – Present; member (alumnus))
J. Dudley Digges American Inn of Court (1996 – approx. 2000)
Lawyers' Roundtable of Baltimore (approx. early 2000's – Present)
Maryland Institute for Continuing Professional Education of Lawyers
Board of Directors (1994 – approx. 1997)
North East Isles Condominium Association
Board of Directors (2006 – 2008)
Phi Kappa Phi (1973 – Present (inactive))
Rule Day Club (approx. early 2000's – 2009)
Saint Margaret's Episcopal Church
Member of the Vestry (1980 – 1983)
Sergeants Inn (approx. late 1990's to mid-2000's)
Trout Unlimited (2010 – Present)
Towson High School Mock Trial Team
Lawyer Advisor (1999 – 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.

Chi Phi is a fraternal organization for men. Otherwise, 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.

Books:

MANAGING E-DISCOVERY AND ESI, FROM PRE-LITIGATION THROUGH TRIAL (Michael D. Berman, Courtney Ingraffia Barton & Paul W. Grimm eds., ABA 2011). Hard copy supplied.

Paul W. Grimm, Chuck S. Fax & Paul Mark Sandler, DISCOVERY PROBLEMS AND THEIR SOLUTIONS (ABA 2d ed. 2009). Hard copy supplied.

Paul W. Grimm & Lisa M. Yurwit, ELECTRONICALLY STORED INFORMATION IN MARYLAND AND FEDERAL COURTS: DISCOVERY, ADMISSIBILITY & ETHICS (MICPEL 2008). Copy supplied.

Paul W. Grimm, Chuck S. Fax & Paul Mark Sandler, MARYLAND DISCOVERY PROBLEMS AND SOLUTIONS (MICPEL 2008). Copy supplied.

Joseph F. Murphy, Jr. & Paul W. Grimm, MURPHY & GRIMM'S COMPARATIVE GUIDE TO THE MARYLAND AND FEDERAL RULES OF EVIDENCE (MICPEL 2007). Copy supplied.

Paul W. Grimm, Chuck S. Fax & Paul Mark Sandler, DISCOVERY PROBLEMS AND THEIR SOLUTIONS (ABA 2005). Hard copy supplied.

Paul W. Grimm & Matthew G. Hjortsberg, FUNDAMENTALS OF TRIAL EVIDENCE: STATE AND FEDERAL (MICPEL 1997). Copy supplied.

SURETY BONDS AND INSURANCE IN THE CONSTRUCTION INDUSTRY (MICPEL 1995) (contributing author). Copy supplied.

SURETY BONDS AND INSURANCE IN THE CONSTRUCTION INDUSTRY (MICPEL 1992) (contributing author). Copy supplied.

Paul W. Grimm, CIVIL TRIAL PROCEEDINGS IN MARYLAND (Nat'l Bus. Inst. 1992) (co-author). I have been unable to locate a copy of this book.

Paul W. Grimm, TAKING AND DEFENDING DEPOSITIONS: A HANDBOOK FOR MARYLAND ATTORNEYS (MICPEL 1991). Copy supplied.

Paul W. Grimm, J. Martin McDonough, Jr., Danny B. O'Connor & Paul S. Sugar, COMMERCIAL CONSTRUCTION CONTRACTS (MICPEL 1989). Copy supplied.

Paul W. Grimm, MARYLAND EVIDENCE CHECKLISTS (MICPEL 1989). Copy supplied.

Paul W. Grimm, COMMENTS ON THE LAW OF EVIDENCE RELATING TO ADMINISTRATIVE HEARINGS IN MARYLAND (MICPEL 1981). Copy supplied.

Law Reviews, Journals, and Book Chapters:

Paul W. Grimm, *Admissibility of Expert Testimony in Federal Courts: A View from the Bench*, in DAVID FAUST: COPING WITH PSYCHIATRIC AND PSYCHOLOGICAL TESTIMONY 13 (6th ed., Oxford Univ. Press 2012). Copy supplied.

Paul W. Grimm, *Direct Examination—A View from the Bench*, *in* PAUL MARK SANDLER, ANATOMY OF A TRIAL: A HANDBOOK FOR YOUNG LAWYERS 111 (1st ed., ABA 2011). Copy supplied.

Paul W. Grimm, *The State of Discovery Practice in Civil Cases: Must the Rules be Changed to Reduce Costs and Burden, or can Significant Improvements be Achieved within the Existing Rules?*, 12 SEDONA CONF. J. 47 (2011). Copy supplied.

Paul W. Grimm, Lisa Yurwit Bergstrom & Matthew P. Kraeuter, *Federal Rule of Evidence 502: Has It Lived Up to Its Potential?*, XVII RICH. J.L. & TECH. 8 (2011). Copy supplied.

Paul W. Grimm, Jerome E. Deise & John R. Grimm, *The Confrontation Clause and the Hearsay Rule: What Hearsay Exceptions are Testimonial?*, 40 U. BALT. L.F. 155 (2010). Copy supplied.

David Faust, Paul W. Grimm, David C. Ahern & Mark Sokolik, *The Admissibility of Behavioral Science Evidence in the Courtroom: The Translation of Legal to Scientific Concepts and Back*, 6 ANN. REV. CLIN. PSYCHOL. 49 (Apr. 2010). Copy supplied.

Paul W. Grimm, Michael V. Ziccardi & Alexander W. Major, *Back to the Future:* Lorraine v. Markel American Insurance Co. *and New Findings on the Admissibility of Electronically Stored Information*, 42 AKRON L. REV. 357 (2009). Copy supplied.

Dennis R. Kiker, Tammy L. DeCastro, Paul W. Grimm & Scott A. Richardson, *Chapter 15. eDiscovery for Corporate Counsel*, *in* TRIAL PRACTICE MANAGEMENT (Thomson/West 2008). Copy supplied.

Paul W. Grimm & Joel P. Williams, *Ethical Issues Associated with Preserving, Accessing, Discovering, and Using Electronically Stored Information*, 14 FIDELITY L.J. 57 (2008). Copy supplied.

Paul W. Grimm & Alexander Major, *Legal Standards Governing the Collection of Admissible Electronic Evidence in Criminal Cases in the United States: Balancing Privacy Interests and Law Enforcement Interests*, 2 SUNGKYUNKWAN J. SCI. & TECH. L. 1 (2008). Copy supplied.

Paul W. Grimm, Michael D. Berman, Conor R. Crowley & Leslie Wharton, *Proportionality in the Post-Hoc Analysis of Pre-Litigation Preservation Decisions*, 37 U. BALT. L. REV. 381 (2008). Copy supplied.

Paul W. Grimm, Michael D. Berman, Leslie Wharton, Jeanna Beck & Conor R. Crowley, *Discovery About Discovery: Does the Attorney-Client Privilege Protect All Attorney-Client Communications Relating to the Preservation of Potentially Relevant Information?*, 37 U. BALT. L. REV. 413 (2008). Copy supplied.

Paul W. Grimm & Michael D. Berman, *District of Maryland Suggested Protocol for Discovery of Electronically Stored Information*, *in* MARYLAND'S DISCOVERY PROTOCOL (LexisNexis pamphlet 2007). Copy supplied.

Paul W. Grimm & Robert B. Levin, *Chapter 22, Appeals from Administrative Agencies*, *in* APPELLATE PRACTICE FOR THE MARYLAND LAWYER: STATE AND FEDERAL (MICPEL 3d ed. 2007). Copy supplied.

Paul W. Grimm & Jerome E. Deise, Jr., *Hearsay, Confrontation, and Forfeiture by Wrongdoing:* Crawford v. Washington, *a Reassessment of the Confrontation Clause*, 35 U. BALT. L.F. 5 (2004). Copy supplied.

Paul W. Grimm, *Equal Employment Opportunity Commission's Guidelines for Discovery*, *in* WINNING THROUGH DISCOVERY IN EMPLOYMENT DISCRIMINATION CASES (MICPEL 2002). Copy supplied.

Paul W. Grimm, *Common Law Torts*, *in* PETER H. GUNST, ET AL., CORPORATE TORTS (MICPEL 1994). Copy supplied.

Paul W. Grimm, *Impeachment and Rehabilitation Under the Maryland Rules of Evidence: An Attorney's Guide*, 24 U. BALT. L. REV. 95 (1994). Copy supplied.

Paul W. Grimm, *Jurisdiction of the Courts and Resisting and Enforcing Agreements to Arbitrate under the State and Federal Arbitration Acts*, *in* DAVID F. ALBRIGHT, JR., ET AL., ARBITRATION OF CONSTRUCTION AND COMMERCIAL CASES (MICPEL 1991). Copy supplied.

Paul W. Grimm, Note, *Evidence: Prior Crimes and Prior Bad Acts Evidence*, 6 N.M. L. REV. 405 (1976). Copy supplied.

Paul W. Grimm, *Parole Revocation and the Right to Counsel*, 5 N.M. L. REV. 311 (May 1975). Copy supplied.

Other Articles:

Paul W. Grimm, Leah Hauser & Lisa Yurwit Bergstrom, *Admissibility and Authentication of Social Media in Litigation*, TORTSOURCE (Fall 2011). Copy supplied.

Paul W. Grimm, Ilan Weinberger & Lisa Yurwit, *New Paradigm for Discovery Practice: Cooperation*, MD. BAR J., Nov./Dec. 2010, at 26. Copy supplied.

Paul W. Grimm, Melissa O'Toole-Loureiro & Lisa M. Yurwit, *Alternative Dispute Resolution in the District of Maryland*, MAJ TRIAL REPORTER (Fall 2010). Copy supplied.

Paul W. Grimm & Matthew Haven, *Cooperation: The Procedural, Ethical and Economical Solution to Discovery Abuse*, MD. LITIG., Sept. 2010, at 3. Copy supplied.

Paul W. Grimm, *Important Revisions to the Discovery Guidelines for the United States District Court for the District of Maryland, Effective December 1, 2009*, Federal Bar Association – Maryland Chapter Newsletter, Mar. 2010, at 6. Copy supplied.

Paul W. Grimm & Claudia Diamond, *Low-Tech Solutions to High-Tech Wizardry: Computer-Generated Evidence*, MD. BAR J., July/Aug. 2004, at 5. Copy supplied.

Paul W. Grimm, *New Rule Covers Authentication of Business Records*, MD. LITIG., Dec. 1994, at 1. I have been unable to locate a copy of this article.

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 2011, I co-wrote the revisions to this court's Discovery Guidelines, which appear as Appendix A to our local rules of court, as part of our court's Rules and Forms Committee. Copy supplied.

In 2009, I was appointed by the Chief Justice of the United States to serve as a member of the Advisory Committee on the Federal Rules of Civil Procedure. In conjunction with each of its meetings, the Civil Rules Committee prepares a report summarizing its work. Copies of the reports prepared for the following meetings of the Civil Rules Committee are supplied:

December 2011 Report (November 7-8, 2011 Meeting)
May 2011 Report (April 4-5, 2011 Meeting)
December 2010 Report (November 15-16, 2010 Meeting)
May 2010 Report (March 18-19, 2010 Meeting)
December 2009 Report (October 8-9, 2009 Meeting)

I have been a member and am now the Chair of the Discovery Subcommittee of the Advisory Committee on the Federal Rules of Civil Procedure. I have supplied a report released by the subcommittee following a mini-conference held on September 9, 2011. The report discusses preservation and sanctions issues.

In 2008, I signed the Sedona Conference Cooperation Proclamation. Copy supplied.

In 2006, I chaired an ad-hoc joint bar–court committee, operating through our court's Rules and Forms Committee, which issued a Suggested Protocol for Discovery of Electronically Stored Information. The following year, LexisNexis published a pamphlet containing the protocol for which I co-wrote a brief introduction. 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.

On January 6, 2011, I was part of a panel discussing spoliation and sanctions for the Committee on Rules of Practice and Procedure, San Francisco, California. Meeting minutes supplied.

Since 2009, I have been a member of the Advisory Committee on the Federal Rules of Civil Procedure and occasionally have made comments and given presentations during meetings. Meeting minutes supplied.

On April 24, 2006, I provided testimony in favor of proposed Federal Rule of Evidence 502 (which has since been enacted) at a public hearing held by the Advisory Committee for the Federal Rules of Evidence at Fordham University School of Law. The views I expressed are consistent with my opinion in *Hopson v. Mayor & City Council of Baltimore*, 232 F.R.D. 228 (D. Md. 2005). A transcript is supplied.

I testified before the Maryland Senate Judicial Proceedings Committee on two occasions, in 2004 and January 2005. My testimony related to a bill proposing adoption of a state rule of evidence comparable to that currently found in Federal Rule of Evidence 804(b)(6). (Since then, the bill has been enacted.) I have been unable to locate copies of my testimony, but press coverage is supplied. My testimony was consistent with the opinions expressed in Paul W. Grimm & Jerome E. Deise, Jr., *Hearsay, Confrontation, and Forfeiture by Wrongdoing: Crawford v. Washington, a Reassessment of the Confrontation Clause*, 35 U. BALT. L.F. 5 (2004), a copy of which is supplied in response to Question 12a.

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.

Listed below are all of the speaking engagements that I have been able to recall or locate. I compiled the list by reviewing my records and my calendar, and by searching the Internet. Various telephonic or video presentations for which I have no record may not appear, but in all likelihood would have been for one of the groups listed below. Typically, I speak without notes. In the few instances where I have notes, I have so stated and I am supplying them. Recordings or links to recordings are also supplied for those instances in which I have been able to obtain them.

January 20, 2012: a presentation on social media for state public defenders through the Maryland Office of the Public Defender, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland Office of the Public Defender is 6 St. Paul Street, Suite 1400, Baltimore, Maryland 21202.

January 19, 2012: a presentation on evidentiary issues in federal court for attorneys in the Office of the State's Attorney for Prince George's County, Upper Marlboro, Maryland. I have no notes, transcript, or recording. The address of the Office of the State's Attorney for Prince George's County is 14735 Main Street, Suite M3403, Upper Marlboro, Maryland 20772.

January 18, 2012: I participated in a mock Rule 26(f) conference sponsored by Nova Office Strategies, Inc, Charlotte, North Carolina. I have no notes, transcript, or recording. The address of Nova Office Strategies, Inc. is 129 West Trade Street, Suite 1420, Charlotte, North Carolina 28202.

December 16, 2011: a presentation on e-discovery sponsored by Williams & Connolly, Washington, DC. I have no notes, transcript, or recording. The address of Williams & Connolly is 725 Twelfth Street, NW, Washington, DC 20005.

December 14, 2011: a videoconference presentation on admissibility of electronic evidence and Federal Rule of Evidence 502 for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

December 14, 2011: a presentation on e-discovery for the United States Attorney's Office for the District of Maryland, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the District of Maryland is 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201.

December 13, 2011: a presentation on social media and ethics to the Bar Association of Baltimore City, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Bar Association of Baltimore City is 111 North Calvert Street, Suite 627, Baltimore, Maryland 21202.

November 30, 2011: a presentation on admissibility of electronic evidence for foreign judges through the International Judicial Academy, Greenbelt, Maryland. I have no notes, transcript, or recording. The address of the International Judicial Academy is Suite 715, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

November 30, 2011: a webinar titled "Fifth Anniversary of the Federal E-Discovery Rules" for the Sedona Conference. An audio recording is supplied.

November 18, 2011: a presentation on discovery and admissibility of electronically stored information for Georgetown Law Continuing Legal Education, Arlington, Virginia. I have no notes, transcript, or recording, but press coverage is supplied. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

November 16, 2011: a videoconference presentation on e-discovery for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 15, 2011: a presentation on expert opinion evidence for Judge Legg and Rignal Baldwin's class at the University of Maryland Francis King Carey School of Law, Baltimore, Maryland. I have no notes, transcript, or recording.

The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

November 14, 2011: a teleconference presentation on discovery of electronically stored information for John Barkett's class at the University of Miami School of Law, Coral Gables, Florida. I have no notes, transcript, or recording. The address of the University of Miami School of Law is 1311 Miller Drive, Coral Gables, Florida 33146.

November 9, 2011: a program called The Brain on Trial for the American Association for the Advancement of Science, Washington, DC. Script supplied (this script is dated Feb. 20, 2010 as it was used for an event on that date as well, but I did not participate in that event).

November 4, 2011: a presentation titled "The Importance of the Practice Support Professional in the eDiscovery Process" for Georgetown Law Continuing Legal Education, Washington, DC. An audio recording is supplied.

November 3, 2011: a presentation on recent developments in the Rules Committee with regard to spoliation for a Moot Court class at the University of Maryland Francis King Carey School of Law, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

November 2, 2011: a presentation on admissibility of electronic evidence for foreign judges through the International Judicial Academy, Greenbelt, Maryland. I have no notes, transcript, or recording. The address of the International Judicial Academy is Suite 715, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

October 29, 2011: keynote speech at Georgetown University Law Center for ESI Practice Support Professionals on current and future developments in the law relating to the discovery of electronically stored information, Washington, DC. I have no notes, transcript, or recording. The address of Georgetown Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

October 27, 2011: a teleconference presentation on spoliation, sanctions, and Rule 502 for Michael Arkfeld's online e-discovery course. I have no notes, transcript, or recording. The address of Mr. Arkfeld's firm, Arkfeld and Associates, is 9602 North 35th Place, Phoenix, Arizona 85028.

October 27, 2011: a presentation on forensic evidence for the Criminal Law and Practice Section Council of the Maryland State Bar Association in Columbia, Maryland, relying on *United States v. Willock*, 696 F. Supp. 2d 536, 549–82 (D. Md. 2010), and NATIONAL RESEARCH COUNCIL'S COMMITTEE ON IDENTIFYING

THE NEEDS OF THE FORENSIC SCIENCES COMMUNITY, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD 85–110, 127–82 (National Academies Press 2009); NATIONAL RESEARCH COUNCIL'S COMMITTEE ON IDENTIFYING THE NEEDS OF THE FORENSIC SCIENCES COMMUNITY, BALLISTIC IMAGING (National Academies Press 2008). I have no other notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Suite 300, Baltimore, Maryland 21201.

October 25, 2011: a presentation on privilege and Rule 502 for the Federal Judicial Center, Washington, DC. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

October 21, 2011: a presentation on duty to preserve electronically stored information for the Aviation and Space Law Litigation Section of the American Bar Association, Washington, DC. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

October 20, 2011: a presentation on social media as evidence through the Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, Pittsburgh, Pennsylvania. I have no notes, transcript, or recording. The address of the Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts is Pennsylvania Judicial Center, P.O. Box 61260, Harrisburg, Pennsylvania 17106.

October 19, 2011: a presentation on admissibility of electronic evidence for foreign judges through the International Judicial Academy, Greenbelt, Maryland. I have no notes, transcript, or recording. The address of the International Judicial Academy is Suite 715, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

October 13, 2011: a presentation on social media as evidence through the Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, Blue Bell, Pennsylvania. I have no notes, transcript, or recording. The address of the Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts is Pennsylvania Judicial Center, P.O. Box 61260, Harrisburg, Pennsylvania 17106.

October 12, 2011: a presentation on privilege for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

September 30, 2011: a presentation on admissibility of social media for the Maryland Association for Justice, Columbia, Maryland. I have no notes,

transcript, or recording. The address of the Maryland Association for Justice is 6240 Old Dobbin Lane, Suite 100, Columbia, Maryland 21045.

September 24, 2011: a testimonial for the Sedona Conference on the contributions of the founder of the Sedona Conference to the law relating to discovery of electronically stored information, Washington, DC. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

September 14, 2011: a presentation on admissibility of electronic evidence for foreign judges through the International Judicial Academy, Greenbelt, Maryland. I have no notes, transcript, or recording. The address of the International Judicial Academy is Suite 715, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

September 6, 2011: a webinar titled "Rule 502(d) for Dummies with Judge Grimm" for ESIBytes. An audio recording is supplied.

July 28 – 29, 2011: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Santa Fe, New Mexico. Handouts and a video recording are supplied.

July 22, 2011: a presentation on admissibility of electronic evidence for foreign judges through the International Judicial Academy, Greenbelt, Maryland. I have no notes, transcript, or recording. The address of the International Judicial Academy is Suite 715, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

July 1, 2011: a presentation on admissibility for the Federal Judicial Center, Washington, DC. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

June 28, 2011: a presentation on e-discovery for the Baltimore Chapter of Women in eDiscovery, Baltimore, Maryland I have no notes, transcript, or recording. The Baltimore Chapter does not have a physical address.

June 17, 2011: remarks at Judge Stephanie Gallagher's Investiture at the United States District Court for the District of Maryland, Baltimore, Maryland. Script supplied.

June 11, 2010: a teleconference presentation to Judge Ron Hedges' class at Georgetown University Law Center on admissibility of electronically stored information. I have no notes, transcript, or recording. The address of

Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

June 10, 2011: a presentation on discovery and admissibility of electronically stored information for Georgetown Law Continuing Legal Education, Washington, DC. I have no notes, transcript, or recording, but press coverage is supplied. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

June 6, 2011: a teleconference presentation on e-discovery for the Thirteenth International Conference on Artificial Intelligence and Law, University of Pittsburgh School of Law, Pittsburgh, Pennsylvania. I have no notes, transcript, or recording. The address of the International Conference on Artificial Intelligence and Law, University of Pittsburgh School of Law is 3900 Forbes Avenue, Pittsburgh, Pennsylvania 15260.

May 24, 2011: a videoconference presentation on technology issues, such as social media and confidentiality and preservation of electronically stored information for new admittees to the Maryland Bar at the Required Course on Professionalism, Commission on Professionalism, Maryland Court of Appeals. I have no notes, transcript, or recording. The address of the Commission on Professionalism, Maryland Court of Appeals is 361 Rowe Boulevard, Annapolis, Maryland 21401.

May 11, 2011: panel discussion on approach under U.S. law to discovery of electronically stored information for IQPC Ltd., London, England. I have no notes, transcript, or recording. The address of IQPC Ltd. is 15 – 19 Britten Street, London SW3 3QL England.

April 28, 2011: participated in a panel discussing local federal rules and protocols for e-discovery at the Sedona Conference, Fort Lauderdale, Florida. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

April 14, 2011: a presentation on Rule 502, privilege, and e-discovery for Professor Michael Berman's Electronic Evidence and Discovery Workshop at the University of Maryland School of Law, Baltimore, Maryland. I have no notes, transcript, or recording, but coverage written by a co-presenter is supplied. The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

April 13, 2011: a teleconference presentation on electronically stored information discovery for the American Law Institute of the American Bar Association (ALI-ABA). An audio recording is supplied.

April 12, 2011: a teleconference presentation for Professor Steve Gensler's e-discovery class at the University of Oklahoma College of Law. I have no notes, transcript, or recording. The address of the University of Oklahoma College of Law is 300 Timberdell Road, Norman, Oklahoma, 73019.

April 7 – 8, 2011: panels at the Sedona Conference, San Diego, California. I was on a panel with other members of the Advisory Committee for the Rules of Civil Procedure regarding that Committee's most recent public hearings. In addition, I participated in a panel discussion with lawyers and other judges regarding the burdens and expenses associated with the obligation to preserve electronically stored information in connection with pending or anticipated litigation. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

April 1, 2011: teleconference presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA). I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

March 31, 2011: a webinar titled "The Launch of a Law Student E-Discovery Website" for ESIBytes. An audio recording is supplied.

March 26, 2011: a presentation on the use of expert testimony for the Prince George's County Bar Association's Alan J. Goldstein Seminar, Upper Marlboro, Maryland, relying on *United States v. Willock*, 696 F. Supp. 2d 536, 549-82 (D. Md. 2010). I have no notes, transcript, or recording. The address of the Prince George's County Bar Association is 14330 Old Marlboro Pike, Upper Marlboro, Maryland 20772.

March 16, 2011: a presentation on basic evidence for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

March 15, 2011: a teleconference presentation on evidentiary issues for the Anne Arundel Bar Association Family Law Committee. I have no notes, transcript, or recording. The address of the Anne Arundel Bar Association Family Law Committee is P.O. Box 161, Annapolis, Maryland 21404.

March 14, 2011: a presentation on admissibility of electronically stored information for the Richard K. Herrmann Technology American Inn of Court and Widener University School of Law, Wilmington, Delaware. I have no notes, transcript, or recording, but press coverage is supplied. The address of the

American Inns of Court is 1229 King Street, Second Floor, Alexandria, Virginia 22314.

March 3, 2011: a presentation on Rule 502 for the University of Richmond Journal of Law & Technology, Richmond, Virginia, relying on Paul W. Grimm, Lisa Yurwit Bergstrom & Matthew P. Kraeuter, *Federal Rule of Evidence 502: Has It Lived Up to Its Potential?*, XVII RICH. J.L. & TECH. 8 (2011). A video recording is supplied.

February 28, 2011: a presentation on Rule 8 after *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), for Professor Ifill's Civil Procedure class at the University of Maryland School of Law, Baltimore, Maryland. Video available at http://tinyurl.com/umdiqbal.

February 18, 2011: a podcast on admissibility of electronically stored information for the Association of Certified E-Discovery Specialists. I have no notes, transcript, or recording. I am unable to locate a physical address for the Association of Certified E-Discovery Specialists.

February 12 or 26, 2011: a teleconference presentation to Judge Ron Hedges' class at Georgetown University Law Center on admissibility of electronically stored information, Washington, DC. I have no notes, transcript, or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

February 5, 2011: a presentation on e-discovery at Temple University Beasley School of Law, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

January 13, 2011: a webinar titled "2010 E-Discovery Year in Review" for the Sedona Conference. An audio recording is supplied.

December 20, 2010: a webinar titled "Will Judges Think It Is Okay to Use Clustering and Suggestive Coding Tools?" for ESIBytes. An audio recording is supplied.

December 19, 2010: as an Audience Storyteller, I told a story about one Christmas when I was a child as part of The Stoop Storytelling Series, Baltimore, Maryland. An audio recording is supplied.

December 13, 2010: a presentation on newly enacted Federal Rules of Civil Procedure for the Bar Association of Baltimore City, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Bar Association of Baltimore City is 111 North Calvert Street, Suite 627, Baltimore, Maryland 21202.

December 10, 2010: a presentation on mediation for the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201.

December 2, 2010: moderated a panel on electronically stored information for George Mason University School of Law, Law & Economics Center, Arlington, Virginia. I have no notes, transcript, or recording for this panel discussion, but I gave a brief interview summarizing my presentation after the event. The video is available at http://vimeo.com/17681507. The address of George Mason University School of Law, Law & Economics Center is 3301 Fairfax Drive, Arlington, Virginia 22201.

November 30, 2010: a presentation on protecting attorney–client privilege and work product for the Intellectual Property Section of the Maryland State Bar Association, Baltimore, Maryland, referring to *In re Seagate Tech., LLC*, 497 F.3d 1360 (Fed. Cir. 2007), and *Mohawk Industries, Inc. v. Carpenter*, 130 S. Ct. 599 (2009). An audio recording is supplied.

November 18, 2010: participant in a Judicial Roundtable and Ethics Game Show for Georgetown Law Continuing Legal Education, Arlington, Virginia. Video recordings supplied.

November 17, 2010: a videoconference presentation on the admissibility of electronically stored information for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 10, 2010: a presentation on e-signatures and e-records in the courtroom for the Electronic Signature & Records Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Electronic Signature & Records Association is P.O. Box 96503-33850, Washington, DC 20090.

November 5, 2010: a presentation on admissibility of electronically stored information for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

November 4, 2010: a presentation on discovery and admissibility of electronically stored information for Mike Berman's class at the University of Maryland School of Law, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

November 3, 2010: a presentation on e-discovery at a seminar hosted by Capital One Services, Inc., McLean, Virginia. I have no notes, transcript, or recording. The address of Capital One Services, Inc. is 15000 Capital One Drive, Richmond, Virginia 23238.

October 26, 2010: a presentation on privilege and Rule 502 for the Federal Judicial Center, Washington, DC. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

October 23, 2010: a presentation on discovery, as part of interactive session for the Defense Research Institute, San Diego, California. I have no notes, transcript, or recording. The address of the Defense Research Institute is 150 North Michigan Avenue, Chicago, Illinois 60601.

October 15, 2010: a presentation on electronically stored information for the Maryland State Bar Association, Baltimore or Columbia, Maryland. An audio recording is supplied.

October 13, 2010: a webinar titled the "Slippery Slope: From Prevention to Sanctions" on discovery and admissibility of electronically stored information for the Bureau of National Affairs. An audio recording is supplied.

October 11, 2010: informal remarks after a golfing clinic fundraiser sponsored by the Maryland Chapter of the Federal Bar Association, Upper Marlboro, Maryland. I have no notes, transcript or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

October 7 – 8, 2010: I participated in a panel at the Sedona Conference, Scottsdale, Arizona. The panel addressed the duty to cooperate among counsel during the discovery process. To the best of my recollection, I also participated in the judicial roundtable discussion at the conclusion of the conference. I likely asked questions or made comments in response to other questions. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

September 29, 2010: a presentation on admissibility for the Federal Judicial Center, Washington, DC. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

September 28, 2010: a presentation on Rule 502, privilege, and work product for the Federal Judicial Center, Washington, DC. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

September 27, 2010: a presentation on search technologies for the Federal Judicial Center, Washington, DC. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

September 21, 2010: a presentation on character and impeachment evidence for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

September 15, 2010: a presentation on admissibility of evidence for the American Society of Crime Laboratory Directors, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the American Society of Crime Laboratory Directors is 139A Technology Drive, Garner, North Carolina 27529.

September 1, 2010: a presentation on evidence for attorneys in the Office of The State's Attorney for Prince George's County, Upper Marlboro, Maryland. I have no notes, transcript, or recording. The address of the Office of The State's Attorney for Prince George's County is 14735 Main Street, Suite M3403, Upper Marlboro, Maryland 20772.

August 17, 2010: a webinar on electronically stored information for the American Law Institute of the American Bar Association (ALI-ABA). An audio recording is supplied.

July 29, 2010: a videoconference presentation on protective orders and sanctions for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

July 21 – 23, 2010: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Santa Fe, New Mexico. I served on six panels, but was only able to obtain video recordings of three of those. These video recordings are supplied.

July 19, 2010: a webinar titled "The State of Search in 2010: A Roundtable Discussion with the Bench, Bar, and Experts" for H5. An audio recording is supplied.

July 8, 2010: a presentation on Rule 502 and Central Violations Bureau issues for the Federal Judicial Center, Santa Fe, New Mexico. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

June 30, 2010: a webinar titled "The ESI Data Map: The Experts Weigh In" for the Ingersoll Firm. An audio recording and a video of the PowerPoint presentation are supplied.

June 24, 2010: brown bag lunch with summer interns and law clerks, United States District Court for the District of Maryland, Baltimore, Maryland. I have no notes, transcript or recording. The address of the court is 101 West Lombard Street, Baltimore, Maryland 21201.

June 15, 2010: a webinar on legal issues associated with electronically stored information for the ABA. I have no notes or transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

June 12, 2010: a teleconference presentation to Judge Ron Hedges' class at Georgetown University Law Center on admissibility of electronically stored information, Washington, DC. I have no notes, transcript, or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

June 2010: a presentation on e-discovery for federal agency attorneys, Washington, DC. I have no notes, transcript, or recording. The address of the Office of Legal Education, United States Department of Justice is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 27, 2010: a presentation on getting electronically stored information admitted into evidence for the Section of Litigation of the American Bar Association, Washington, DC. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

May 26, 2010: a videoconference presentation on e-discovery for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 25, 2010: a webinar about the 2010 Civil Litigation Conference at Duke Law School for the Bureau of National Affairs. An audio recording is supplied.

May 21, 2010: a presentation on admissibility of electronic evidence for foreign judges through the International Judicial Academy, Greenbelt, Maryland. I have no notes, transcript, or recording. The address of the International Judicial Academy is Suite 715, 1779 Massachusetts Avenue NW, Washington, DC 20036.

May 19, 2010: panel discussion on approach under U.S. law to discovery of electronically stored information for IQPC Ltd., London, England. I have no

notes, transcript, or recording. The address of IQPC Ltd. is 15 – 19 Britten Street, London SW3 3QL England.

May 12, 2010: a videoconference presentation on admissibility of electronically stored information and Rule 502 for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 10 – 11, 2010: 2010 Civil Litigation Conference at Duke Law School, Durham, North Carolina, regarding costs of civil litigation, particularly discovery and e-discovery, for the Advisory Committee for the Federal Rules of Civil Procedure. Administrative Office of the United States Courts. A video recording is supplied.

May 7, 2010: a presentation on admissibility of electronically stored information for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

May 1, 2010: a presentation on discovery for Maryland Fellows of the American College of Trial Lawyers, Prince George's County, Maryland. My notes are supplied. I also relied upon the article *The State of Discovery Practice in Civil Cases*, 12 SEDONA CONF. J. 47 (2011), which was supplied in response to 12(a).

April 29 – 30, 2010: a presentation on e-discovery and digital evidence for the Texas Bar Association, Austin, Texas. I have no notes, transcript, or recording. The address of the Texas Bar Association is P.O. Box 12487, Austin, Texas 78711.

April 23, 2010: a presentation on *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) for the American Bar Association, New York, New York. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

April 22, 2010: a presentation on designation of expert witnesses in criminal and civil cases for the Baltimore City Circuit Court judges, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Baltimore City Circuit Court is Courthouse East, 111 North Calvert Street, Baltimore, Maryland 21202.

April 20, 2010: a presentation on basic evidence for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

April 16, 2010: I participated in a symposium on the Confrontation Clause at the University of Baltimore School of Law, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Baltimore School of Law is 1415 Maryland Avenue, Baltimore, Maryland 21201.

April 15, 2010: a presentation on *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), during the annual dinner for the Labor & Employment Law Section of the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

April 15, 2010: a podcast regarding *Mohawk Industries, Inc. v. Carpenter*, 130 S. Ct. 599 (U.S. 2009), for the American Law Institute of the American Bar Association (ALI-ABA). An audio recording is supplied.

April 14, 2010: a webinar titled Law School Students on E-Discovery with Judge Grimm for ESIBytes. An audio recording is supplied.

April 8, 2010: a presentation on Rule 502 for the Federal Judicial Center, San Francisco, California. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

April 5, 2010: a podcast titled "Admissibility Pointers from the Bench" for ESIBytes. An audio recording is supplied.

March 27, 2010: a presentation on the Confrontation Clause for the Prince George's County Bar Association's Alan J. Goldstein Seminar, Upper Marlboro, Maryland. I have no notes, transcript, or recording. The address of the Prince George's County Bar Association is 14330 Old Marlboro Pike, Upper Marlboro, Maryland 20772.

March 25 – 26, 2010: I served on four panels during the 4th Annual Sedona Conference Program on eDiscovery: Cooperation in eDiscovery, Maximizing the Opportunities in the Rules: Negotiating Search Protocols, eDiscovery Ethical Issues, and Judicial Roundtable: Effective & Efficient eDiscovery, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

March 17, 2010: a webinar regarding *Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities*, 658 F. Supp. 2d 456 (S.D.N.Y. 2010), for the Bureau of National Affairs. An audio recording is supplied.

March 12, 2010: a presentation on e-discovery for the American Law Institute of the American Bar Association (ALI-ABA). I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

February 27, 2010: a teleconference presentation to Judge Ron Hedges' class at Georgetown University Law Center on admissibility of electronically stored information, Washington, DC. I have no notes, transcript, or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

February 19, 2010: a presentation on e-discovery for the American Law Institute of the American Bar Association (ALI-ABA). I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

February 17, 2010: I was a panelist in a program at the University of Maryland School of Law regarding the future of law in the United States, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

February 5, 2010: a videoconference presentation on sanctions and protective orders in pretrial practice for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 4, 2010: a presentation on evidentiary issues associated with discovery of expert testimony for the judges of the Circuit Court for Baltimore County, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Circuit Court for Baltimore County is Baltimore County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204.

February 3, 2010: a presentation on e-discovery search for Legal Tech, New York, New York. I have no notes, transcript, or recording. The address of Legal Tech is 120 Broadway, Fifth Floor, New York, New York 10271.

January 28, 2010: keynote speaker on legal issues associated with e-mail and social media for the 88th Annual Baltimore County Bar Association banquet, Baltimore, Maryland. I have no notes, transcript or recording, but press coverage is supplied. The address of the Baltimore County Bar Association is 100 County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204.

January 26, 2010: a webinar on evidentiary issues associated with employment law for the American Law Institute of the American Bar Association (ALI-ABA). An audio recording is supplied.

December 4, 2009: a presentation on *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), that, to the best of my recollection, was for the Maryland Chapter of the Federal Bar Association. I have no notes, transcript, or recording. The address of the Maryland Chapter of the Federal Bar Association is c/o Sharon A. Snyder (President), Ober, Kaler, Grimes & Shriver, 100 Light Street, Baltimore, Maryland 21202.

November 23, 2009: a presentation on *Lorraine v. Markel American Insurance Co.*, 241 F.R.D. 534 (D. Md. 2007), for Mike Berman's class at the University of Maryland School of Law, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

November 20, 2009: a videoconference presentation on admissibility of electronically stored information for the Federal Judicial Center. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

November 18, 2009: a presentation on *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), for the Bar Association of Baltimore City's Federal Practice Committee, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Bar Association of Baltimore City is 111 North Calvert Street, Suite 627, Baltimore, Maryland 21202.

November 18, 2009: a videoconference presentation on Rule 502 and proposed amendments to Rule 26 for the Federal Judicial Center. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

November 17, 2009: a presentation on forensic evidence to Towson High School forensic science class, relying on *United States v. Willock*, 696 F. Supp. 2d 536, 549–82 (D. Md. 2010), Towson, Maryland. I have no notes, transcript, or recording. The address of Towson High School is 69 Cedar Avenue, Towson, Maryland 21286.

November 12 – 13, 2009: a presentation on discovery and admissibility of electronically stored information for Georgetown Law Continuing Legal Education, Washington, DC. PowerPoint slides supplied.

November 10, 2009: a keynote address on e-discovery at a seminar hosted by Capital One Services, Inc., McLean, Virginia. My notes are supplied.

November 6, 2009: a presentation on trying a case to the jury for the Worcester County Bar Association, Fager's Island, Maryland. I have no notes, transcript, or recording. The address for Worcester County Bar Association is 5700 Coastal Highway, Suite 305, Ocean City, Maryland 21842.

November 4, 2009: a webinar titled "The First Year of the Cooperation Proclamation" for the Sedona Conference. An audio recording is supplied.

October 30, 2009: moderated a panel on issues facing practitioners and judges in the District of Maryland, Sixth Biennial Bench-Bar Conference, Greenbelt Courthouse, Greenbelt, Maryland. I have no notes, transcript or recording. The address of the Greenbelt Courthouse is 6500 Cherrywood Lane, Greenbelt, Maryland 20770.

October 27, 2009: a panel presentation on Judicial Perspectives on Ethical Obligations regarding Technology, E-Discovery and Information Management, Washington Metropolitan Area ACC, McLean, Virginia. I have no notes, transcript or recording. The Washington Metropolitan Area ACC does not have a physical address.

October 22, 2009: a presentation on electronic evidence at trial for the Ohio State Bar Association, Columbus, Ohio. I have no notes, transcript, or recording. The address of the Ohio State Bar Association is P.O. Box 16562, Columbus, Ohio 43216.

October 20, 2009: a presentation on electronically stored information for the Maryland Chapter of the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland Chapter of the Federal Bar Association is c/o Sharon A. Snyder (President), Ober, Kaler, Grimes & Shriver, 100 Light Street, Baltimore, Maryland 21202.

October 7, 2009: a videoconference presentation on admissibility of electronically stored information and Rule 502 for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 6, 2009: a presentation on Maryland's suggested protocol for discovery of electronically stored information for IE Discovery at the National Press Club, Washington, DC. I have no notes, transcript, or recording. The address of IE Discovery is 1101 Wilson Boulevard, Suite 1450, Arlington, Virginia 22209.

September 25, 2009: a presentation on electronically stored information for Maryland Institute for Continuing Professional Education of Lawyers, Inc. (MICPEL), now subsumed by the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

September 24, 2009: a presentation on hearsay and the Confrontation Clause for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

September 17, 2009: a presentation on e-discovery for the J. Frankly Bourne Bar Association, Upper Marlboro, Maryland. I have no notes, transcript, or recording. The address of the J. Frankly Bourne Bar Association is P.O. Box 1121, Upper Marlboro, Maryland 20773.

September 10 – 11, 2009: a presentation on discovery and admissibility of electronically stored information for the Federal Judicial Center, Washington, DC. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

September 4, 2009: a videoconference presentation titled "Rule 502: Are We There Yet?" for ESIBytes. An audio recording is supplied.

August 24, 2009: a presentation on cutting-edge issues and trends in e-discovery for the Minnesota State Bar Association, Continuing Legal Education, Minneapolis, Minnesota. I have no notes, transcript, or recording. The address of the Minnesota State Bar Association is 2550 University Avenue West #160-S, Saint Paul, Minnesota 55114.

August 19, 2009: a presentation on Maryland and federal evidence for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

July 23 – 24, 2009: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Santa Fe, New Mexico. A video recording is supplied.

July 15 – 16, 2009: a presentation on admissibility of electronic evidence for the Federal Judicial Center, Milwaukee, Wisconsin. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

June 18, 2009: a presentation on e-discovery for trial lawyers for the American Board of Trial Advocates, Maryland Chapter, Rockville, Maryland. I have no notes, transcript, or recording. The address of the American Board of Trial Advocates, Maryland Chapter is 2011 Bryan Street, Suite 3000, Dallas, Texas 75201.

June 9, 2009: I was a panelist in a webinar on electronically stored information for Wave Software's Wave University. I have no notes, transcript, or recording. The address of Wave University is 300 South Orange Avenue, Suite 900, Orlando, Florida 32801.

June 6, 2009: a webinar titled "Search and Retrieval Tips from the Bench" for ESIBytes. An audio recording is supplied.

June 5, 2009: a presentation on expert witnesses in federal and state courts for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

May 21, 2009: panel discussion on approach under U.S. law to discovery of electronically stored information for IQPC Ltd., London, England. I have no notes, transcript, or recording, but press coverage is supplied. The address of IQPC Ltd. is 15 – 19 Britten Street, London SW3 3QL England.

May 1, 2009: a presentation on getting electronically stored information admitted into evidence for the Section of Litigation of the American Bar Association, Atlanta, Georgia. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

April 24, 2009: a presentation on discovery motions for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

April 21 – 22, 2009: a presentation on admissibility of electronic evidence for the Federal Judicial Center, Redondo Beach, California. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

April 15, 2009: a presentation on discovery and admissibility of electronically stored information for the Baltimore Chapter of Women in eDiscovery, Baltimore, Maryland. I have no notes, transcript, or recording. The Baltimore Chapter does not have a physical address.

April 2, 2009: a presentation on recent case law relating to discovery (cooperation, transparency, and sanctions), Rule 502, waivers, privilege, work product protection, Rule 26(f) conferences, and discovery costs for Huron Consulting Group, Washington, DC. I have no notes, transcript, or recording. The address of Huron Consulting Group is 550 West Van Buren Street, Chicago, Illinois 60607.

March 13, 2009: a presentation about U.S. Magistrate Judges, for a Special Admissions Ceremony at the United States District Court for the District of Maryland, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the United States District Court for the District of Maryland is Garmatz Federal Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201.

March 11, 2009: a presentation on e-discovery for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

March 9, 2009: a presentation on discovery and admissibility of electronically stored information for the Federal Judicial Center, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

February 27, 2009: a videoconference presentation on admissibility of electronically stored information and Rule 502 for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 25, 2009: a presentation on admissibility of electronic evidence for foreign judges through the International Judicial Academy, Greenbelt, Maryland. I have no notes, transcript, or recording. The address of the International Judicial Academy is Suite 715, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

February 11, 2009: a presentation on discovery and admissibility of electronically stored information for Georgetown Law Continuing Legal Education, Washington, DC. I have no notes, transcript, or recording. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

January 16, 2009: a presentation on e-discovery, experts, and technology issues for the Federal Bar Association, San Juan, Puerto Rico. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201.

December 12, 2008: a webinar on effective document review for Encore Discovery Solutions. I have no notes, transcript or recording. The address of Encore Discovery Solutions is 3255 East Elwood Street, Suite 110, Phoenix, Arizona 85034.

December 10, 2008: a webinar titled "Finding a Better Way to Search: Benchmarking E-Discovery Methods" for H5. An audio recording is supplied.

December 9, 2008: a presentation on e-discovery for the International Quality & Productivity Center, New York, New York. I have no notes, transcript, or recording, but press coverage is supplied. The address of the International Quality & Productivity Center is 535 Fifth Avenue, Eighth Floor, New York, New York 10017.

December 5, 2008: a presentation on e-discovery for the Department of Justice – National Advocacy Center, Columbia, South Carolina. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 25, 2008: a webinar titled "Limitations on Privilege Waiver under New Federal Rule of Evidence 502" for the Sedona Conference. An audio recording is supplied.

November 20 – 21, 2008: presentations on discovery and admissibility of electronically stored information for Georgetown Law Continuing Legal Education, Arlington, Virginia. I have no notes, transcript, or recording. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

November 19, 2008: a keynote address on new e-discovery rules for Law Firm General Counsel's Forum, The Hildebrandt Institute, New York, New York. I have no notes, transcript, or recording. The address of Law Firm General Counsel's Forum, The Hildebrandt Institute is 1100 13th Street, NW, Suite 200, Washington, DC 20005.

November 13 – 14, 2008: I was a participant at the Sedona Conference, but I did not give a formal presentation, Palm Springs, California. I likely asked questions or made comments in response to other questions. I do not recall participating in any panels, but I likely participated in the judicial roundtable at the conclusion of the conference. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

November 6, 2008: I participated in a panel on electronically stored information for the Maryland State Bar Association Litigation Section Program, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland

State Bar Association is 520 West Fayette Street, Suite 300, Baltimore, Maryland 21201.

October 30, 2008: a presentation on forfeiture by wrongdoing and the Confrontation Clause at the University of Baltimore School of Law, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Baltimore School of Law is 1420 North Charles Street, Baltimore, Maryland 21201.

October 24, 2008: a presentation on e-discovery for the Defense Research Institute, New Orleans, Louisiana. I have no notes, transcript, or recording. The address of the Defense Research Institute is 150 North Michigan Avenue, Chicago, Illinois 60601.

October 22, 2008: a videoconference presentation on electronically stored information for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 14, 2008: a presentation on electronically stored information for Judge Lynne Battaglia's class at the University of Baltimore, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Baltimore School of Law is 1420 North Charles Street, Baltimore, Maryland 21201.

October 6, 2008: a presentation on electronically stored information for the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Suite 300, Baltimore, Maryland 21201.

October 3 – 4, 2008: a presentation on discovery problems and solutions, discovery of electronically stored information for the New Mexico State Bar Foundation, Albuquerque, New Mexico. I have no notes, transcript, or recording. The address of the New Mexico State Bar Foundation is 5121 Masthead Northeast, Albuquerque, New Mexico 87109.

September 30, 2008: a webinar on ethics and e-discovery for the Section of Litigation of the American Bar Association. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

September 25, 2008: a videoconference presentation on e-discovery for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 24, 2008: a presentation for IEEE Society, 25th IEEE Symposium on Massive Storage Systems and Technologies on the preservation, search and retrieval of electronic records for discovery purposes, Baltimore, Maryland. I have no notes, transcript, or recording. The address of IEEE Society is 2001 L Street, NW, Suite 700, Washington, DC 20036.

August 21, 2008: a presentation on cutting-edge issues and trends in e-discovery for the Minnesota State Bar Association, Continuing Legal Education, Minneapolis, Minnesota. I have no notes, transcript, or recording. The address of the Minnesota State Bar Association is 2550 University Avenue West #160-S, Saint Paul, Minnesota 55114.

August 13, 2008: a presentation on admissibility of electronic evidence for foreign judges through the International Judicial Academy, Greenbelt, Maryland. I have no notes, transcript, or recording. The address of the International Judicial Academy is Suite 715, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

July 24, 2008: a webinar titled "The Sedona Conference® E-Discovery Summer School: Case Law Update" for the Sedona Conference. An audio recording is supplied.

July 22 – 24, 2008: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Santa Fe, New Mexico. Handout supplied.

July 21, 2008: a podcast for Kroll Ontrack on legal issues associated with electronically stored information. I have no notes, transcript, or recording. The address of Kroll Ontrack, Inc. is 9023 Columbine Road, Eden Prairie, Minnesota 55347.

July 16, 2008: a presentation on e-discovery for MICPEL, now subsumed by the Maryland State Bar Association, Annapolis, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

July 11, 2008: an orientation to the U.S. Courts for summer associates and law clerks at the United States District Court for the District of Maryland, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the United States District Court for the District of Maryland is Garmatz Federal Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201.

June 27, 2008: a presentation on legal proof versus scientific proof and the admissibility of expert testimony in the federal courts for the American Association for the Advancement of Science. I have no notes, transcript, or recording. The address of the American Association for the Advancement of Science is 1200 New York Avenue, NW, Washington, DC 20005.

June 23 – 24, 2008: a presentation on discovery and admissibility of electronically stored information for Georgetown Law Continuing Legal Education, Washington, DC. I have no notes, transcript, or recording, but press coverage is supplied. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

June 17, 2008: a presentation on Maryland discovery problems and solutions for MICPEL, now subsumed by the Maryland State Bar Association, Rockville, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

June 12, 2008: a presentation on Maryland discovery problems and solutions for MICPEL, now subsumed by the Maryland State Bar Association, Ocean City, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

June 6, 2008: a presentation on e-discovery and pretrial litigation for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

May 30, 2008: a presentation on electronically stored information for paralegals for MICPEL, now subsumed by the Maryland State Bar Association, Annapolis, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

May 1, 2008: keynote speech for Law Day at the Circuit Court for Baltimore County on the origin and importance of the jury trial in the United States, Baltimore, Maryland. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Circuit Court for Baltimore County is Baltimore County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204.

April 25, 2008: a videoconference presentation on evidence for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 16, 2008: presentations on hearsay, character evidence, spoliation, admissibility of electronically stored information, employee use of company computer and attorney-client privilege waiver for the American Law Institute of

the American Bar Association (ALI-ABA), Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

April 2, 2008: a videoconference presentation on electronically stored information for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 2, 2008: a presentation on information law, information security, and e-discovery for the Department of Veteran Affairs, Crystal City, Virginia. I have no notes, transcript, or recording. The address of the Department of Veteran Affairs is 810 Vermont Avenue, NW, Washington, DC 20420.

March 31, 2008: a presentation on admissibility of electronically stored information for Hunton & Williams, Washington, DC. I have no notes, transcript, or recording. The address of Hunton & Williams is 2200 Pennsylvania Avenue, NW, Washington, DC 20037.

March 26 – 29, 2008: a presentation on electronic evidence and advanced e-discovery and ethics for the employment lawyer for the American Bar Association, Tucson, Arizona. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

March 19, 2008: an introduction to the federal courthouse for the Federal Bar Association Young Lawyers Program, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201.

March 13, 2008: moderator of federal panel on electronically stored information at the University of Baltimore School of Law, Baltimore, Maryland. I have no notes, transcript, or recording, but press coverage is supplied. The address of the University of Baltimore School of Law is 1420 North Charles Street, Baltimore, Maryland 21201.

March 12, 2008: a presentation on basic evidence for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

February 29, 2008: a presentation on the pitfalls of e-discovery for the State of New York, Office of the Attorney General, New York, New York. I have no notes, transcript, or recording. The address of the State of New York, Office of the Attorney General is The Capitol, Albany, New York 12224.

February 7 – 8, 2008: presentations on compensatory damages, Rule 35 mental exams and psychological testing, and ethics for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

February 5, 2008: a presentation on authenticating digital evidence for Merrill Legal Solutions, New York, New York. I have no notes, transcript, or recording. The address of Merrill Legal Solutions is One Merrill Circle, Saint Paul, Minnesota 55108.

February 1, 2008: Margaret Garner Project for the Maryland Chapter of the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland Chapter of the Federal Bar Association is c/o Sharon A. Snyder (President), Ober, Kaler, Grimes & Shriver, 100 Light Street, Baltimore, Maryland 21202.

January 21 – 25, 2008: a presentation on electronic evidence in criminal cases and privacy protection at Sung Kyun Kwan University, Seoul, South Korea. I have no notes, transcript, or recording. The address of Sung Kyun Kwan University is 53 Myungryun-dong, Jongno-gu, Seoul, South Korea 110 – 745.

January 17 – 18, 2008: presentations on discovery and preservation of electronically stored information for the American Law Institute of the American Bar Association (ALI-ABA), New York, New York. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

December 7, 2007: a presentation on discovery for the Young Lawyers' Division of the Bar Association of Baltimore City, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Bar Association of Baltimore City is 111 North Calvert Street, Suite 627, Baltimore, Maryland 21202.

November 30 – December 1, 2007: a presentation on e-discovery for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

November 27, 2007: a presentation on e-discovery and evidence for the Montgomery County Bar Association, Rockville, Maryland. I have no notes, transcript, or recording. The address of the Montgomery County Bar Association is 27 West Jefferson Street, Rockville, Maryland 20850.

November 15 – 16, 2007: panel presentation on "Federal Rules Amendments a Year Later – The Judicial Perspective," and I moderated a panel on admissibility

of electronically stored information, Georgetown Law Continuing Legal Education, Washington, DC. I have no notes, transcript or recording. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue NW, Washington, DC 20001.

November 14, 2007: a presentation on admissibility of electronically stored information for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

November 13, 2007: a presentation on evidence for the Baltimore County Bar Association, Towson, Maryland. I have no notes, transcript, or recording. The address of the Baltimore County Bar Association is 100 County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204.

November 7 – 9, 2007: I was a participant at the Sedona Conference, but I did not give a formal presentation, Hilton Head, South Carolina. I likely asked questions or made comments in response to other questions. To the best of my recollection, I may have been on a panel addressing electronically stored information, and I likely also participated in the judicial roundtable at the conclusion of the conference. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

October 25, 2007: a presentation on basic evidence for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

October 24, 2007: a presentation on document production for the Bureau of National Affairs, Washington, DC. I have no notes, transcript, or recording. The address of the Bureau of National Affairs is 1801 South Bell Street, Arlington, Virginia 22202.

October 18, 2007: a presentation on expert witnesses for the J. Dudley Digges American Inn of Court, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the American Inns of Court is 1229 King Street, Second Floor, Alexandria, Virginia 22314.

October 17, 2007: a presentation on evidence and credibility in fact finding for the National Association of Administrative Law Judiciary, Washington, DC. An audio recording is supplied. My panel's presentation begins at 33:30.

October 9, 2007: a presentation for the Rule Day Club on the use of song lyrics in judicial opinions, Baltimore, Maryland. I have no notes, transcript, or recording. I am unable to locate a physical address for the Rule Day Club.

October 3, 2007: a presentation on discovery in the federal courts for Baltimore Office of the United States Department of Veterans Affairs, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the United States Department of Veterans Affairs is 801 Vermont Avenue, NW, Washington, DC 20420.

September 28, 2007: a presentation on character and impeachment evidence for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

September 27, 2007: a presentation on e-discovery litigation readiness for Kroll Ontrack, Inc., Washington, DC. I have no notes, transcript, or recording. The address of Kroll Ontrack, Inc. is 9023 Columbine Road, Eden Prairie, Minnesota 55347.

September 19, 2007: a presentation on admissibility of electronic evidence for foreign judges through the International Judicial Academy, Greenbelt, Maryland. I have no notes, transcript, or recording. The address of the International Judicial Academy is Suite 715, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

September 11, 2007: a videoconference presentation on electronically stored information and examination of witnesses for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

August 17, 2007: a presentation on expert witnesses for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

July 26 – 28, 2007: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Santa Fe, New Mexico. Handout supplied.

July 10, 2007: a webinar on *Lorraine v. Markel American Ins. Co.*, 241 F.R.D. 534 (D. Md. 2007) for the Sedona Conference. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

June 15, 2007: a presentation on e-discovery for the Maryland State Bar Association, Ocean City, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

June 6, 2007: a presentation on Rule 26(b)(2)(B) for the Compliance, Governance and Oversight Council, New York, New York. I have no notes, transcript, or recording. The address of the Compliance, Governance and Oversight Council is 2525 East Charleston Road, Suite 201, Mountain View, California 94043.

June 1, 2007: a presentation on hearsay and expert witnesses for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

May 7 – 8, 2007: a presentation on e-discovery, privilege and production for the Bureau of National Affairs, Chicago, Illinois. I have no notes, transcript, or recording. The address of the Bureau of National Affairs is 1801 South Bell Street, Arlington, Virginia 22202.

May 4, 2007: a presentation on electronically stored information for the Bankruptcy Bar Association for the District of Maryland, Annapolis, Maryland. I have no notes, transcript, or recording. The address of the Bankruptcy Bar Association for the District of Maryland is c/o Alan Eisler, President, 6600 Rockledge Drive, Suite 410, Bethesda, Maryland 20817.

May 3, 2007: a presentation on new e-discovery rules for MICPEL, now subsumed by the Maryland State Bar Association, Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

April 26 – 27, 2007: I was a participant at the Sedona Conference on attorney-client privilege, but I did not give a formal presentation, Sedona, Arizona. I likely asked questions or made comments in response to other questions. I participated in the judicial roundtable, and I may have been on a panel discussion related to discovery of electronically stored information. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

April 20, 2007: mock discovery hearing for the Defense Research Institute, Washington, DC. I have no notes, transcript, or recording. The address of the Defense Research Institute is 150 North Michigan Avenue, Chicago, Illinois 60601.

April 18, 2007: a presentation on electronic discovery at Fordham University School of Law, New York, New York. I have no notes, transcript, or recording.

The address of Fordham University School of Law is 140 West 62nd Street, New York, New York 10023.

April 16, 2007: a webinar titled "All Discovery is Now E-Discovery: Policies, Procedures & Tools to Preserve the Integrity of Your Electronic Documents" for Surety, LLC. I have no notes, transcript, or recording. The address of Surety, LLC is 12020 Sunrise Valley Drive #250, Reston, Virginia 20191.

April 6, 2007: a presentation on preservation and spoliation for Anne Arundel Community College, Arnold, Maryland. I have no notes, transcript, or recording. The address of Anne Arundel Community College is 101 College Parkway, Arnold, Maryland 21012.

March 30, 2007: an introduction to the federal courthouse for the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201.

March 29, 2007: a presentation on legal issues involving electronically stored information for the Department of Justice – National Advocacy Center. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 20 – 21, 2007: a presentation on e-discovery for the Department of Justice – National Advocacy Center, Charleston, South Carolina. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 9, 2007: a presentation on practical considerations and ethical issues in electronic discovery for the American Bar Association, Chicago, Illinois. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

February 8 – 9, 2007: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. An audio recording is supplied.

January 30, 2007: a presentation on Rule 34(b) and privilege for Kroll Ontrack, Inc., New York, New York. I have no notes, transcript, or recording. The address of Kroll Ontrack, Inc. is 9023 Columbine Road, Eden Prairie, Minnesota 55347.

January 25, 2007: a presentation on electronically stored information for the Federal American Inn of Court, Washington, DC. I have no notes, transcript, or

recording. The address of the American Inns of Court is 1229 King Street, Second Floor, Alexandria, Virginia 22314.

December 14, 2006: a presentation on ethics in metadata for MICPEL, now subsumed by the Maryland State Bar Association, Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

December 7 – 8, 2006: a presentation on e-discovery for the Department of Justice – National Advocacy Center, Columbia, South Carolina. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

December 1, 2006: a presentation on e-discovery for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. I have no notes, transcript, or recording, but press coverage is supplied. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

November 22, 2006: a presentation on electronic discovery for the United States Attorney's Office for the District of Maryland, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the District of Maryland is 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201.

November 17, 2006: panel presentations on electronically stored information production for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

November 15, 2006: a presentation on preparing to litigate under the new amendments to the Federal Rules of Civil Procedure for MICPEL, now subsumed by the Maryland State Bar Association, Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

November 3, 2006: a presentation on employment litigation for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

November 2 – 3, 2006: I was a participant at the Sedona Conference, but I did not give a formal presentation, La Jolla, California. I likely asked questions or made comments in response to other questions. I likely participated in the judicial roundtable at the conclusion of the conference. I have no notes, transcript, or

recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

October 31, 2006: a presentation on e-discovery and employment law for the Department of Justice – National Advocacy Center, Washington, DC. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 30, 2006: a webinar on electronic discovery for Pike & Fischer, a division of the Bureau of National Affairs. I have no notes, transcript, or recording. The address of the Bureau of National Affairs is 1801 South Bell Street, Arlington, Virginia 22202.

October 20, 2006: a presentation titled, "A Primer on Privilege" for the Maryland Chapter of the Federal Bar Association. I have no notes, transcript or recording. The address of the Maryland Chapter of the Federal Bar Association is c/o Sharon A. Snyder (President), Ober, Kaler, Grimes & Shriver, 100 Light Street, Baltimore, Maryland 21202.

October 16, 2006: a presentation on, to the best of my recollection, criminal law for Maryland Defense Force, Pikesville Military Reservation, Pikesville, Maryland. I have no notes, transcript, or recording. The address of Maryland Defense Force, Pikesville Military Reservation is 610 Reisterstown Road, Pikesville, Maryland 21208.

October 12, 2006: a presentation on discovery, motions, and sanctions for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

October 6, 2006: panel on the annotated commercial crime policy for the Tort Trial & Insurance Practice Section of the American Bar Association, Washington, DC. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

October 5, 2006: a presentation on preservation and collection of electronic documents and data for the Bureau of National Affairs, Washington, DC. I have no notes, transcript, or recording. The address of the Bureau of National Affairs is 1801 South Bell Street, Arlington, Virginia 22202.

September 29, 2006: a presentation on mediation in employment disputes for State Capital Global Law Firm Group, Washington, DC. I have no notes, transcript, or recording. The address of State Capital Global Law Firm Group is 1717 Pennsylvania Avenue, NW, Washington, DC 20006.

September 14, 2006: participated in a panel discussion about relying on forensic evidence in court during the CSI Effect on Criminal Prosecution program, University of Maryland School of Law, Baltimore, Maryland. I have no notes, transcript or recording. The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

July 27 – 29, 2006: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Santa Fe, New Mexico. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

July 20, 2006: overview of the federal court system for the Maryland Chapter of the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland Chapter of the Federal Bar Association is c/o Sharon A. Snyder (President), Ober, Kaler, Grimes & Shriver, 100 Light Street, Baltimore, Maryland 21202.

July 12, 2006: a webinar on e-discovery for Applied Discovery, Inc. I have no notes, transcript, or recording. The address of Applied Discovery, Inc. is 13427 Northeast 16th Street, Suite 200, Bellevue, Washington 98005.

June 15, 2006: a panel on e-discovery during the Maryland State Bar Association annual meeting, Ocean City, Maryland. I have no notes, transcript or recording, but press coverage is supplied. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

May 30, 2006: comments on the preliminary hearing in defense of Schmarty Pants for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

May 17, 2006: a presentation on e-discovery for the Maryland Circuit Court and District Court Statewide Conference; to the best of my recollection, the conference was put on by the Administrative Office of the Maryland State Courts, Cambridge, Maryland. I have no notes, transcript, or recording. The address of the Administrative Office of the Maryland State Courts is 580 Taylor Avenue, Annapolis, Maryland 21401.

April 5, 2006: honored by the University of Maryland School of Law during its Third Annual Judges' Night, Baltimore, Maryland. I spoke briefly on the importance of the rule of law and the vital role that lawyers play in society. I have no notes, transcript or recording. The address of the University of Maryland

Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

March 31, 2006: introduction to United States Magistrate Judges for the Maryland Chapter of the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland Chapter of the Federal Bar Association is c/o Sharon A. Snyder (President), Ober, Kaler, Grimes & Shriver, 100 Light Street, Baltimore, Maryland 21202.

March 29, 2006: a presentation on leadership development and ethics at the University of Maryland, Robert H. Smith School of Business, College Park, Maryland. I have no notes, transcript, or recording. The address of the University of Maryland, Robert H. Smith School of Business is 4518 Van Munching Hall, College Park, Maryland 20742.

March 23 – 25, 2006: a presentation on legal ethics in discovery for the American Law Institute of the American Bar Association (ALI-ABA), Phoenix, Arizona. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

March 17, 2006: a presentation on hearsay and the Confrontation Clause for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

March 16, 2006: a presentation on e-discovery for Applied Discovery, Inc., Washington, DC. I have no notes, transcript, or recording. The address of Applied Discovery, Inc. is 13427 Northeast 16th Street, Suite 200, Bellevue, Washington 98005.

March 15, 2006: a presentation on discovery and admissibility of electronic evidence for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

March 13 – 14, 2006: presentations on electronic evidence, hearsay and the Confrontation Clause for the Department of Justice – National Advocacy Center, Columbia, South Carolina. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 23, 2006: a presentation on e-discovery and attorney client privilege for Kroll Ontrack, Inc. I have no notes, transcript, or recording. The address of Kroll Ontrack, Inc. is 9023 Columbine Road, Eden Prairie, Minnesota 55347.

February 9 – 10, 2006: co-chair of a program on evidence and jury instructions for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. Handout supplied.

January 17 – 18, 2006: presentations on hearsay and exceptions, authenticity and the original document rule, character evidence and impeachment, opinion and expert testimony including *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), for the Department of Justice – National Advocacy Center, Columbia, South Carolina. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

January 11, 2006: panel presentation on the *Hopson v. Mayor & City Council of Baltimore* case, Georgetown Law School, Washington, DC. I have no notes, transcript or recording. The address of Georgetown Law is 600 New Jersey Avenue, NW, Washington, DC 20001.

December 13, 2005: a presentation on Federal Rules of Evidence and proposed new rules for the Montgomery County Bar Association, Rockville, Maryland. I have no notes, transcript, or recording. The address of the Montgomery County Bar Association is 27 West Jefferson Street, Rockville, Maryland 20850.

November 22, 2005: a presentation on expert testimony for the United States Attorney's Office for the District of Maryland, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the District of Maryland is 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201.

November 18, 2005: a presentation on legal ethics in discovery for Georgetown Law Continuing Legal Education, Washington, DC. I have no notes, transcript, or recording. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

November 8, 2005: a presentation on e-discovery for MICPEL, now subsumed by the Maryland State Bar Association, Annapolis, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

November 3 – 4, 2005: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

October 26, 2005: I participated in a panel on the new witness intimidation law at the University of Baltimore School of Law, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Baltimore School of Law is 1420 North Charles Street, Baltimore, Maryland 21201.

October 3 – 4, 2005: a presentation on e-discovery for the Department of Justice – National Advocacy Center, Columbia, South Carolina. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 30, 2005: a presentation on damages in Maryland courts for the Maryland Employment Lawyers Association, Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland Employment Lawyers Association is 7836 Rydal Terrace, Rockville, Maryland 20855.

September 27, 2005: a presentation on electronically stored information for the Maryland Defense Counsel, Inc., Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland Defense Counsel, Inc. is 1218 Broadway Road, Lutherville, Maryland 21093.

September 16, 2005: a presentation on character and impeachment evidence for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

July 27 – 29, 2005: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Santa Fe, New Mexico. I used the same handout as that supplied for the February 9 – 10, 2006 event.

July 14, 2005: an introduction to the federal courthouse for the Federal Bar Association Young Lawyers Program, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201.

June 16 – 17, 2005: I participated in panels on professionalism and e-discovery for the Maryland State Bar Association, Ocean City, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

June 10, 2005: a presentation on experts for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

May 20, 2005: a presentation on limits on hearsay exceptions after *Crawford v. Washington* for the Federal Public Defender, Northern Division, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Federal Public Defender, Northern Division, is Tower II, Suite 1100, 100 South Charles Street, Baltimore, Maryland 21201.

May 19, 2005: panel presentation on electronic discovery for the Maryland Chapter of the Federal Bar Association, Baltimore or Greenbelt, Maryland. I have no notes, transcript or recording. The address of the Maryland Chapter of the Federal Bar Association is c/o Sharon A. Snyder (President), Ober, Kaler, Grimes & Shriver, 100 Light Street, Baltimore, Maryland 21202.

April 15 – 16, 2005: a presentation on expert testimony for the Society for Industrial and Organizational Psychology, Los Angeles, California. I have no notes, transcript, or recording. The address of the Society for Industrial and Organizational Psychology is P.O. Box 87, Bowling Green, Ohio 43402.

March 18, 2005: introduction to United States Magistrate Judges for the Maryland Chapter of the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland Chapter of the Federal Bar Association is c/o Sharon A. Snyder (President), Ober, Kaler, Grimes & Shriver, 100 Light Street, Baltimore, Maryland 21202.

March 2, 2005: a presentation on e-discovery for the Department of Justice – National Advocacy Center, Columbia, South Carolina. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 10 – 12, 2005: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Washington, DC. Handout on discovery issues supplied. I have no notes, transcript or recording for the other presentations. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

January 10, 2005: a presentation on legal issues associated with electronically stored information. It may have been for the Transportation Research Board 84th Annual Meeting, Washington, DC. I have no notes, transcript, or recording. The address of the Transportation Research Board is 500 Fifth Street, NW, Washington, DC 20001.

December 1 – 3, 2004: presentations on hearsay and exceptions, authenticity and the original document rule, character evidence and impeachment, opinion and expert testimony including *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), for the Department of Justice – National Advocacy Center, Columbia,

South Carolina. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 9, 2004: a presentation on evidence for the Harford County Bar Association, Bel Air, Maryland. I have no notes, transcript, or recording. The address of the Harford County Bar Association is 20 West Courtland Street, Bel Air, Maryland 21014.

October 18, 2004: a presentation on alternative career paths in the law, experiences as both a magistrate judge and adjunct professor for the Young Lawyers Section of the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Suite 300, Baltimore, Maryland 21201.

October 15 – 16, 2004: I was a participant at the Sedona Conference, Phoenix, Arizona, but I did not give a formal presentation. I likely asked questions or made comments in response to other questions. I likely participated in the judicial roundtable at the conclusion of the conference. I have no notes, transcript, or recording. The address of the Sedona Conference is 180 Broken Arrow Way South, Sedona, Arizona 86351.

October 5, 2004: a presentation on admissibility of evidence for the Judicial Institute of Maryland, Crownsville, Maryland, to the best of my recollection. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

September 13, 2004: a presentation on the practice of law in federal court to the ASPER Internship class at the University of Maryland School of Law, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

August 10 – 13, 2004: a presentation on *Daubert/Frye* hearings for the Foundation for Law and Science Centers, Halifax, Nova Scotia, Canada. I have no notes, transcript, or recording. The address of the Foundation for Law and Science Centers is 2867 Tilden Street, NW, Washington, DC 20008.

July 27 – 31, 2004: presentations on issues including the U.S. Supreme Court term, e-discovery, evidence and jury instructions in employment cases, ADA developments, and ethics and professional responsibility for the American Law Institute of the American Bar Association (ALI-ABA), Santa Fe, New Mexico. I used the same handout as that supplied for the February 9 – 10, 2006 event.

June 30, 2004: a presentation on legal issues associated with criminal and civil practice in Maryland at the United States Attorney's Office for the District of

Maryland, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the District of Maryland is 36 South Charles Street, Fourth Floor, Baltimore, Maryland 21201.

May 25, 2004: a presentation on discovery of electronic records for the Association of Corporate Counsel, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Association of Corporate Counsel is 1025 Connecticut Avenue, NW, Suite 200, Washington, DC 20036.

April 30, 2004: a presentation on evidence for the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201.

April 20, 2004: a presentation on e-discovery for the Metropolitan Washington Employment Lawyers Association, Washington, DC. I have no notes, transcript, or recording. The address of the Metropolitan Washington Employment Lawyers Association is 400 North Washington Street, Suite 300, Alexandria, Virginia 22314.

April 2, 2004: a presentation on basic evidence for the Judicial Institute of Maryland, Crownsville, Maryland. I have no notes, transcript, or recording. The address of the Judicial Institute of Maryland is 2009D Commerce Park Drive, Annapolis, Maryland 21401.

March 26, 2004: a presentation on discovery, depositions, and evidence for MICPEL, now subsumed by the Maryland State Bar Association; the Maryland Chapter of the Federal Bar Association; the Maryland State Bar Association Litigation and Business Law Sections; the University of Baltimore School of Law; and the University of Maryland School of Law, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201. The address of the University of Baltimore School of Law is 1415 Maryland Avenue, Baltimore, Maryland 21201. The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

March 12 or 26, 2004: a presentation titled "Forensics Matters: An Innovative Computer Forensics and Electronic Document Discovery Seminar," sponsored by the Federal Career Service Division of the Federal Bar Association and Cricket Technologies, Washington, DC. I have no notes, transcript or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201.

March 4, 2004: a presentation on Fourth Amendment search and seizure law and recent proposed amendments to the Maryland circuit court rules of civil procedure for the Cecil County Bar Association, North East, Maryland. I have no notes, transcript, or recording. The address of the Cecil County Bar Association is 109 East Main Street, Elkton, Maryland 21921.

February 27, 2004: a presentation on *United States v. Horn* – Two Years Later for the Maryland Criminal Defense Attorneys' Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland Criminal Defense Attorneys' Association is 720 Light Street, Baltimore, Maryland 21230.

February 4, 2004: a presentation on discovery problems and solutions for the Department of Justice – National Advocacy Center, Washington, DC. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

January 4, 2004: a presentation on Maryland trial advocacy for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

January 2004: presentations on evidence related to employment litigation for Pike & Fischer, a division of the Bureau of National Affairs. I have no notes, transcript, or recording. The address of the Bureau of National Affairs is 1801 South Bell Street, Arlington, Virginia 22202.

October 20 – 21, 2003: I presented to the Department of Justice – National Advocacy Center, Columbia, South Carolina, but I do not remember the topic. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 2, 2003: I presented for Georgetown Law Continuing Legal Education, Washington, DC, but I do not remember the topic. I have no notes, transcript, or recording. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

September 2003: presentations on evidentiary issues in employment litigation for Pike & Fischer, a division of the Bureau of National Affairs. I have no notes, transcript, or recording. The address of the Bureau of National Affairs is 1801 South Bell Street, Arlington, Virginia 22202.

May 19 – 22, 2003: I presented to the Department of Justice – National Advocacy Center, Columbia, South Carolina, but I do not remember the topic. I have no notes, transcript, or recording. The address of the Department of Justice –

National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 1 – 2, 2003: I presented to the Department of Justice – National Advocacy Center, Columbia, South Carolina, but I do not remember the topic. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 26 – 28, 2003: a presentation on employment law for Pike & Fischer, a division of the Bureau of National Affairs. I have no notes, transcript, or recording. The address of the Bureau of National Affairs is 1801 South Bell Street, Arlington, Virginia 22202.

March 18, 2003: I presented to the United States Attorney's Office in Buffalo, New York, but I do not remember the topic. I have no notes, transcript, or recording. The address for the United States Attorney's Office is 138 Delaware Avenue, Buffalo, New York 14202.

January 15, 2003: a presentation on search and seizure to the Baltimore County Bar Association, Towson, Maryland. I have no notes, transcript, or recording. The address of the Baltimore County Bar Association is 100 County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204.

January 6, 2003: tips from the bench for the Maryland Defense Counsel, Inc., Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland Defense Counsel, Inc. is 1218 Broadway Road, Lutherville, Maryland 21093.

November 1, 2002: a presentation on scientific evidence for the Maryland Trial Lawyers Association. I have no notes, transcript, or recording. The Maryland Trial Lawyers Association is now known as the Maryland Association for Justice, and its address is 6240 Old Dobbin Lane, Suite 100, Columbia, Maryland 21045.

October 25, 2002: I presented for Georgetown Law Continuing Legal Education, Washington, DC, but I do not remember the topic. I have no notes, transcript, or recording. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

October 18, 2002: a presentation on *Daubert* for the Third Biennial Bench-Bar Conference, Maryland State Bar Association and Maryland Chapter of the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201. The address of the Maryland Chapter of the Federal Bar Association is c/o Sharon A. Snyder (President), Ober, Kaler, Grimes & Shriver, 100 Light Street, Baltimore, Maryland 21202.

September 12, 2002: a presentation on discovery in employment discrimination cases for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

August 28, 2002: a presentation on "Maryland and Federal Evidence" with Judge Joseph Murphy, University of Baltimore, Baltimore, Maryland, sponsored by MICPEL, now subsumed by the Maryland State Bar Association. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

July 25 – 27, 2002: presentations on employment law for the American Law Institute of the American Bar Association (ALI-ABA), Santa Fe, New Mexico. I have no notes, transcript, or recording. I used the same "Analysis of Discovery and Evidence Issues" handout as supplied for the February 10 – 12, 2005 event.

May 21, 2002: a presentation on legal issues associated with tort practice in federal court as they pertain to medical doctors for Johns Hopkins University School of Medicine (grand rounds), Baltimore, Maryland. I have no notes, transcript, or recording. The address of Johns Hopkins University School of Medicine, Office of Graduate Medical Education, is 733 North Broadway, Suite 147, Baltimore, Maryland 21205.

May 15 – 17, 2002: I presented to the Department of Justice – National Advocacy Center, Columbia, South Carolina, but I do not remember the topic. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 8 – 10, 2002: a presentation for United States Magistrate Judges for the Federal Judicial Center, Washington, DC. I have no notes, transcript, or recording. The address of the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

February 5 – 6, 2002: I presented to the Department of Justice – National Advocacy Center, Columbia, South Carolina, but I do not remember the topic. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

January 6, 2002: a presentation on trial advocacy for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

October 5, 2001: I presented for Georgetown Law Continuing Legal Education, Washington, DC, but I do not remember the topic. I have no notes, transcript, or recording. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

September 24, 2001: I participated in a training session for the United States Attorney's Office in San Antonio, Texas. I have no notes, transcript, or recording. To the best of my recollection, it was the San Antonio Office of the Western Division of Texas. The address of the San Antonio United States Attorney's Office in the Western District of Texas is 601 NW Loop 410, Suite 600, San Antonio, Texas 78216.

May 11, 2001: a presentation for Criminal Justice Act (CJA) panel attorneys through the Office of the Federal Public Defender for the District of Maryland, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Office of the Federal Public Defender for the District of Maryland is 100 South Charles Street, BankAmerica Tower II, Ninth Floor, Baltimore, Maryland 21201.

May 1, 2001: a presentation on evidence for the Department of Justice – National Advocacy Center, Columbia, South Carolina. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 28, 2001: I gave a presentation on trial practice, but I do not remember the audience or the sponsor. I have no notes, transcript, or recording.

April 6, 2001: an introduction to the federal bar for the Federal Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201.

Spring 2001: I gave a presentation at a dinner event for the Maryland Defense Counsel and the Federal Bar Association, Baltimore, Maryland, but I do not recall the specific topic of my remarks, except that they dealt with litigation issues, either procedural or evidentiary. I have no notes, transcript, or recording. The address of the Maryland Defense Counsel is 1218 Broadway Road, Lutherville, Maryland 21093. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Alexandria, Virginia 22201.

February 16, 2001: a presentation on substantive legal issues in federal court for the Maryland Trial Lawyers Association. I have no notes, transcript, or recording. The Maryland Trial Lawyers Association is now known as the Maryland Association for Justice, and its address is 6240 Old Dobbin Lane, Suite 100, Columbia, Maryland 21045.

December 17 – 18, 2000: I presented to the Department of Justice – National Advocacy Center, Columbia, South Carolina, but I do not remember the topic. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

August 24, 2000: a presentation on state and federal evidence for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

July 25 – 29, 2000: I presented to the Judicial Education Committee of the Oregon Courts, but I do not remember the topic. I have no notes, transcript, or recording. The address for the Judicial Education Committee of the Oregon Courts is Office of Education, Training and Outreach, 1163 State Street, Salem, Oregon 97301.

July 9 – 10, 2000: a presentation on trial practice for the Tort Trial & Insurance Practice Section of the American Bar Association, New York, New York. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, 18th Floor, Chicago, Illinois 60610.

March 17, 2000: I participated in a legal education seminar, but I do not remember the topic, the audience, or the sponsor. I have no notes, transcript, or recording.

February 29 – March 1, 2000: I presented to the Department of Justice – National Advocacy Center, Columbia, South Carolina, but I do not remember the topic. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 7 – 10, 1999: I presented to the Federal Judicial Center, Washington, DC, but I do not remember the topic. I have no notes, transcript, or recording. The address for the Federal Judicial Center is Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC 20002.

November 5, 1999: I presented for Georgetown Law Continuing Legal Education, Washington, DC, but I do not remember the the topic. I have no notes, transcript, or recording. The address of Georgetown Law Continuing Legal Education is 600 New Jersey Avenue, NW, Washington, DC 20001.

August 23 – 26, 1999: I presented to the Department of Justice – National Advocacy Center, Columbia, South Carolina, but I do not remember the topic. I have no notes, transcript, or recording. The address of the Department of Justice

– National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 29, 1999: I presented to the United States Attorney's Office in the Southern District of Texas, Corpus Christi, Texas, but I do not remember the topic. I have no notes, transcript, or recording. The address of the United States Attorney's Office in the Southern District of Texas is One Shoreline Plaza South Tower, 800 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401.

February 9, 1999: a presentation on "Don't Confuse Disappointment with Disaster: Trying the Business Litigation Case" for a Maryland Defense Counsel dinner, Baltimore, Maryland. I have no notes, transcript or recording. The address of the Maryland Defense Counsel is 1218 Broadway Road, Lutherville, Maryland 21093.

January 25 – 27, 1999: I presented to the Department of Justice – National Advocacy Center, Columbia, South Carolina, but I do not remember the topic. I have no notes, transcript, or recording. The address of the Department of Justice – National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 9, 1997: a presentation on preliminary motions practice for the University of Maryland School of Law, Baltimore, Maryland. I have no notes, transcript, or recording. The address of the University of Maryland Francis King Carey School of Law is 500 West Baltimore Street, Baltimore, Maryland 21201.

Summer 1996: a presentation on evidence for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

May 1996: a presentation on trial practice for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

April 1996: a presentation on practicing before the United States District Court for the District of Maryland for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

March 1996: a presentation on depositions for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

April 1992: a presentation on handling fidelity and surety claims for the Harleysville Insurance Company, Harleysville, Pennsylvania. I have no notes, transcript, or recording. The address for the Harleysville Insurance Company is 355 Maple Avenue, Harleysville, Pennsylvania 19438.

1992: depositions program co-chair in a presentation for the Maryland State Bar Association, Baltimore or Ocean City, Maryland. I believe I authored a paper in connection with this program, but I no longer have a copy of it. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

October 1991: a presentation on handling fidelity and surety claims for the Harleysville Insurance Company, Harleysville, Pennsylvania. I have no notes, transcript, or recording. The address for the Harleysville Insurance Company is 355 Maple Avenue, Harleysville, Pennsylvania 19438.

August 1991: I presented for the National Association of Surety Bond Producers, but I do not remember the topic. I have no notes, transcript, or recording. The address of the National Association of Surety Bond Producers is 1140 19th Street, NW, Suite 800, Washington, DC 20036.

March 21, 1991: a presentation on fidelity and surety issues for the National Association of Independent Sureties. I have no notes, transcript, or recording. I am unable to locate the address of the National Association of Independent Sureties.

November 1989: a presentation on surety law for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

November 1989: a presentation on arbitration of construction claims and the construction surety for the Fidelity and Surety Subsection of the Maryland State Bar Association. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

October 1989: a presentation on surety law for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

May 1989: a presentation on commercial construction contracts for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia,

Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

April 1989: a presentation on commercial construction contracts for MICPEL, now subsumed by the Maryland State Bar Association, Baltimore or Columbia, Maryland. I have no notes, transcript, or recording. The address of the Maryland State Bar Association is 520 West Fayette Street, Baltimore, Maryland 21201.

August 1988: a presentation on agreements of indemnity for the New Jersey Insurance Underwriting Association. I have no notes, transcript, or recording. The address of the New Jersey Insurance Underwriting Association is 744 Broad Street, P.O. Box 32609, Newark, New Jersey 07102.

April 1988: a presentation on agreements of indemnity in surety law for the New Jersey Insurance Underwriting Association. I have no notes, transcript, or recording. The address of the New Jersey Insurance Underwriting Association is 744 Broad Street, P.O. Box 32609, Newark, New Jersey 07102.

May 1987: a presentation on general agreements of indemnity for the National Association of Independent Sureties. I have no notes, transcript, or recording. I am unable to locate the address of the National Association of Independent Sureties.

1986: a presentation on the insolvency of Eastern Indemnity Company of Maryland for the National Association of Insurance Commissioners. I have no notes, transcript, or recording. The address of the National Association of Insurance Commissioners is 2301 McGee Street, Suite 800, Kansas City, Missouri 64108.

1985: a presentation on insurance insolvencies and liquidations regarding Eastern Indemnity Company of Maryland for the National Association of Insurance Commissioners. I have no notes, transcript, or recording. The address of the National Association of Insurance Commissioners is 2301 McGee Street, Suite 800, Kansas City, Missouri 64108.

Fall, yearly: a presentation to incoming law clerks at the United States District Court for the District of Maryland. A copy of the materials on which my presentation to the new clerks is based is supplied. (The handbook is updated each year to reflect new developments in the law. The attached handbook is from 2011.) The address of the United States District Court for the District of Maryland is Garmatz Federal Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201.

I have presided over more than 50 naturalization ceremonies at the United States District Court for the District of Maryland. I do not use a written script at these

ceremonies, but my custom is to make comments congratulating the new citizens and encouraging them to become engaged members of their communities.

The above list of presentations has been assembled from those records that I have retained and from searches of public databases and the Internet. However, for more than 20 years, I have been giving talks, presentations, lectures, and participating in panel discussions on legal issues associated with procedure, evidence, trial practice, ethics, and the like. I have presented to bar associations, continuing legal education programs, and lawyer groups, such as Inns of Court, judicial education organizations, law schools, and other schools. I have listed all presentations that I can recall or identify, but, principally because I usually do not speak from pre-prepared remarks, I have not been able to identify presentations given prior to 1985.

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.

Interview by Discovery Brain Blog/News Site (Oct. 18, 2011) (discussing e-discovery law). Copy supplied.

Monica Bay, *Paul Grimm*, LAW TECHNOLOGY NEWS, Jan. 31, 2011. Copy supplied.

Annie Linskey & Julie Bykowicz, *Judge Acts to Put Jury at Ease*, BALT. SUN, Nov. 22, 2009, at 1A. Copy supplied.

Annie Linskey & Julie Bykowicz, *Dixon Jurors Feelings the Heat*, BALT. SUN, Nov. 21, 2009, at 1A (quote reprinted in multiple outlets). Copy supplied.

Dennis M. Sweeney, Commentary, *Twitter and Tweeting During Jury Service*, MD. DAILY REC., Apr. 20, 2009. Copy supplied.

Caryn Tamber, *Maryland's Two Federal Courthouses Are Running Out of Space, Users Say—But Relief Is a Long Way Off*, MD. DAILY REC., Nov. 10, 2008. Copy supplied.

Julia Reischel, *New Rule Curbs Inadvertent Waivers*, DOLAN MEDIA NEWSWIRES, Oct. 5, 2008. Copy supplied.

Billy Shields, *Damage Control*, BROWARD DAILY BUSINESS REVIEW, Oct. 1, 2008 (reprinted in multiple outlets). Copy supplied.

Jason Krause, *Rockin' Out the E-Law: A Few Federal Judges Are Becoming Stars as They Create New E-Discovery Rules*, ABA JOURNAL, July 2008. Copy supplied.

Jason Krause, *E-Discovery Tips from the Bench*, LAW TECHNOLOGY NEWS, Jun 16, 2008. Copy supplied.

Brendan Kearney, *Discovery Rules, With a Dramatic Flair at Maryland State Bar Association's Annual Meeting*, MD. DAILY REC., June 12, 2008. Copy supplied.

Brendan Kearney, *How Maryland Law Firms Are Coping In the Era of E-Discovery*, MD. DAILY REC., Jan. 28, 2008. Copy supplied.

In 2007 or 2008, I gave an interview to a television station in Seoul, Korea on how the American legal system handles security and privacy issues related to the discovery of electronically stored information. I do not have any additional information on this interview, nor have I been able to obtain a clip or transcript of the interview.

Matthew Dolan, *Bromwell Given a New Lawyer: Court Appoints Free Counsel to Former State Senator Facing Federal Racketeering Charges*, BALT. SUN, Apr. 3, 2007, at 3B (quote reprinted in multiple outlets). Copy supplied.

Paul Mark Sandler, *The World of a U.S. Magistrate Judge: An Interview with Paul W. Grimm*, MD. DAILY REC., Jan. 26, 2007. Copy supplied.

Brent Jones, *Close to Accord, City Razes 1 Unit*, BALT. SUN, Oct. 27, 2006, at 3B. Copy supplied.

Ann W. Parks, *Group Takes Global Diplomacy to the Law-Firm Level in Baltimore*, MD. DAILY REC., Sept. 27, 2006. Copy supplied.

Caryn Tamber, *Experts Say Too Many Attorneys Are Unaware of "Data Integrity" Issue in Records Management*, MD. DAILY REC., Apr. 7, 2006 (reprinted in multiple outlets). Copy supplied.

Matthew Dolan, *Quiet Farm Jarred by Meth Charges*, BALT. SUN, July 21, 2005, at 1B. Copy supplied.

Tricia Bishop, *Tracking Down Digital Smoking Guns*, BALT. SUN, Dec. 5, 2004, at 1C (reprinted in multiple outlets). Copy supplied.

Peter Geier, *Members of Legal Community Take Time Out for Military Service*, MD. DAILY REC., Feb. 4, 2003. Copy supplied.

Seana Kelly-Coffin, *The Verdict Is In: Towson Courts Win*, TOWSON TIMES, Apr. 24, 2002. Copy supplied.

Recommendation for Recovering Fees, TESTIFYING EXPERT, Apr. 1996. Copy supplied.

Maryland District Court Considering Discovery Guidelines to Protect Treating Physicians, TESTIFYING EXPERT, July 1995. Copy supplied.

Alex Friend, *State Litigators Watching as Arbitration Zooms as Fastest Growing Legal Trend*, WARFIELD'S BUS. REC., Nov. 6, 1992, at 21. Copy supplied.

Michelle Singletary, *Arbitrator to Resolve Dispute over Repairs at Condominium*, BALT. SUN, Feb. 19, 1991. Copy supplied.

Meg Fletcher, *Courts Order Broke Insurers to Pay Feds First*, BUS. INS., Oct. 3, 1988, at 1. Copy supplied.

David Conn, *US Court Ruling Narrows Scope of McCarran Act*, J. COMMERCE, May 26, 1988, at 17A. Copy supplied.

Keith F. Girard & Molly Sinclair, *Executive Enjoyed Success as He Skidded Toward Failure*, WASH. POST, Feb. 9, 1986, at A1. Copy supplied.

The above list of interviews has been assembled from those records that I have retained and from public database and Internet searches. However, it is likely that I also gave interviews that I have been unable to recall or identify.

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.

United States Magistrate Judge (1997 – 2006), Chief United States Magistrate Judge (2006 – Present), United States District Court for the District of Maryland. These positions were appointed. The jurisdiction and powers of United States Magistrate Judges are set forth principally at 28 U.S.C. § 636 and Local Rule 301 of the U.S. District Court for the District of Maryland. As a Magistrate Judge, I am responsible for handling routine criminal matters (such as issuing search warrants, conducting preliminary criminal proceedings, and presiding over misdemeanor criminal cases). I am also responsible for handling civil cases, where I preside over bench and jury trials (with the consent of the parties), conduct settlement conferences, and resolve discovery disputes and other non-dispositive matters at the referral of United States District Judges.

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

I do not have the records available to provide a precise estimate to this question. However, in the nearly 15 years that I have been a United States Magistrate Judge, I estimate that I have presided over approximately 50 civil trials, and approximately 150 criminal trials of varying lengths, all misdemeanors.

i. Of these, approximately what percent were:

jury trials	40%
bench trials	60%
civil proceedings:	35%
criminal proceedings:	65%

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).

1. *Bandurchin v. Staples*, PWG-06-0842 (2010). This was a wrongful discharge case that was tried before me and a jury. Plaintiff, an employee of Staples for several years, one day noticed two men shipping packages at Staples under circumstances that she thought were suspicious, such as the fact that one of the boxes had a Best Buy sticker on it. Suspecting that the merchandise may have been stolen, plaintiff reported her suspicions to her supervisors, a police officer, and Best Buy representatives. When Staples management learned that plaintiff had reported her suspicions to the police and Best Buy, they terminated her employment because they viewed what she had done as a violation of company policies to protect against disclosure of confidential customer information. Plaintiff claimed that Staples' termination of her employment was wrongful, implicating important public policy considerations. Following a three-day jury trial, a defense verdict was returned. No appeal was filed.

Counsel for Plaintiff Bandurchin:
Mary T. Keating
Law Office of Mary Keating
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2. *Mecco, Inc. v. Capital Hardware Supply, Inc.*, PWG-05-0540 (2007) (unpublished memorandum opinion explaining my ruling from the bench that an interpleader defendant was entitled to interpleaded funds; copy supplied). This was an interpleader case that was tried before me without a jury. A mechanical contractor interpleaded funds owed to an insolvent sheet metal subcontractor. A bank and the Internal Revenue Service filed claims to the interpleaded funds. Following a bench trial, I ruled from the bench (followed by a written memorandum and order) that the bank, a secured creditor, had priority to the funds over the IRS. The IRS filed an appeal, which was later withdrawn.

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Counsel for Defendant Colombo Bank:
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3. *Darden v. Housing Authority of Baltimore*, No. PWG-06-0216, 2006 WL 3231964 (D. Md. Nov. 7, 2006) (memorandum opinion granting plaintiff's motion for summary judgment). This was a Title VII action brought by a housing inspector against the Mayor and City Counsel of Baltimore, among others, alleging race-based discrimination in connection with a decision not to give plaintiff a promotion he had sought. In a written memorandum opinion and separate order, I granted summary judgment for the defendants. The plaintiff did not appeal.

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Counsel for Defendant Housing Authority of Baltimore City:
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4. *United States v. Horn*, 185 F. Supp. 2d 530 (D. Md. 2002) (opinion resolving evidentiary issue). The defendant, who was charged with driving while intoxicated on a federal military installation, challenged the admissibility of standard field sobriety tests, arguing that the tests violated Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). Following a multiple-day *Daubert* hearing, defendant's motion to suppress evidence was granted in part and denied in part, and I issued a published opinion that comprehensively analyzed the evidentiary issues in the case.

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Counsel for Defendant Horn:
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5. *Piselli v. 75th Street Medical*, PWG-98-2416 (2000) (unpublished memorandum, unpublished order; copies supplied). Parents of a minor child brought a medical malpractice claim against a medical clinic for failing to diagnose properly a serious leg injury, resulting in permanent injuries. The case was unusual because there was a significant statute of limitations defense under a Maryland statute that imposed a shorter limitations period for claims by minors against medical providers than applied for claims by minors against other tortfeasors. I denied defense motions for summary judgment without prejudice, and the case proceeded to a five-day jury trial, during which defendants moved for judgment as a matter of law, which I granted in part and denied in part. The trial resulted in a verdict for the minor child and his parents against 75th Street Medical, but not against the individual defendant, Dr. Yarborough. However, I then entered judgment for both defendants on the basis that Md. Code Ann., Cts. & Jud. Proc. § 5-109 barred plaintiffs' claims. I denied plaintiffs' motion to alter or amend judgment, and they appealed. Defendants cross-appealed. The Fourth Circuit certified to the Maryland Court of Appeals "the question of whether, when a claim is brought by parents on behalf of a child who was injured before reaching age eleven, the three-year statute of limitations of section 5-109(a)(2) begins to accrue upon discovery of the injury by the child or upon discovery of the injury by the parents." *Piselli v. 75th St. Medical, P.A.*, 12 Fed. App'x 138, 140 (4th Cir. 2001). The Maryland Court of Appeals held that the statute was unconstitutional as a violation of the Maryland Declaration of Rights, *Piselli v. 75th St. Medical, P.A.*, 808 A.2d 508, 524 (Md. 2002), and therefore the minor's claim was timely, *id.* at 526. On that basis, the Fourth Circuit reversed my judgment and remanded the case to me for further proceedings in light of the decision of the Court of Appeals. *Piselli v. 75th St. Medical, P.A.*, 51 Fed. App'x 115 (4th Cir. 2002). Following a hearing, I denied defense motions for judgment as a matter of law and a new trial, and I upheld the jury verdict. 75th Street Medical appealed, but the Fourth Circuit dismissed the appeal.

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Counsel for Defendant 75th Street Medical, P.A.:
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6. *Samuel v. Ford Motor Co.*, No. PWG-96-2155 (2000). Published Preliminary Rulings: *Samuel v. Ford Motor Co.*, 96 F. Supp. 2d 491 (D. Md. 2000) (memorandum & order granting defendant's motion in limine), *aff'd*, *Berger v. Ford Motor Co.*, 95 Fed. App'x 520 (4th Cir. 2004); *Samuel v. Ford Motor Co.*, 112 F. Supp. 2d 460 (D. Md. 2000) (memorandum & order denying plaintiff's motion for a new trial), *aff'd*, *Berger v. Ford Motor Co.*, 95 Fed. App'x 520 (4th Cir. 2004). This was a products liability suit against the manufacturer of the 1993 Ford Aerostar, a minivan. Plaintiffs, the driver and passengers of an Aerostar, were seriously injured when defendant Hamilton's vehicle struck the Aerostar and it rolled over; two other passengers were killed. Based on the Aerostar's alleged propensity to roll over, plaintiffs brought claims against defendant Ford Motor Co., including design defect and failure to warn, under strict liability and negligence theories, and breach of warranty. During a 23-day trial, I dismissed plaintiffs' failure to warn claims. At the close of trial, the jury returned a defense verdict on the remaining claims. The verdict was affirmed on appeal.

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7. *Torrence v. City of Annapolis*, MJG-97-497 (1999) (unpublished judgment). A city police officer brought a Title VII claim against the City alleging race-based employment discrimination, including constructive discharge. Judge Marvin J. Garbis granted defendant's motion to dismiss Counts VII - XI of the complaint and then referred the case to me for all proceedings. I granted defendant's motion for summary judgment as to Counts V and VI, but denied it as to the first four counts, which were tried before me and a jury. Following a five-day jury trial, a defense verdict was returned. No appeal was filed.

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8. *Jackson v. Morgan*, No. WMN-95-0271 (PWG) (1999), *rev'd*, 19 Fed. App'x 97 (4th Cir. 2001), *cert. denied*, 535 U.S. 970 (2002). (I wrote a

Memorandum Opinion in this case denying defendants' motion for judgment as a matter of law, but it was not retained in the case file, and I do not have a copy of it.) This was a 42 U.S.C. § 1983 civil rights suit brought by a formerly incarcerated inmate, alleging that staff at the correctional center where he was detained had used malicious excessive force against him in violation of his Eighth Amendment rights when they repeatedly sprayed him with pepper spray, struck him in the head when he was handcuffed, and placed him into an isolation cell. Following a six-day trial, the jury found for the plaintiff and awarded nominal compensatory damages, as well as punitive damages. The verdict was reversed on appeal, with the Fourth Circuit holding that the injuries sustained by the inmate from being placed into the isolation cell were *de minimus*. One judge dissented from the reversal.

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9. *Pounds v. Bd. of Trustees*, No. CCB-96-3977 (PWG) (1998), *aff'd*, 215 F.3d 1320 (Table), 2000 WL 655936 (4th Cir. 2000). This was an employment discrimination claim brought under Title VII, 42 U.S.C. § 2000(e), 42 U.S.C. § 1981, and 42 U.S.C. § 1983 by the Vice President and Dean of a community college against the President and Board of Trustees of the college, alleging that her employment was not renewed on account of her race. Following a nine-day jury trial, a defense verdict was returned, with the jury finding that the plaintiff was not performing her job at a satisfactory level when she was terminated. The verdict was affirmed on appeal.

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10. *Briggs v. Dalkon Shield Claimants Trust*, No. K-85-293 (PWG) (1997). *Briggs v. Dalkon Shield Claimants Trust*, 174 F.R.D. 369 (D. Md. 1997) (resolving preliminary non-dispositive issue regarding the defendant's "waiver of proof"). This was a case against the manufacturer of the Dalkon Shield intrauterine device filed by a woman who alleged injuries resulting from use of the product. The plaintiff asserted negligence, strict liability, and fraud and misrepresentation causes of action against the defendant, who denied the allegations and asserted a variety of affirmative defenses, including statute of limitations, assumption of the risk, proper design, and proper discharge of the duty to warn. Following a nine-day jury trial, a defense verdict was returned. No appeal was filed.

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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. *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497 (D. Md. 2010).

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2. *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354 (D. Md. 2008).

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3. *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534 (D. Md. 2007).

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4. *Hopson v. Mayor & City Council of Baltimore*, 232 F.R.D. 228 (D. Md. 2005).

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5. *Thompson v. U.S. Dep't of Hous. & Urban Dev.*, 219 F.R.D. 93 (D. Md. 2003).

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6. *United States v. Horn*, 185 F. Supp. 2d 530 (D. Md. 2002).

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7. *Behler v. Hanlon*, 199 F.R.D. 553 (D. Md. 2001).

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8. *Samuel v. Ford Motor Co.*, 96 F. Supp. 2d 491 (D. Md. 2000).

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9. *Nutramax Labs. v. Twin Labs.*, 183 F.R.D. 458 (D. Md. 1998).

Counsel for Plaintiff Nutramax Labs.:
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Counsel for Defendant Twin Labs.:
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10. *Malina v. Balt. Gas & Elec. Co.*, 18 F. Supp. 2d 596 (D. Md. 1998).

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Counsel for Defendant Balt. Gas & Elec. Co.:
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e. Provide a list of all cases in which certiorari was requested or granted.

Jackson v. Morgan, No. WMN-95-271, *rev'd*, 19 Fed. App'x 97 (4th Cir. 2001). This case involved a claim brought by a former state inmate raising § 1983 civil rights claims against prison officials for using excessive force in violation of his Eight Amendment right to be free from cruel and unusual punishment. The case was tried to a jury, and I presided. The trial lasted six days, at the end of which the jury returned a verdict in favor of plaintiff and awarded both compensatory and punitive damages against defendants. The defendants appealed, and the Fourth Circuit, concluding that the plaintiff suffered only *de minimus* injuries, reversed. The United States Supreme Court denied certiorari. *Jackson v. Morgan*, 535 U.S. 970 (2002).

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.

Victor Stanley, Inc. v. Creative Pipe, Inc., 269 F.R.D. 497 (D. Md. 2010). This case was referred to me for discovery, and I addressed plaintiff's motion for sanctions for defendants' spoliation of evidence. I recommended that the Court enter a default judgment on the copyright infringement count, grant plaintiff's motion for injunctive relief on that count, and deny plaintiff's motion for default judgment without prejudice as to all other counts. Judge Garbis adopted my recommendations in full. Sept. 30, 2010 Order, ECF No. 381 (copy supplied). Additionally, I ordered defendant Pappas to pay monetary sanctions and stated that defendant's actions would be treated as contempt of Court, for which he would be imprisoned for a limited period of time, unless and until he paid the monetary sanctions. Defendants appealed the imprisonment order only, and "the Court d[id] not find it appropriate to Order Defendant Pappas incarcerated for a future possible failure to comply with his obligation to make payment of an amount to be determined in the course of further proceedings." Nov. 1, 2010 Order at 3-4, ECF No. 397 (copy supplied). Nonetheless, Judge Garbis cautioned that "if Defendant Pappas should fail to comply with a specific payment order, the Court may issue an order requiring him to show cause why he should not be held in civil contempt for failure to comply with that payment order," and that, "under appropriate circumstances, criminal contempt proceedings might be considered." *Id.* at 4.

Kennedy v. Villa St. Catherine's, Inc., 709 F. Supp. 2d 404 (D. Md. 2010), *rev'd in part sub nom. Kennedy v. St. Joseph's Ministries, Inc.*, 657 F.3d 189 (4th Cir. 2011). This case involved an employee's claims for religious harassment, retaliatory discharge, and discriminatory discharge. Defendant moved for summary judgment, and I granted defendant's motion as to the count for discriminatory discharge, but denied it as to the counts for religious harassment and retaliatory discharge. I concluded that it was permissible for defendant, as a religious institution, to terminate plaintiff's employment based on her religion, as plaintiff alleged in her discriminatory discharge claim. On the other claims, I reasoned that the statutory exception that permitted religious institutions to discriminate only permitted discrimination in employment decisions and did not permit harassment, which did not qualify as an employment decision. Therefore, I concluded that plaintiff had stated claims for religious harassment and retaliatory discharge, without deciding whether, on the facts of the case, either religious harassment or retaliatory discharge had occurred. I certified this issue for interlocutory appeal, and defendant appealed. The Fourth Circuit considered whether I had erred in denying summary judgment as to the religious harassment and retaliatory discharge claims, and it reversed. It reasoned that the term "employment" in the applicable statute encompassed more than "hiring and firing decisions." *Kennedy*, 657 F.3d at 193. Judge King dissented on the ground that the appeal was improvidently granted.

Laborers' Dist. Council Pension Fund v. E.G.S., Inc., No. WDQ-09-3174, 2010 WL 1568595 (D. Md. Apr. 16, 2010). I recommended that the Court grant plaintiffs' motion for default judgment, award damages, grant injunctive relief, and grant plaintiffs attorney's fees, but in a lesser amount than requested. *Id.* at *6. With regard to attorney's fees, I reasoned that the requested amount unreasonably exceeded the Court's Rules and Guidelines for Determining Attorneys' Fees in Certain Cases. *Id.* Judge Quarles adopted all of my Report and Recommendation, with the exception of the amount of the award of attorney's fees. April 22, 2010 Order 3, ECF No. 16 (copy supplied). Judge Quarles noted that in their objection to my Report and Recommendation, unlike in their motion for default judgment, plaintiffs had cited to two cases in which the Court awarded fees to the same attorney based on rates of $320 and $295 per hour, respectively. *Id.* at 2. On that basis, Judge Quarles found that the $300 per hour rate was reasonable. *Id.*

Nicholson v. Astrue, WDQ-06-1948. I recommended that the Court grant the Commissioner's motion to dismiss for lack of subject matter jurisdiction, reasoning that, because there had not been a hearing before an Administrative Law Judge or a "final decision," and because "the Claimant ha[d] not established the existence of a colorable constitutional claim," the Claimant had not exhausted her administrative remedies or "identified a basis for this Court to have subject matter jurisdiction to hear her appeal." March 6, 2007 Report & Recommendation 4-6, ECF No. 18 (copy supplied). The Claimant filed an objection to the Report and Recommendation, arguing that the Administrative Law Judge's "dismissal

was without intervening notice to the [Claimant] and thus violated her right to due process." April 2, 2007 Order 4, ECF No. 24 (copy supplied). Judge Quarles agreed that "there was no final decision after a hearing" and that Claimant did not present me with a valid argument for an exception to the requirement of a final decision following a hearing. *Id.* at 6. He explained that "based only on the counter-arguments presented by the [Claimant] prior to the Report, the magistrate judge's conclusion that the [Claimant's] claims fail to qualify for an exception to the exhaustion requirements of 42 U.S.C. § 405(g), and the Court thus lacks jurisdiction to review the Agency's decision, would be correct." *Id.* at 7. However, the Claimant raised "a colorable constitutional challenge" in her objection, namely that her due process rights were violated. *Id.* On that ground, Judge Quarles sustained Claimant's objection to my Report and Recommendation and denied dismissal. *Id.* at 9.

Jackson v. Morgan, No. WMN-95-271, *rev'd*, 19 Fed. App'x 97 (4th Cir. 2001). (I wrote a Memorandum Opinion in this case denying defendants' motion for judgment as a matter of law, but it was not retained in the case file, and I do not have a copy of it.) This case involved a claim brought by a former state inmate raising § 1983 civil rights claims against prison officials for using excessive force in violation of his Eight Amendment right to be free from cruel and unusual punishment. The case was tried to a jury, and I presided. The trial lasted six days, at the end of which the jury returned a verdict in favor of plaintiff and awarded both compensatory and punitive damages against defendants. The defendants appealed, and the Fourth Circuit, concluding that the plaintiff suffered only *de minimus* injuries, reversed. The United States Supreme Court denied certiorari. *Jackson v. Morgan*, 535 U.S. 970 (2002).

Piselli v. 75th Street Medical, PWG-98-2416, *rev'd*, *Piselli v. 75th St. Medical, P.A.*, 12 Fed. App'x 138, 140 (4th Cir. 2001). Parents of a minor child brought a medical malpractice claim against a medical clinic for failing to diagnose properly a serious leg injury, resulting in permanent injuries. The case was unusual because there was a significant statute of limitations defense under a Maryland statute that imposed a shorter limitations period for claims by minors against medical providers than applied for claims by minors against other tortfeasors. I denied defense motions for summary judgment without prejudice, and the case proceeded to a five-day jury trial, during which defendants moved for judgment as a matter of law, which I granted in part and denied in part. The trial resulted in a verdict for the minor child and his parents against 75th Street Medical, but not against the individual defendant, Dr. Yarborough. However, I then entered judgment for both defendants on the basis that Md. Code Ann., Cts. & Jud. Proc. § 5-109 barred plaintiffs' claims. (Opinion supplied in response to question 13(c).) I denied plaintiffs' motion to alter or amend judgment, and they appealed. Defendants cross-appealed. The Fourth Circuit certified a question to the Maryland Court of Appeals: "whether, when a claim is brought by parents on behalf of a child who was injured before reaching age eleven, the three-year statute of limitations of section 5-109(a)(2) begins to accrue upon discovery of the

injury by the child or upon discovery of the injury by the parents." *Piselli*, 12 Fed. App'x at 140. The Maryland Court of Appeals held that the statute was unconstitutional as a violation of the Maryland Declaration of Rights, *Piselli v. 75th St. Medical, P.A.*, 808 A.2d 508, 524 (Md. 2002), and therefore the minor's claim was timely, *id.* at 526. On that basis, the Fourth Circuit reversed my judgment and remanded the case to me for further proceedings in light of the decision of the Court of Appeals. *Piselli v. 75th St. Medical, P.A.*, 51 Fed. App'x 115 (4th Cir. 2002). Following a hearing, I denied defense motions for judgment as a matter of law and a new trial, and I upheld the jury verdict. 75th Street Medical appealed, but the Fourth Circuit dismissed the appeal.

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.

For routine matters, such as rulings on discovery disputes, resolution of summary judgment motions in social security appeals, and other non-dispositive matters, the U.S. District Court for the District of Maryland has a policy of issuing "letter orders," rather than formal opinions and orders. Letter orders contain substantive rulings and citations to authority, but are informal and unpublished. In addition, Magistrate Judges regularly provide Reports and Recommendations to District Judges. Reports and Recommendations are more formal than letter orders, but typically are not published. (Some may appear on Westlaw or Lexis.) Many opinions are not marked for publication, but may be reviewed by the public on the Court's Case Management/Electronic Case Filing ("CM/ECF") System. Indeed, all Court orders and opinions since early March 2003 are available to the public on the CM/ECF system.

I would estimate that roughly 75 to 85% of the opinions that I produce are unpublished. My decision to publish is reserved for opinions that I believe provide some guidance in the development of the law that will be of assistance to counsel or other courts, and which did not exist before I authored the opinion.

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.

Bosse v. Baltimore Cnty., 692 F. Supp. 2d 574 (D. Md. 2010).

Jackson v. Morgan, No. WMN-95-0271 (PWG), *rev'd*, 19 Fed. App'x 97 (4th Cir. 2001), *cert. denied*, 535 U.S. 970 (2002). (I wrote a Memorandum Opinion in this case denying defendants' motion for judgment as a matter of law, but it was not retained in the case file, and I do not have a copy of it.)

United States v. James, 128 F. Supp. 2d 291 (D. Md. 2001).

Luxford v. Dalkon Shield Claimants Trust, 978 F. Supp. 221 (D. Md. 1997).

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

I have never 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.

As a sitting United States Magistrate Judge, I am required to keep an updated conflicts of interest list, which is filed with the Clerk's Office of the U.S. District Court for the District of Maryland and used by the Clerk's Office to screen any cases assigned to me to insure that there is no conflict. When I receive a case, my staff double-checks the conflicts list against the docket sheet to confirm that no conflict exists. This procedure avoids more frequent recusal issues. If a recusal issue arises, I assess the propriety of recusal as follows: First, I analyze the basis of the request for recusal. Second, I conduct legal research and review the legal standards governing the recusal request. Third, I perform a peer review, double checking my recusal determination with another officer of the Court. I describe the procedure I follow upon requests for recusal in detail in *Ausherman v. Bank of Am. Corp.*, 216 F. Supp. 2d 530 (D. Md. 2002).

The following is a list of the three cases in which a litigant or party has requested that I recuse myself due to an asserted conflict of interest. To the best of my knowledge, I have not recused myself *sua sponte* from any cases assigned to me.

McGill v. Balt. City Bd. of Sch. Comm'rs, JFM-09-2506. In an employment discrimination case that was assigned to me for all proceedings with the consent of the parties, the *pro se* plaintiff sought my recusal, alleging that the fact that

certain rulings I had made were adverse to her demonstrated that I was biased in favor of the defendant. Judge Hollander, who referred the case to me, determined that I was not biased and there was no basis for my disqualification, noting that even the plaintiff acknowledged the efforts I had made to assist her in navigating the federal court system. However, out of an abundance of caution and concern for whether the plaintiff's consent to a magistrate judge was fully knowing and voluntary, Judge Hollander terminated the referral to me.

Mezu v. Morgan State Univ., WMN-09-2855. An FLMA case currently is assigned to me to resolve discovery disputes. During discovery, defendant issued a subpoena to a health care provider for the medical records of the plaintiff's daughter in an effort to obtain documents that defendant contends will support its defense that plaintiff was not entitled to FLMA leave. Plaintiff's daughter, who is not a party to the case, filed a motion to quash the subpoena, acting as her own attorney. After briefing was completed, I issued a detailed order, denying the motion to quash and providing a thorough explanation for my ruling. The daughter filed objections to my discovery ruling to the district judge assigned to the case. In those objections, she contended that my rulings against her in the motion to quash demonstrated bias and that I should have recused myself. In a recent letter order, the district judge overruled the objections filed by Plaintiff's daughter and stated that I displayed no bias in the case.

Ausherman v. Bank of Am. Corp., 216 F. Supp. 2d 530 (D. Md. 2002). This case was assigned to me to handle all discovery matters. The case involved a law suit against the Bank of America, alleging Fair Credit Reporting Act violations. Plaintiff sought my recusal because the Bank of America held the mortgage on my principal residence. I conducted legal research to determine whether recusal was warranted, obtained an informal opinion from the Chair of the Judicial Conference Committee on Codes of Conduct for United States Judges, which confirmed there was no legitimate basis for recusal, and denied the motion accordingly. The appropriateness of my denial of the motion to recuse myself was affirmed on appeal by the Fourth Circuit Court of Appeals, *Ausherman v. Bank of Am. Corp.*, 352 F.3d 896, 899 n.2 (4th Cir. 2003).

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.

1987 – 1989
Commissioner, Maryland Home Improvement Commission
Appointed by former Maryland Governor Harry Hughes

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.

When Richard D. Bennett ran for attorney general of Maryland against Joseph Curran (in the early 1990s), the managing partner of my law firm was involved in managing his campaign. I informally met on several occasions with lawyers working on Mr. Bennett's campaign to help provide background information on the functions of the Attorney General's Office, and to help identify issues. I have not otherwise held a position or played a role in a political campaign. Nor have I held office in, or rendered services to, any political party or election committee.

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

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

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

I did not serve as a law 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.

1976 – 1977
U.S. Army Judge Advocate General's Corps
Aberdeen Proving Ground, Maryland
Captain

1977 – 1979
U.S. Army Judge Advocate General's Corps
Office of the Judge Advocate General, Administrative Law Division
The Pentagon, Army Navy Drive & Fern Street
Washington, DC 22031
Attorney Advisor

1979 – 1980
Daniels & Grimm, Attorneys at Law

305 West Chesapeake Avenue
Towson, Maryland 21204
Partner

1980 – 1981
Assistant State's Attorney, Baltimore County, Maryland
Baltimore County Courthouse
400 Washington Avenue
Towson, Maryland 21204
Prosecutor

1981 – 1984
Assistant Attorney General, State of Maryland
Department of Licensing and Regulation
501 Saint Paul Place
Baltimore, Maryland 21202
Chief of Litigation and Administration

Note: There was a very brief period of time from November 3 to November 11, 1983 that I left the Attorney General's Office and went to work as a litigation associate at the Baltimore Law Firm of Anderson, Coe and King, but I left after one week to return to the Attorney General's Office. Because I was at the firm for such a short period of time, I declined to accept any pay.

1984 – 1985
Niles, Barton & Wilmer
929 North Howard Street
Baltimore, Maryland 21201
Associate

1985 – 1987
Niles, Barton & Wilmer
929 North Howard Street
Baltimore, Maryland 21201
Partner

1987 – 1991
Jordan, Coyne, Savits & Lopata
201 East Baltimore Street
Baltimore, Maryland 21202
Managing Partner, Baltimore Branch

1991 – 1997
Niles, Barton & Wilmer
111 South Calvert Street

Baltimore, Maryland 21202
Partner, Chief of the Litigation Department

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 private practice prior to my appointment as a U.S. Magistrate Judge, I handled approximately five arbitrations or mediations, either through the American Arbitration Association or the MSBA Lawyer Dispute Resolution Program. Of the five arbitrations or mediations that I conducted, I remember two with any detail. First, I handled one private mediation involving the dissolution of a two-person law firm, resolving how the dissolving firm's assets and clients were to be divided among the two separating partners. Second, I handled a private arbitration involving a homeowner's complaint that a contractor hired to do extensive renovations to his home had failed to do a workman-like job.

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 career (1976 – 1979), I served in the U.S. Army Judge Advocate General's Corps, first as a Captain at Aberdeen Proving Ground, where I prosecuted and defended courts martial, acted as counsel in administrative boards, and represented soldiers in legal assistance matters involving commercial law, domestic relations law, tax law, and civil law, and later, as an attorney advisor in the Administrative Law Division of the Office of the Judge Advocate General, where I advised various agencies within the Department of the Army and the Department of Defense, primarily on administrative law issues associated with officer personnel law. After resigning my active duty commission in the Army, I entered a two-lawyer general practice in Towson, Maryland (Daniels & Grimm, Attorneys at Law), with Lawrence R. Daniels (now a retired Circuit Court Judge, Baltimore County, Maryland). Our firm did civil litigation, criminal law, administrative law, estates and trust work, and domestic relations work, primarily in the Circuit and District Courts of Maryland in the Baltimore region. From 1980 to 1981, I worked as a prosecutor in the Baltimore County State's Attorney's Office, where I handled both misdemeanor and felony cases. From 1981 to 1984, I worked as an Assistant State's Attorney, assigned as Chief of Litigation and Administration for the Department of Licensing Regulation. I was responsible for creating, training, and supervising a team of lawyers to prosecute contested cases in administrative agencies such as the Home Improvement Commission, the Real Estate Commission, the State

Banking Commission, the Insurance Commission, the Maryland Occupational Safety and Health Administration, the Department of Labor, and numerous other agencies. I also handled my own caseload of administrative cases, prosecuted and defended cases in Maryland Circuit Court and the United States District Court for the District of Maryland, and argued appeals on behalf of the State of Maryland before the Maryland Court of Appeals and the Maryland Court of Special Appeals.

When I entered private practice, my practice evolved to include commercial litigation, representing both plaintiffs and defendants, in a broad array of commercial areas, at both the trial and appellate level, in both state and federal court. From 1984 to 1987, I was an associate, and then partner, at Niles, Barton & Wilmer in Baltimore, where my practice was exclusively litigation related. At Niles, Barton & Wilmer, I handled products liability cases, fidelity and surety cases, general tort cases, professional (lawyer, accountant, director and officer, design professional) malpractice cases, and construction cases. During this time, I was retained to act as outside counsel for the Maryland Insurance Commissioner, acting in his capacity as Receiver for a national fidelity and surety insurer that was domiciled in Maryland, the Eastern Indemnity Insurance Company, and had been placed into receivership. As the Commissioner/Receiver's counsel, I was responsible for defending claims against the insolvent company throughout the United States in both state and federal courts, as well as prosecuting civil actions against those responsible for the insolvency of the company (directors, officers, lawyers, accountants). From 1987 to 1991, I was the managing partner of the Baltimore Branch of Jordan, Coyne, Savits & Lopata, where I continued to handle the same type of commercial litigation I had handled at Niles, Barton & Wilmer, but expanded my practice to include defending (as opposed to suing) lawyers and accountants in professional liability cases. In addition, my work on behalf of the Maryland Insurance Commissioner/Receiver expanded to include two additional receiverships, and my practice in construction, fidelity, and surety law grew as well. I returned to Niles, Barton & Wilmer in 1991 when Jordan, Coyne decided to close its Baltimore office and concentrate its practice in Washington, DC. My cases continued to include the type of cases that I had handled before at Jordan, Coyne, and earlier when I first worked at Niles, Barton, including commercial litigation, insurance receivership law, construction law, fidelity and surety law, and professional liability defense and prosecution. In addition, I litigated contested claims in Bankruptcy Court and tried cases in federal and state court involving trademark/unfair competition, breach of contract involving an employee dishonesty insurance policy, breach of contract involving an accountant's liability insurance policy, and construction.

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

As a prosecutor and Assistant Attorney General (1980 – 1984), my clients included the citizens of Baltimore County and the State of Maryland. In private practice (1979 – 1980, 1984 – 1997), typical clients included government agencies, insurance companies, private corporations and partnerships, law firms, accounting firms, and individuals. In private practice, I specialized in commercial litigation, construction/fidelity and surety law, receivership, professional liability claims, and director and officer claims. My expertise included both trial and appellate work.

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

With the exception of a one year period (1979 – 1980, Daniels & Grimm) in which I handled simple wills, my career in private practice was entirely litigation-based. Therefore, nearly 100% of my practice was in litigation. I appeared in court frequently. I handled motions and hearings with the most frequency, and trials with less frequency.

i. Indicate the percentage of your practice in:

1. federal courts: 55%
2. state courts of record: 35%
3. other courts: 0%
4. administrative agencies: 10%

As an army prosecutor, I handled courts martial cases. I have included these cases in the federal courts percentage above.

ii. Indicate the percentage of your practice in:
1. civil proceedings: 90%
2. criminal proceedings: 10%

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

From 1973 to 1979, I tried approximately 55 cases before a military judge or jury, acting as sole counsel. From 1980 to 1981, as a state court prosecutor, I tried approximately 50 to 75 cases before a judge or jury as sole counsel. From 1981 to 1984, as an Assistant State's Attorney, I tried approximately 75 to 100 cases before an administrative law judge or hearing examiner as sole counsel. In that same time period, I tried two cases before a state or federal court judge, serving as co-counsel in each case. While in the private practice of law from 1984 to 1997, I

tried approximately six to ten cases before a state or federal judge or jury as lead counsel. Between 1991 and 1997, I tried two cases, lasting one month and two months, respectively, before the American Arbitration Association Construction Litigation three-person Arbitration Panel 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 drafted a petition for writ of certiorari in *Gordon v. U.S. Dep't of Treasury*, 488 U.S. 954 (1988) (No. 88-302), 1988 WL 1093812, which was denied. 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. *Gen. Analytics Corp. v. CNA Ins. Cos.*, 86 F.3d 51 (4th Cir. 1996) (before Fourth Circuit Judges Hall, Niemeyer, and Butzner). A corporate insured sued CNA Insurance Companies for losses sustained as a result of allegedly fraudulently action by one of its employees. The insurance policy at issue contained employee dishonesty coverage. The case first was filed in state court, but removed to federal court. I was lead counsel for the insurance company, and represented it in federal court through pretrial discovery and motions practice. When the district court granted summary judgment against my client, I was lead counsel in drafting and arguing the appeal, which was successful. I was also lead counsel in the successful bench trial of the case after the appellate court reversed the entry of summary judgment and remanded the case to the district court for further proceedings.

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2. *United Gen. Title Ins. Co. v. Land Title Research of Md.*, 875 F. Supp. 309 (D. Md. 1995) (before United States District Judge Young). The Maryland State Insurance Commissioner initiated a receivership against a Maryland title company. Another insurance company, which had paid claims as a result of alleged embezzlement by the defendant title insurance company, sought to attach nearly a million dollars in assets of the title insurer to make whole its loss. The Special Deputy Insurance Commissioner and Receiver, whom I represented, moved to stay the federal proceedings under a theory of *Burford v. Sun Oil*, 319 U.S. 315 (1943) abstention, on the grounds that the federal proceedings should not interfere with the state receivership. The District Court ruled in favor of my client. No appeal was taken. I was lead counsel for the Special Deputy Insurance Commission.

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Counsel for Intervenor-Plaintiff:
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Counsel for Defendant:
Richard Fine
Unable to locate contact information

3. *O.W.A., Inc. v. Whitehurst Imports, Inc.*, No. 94-0246 (D. Md. 1994) (before then-U.S. Magistrate Judge Blake). I represented the defendant in this trademark infringement case. The case began in 1994 in the United States District Court for the District of Maryland, and was presided over by Judge Catherine C. Blake (then a U.S. Magistrate Judge, now a U.S. District Judge). I was lead counsel and principal trial counsel, assisted by my then-associate (and later, partner) David D. Gillis. The plaintiff alleged that my client—a Maryland company with its own distinctive design for Christmas ornament hangers—infringed the plaintiff's trademark by copying the unique design of the wire hanger topping the plaintiff's expensive, handmade Christmas ornaments. At issue in the case was whether my client's design was confusingly similar to the plaintiff's. Following a five-day bench trial, Judge Blake ruled that it was not.

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Counsel for Plaintiff:
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(410) 347-7682

4. *United States v. DWC Trust*, No. JRH-93-2859 (D. Md. 1993) (before United States District Judge Hargrove). The EPA sued a family trust and individual family members under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") seeking to recover cleanup costs for lead contamination allegedly found on one of the family trust's properties. The EPA sought both the actual

cleanup costs as well as substantial punitive fines. I was retained by the defendants to take over the defense of the case from another law firm. I was extensively involved in discovery and motions practice, and along with my co-counsel from another law firm, drafted a motion for partial summary judgment on the applicability of the punitive fines. That partial motion for summary judgment was successful, and the court ruled that punitive fines were not appropriate. Thereafter, with the assistance of a U.S. Magistrate Judge, the cleanup cost portion of the case was settled.

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5. *Zolfaghari v. Seikholeslami*, 943 F.2d 451 (4th Cir. 1991) (before Fourth Circuit Judges Hall, Phillips, and Murnaghan). This case involved a RICO and securities suit brought by investors who purchased mortgages and interests in mortgage pools. I

represented a law firm and its lawyers who had been named as defendants based on legal services they provided to the mortgage company that was at the center of the alleged RICO and securities violations. The case was resolved favorably on behalf of all defendants, my clients included, on motions for summary judgment. I was lead counsel for my clients and was involved in the pleading, discovery, and motions practice of the case, as well as in the drafting of the appellate briefs. I also prepared the lawyer who actually argued the appeal. On appeal, the Fourth Circuit affirmed the district court's award of summary judgment to the defendants as to the RICO claim, but reversed as to the securities fraud claim.

Co-Counsel:
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(Formely of Knopf & Burka)
Foley & Lardner LLP
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Washington, DC 20007
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Counsel for Defendants-Appellees:
Robert Wilson Hawkins
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Hunton & Williams LLP
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6. *Gordon v. U.S. Dep't of Treasury*, 846 F.2d 272 (4th Cir. 1988) (before Fourth Circuit Judges Winter and Sprouse, and United States District Judge Kaufman, sitting by designation). As counsel for the receiver of an insolvent Maryland-domiciled fidelity and surety insurance company, I filed suit against the United States Department of Treasury to obtain a ruling that the McCarran-Ferguson Act precluded the Department of Treasury from asserting priority claims relating to Miller Act construction bonds against the state receivership. I handled the case through pleadings, discovery and the summary judgment phase, and argued the case on appeal. At the trial court, the plaintiff's motion for summary judgment on the basis of the McCarran-Ferguson Act was denied. There was a cross-motion for summary judgment by the government, which was granted. *Gordon v. U.S. Dep't of Treasury*, 668 F. Supp. 483 (D. Md. 1987). The Fourth Circuit denied plaintiff's appeal. *Gordon*, 846 F.2d at 273–74. I also drafted the petition for certiorari

to the U.S. Supreme Court, which was denied. *See Gordon v. U.S. Dep't of Treasury*, 488 U.S. 954 (1988) (denying certiorari). Subsequently, a different federal appellate court ruled against the Department of Treasury on the same issue, and the Department of Justice successfully sought certiorari. I participated in the moot court preparation of the counsel for the other state insurance receiver. In a 5-4 ruling, the Supreme Court accepted the arguments that I had made in my case and held that the McCarran-Ferguson Act did preclude the Department of Treasury's assertion of priority. *U.S. Dep't of Treasury v. Fabe*, 508 U.S. 491, 493–94 (1993).

Co-Counsel:
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Counsel for Defendant-Appellees:
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7. *Camelback Ski Corp. v. Behning*, 539 A.2d 1107 (Md. 1988) (before Chief Judge Murphy and Judges Eldridge, Cole, Rodowsky, McAuliffe, Smith, specially assigned, and Couch, specially assigned); *Camelback Ski Corp. v. Behning*, 513 A.2d 874 (Md. 1986) (before Chief Judge Murphy and Judges Smith, Eldridge, Cole, Rodowsky, Couch, and McAuliffe); *Camelback Ski Corp. v. Behning*, 484 A.2d 646 (Md. Ct. Spec. App. 1984) (before Judges Weant, Bell, and Karwacki). This was a personal injury suit seeking recovery for serious injuries suffered in a skiing accident. The Maryland Circuit Court dismissed the case, ruling that under Maryland's long-arm statute, there was no personal jurisdiction over a Pennsylvania ski resort (my client, Camelback Ski Corp.). Plaintiff appealed, the intermediate appellate court reversed, *Camelback Ski Corp. v. Behning*, 484 A.2d 646 (Md. Ct . Spec. App. 1984), and we successfully sought certiorari to Maryland's high court. The Maryland Court of Appeals reversed the Court of Special Appeals, *Camelback Ski Corp. v. Behning*, 513 A.2d 874 (Md. 1986). The plaintiff filed a petition for certiorari to the U.S. Supreme Court, which granted the petition, vacated the Court of Appeals' decision, and remanded the case back to the Court of Appeals for reconsideration in light of its recent decision in *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102 (1987). *Behning v. Camelback Ski Corp.*, 480 U.S. 901 (1987). I argued on reconsideration successfully, and the Court of Appeals again held that personal jurisdiction was lacking in Maryland, *Camelback Ski Corp. v. Behning*, 539 A.2d 1107 (Md. 1988). I argued all three appellate cases, and worked on the briefs.

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8. *Ramsay, Scarlett & Co. v. Comptroller of Treasury*, 490 A.2d 1296 (Md. 1985) (before Chief Judge Murphy and Judges Smith, Eldridge, Cole, Rodowsky, Couch, and Orth (retired) of the Maryland Court of Appeals). I successfully argued this tax case on appeal. The case involved my client, Ramsay Scarlett, a Maryland corporation with an unincorporated division in Louisiana, and the corporate income taxes Ramsay Scarlett paid. Ramsay Scarlett did not pay Maryland taxes on its Louisiana division income because the corporation accounted for the Louisiana division separately. The Maryland Comptroller of the Treasury had assessed an additional corporate income tax against Ramsay Scarlett on the basis that the corporation, including the Louisiana division, was a "unitary business." The corporation appealed to the Maryland Tax Court, an administrative tribunal which reversed the Comptroller's ruling. The Comptroller appealed and the Circuit Court for Baltimore City ruled in favor of Ramsay Scarlett. The Comptroller appealed, and Maryland's intermediate appellate court reversed the circuit court and remanded. The Maryland Court of Appeals granted certiorari, and I successfully argued the case on appeal before that court.

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(Formerly Assistant Attorney General of Maryland)
Unable to locate contact information

9. *Greater Balt. Bd. of Realtors v. Hughes*, 596 F. Supp. 906 (D. Md. 1984) (before United States District Judge Murray). I served as co-counsel for the state defendants in this commercial free speech challenge to the Maryland Real Estate Commission's "for sale" sign ban, which existed in various "conservation areas" to prevent panic selling in neighborhoods with a history of illegal real estate practices such as "block busting" or "steering." The Board of Realtors challenged the sign ban as a violation of commercial free speech and sought an injunction. As an Assistant Attorney General, I defended the state defendants, including the Real Estate Commission. The case proceeded through pleadings, discovery, and an evidentiary hearing on an expedited schedule. I was co-counsel with one other Assistant Attorney General and we equally shared the responsibilities in all phases of the case. The case raised challenging issues regarding the extent of the authority of the state to regulate the real estate profession and to protect against improper sales activities, as balanced against the First Amendment rights of the realtors. After the evidentiary hearing, the Court ruled that the state's action violated commercial free speech and granted the injunction.

Co-Counsel:
Dorothy A. Beatty
(Formerly Assistant Attorney General of Maryland)
Deceased

Counsel for Plaintiffs:
Peter H. Gunst
(Formerly of Bernstein, Conaway & Goldman)
Astrachan Gunst & Thomas
217 East Redwood Street, Suite 2100
Baltimore, Maryland 21202
(410) 783-3542

Counsel for Plaintiffs:
Andrew D. Levy
(Formerly of Bernstein, Conaway & Goldman)
Brown Goldstein Levy
120 East Baltimore Street, Suite 1700
Baltimore, Maryland 21202
(410) 962-1030

10. *United Steelworkers of Am. AFL-CIO, Local 2610 v. Bethlehem Steel Corp.*, 472 A.2d 62 (Md. 1984) (before Chief Judge Murphy and Judges Smith, Eldridge, Cole, Davidson, Rodowsky, and Couch of the Maryland Court of Appeals). In this Maryland Occupational Safety and Health Administration ("OSHA") case, following an extensive administrative hearing, the hearing examiner ruled that the respondent, a steel mill, had committed serious violations of Maryland's OSHA laws. The respondent appealed to the

circuit court, which reversed the decision by the Commissioner of Labor and Industry. The union for the steelworkers appealed, and I was invited to argue before the Court of Appeals, Maryland's highest court, as amicus on behalf of the state. The Court of Appeals vacated the circuit court's order and remanded the case for further proceedings.

Co-Counsel:
Stephen H. Sachs
(Formerly Attorney General of Maryland)
Wilmer Hale (Retired)
1875 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 663-6049

Co-Counsel:
David Blum
(Formerly Assistant Attorney General of Maryland)
Deceased

Counsel for Appellant:
Larry J. Ritchie
(Formerly of Law Offices of Peter G. Angelos)
Professor of Law, Roger Williams University School of Law
10 Metacom Avenue
Bristol, Rhode Island 02809
(401) 254-4635

Counsel for Appellee:
Warren M. Davison
(Formerly of Shawe & Rosenthal)
Deceased

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 2009, I was appointed by the Chief Justice of the United States to serve as a member of the Advisory Committee for the Federal Rules of Civil Procedure. In 2010, I was designated as Chair of the Civil Rules Committee's Discovery Subcommittee.

For many years, I have been involved in a variety of legal education programs. For example, I have presented as an instructor at numerous Federal Judicial Center courses for federal judges on subjects related to civil procedure, discovery practice, and evidence.

Similarly, I teach Maryland trial and appellate judges several times each year at the Maryland Judicial Education Center, primarily in the areas of evidence and civil procedure. I have also served as a presenter/instructor for Continuing Legal Education programs sponsored by Georgetown University Law Center, MICPEL, the Maryland State Bar Association, ALI-ABA, the ABA, the United States Department of Justice, and the Maryland Legal Aid Society. I have also served as an adjunct faculty member at both the University of Maryland Francis King Carey School of Law and the University of Baltimore School of Law, where I teach various evidence and civil procedure/discovery courses.

I do not participate in any lobbying activities.

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

I reviewed my records, and to the best of my knowledge, the following is a complete list of courses I have taught. Because I have taught some courses on multiple occasions, I have supplied a copy of a representative syllabus for each course, where available.

Evidence, University of Maryland School of Law (Summer Semesters 2007 – 2011, Spring Semester 2010, Fall Semesters 2006 – 2008); University of Baltimore School of Law (Spring Semesters 2011 – 2012 , Fall Semesters 1998 – 2001). Spring 2011 and 2012 syllabi supplied.

Discovery Practice and Procedure, University of Baltimore School of Law (Fall Semesters 2010 – 2011). Fall 2011 syllabus supplied.

Electronic Evidence and Discovery Workshop, University of Maryland School of Law (Spring Semester 2009; Fall Semester 2008); University of Baltimore School of Law (Spring Semester 2008). Spring 2009 syllabus supplied.

Pretrial Civil Procedure, University of Maryland School of Law (Spring Semesters 2000 – 2007, Summer Semesters 2003 – 2004, Fall Semesters 1997 – 1998, once a year, spring or fall, 1992 – 1996); University of Baltimore School of Law (Summer Semester 1998, Fall Semester 1997). Spring 2007 syllabus supplied.

Trial Evidence, University of Maryland School of Law (Fall Semesters 2003 – 2005). Fall 2005 syllabus supplied.

Scientific Evidence, University of Maryland School of Law (Fall Semester 2002). I was unable to obtain a copy of this syllabus.

Constitutional Law, Villa Julie College (Spring Semesters 1982 – 1996, 1998). I was unable to obtain a copy of this 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.

    None.

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

    I do plan to continue to teach in the future, so long as I continue to receive approval to do so for those courses in which compensation is received, and so long as doing so does not interfere with my official duties. Other than this teaching, I have no plans or commitments to pursue outside employment during my court 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.

       Several personal friends, as well as the law firms in which they work are likely to present potential conflicts-of-interest. My son was sworn into the Maryland bar on December 13, 2011, and is likely to present a conflict. My wife consults for two nursing homes, both of which may present a conflict. My brother-in-law is an assistant staff vice president of a national association and my sister-in-law is the chief operating officer for a medical corporation, which also may present a conflict. I currently teach for a bar review course, the University of Maryland

Francis King Carey School of Law, and the University of Baltimore School of Law, all of which may present a conflict. Finally, I have investments or financial accounts with various organizations listed in my Net Worth Statement, which may present conflicts.

If I am confirmed, I will first determine whether a conflict of interest exists based on the conflicts of interest list I will keep. The list, similar to the list I keep as a sitting United States Magistrate Judge, will include financial information contained in my financial disclosure statement, the names of employers of my family members, and similar information designed to avoid any conflict of interest. In assessing potential conflicts, I will consult the Code of Conduct for United States Judges. If it is a close issue or one that has not been decided yet, I will seek guidance from the Judicial Conference Committee on Codes of Conduct for an informal or, if necessary, formal opinion. If it is determined that a conflict exists, I will 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.

If I am confirmed, I will first determine whether a conflict of interest exists based on the conflicts of interest list I will keep. The list, similar to the list I keep as a sitting United States Magistrate Judge, will include financial information contained in my financial disclosure statement, the names of employers of my family members, and similar information designed to avoid any conflict of interest. In assessing potential conflicts, I will consult the Code of Conduct for United States Judges. If it is a close issue or one that has not been decided yet, I will seek guidance from the Judicial Conference Committee on Codes of Conduct for an informal or, if necessary, formal opinion. If it is determined that a conflict exists, I will recuse myself.

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

As a sitting judge, I am precluded from accepting pro bono assignments. I endeavor to serve the disadvantaged in volunteer work that I do outside the legal profession, such as through my church. While in private practice, I accepted pro bono assignments when my schedule permitted, including: (1) representing a state court prison inmate in a civil rights case filed in the United States District Court (1995) (approximately 20 – 30 hours); (2) representing a state court prison inmate in a civil rights case filed in the United States District Court (1979 – 1980) (approximately 40 – 80 hours); (3) representing a disabled veteran in appealing denial of Veterans Affairs' disability benefits (1979 – 1980) (approximately 20 – 30 hours).

26. **Selection Process**:

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

In 2009, Senators Barbara Mikulski and Benjamin Cardin created an advisory group of prominent lawyers and an academic from the Maryland legal community to evaluate applications for vacancies on the United States District Court for the District of Maryland. I applied to this group by submitting a comprehensive written questionnaire and was interviewed. My name was among approximately eight to ten applicants sent by the group to the Senators as highly qualified for appointment, and I was interviewed in person by both Senators. I was not selected at that time. In late spring of 2011, another vacancy was announced, and I again was considered. I was among two finalists submitted to the Senators, but was not ultimately selected. When a vacancy became open this fall, the advisory group again reviewed the list of applicants and questionnaires on file, and I was selected by the Senators without further interview. Senator Mikulski notified me that she had submitted my name to the White House.

Since November 21, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 20, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On February 16, 2012, 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
Grimm, Paul W.	U.S. District Court, District of Maryland	02/16/2012
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 status)	☑ Nomination, Date 02/16/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 01/31/2012
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.**	
Chambers 8B U.S. Courthouse 101 West Lombard Street Baltimore, MD 21201	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 10	Name of Person Reporting Grimm, Paul W	Date of Report 02/16/2012

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	Shemer Bar Review, lecturer	$5,300.00
2. 2011	ABA-MD Discovery Problems Solutions, royalties	$1,687.27
3. 2011	University of Baltimore School of Law, adjunct faculty	$7,300.00
4. 2011	University of Maryland School of Law, adjunct faculty	$3,650.00
5. 2010	Shemer Bar Review, lecturer	$4,750.00
6. 2010	ABA-MD Discovery Problems Solutions, royalties	$926.20
7. 2010	University of Baltimore School of Law, adjunct faculty	$3,700.00
8. 2010	University of Maryland School of Law, adjunct faculty	$7,400.00
9.		

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. 2012	Dietician-Blue Point Nursing LLC
2. 2012	Dietician-Holly Hill Nursing LLC
3. 2011	Dietician-Blue Point Nursing LLC
4. 2011	Dietician-Holly Hill Nursing LLC

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.				

FINANCIAL DISCLOSURE REPORT Page 3 of 10	Name of Person Reporting Grimm, Paul W.	Date of Report 02/16/2012

2.

4.

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 10	Name of Person Reporting Grimm, Paul W.	Date of Report 02/16/2012

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
Grimm, Paul W.	02/16/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. M&T Bank accounts	A	Interest	L	T	Exempt				
2. AXA Equitable TSA (Equi-Vest)		None	K	T					
3. Vanguard GNMA Fund IRA	B	Dividend	K	T					
4. Lincoln Multi-Fund (Johns Hopkins Hosp Retirement)		None	J	T					
5. T. Rowe Price Equity Income IRA	A	Dividend	K	T					
6. The Columbia Bank CD	A	Interest	J	T					
7. Fidelity Cash Reserves Roth	A	Dividend	J	T					
8. Fidelity Cash Reserves Roth	A	Dividend	J	T					
9. T. Rowe Price Prime Reserve	A	Dividend	K	T					
10. MD College Investment Plan 529-Portfolio 2012		None	K	T					
11. Exelon Corporation common stock	A	Dividend	J	T					
12. VCSP/College America EuroPacific Growth Fund 529A	A	Dividend	J	T					
13. VCSP/College America Growth Fund of America 529A	A	Dividend	J	T					
14. VCSP/College America SMALLCAP World Fund 529A	A	Dividend	J	T					
15. VCSP/College America Fundamental Investors 529A	A	Dividend	J	T					
16. VCSP/College America Capital Income Builder 529A	A	Dividend	J	T					
17. VCSP/College America Amer Fds Money Mkt Fd 529A		None	L	T					

1. Income/Gain Codes:
(See Columns B1 and D4)

A = $1,000 or less
B = $1,001 - $2,500
C = $2,501 - $5,000
D = $5,001 - $15,000
E = $15,001 - $50,000
F = $50,001 - $100,000
G = $100,001 - $1,000,000
H1 = $1,000,001 - $5,000,000
H2 = More than $5,000,000
I = $15,000 or less
J = $15,001 - $50,000
K = $50,001 - $100,000
L = $100,001 - $1,000,000
M1 = $1,000,001 - $5,000,000
M2 = More than $5,000,000
N = $5,000,001 - $25,000,000
O = $25,000,001 - $50,000,000
P1 = $50,000,001 - $100,000,000
P2 = $100,000,001 - $250,000,000
P3 = $250,000,001 - $500,000,000
P4 = More than $500,000,000

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 - $1,000,000
N = $1,000,001 - $5,000,000
O = $5,000,001 - $25,000,000
P1 = $25,000,001 - $50,000,000
P2 = $50,000,001 - $100,000,000
P3 = More than $100,000,000
P = Cash Market

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
Grimm, Paul W.	02/16/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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. VCSP/College America Amer Fds Money Mkt Fd 529A		None	K	T					
19. IRA #1:	D	Dividend	M	T					
20. - Calamos Strategic Total Return Fund									
21. - Goldman Sachs Tr Equity Growth Strategy									
22. - Prime MM, RBC Investor Class									
23. - Invesco Van Kampen Equity Income C									
24. - MacQuarie 1st Tr Global Infrastructure Div/Inc									
25. - Enervest Diversified Income Trust									
26. - Cohen & Steers Infrastructure Fund									
27. - John Hancock Tax Advntgd Div/ Inc									
28. - AllianceBernstein Global Hi Income Fd B									
29. IRA #2:	D	Interest	M	T					
30. - Countrywide Home Loans Ser 03-40-A3									
31. - CS First Boston Mortgage 03-21-1A14									
32. - FHLMC REMIC 3010-YD									
33. - Bank of America Fndg Corp Ser 05-8-4A10									
34. - Citicorp Mortgage Secs Tr Ser 07-5-1A3									

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 - More than $5,000,000
P3 - $25,000,001 - $50,000,000
P4 - More than $50,000,000
P2 - $5,000,001 - $25,000,000
P3 - $25,000,001 - $50,000,000

3. Value Method Codes (See Column C2)
Q - Appraisal
R - Cost (Real Estate Only)
S - Assessed
T - Cash Market
U - Book Value
V - Other
W - Estimated

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Name of Person Reporting	Date of Report
Grimm, Paul W.	02/16/2012

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-46 of filing instructions.)*

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

A. Brief description of assets (including trust assets)	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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 mo./day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
Place "NONE" if no such assets exempt from prior disclosure									
35. - Bank of America Mtge Sec Ser 07-3/2A8									
36. - Wells Fargo Mtge Bkd Sec 07-10/II-A-5									
37. - Alternative Loan Tr 05-21CB/A-9									
38. - CWalt Inc Mtge PC 04-35T2A-1									
39. - Countrywide Home Loan Alt Loan 04-28CB/3-A-1									
40. - Mastr Alt Loan Trust Ser 05-3/2-A-1									
41. - Mastr Alt Loan Trust Ser 05-3/7-A-1									
42. - Alternative Loan Trust 05-98CB/2-A-1									
43. - Banc Amer Funding Corp 05-5/1A8									
44. - Alternative Loan Trust 05-47CB/A-7									
45. - 1st Horizon Alt Mtge Ser 05-FA8/1-A-14									
46. - Banc Amer Mtg Sec 05-11-1A7									
47. - Banc of Amer Alt Ln Tr 06-7/A2									
48. - Wells Fargo Mtge Bkd Sec 06-6/1-A-2									
49. - Mastr Alt Loan Tr 05-2/1-A-4									
50. - Mastr Alt Loan Tr 04-13/7-A-1									
51. - Alternative Loan Tr 04-18CB/5-A-1									

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 = Over $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 = Over $25,000,000

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

1. = $50,000 - $100,000
2. = $100,001 - $250,000
3. = $250,001 - $500,000
4. = $500,001 - $1,000,000
5. = $1,000,001 - $5,000,000
6. = $5,000,001 - $25,000,000
7. = Over $25,000,000

J = Cost
K = Other
L = Cash Value
M = Exchange
N = Dividend
O = Interest
P = Rent
Q = Royalty
R = Business
S = Partnership
T = Agriculture
U = Other
V = Mortgage
W = Loan
X = Tax Free
Y = Blind Trust
Z = Unknown

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Name of Person Reporting	Date of Report
Grimm, Paul W.	02/16/2012

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 44-60 of filing instructions.)*

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

A Description of Assets (including trust assets)	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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. - CSFB Mtge Bkd 04-8 II-A-1									
53. - Bear Stearns Asset Bk Sec Tr 04-AC3 A-1									

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
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 9 of 10	Name of Person Reporting Grimm, Paul W.	Date of Report 02/16/2012

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

FINANCIAL DISCLOSURE REPORT Page 10 of 10	Name of Person Reporting Grimm, Paul W.	Date of Report 02/16/2012

IX. CERTIFICATION.

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

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

Signature Paul William Grimm

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		93	864	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		500	320	Notes payable to relatives			
Unlisted securities – see schedule		196	128	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		237	054
Real estate owned – see schedule		648	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		135	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		237	054
				Net Worth	1	336	258
Total Assets	1	573	312	Total liabilities and net worth	1	573	312
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts		3	392	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	
AllianceBernstein Global High Income Fund II	$33,750
AXA Equitable TSA (Equi-Vest)	40,890
Calamos Strategic Total Return Fund	12,240
Cohen & Steers Infrastructure Fund	14,926
Enervest Diversified Income Trust	9,469
Exelon stock	1,034
Fidelity Cash Reserves	9,616
Goldman Sachs Equity Growth Strategy Fund	14,755
Invesco Van Kampen Equity & Income C Fund	28,421
John Hancock Tax-Advantaged Dividend Income Fund	16,527
Lincoln Multi-Fund	13,678
MacQuarie/First Trust Global Infrastructure Utilities Dividend & Income Fund	12,895
MD College Investment Plan 529- Portfolio 2012	28,881
Prime Money Market RBC Investor Fund	14,366
RBC Cash Account	92
T. Rowe Price Equity Income Fund	45,945
T. Rowe Price Prime Reserve Fund	25,446
Vanguard GNMA Fund	48,933
VCSP/College America EuroPacific Growth Fund 529A	5,874
VCSP/College America Growth Fund of America 529A	8,434
VCSP/College America SMALLCAP World Fund 529A	6,011
VCSP/College America Fundamental Investors 529A	6,455
VCSP/College America Capital Income Builder 529A	6,710
VCSP/College America American Funds Money Market Fund 529A	94,972
Total Listed Securities	$500,320

Unlisted Securities	
Alternative Loan Trust 04-18CB5-A-1	$9,965
Alternative Loan Trust 05-21CBA-9	4,785
Alternative Loan Trust 05-47CBA-7	7,413
Alternative Loan Trust 05-9CB-2-A-1	16,853
Banc of America Alternative Loan Trust 06-7-A2	6,445
Banc of America Funding Corp Ser 05-5-1A8	3,527
Banc of America Funding Corp Ser 05-8-4A10	707
Banc of America Mortgage Sec Ser 05-11-1A7	2,846
Banc of America Mortgage Sec Ser 07-3-2A8	10,420
Bear Stearns Asset Backed Sec Trust 04-AC3 A-1	10,791
Citicorp Mortgage Sec Tr Ser 07-5-1A3	12,750
CSFB Mortgage Backed Sec 04-8 II-A-1	12,723
Countrywide Home Loan Ser 03-40-A3	9,161
Countrywide Home Loan Alternative Loan 04-28CB3-A-1	11,706
CS 1st Boston Mortgage 03-21 I-A-14	632
CWalt Inc Mtg PC 04-35T2A-1	5,185

FHLMC REMIC 3010-YD	7,261
First Horizon Alternative Mtge Ser 05-FA81-A-14	7,479
Mastr Alternative Loan Trust Ser 04-13 7-A-1	7,619
Mastr Alternative Loan Trust Ser 05-2 1-A-4	7,590
Mastr Alternative Loan Trust Ser 05-3-2-A-1	8,913
Mastr Alternative Loan Trust Ser 05-3-7-A-1	16,569
Wells Fargo Mortgage Backed Sec 06-6-I-A-2	7,956
Wells Fargo Mortgage Backed Sec 07-10-II-A-5	6,832
Total Unlisted Securities	$196,128

Real Estate Owned	
Personal residence	$ 461,000
Vacation property	187,000
Total Real Estate Owned	$ 648,000

AFFIDAVIT

I, Paul William Grimm, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 17, 2012
(DATE)

(NAME)

JACKIE HECTOR NOTARY PUBLIC BALTIMORE CO. MD

Jackie Hector
(NOTARY)
My Commission expires June 1, 2014

STATEMENT OF MR. JOHN E. DOWDELL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA

Mr. DOWDELL. Thank you, Chairman Whitehouse. Thank you, in particular, for presiding over these proceedings. Thank you, as well, for Ranking Member Lee's and for Dr. Coburn's presence and their scheduling of this hearing.

In particular, I would like to thank both Senator Inhofe and Senator Coburn for their kind remarks on my behalf. And, as well, I would like to thank Senator Coburn and Senator Inhofe for forwarding my name to the White House and for supporting my nomination.

I would also like to thank Representative Dan Boren of the second district of Oklahoma for supporting my nomination.

And I would thank principally the President for the honor of being nominated and of his confidence in me.

I do have a few family members and friends to introduce. Senator Inhofe introduced my wife of 24 years. She is the mother of my four sons. My oldest son, Jack, is graduating this weekend from the University of Kansas. So he has traveled here from Lawrence.

My second oldest son, Joe, is a sophomore at Dartmouth College and traveled here today for the hearing. My third son, Ned, is a freshman at the University of Redlands in California and he traveled a long way to be here. And my youngest son, Gabe, is a junior in high school in Tulsa, Oklahoma.

I want to also thank many people back in Oklahoma who are watching this via Webcast, including two brothers, Tom and Richard, and a sister, Jean, and their families. And I also want to thank the support of my colleagues at my law firm, where I have worked for the past 30 years, and other family and friends elsewhere in Oklahoma and around the country.

I have a friend here, Chris Redding, that I am going to announce in light of Senator Lee's affection for Judge Holloway. So whatever I can do, I will use it. Chris Redding and I clerked together with Judge Holloway, as well.

Thank you very much.

Senator WHITEHOUSE. Judge Walker.

[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 Edward Dowdell

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

   United States District Judge for the Northern District of Oklahoma

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.

   Norman Wohlgemuth Chandler & Dowdell, P.C.
   2900 Mid-Continent Tower
   401 South Boston Avenue
   Tulsa, Oklahoma 74103

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

   1955; Tulsa, Oklahoma

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, University of Tulsa School of Law; J.D., 1981
   1973 – 1978, Wake Forest University; B.A., 1978

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

   1983 – present
   Norman Wohlgemuth Chandler & Dowdell, P.C.
   (f/k/a Norman & Wohlgemuth; Norman Wohlgemuth & Thompson)
   2900 Mid-Continent Tower
   401 South Boston Avenue

Tulsa, Oklahoma 74103
Shareholder and Director (1987 – present)
Associate (1983 – 1987)

1981 – 1983
The Honorable William J. Holloway, Jr.
United States Court of Appeals for the Tenth Circuit
2301 U.S. Courthouse
200 Northwest Fourth Street
Oklahoma City, Oklahoma 73102
Law Clerk

1979 – 1981
Eagleton, Eagleton & Owens
1606 First National Bank Building
Tulsa, Oklahoma 74103
Law Clerk

1978 – 1979
Ashland Warren, Inc.
675 Massachusetts Avenue
Cambridge, Massachusetts 02139
Truck Driver

1978
Crutcher Resource Corporation
10700 East Independence
Tulsa, Oklahoma 74116
Assistant to Draftsman

1978
Office Overload 1970, Inc.
3435 Wilshire Boulevard
Los Angeles, California 90010
Construction Helper

Other Affiliations (uncompensated):

2001 – 2007
Bishop Kelley High School
3905 South Hudson Avenue
Tulsa, Oklahoma 74135
Board of Directors (2001 – 2007)
President (2004 – 2007)

2005 – 2006
Junior Comet Football Association
6737 East 65th Street
Tulsa, Oklahoma 74133
President

1999 – 2001
Council Oak Chapter of the American Inns of Court
1229 King Street, Second Floor
Alexandria, Virginia 22314
(no set local address)
President (2000 – 2001)
President-Elect (1999 – 2000)

1994
Just Cause, Inc.
2900 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103
Incorporator/Director

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

   I have not served in the military. I 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.

   Oklahoma Super Lawyers (2006 – 2011)

   Top Commercial Litigation Lawyers (American Litigation Magazine)

   Jack R. Givens Award for Professionalism and Service (1998)

   Distinguished Service Award of the American Inns of Court (1993)

   Master, Council Oak Chapter of the American Inns of Court

   Bishop Kelley High School Hall of Fame (2007)

   Bishop Kelley High School Athletic Hall of Fame (2011)

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

Council Oak Chapter of the American Inns of Court (1990 – present)
President (2000 – 2001)
President-Elect (1999 – 2000)

Criminal Justice Act Panel in the Northern District of Oklahoma

Criminal Justice Act Panel in the Tenth Circuit Court of Appeals

Federal Bar Association

Magistrate Judge Selection Committee for the Northern District of Oklahoma
Member (2002)
Chair (1998)

Oklahoma Bar Association
Editorial Board (2003)

Tulsa County Bar Association
Court Operations Committee
President (1998 – 1999)
Vice-Chair (1997 – 1998)
Named by the President of Tulsa County Bar Association to serve as a non-voting member of the Tulsa County District Judges' committee for selection of two Special District Judges (1998 and 1999)

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.

Oklahoma, 1983

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. 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, 1986

United States Court of Appeals for the Tenth Circuit. 1983
United States District Court for the Northern District of Oklahoma, 1983
United States District Court for the Western District of Oklahoma, 2002
Oklahoma Supreme Court, 1983

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.

Amnesty International (1983 – 1993)

Bishop Kelley High School
Board of Directors (2001 – 2007)
President (2004 – 2007)

Junior Comet Football Association
President (2005 – 2006)

Just Cause, Inc.
Incorporator/Director (1994)

The Summit Club (1992 – present)

The Tulsa Club (1983 – 1991)

Tulsa Country Club (1990 – 2007)

Tulsa Public Facilities Authority (2003 – 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 above organizations 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.

I have not authored any books, articles, reports, editorial pieces, or other published material. I have a vague recollection of authoring approximately one to three letters to the editor during college and shortly thereafter. I was unable to locate these publications and do not recall their substance.

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

I have not prepared or contributed in the preparation of 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.

From 2003 to 2006, I served on the Tulsa Public Facilities Authority and occasionally made comments during board meetings. I have been unable to obtain copies of meeting minutes.

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.

October 14, 2011: I gave remarks upon being inducted to the Bishop Kelley Athletic Hall of Fame, Tulsa, Oklahoma. Outline supplied.

May 14, 2010: I spoke at a Tenth Circuit habeas corpus seminar in Tulsa, Oklahoma. Outline supplied.

January 28, 2007: I gave remarks upon being inducted to the Bishop Kelley Hall of Fame, Tulsa, Oklahoma. Outline supplied.

May 2001: I moderated an American Inns of Court banquet, during which I gave a brief introduction speech for the Honorable Claire V. Eagan, the recipient of the Jack R. Givens Award for "Furtherance of Excellence in the Practice of Law," Tulsa, Oklahoma. Remarks supplied.

1997: I gave brief remarks during an event at Bishop Kelley High School's gymnasium celebrating the completion of the Home Field Advantage fundraising campaign, and introduced the President of the school, Brother David Poos. I have no notes, transcript or recording. The address of Bishop Kelley High School is 3905 South Hudson Avenue, Tulsa, Oklahoma 74135.

November 17, 1995: I gave a presentation at a program entitled "Practitioners Guide to the Supreme Court's 1994-95 Term." The program was sponsored by the University of Tulsa College of Law. I recall that my presentation included discussion of *Liteky v. United States*, 510 U.S. 540 (1994), which examined the question of whether recusal under 28 U.S.C. § 455(a) is subject to the limitation of the extra-judicial source doctrine. I have no notes, transcript, or recording, but press coverage is supplied. The address of the College of Law is 3120 East Fourth Place, Tulsa, Oklahoma 74104.

November 1995: I gave a brief introduction speech for the Honorable James O. Ellison, at the 1995 President's Prayer Breakfast at the Oklahoma Bar Association's Annual Convention, Tulsa, Oklahoma. Outline supplied.

December 14, 1994: I participated in the presentation of a Continuing Legal Education program entitled "Business Torts." I have no notes, transcript or recording. The presentation was sponsored by the Tulsa County Bar Association, 1446 South Boston Avenue, Tulsa, Oklahoma 74119.

August 27, 1993: I gave an introductory speech for the Honorable William J. Holloway, Jr., United States Circuit Judge, at the Philbrook Museum of Art, Tulsa, Oklahoma. The speech was addressed to the Tulsa chapters of the American Inns of Court. Outline supplied.

September 24, 1990: I gave a presentation at the Council Oak American Inn of Court meeting held at the federal courthouse in Tulsa, Oklahoma. The presentation related to opening statements, but I have been unable to recall more specific details. I have no notes, transcript or recording. The Inn of Court does not have a physical address.

October 13 and 20, 1989: I spoke at an Oklahoma Bar Association seminar titled "The Rights of Borrowers with the FDIC and FSLIC." The topic I co-presented was "Procedural Tricks of the FDIC and FSLIC." The lecture discussed jurisdictional problems and other procedural matters. I have no notes, transcript or recording. The address of the Oklahoma Bar Association is 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

I gave brief remarks during an American Inns of Court program devoted to the topic of whether the Inn's name ("Robert D. Hudson") should be changed following the discovery of evidence suggesting that Mr. Hudson had been associated with the Ku Klux Klan. Those remarks were delivered at the federal courthouse in Tulsa, Oklahoma, but I have been unable to recall the date of my remarks. I have no notes, transcript or recording. I do recall that I was responsible for coordinating the group of speakers who supported changing the Inn's name due to Mr. Hudson's association with the Ku Klux Klan, and that my own remarks supported changing the name of the Inn.

I vaguely recall speaking on the topics of (i) the Sherman Act and claims under it and (ii) representing clients in grand jury proceedings and the differences between federal and state grand juries. I do not recall where or when these presentations were given and I have no notes, transcripts or recordings from them.

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.

Russell Ray, *Williams Settles Suit on 401(k)*, Tulsa World, Sept. 20, 2005. Copy supplied.

April 27, 2005: Interview with Teresa Chen for the article, *The Youngblood Success Stories: Overcoming the "Bad Faith" Destruction of Evidence Standard*, 109 W. Va. L. Rev. 421 (2007). Copy supplied.

Kelly Patricia O'Meara, *Medical Abuse of Children?*, Insight on the News, Sept. 11, 2000. Copy supplied.

Danny M. Boyd, *Rulings Narrow Scope of Federal Lawsuits against Head Start, Others*, Associated Press, July 26, 2000. Copy supplied.

Don Diehl, *Case Involving Physical Examinations to Proceed*, Daily Oklahoman, July 26, 2000. Copy supplied.

Bill Braun, *Judge Refuses to Bar Retrial of Bell in Slaying of Spouse*, Tulsa World, July 13, 1996. Copy supplied.

Bill Braun, *Mrs. Bell's Reversal Stands*, Tulsa World, Feb. 22, 1996. Copy supplied.

Bill Braun, *Appeal Puts Off Bell's Arraignment*, Tulsa World, Jan. 16, 1996. Copy supplied.

Julie DelCour, *Bell Posts Bond of $30,000*, Tulsa World, Sept. 20, 1995. Copy supplied.

Bill Braun, *Bell Verdict Voided*, Tulsa World, Aug. 18, 1995. Copy supplied.

Bill Braun, *Retrials to Top Docket*, Tulsa World, July 30, 1995. Copy supplied.

Bill Braun, *3 More Inmates to Receive New Trials*, Tulsa World, July 4, 1995. Copy supplied.

Bill Braun, *Phrase Voids Fifth Conviction*, Tulsa World, Apr. 27, 1995. Copy supplied.

Julie DelCour, *Appeals Court Finds FAA Tossed Key Trial Evidence*, Tulsa World, May 24, 1994. Copy supplied.

Robert E. Boczkiewicz, *2 Vinita Executives Win Appeal in Fraud Case*, Daily Oklahoman, May 21, 1994. Copy supplied.

Julie DelCour, *Former Attorney General Headlines Legal Gathering*, Tulsa World, Aug. 22, 1993. Copy supplied.

Julie DelCour, *Criticized Tulsa Firm Keeps Hissom Work*, Tulsa World, Sept. 26, 1992 (quotes reprinted in multiple outlets). Copy supplied.

Brian Ford, *Hissom Vendor Fires Back at State Auditor, Senate Foe*, Tulsa World, July 8, 1992. Copy supplied.

Donnelle Eller, *Billing Claims 'Baseless'*, Tulsa World, July 8, 1992. Copy supplied.

Kim Archer, *Truce Sought, but Bills Still Debated*, Tulsa World, July 1, 1992. Copy supplied.

Donnelle Eller, *Haggling over Hissom*, Tulsa World, July 1, 1992. Copy supplied.

Brian Ford, *Attorney Maintains Bill to State Justified*, Tulsa World, May 2, 1992. Copy supplied.

Mick Hinton, *Hissom Contractor's Bill Questioned*, Daily Oklahoman, Apr. 28, 1992. Copy supplied.

Brian Ford, *Tulsa Firm Retaliates for Audit by Billing State*, Tulsa World, Apr. 28, 1992. Copy supplied.

Donnelle Eller, *Audit Report Delayed*, Tulsa World, Apr. 27, 1992. Copy supplied.

Staff, *Audit Lawsuit at Issue*, Tulsa World, Apr. 27, 1992. Copy supplied.

John M. Wylie II, *Aunt Lucy's Stay in Talala Assured*, Oologah Lake Leader, June 14, 1990. Copy supplied.

Linda Martin, *Lucy Walker Staying in Oklahoma for Good*, Tulsa World, June 12, 1990. Copy supplied.

Landon Jones, *Settlement Elates Family*, Tulsa Tribune, June 12, 1990. Copy supplied.

John M. Wylie II, *Aunt Lucy Case Goes to OSBI*, Oologah Lake Leader, May 24, 1990. Copy supplied.

John M. Wylie II, *Guardianship Papers Altered, Attorney Admits*, Tulsa World, May 19, 1990. Copy supplied.

Linda Martin, *Fraud Claimed in Effort to Move Lucy Walker*, Tulsa World, May 12, 1990. Copy supplied.

Staff, *Custody Decision is Delayed*, Tulsa World, May 10, 1990. Copy supplied.

Linda Martin, *No Settlement Reached in Custody Case*, Tulsa World, May 10, 1990. 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 offices.

    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 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 in or rendered services to 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 served as a law clerk for the Honorable William J. Holloway, Jr. of the United States Court of Appeals for the Tenth Circuit from 1981 to 1983.

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.

1983 – present
Norman Wohlgemuth Chandler & Dowdell, P.C.
(f/k/a Norman & Wohlgemuth, Norman Wohlgemuth & Thompson)
2900 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103
Shareholder and Director (1987 – present)
Associate (1983 – 1987)

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 1999, I began to serve as an Adjunct Settlement Judge in the U.S. District Court for the Northern District of Oklahoma on a pro bono basis. Since that time, my mediation practice has expanded to include private engagements in a wide range of disputes.

Mediations in private practice

1. *Williams Welding v. Enogex, LLC.*
   This case centered on Williams Welding's construction of a forty-two mile gas pipeline for Enogex. At great expense, the pipeline was constructed, but claims and counterclaims were asserted as to lost opportunities, contract breaches, timeliness, billings, and estoppel. The case was resolved.

2. *Confidential v. Confidential.*
   A financial advisor employed by a prominent brokerage firm was also the chairman of the board for a client of the brokerage firm. The client made a significant investment in a single stock at a time that intersected with the turbulent market of 2000 to 2002, which raised fiduciary issues between the firm and the financial advisor. The case was resolved.

3. *Confidential v. Confidential.*
   This intellectual property case involved a new technology for vaporless fuel cells with potential military, automotive, and aerospace applications. A licensing agreement was entered, by which the inventor received a sizeable initial payment from investors. Disputes arose as to the best means of developing and marketing the product, and promising marketing opportunities were lost. The case was resolved.

4. *In re Trinity Precision Flow Control, LLC.*
   Trinity was an exclusive distributor, in North America and Mexico, of valves and related pipeline products provided by Valbart, an Italian valve manufacturer. The bulk of Trinity's inventory was manufactured by Valbart. Three individuals loaned money to Trinity shortly before Trinity sought Chapter 11 bankruptcy protection. Claims were filed in several forums. After a two-day mediation and continued discussions over the following months, the case was resolved.

5. *ESCO Financial v. Dent-A-Med Inc.*
   Dent-A-Med Inc. ("DAMI") facilitated financing for the purchase of certain dental, hearing, and other medical products. DAMI and ESCO entered into a marketing agreement, which provided ESCO a fee for its marketing services. Disputes arose as to the parties' respective performance under the agreement. The case resolved two weeks after the mediation session by way of continued discussions.

6. *TransLink, Inc. v. Vogle, et al.*
   TransLink was a remotely owned freight logistics business. Its local employees ultimately sought to acquire TransLink. Failing in that endeavor, several employees established a new company which prompted charges of misappropriation of trade secrets, breach of fiduciary duty, and conversion. The case was resolved.

7. *Ragland v. Benjamin, et al.*
   Ragland, the principal of a construction company, brought claims against the Benjamins for non-payment. The Benjamins brought counterclaims for negligent work and fraud, and sought punitive damages for the work performed at their home. The parties relied upon a number of oral agreements and several versions of a written agreement. The case was resolved.

8. *Gordon, et al. v. Tate, et al.*
   Claimants brought claims for fraud, breach of fiduciary duty, and suitability under the Oklahoma Securities Act, as to the respondent financial advisors and their employer. Claimants, one of whom was a

high level executive of a publicly traded company, were experienced in financial and investment matters. The case was resolved.

Mediations as an Adjunct Settlement Judge

9. *Fenix v. Sheltering Palms, et al.*
Fenix was a constructor of housing projects for lower income, elderly, and handicapped families. GMAC, the lender, entered into a building loan agreement with Sheltering Palms, the borrower. Pursuant to the National Housing Act, HUD insured the lender in case of default by the owner. Near completion of the project, Fenix was notified that Sheltering Palms' payments on the loan were not current and that a default notice had been filed. Payments to Fenix stopped, impacting its working capital and ability to obtain other public works projects. Fenix asserted that HUD was unjustly enriched. The case was resolved.

10. *Confidential v. Confidential.*
Age and race claims were asserted against an international airline. The case was resolved.

b. Describe:

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

The general character of my law practice has always consisted of both civil and criminal litigation, including appeals, in a wide array of substantive matters.

From 1983 to 1987, my practice largely consisted of banking and savings and loan litigation, business litigation, and federal criminal defense. During this timeframe, I devoted a great deal of my time to three lengthy criminal trials and extensive pro bono work on appellate proceedings in a capital case.

I became a shareholder in the firm in 1987, which coincided with an increased level of complex commercial litigation in my practice. During this period, I was involved in a series of antitrust cases involving private jet aircraft engine overhaul and maintenance facilities. I also devoted significant time to litigation in the cable television industry. My criminal defense practice continued to grow. My practice also included a number of U.S. Securities and Exchange Commission investigations.

In the 1990s, my practice included significant work in the oil and gas industry, take-or-pay litigation, and defense of class actions within the

energy sector. My practice in the criminal defense area continued, but much of the work during this time was related to securities disputes, including penny-stock investigations and enforcement proceedings.

From the late 1990s to the present, my practice has consisted of class action matters in a variety of industries, including energy, ERISA, products liability, and various consumer issues. I continue to represent individuals and business entities in complex federal litigation, and to devote significant time, as lead counsel, to two capital habeas matters, with the assistance of other attorneys in my firm.

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

When I joined my firm in 1983, my practice consisted of banking-related cases, litigation for small to medium size companies in civil matters, and criminal defense of individuals.

After I became a shareholder in the firm in 1987, the complexity of the cases expanded. During this period, the majority of the firm's litigation practice was in federal court or before federal agencies, such as the SEC. Representative clients included oil and gas, telecommunications, and insurance companies in complex litigation.

In the late 1990s to the present, my practice has experienced a growth of clients in the oil and gas industry, as well as state and federal securities-related transactions and disputes. This is also a period during which more complex matters have been litigated by my firm, including class litigation.

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

The entirety of my practice has always been in litigation. I have appeared frequently in court throughout my practice.

i. Indicate the percentage of your practice in:
   1. federal courts: 55%
   2. state courts of record: 40%
   3. other courts: 0%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 70%
   2. criminal proceedings: 30%

d. State the number of cases in courts of record, 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.

Fifteen. I was sole counsel in two trials, chief counsel in five, and associate counsel in eight.

i. What percentage of these trials were:
   1. jury: 47%
   2. non-jury: 53%

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 been involved in two cases where certiorari was granted by the Supreme Court of the United States:

Stout v. Oklahoma, 486 U.S. 1050, 108 S. Ct. 2814 (1988) (lead counsel and authored petition for writ of certiorari; petition was granted and case remanded without further briefing or oral argument). Copy supplied.

United States v. Williams, 504 U.S. 39, 112 S. Ct. 1735 (1992) (response to petition for writ of certiorari and brief for respondent) (co-counsel and lead on Supreme Court briefing, oral argument by lead counsel, James C. Lang). Copy supplied.

I have been involved in four other cases in which certiorari was sought but denied:

Williams Controls, Inc. v. Cuesta, No. 09-81, *cert. denied* (brief in opposition) (minimal role in Supreme Court briefing). Copy supplied.

Community Action Project of Tulsa County v. Dubbs, No. 03-795, *cert. denied* (petition for writ of certiorari) (minimal role in Supreme Court briefing). Copy supplied.

Mignot v. Massie, No. 03-767, *cert. denied* (petition for writ of certiorari) (lead counsel, supervisory role in Supreme Court briefing). Copy supplied.

Oklahoma v. Bell, No. 95-783, *cert. denied* (brief in opposition) (lead counsel and authored all Supreme Court briefing). 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. *United States v. Bohl, et al.*, 90-CR-105-B, U.S. District Court for the Northern District of Oklahoma, Honorable Thomas R. Brett, 1990 – 1994.
       Appeal: 25 F.3d 904 (10th Cir. 1994).

       Mr. Bohl and his co-defendant were the Vice President and President, respectively, of a company which entered into a contract with the Federal Aviation Administration ("FAA") to design and construct over 70 radar and radio transmission towers throughout the country. The defendants were charged with conspiracy, submission of false claims, aiding and abetting, and mail fraud in connection with the FAA contract. I represented Mr. Bohl in all phases of the litigation. The defendants asserted that the towers were constructed with steel in conformance with the FAA contract, and thus sought preservation of the steel which the government contended was defective. Aside from a small amount of shavings and a fragment of a tower leg, all other steel had been sold, lost or destroyed, leaving the defendants without a meaningful opportunity to test the government's evidence. The defendants were convicted of all charges except conspiracy. The Tenth Circuit reversed and remanded with instructions to dismiss the indictment. This case is one of the very few reported cases where the *Youngblood* standard for dismissal has been met.

Co-defendant's counsel:	Allen M. Smallwood, Esq. 1310 South Denver Avenue Tulsa, Oklahoma 74119 (918) 582-1993
Opposing counsel:	Neal B. Kirkpatrick, Esq. 3223 East 31st, Suite 107 Tulsa, Oklahoma 74105 (918) 949-4060

2. *United States v. Cook*, U.S. District Court for the Northern District of Oklahoma, CR-89-107-JOE, Honorable James O. Ellison, 1993 – 1996. Appeal: 45 F.3d 388 (10th Cir. 1995).

   Mr. Cook was convicted of possessing cocaine with intent to distribute. His trial counsel had been retained to represent Mr. Cook and his two co-defendants, Ms. Cross and Ms. Burdine. Before trial, Ms. Cross pleaded guilty and agreed to testify against Mr. Cook. At trial, however, Ms. Cross refused to testify. The district court instructed Mr. Cook's counsel to have a private consultation with Ms. Cross, her counsel, and the prosecutor regarding her refusal to testify. After that meeting, Ms. Cross returned to the stand and gave damaging testimony against Mr. Cook, who was convicted. On appeal, Mr. Cook's counsel did not raise any issue as to his conflict of interest during the Cross meeting. I represented Mr. Cook on his ineffective assistance of counsel claim. The Tenth Circuit concluded that Mr. Cook received ineffective assistance of trial and appellate counsel due to the conflict of interest.

   Opposing counsel:

   James L. Swartz, Esq.
   Assistant United States Attorney
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3. *Stout v. Oklahoma*, 486 U.S. 1050, 108 S. Ct. 2814 (1988) (memorandum *per curiam* decision), 1984 – 1992.

   On November 4, 1979, Mr. Stout was found guilty of two counts of murder in the first degree and sentenced to death. The jury determined that two aggravating circumstances existed, one of which was Oklahoma's "especially heinous, atrocious, or cruel" aggravating circumstance. In 1984, I was contacted by Mr. Stout's counsel and asked to assume the lead counsel role in further appellate proceedings. Over the next four years, I filed three applications for post conviction relief in Oklahoma's Court of Criminal Appeals, and obtained three stays of execution, one of which was issued by the United States Supreme Court. On June 13, 1988, the Supreme Court granted Mr. Stout's Petition for a Writ of Certiorari, vacated the Oklahoma Court of Criminal Appeals' decision, and remanded for further consideration in accordance with *Maynard v. Cartwright*, 486 U.S. 356, 108 S. Ct. 1853 (1988), which was decided the same day. Upon re-sentencing, Mr. Stout was sentenced to life without parole. My representation of Mr. Stout was pro bono.

   Co-counsel:

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   (405) 326-6453

Opposing counsel: Michael C. Turpen, Esq.
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Robert Henry, Esq.
President of Oklahoma City University
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4. *Cannon v. Mullin*, 99-CV-297, U.S. District Court for the Northern District of Oklahoma, Honorable Terence C. Kern, 2005 – present.
Appeal: 385 F.3d 1152 (10th Cir. 2004).

Mr. Cannon was convicted in Oklahoma state court of First Degree Murder and sentenced to death. After exhausting available avenues of appeal in the state system, Mr. Cannon sought federal habeas relief. Mr. Cannon was denied relief in the district court, but the Tenth Circuit remanded three ineffective assistance of counsel ("IAC") claims on appeal. I represented Mr. Cannon in the remanded proceedings. To overcome any procedural bar of the IAC claims, it was necessary to establish that Mr. Cannon was not afforded direct appeal counsel who was constitutionally "separate" and independent from his trial counsel. In a bench trial, it was established that appellate and trial counsel were not separate, thus precluding appellate counsel from functioning in accordance with constitutionally mandated standards. Procedural bars imposed under Oklahoma law were thus lifted, and Mr. Cannon's IAC claims are ongoing in the district court at this time.

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Opposing counsel: Jennifer J. Dickson, Esq.
State of Oklahoma, Attorney
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5. *McKissick v. Yuen, et al.*, CV-04-262-JHP-TLW, U.S. District Court for the Northern District of Oklahoma, Honorable James H. Payne, 2004 – present.
Appeal: 618 F.3d 1177 (10th Cir. 2010).

Ms. McKissick, a former Gemstar-TV Guide executive, sued Gemstar and two of its former officers, alleging fraud, negligent misrepresentation, and a violation of the Securities Exchange Act. Ms. McKissick claimed that the defendants had artificially inflated the value of Gemstar's stock, while at the same time inducing her to delay the sale of her stock options until the bottom fell out. Ms. McKissick sought damages of $7 to $10 million. I served as lead counsel for Gemstar, and successfully obtained summary judgment on McKissick's claims, and on Gemstar's counterclaim against Ms. McKissick, which sought attorney fees incurred in defending against her claims. Ms. McKissick appealed. The Tenth Circuit ruled that Ms. McKissick's claims were indeed barred by a separation and release agreement she had executed at the time of her termination from Gemstar. Gemstar's entitlement to attorney fees was affirmed, and the appellate court awarded Gemstar attorney fees incurred during the appeal. The amount of Gemstar's fee award is currently being litigated on remand in the Northern District.

Co-counsel:	Jo Lynn Jeter, Esq. Norman Wohlgemuth Chandler & Dowdell, P.C. 401 South Boston Avenue, Suite 2900 Tulsa, Oklahoma 74103 (918) 583-7571
	Christine D. Little, Esq. Ladner & Little, PLLC 320 South Boston Avenue, Suite 1026 Tulsa, Oklahoma 74103 (918) 582-3044
	Lawrence C. Barth, Esq. Munger Tolles & Olson LLP 355 South Grand Avenue, 35th Floor Los Angeles, California 90071 (213) 683-9274
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Counsel for Co-Defendants Yuen and Leung:	Brian Edward Maas, Esq. Frankfurt Kurnit Klein & Selz PC 488 Madison Avenue

New York, New York 10022
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6. *U.S. v. Williams*, 88-CR-52-E, U.S. District Court for the Northern District of Oklahoma, Honorable James O. Ellison, 1988 – 1992.

I served as co-counsel in the representation of Mr. Williams, who was indicted on seven counts of bank fraud. On the day trial was to commence, we sought the district court's further consideration of a dismissal motion based on the government's withholding of substantial exculpatory evidence from the grand jury. Such conduct, we contended, was contrary to decisions of the Tenth Circuit and the Supreme Court. Upon reconsideration, the district court dismissed the indictment, and the Tenth Circuit affirmed that ruling. 899 F.2d 898 (10th Cir. 1990). The Supreme Court granted certiorari and reversed in a five-to-four decision. 504 U.S. 39, 112 S. Ct. 1735 (1992). I was one of four attorneys defending Mr. Williams, but was lead counsel for the motions and briefing associated with the exculpatory evidence arguments throughout the litigation. Despite the Supreme Court's reversal of the lower courts' rulings, the government subsequently dropped its case against Mr. Williams.

Co-counsel:

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Former Solicitor General
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7. *Krug et al. v. Helmerich & Payne, Inc.*, Tulsa County District Court, CJ-98-06012, Honorable Jefferson D. Sellers, 2007 – present.

A class consisting of all royalty owners under oil and gas leases in two 640-acre sections in Beckham County, Oklahoma brought suit against my client, Helmerich & Payne, Inc. ("H&P"), in 1998. The plaintiffs alleged that H&P breached contractual and fiduciary duties by allowing uncompensated drainage of natural gas to occur. Plaintiffs also claimed that H&P engaged in constructive fraud and was unjustly enriched by failing to pay royalty amounts allegedly included in H&P's 1989 take-or-pay settlement with ANR Pipeline. I became involved as co-lead counsel in mid-2007, after the litigation had been proceeding for nearly a decade.

After my involvement commenced, there were numerous hearings and two writ proceedings before the Oklahoma Supreme Court (Case Nos. PR-106332 & MA-106412). The case was tried to a jury on November 3-26, 2008, and the jury returned verdicts in favor of plaintiffs on several theories. The district court found the verdict for constructive fraud in the ANR Settlement ($6.8 million) to be controlling and adopted it. Thereafter, the district court, sitting in equity, imposed an additional award of $112 million as disgorgement of profits.

I continue to represent H&P on appeal. On August 18, 2011, the Oklahoma Court of Civil Appeals entered an Opinion in Appeal No. DF-106845. The Court affirmed the jury verdicts, but reversed the $112 million disgorgement award. On February 13, 2012, the Oklahoma Supreme Court granted H&P's petition for certiorari related to the jury's verdict, including the $6.8 million award.

Co-counsel:

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Opposing counsel:

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8. *State of Oklahoma v. Bell*, CF-93-0479, Tulsa County District Court, Honorable Clifford Hopper, 1993 – 1996.

Ms. Bell was convicted of Second Degree Murder after a lengthy trial in the Tulsa County District Court on September 30, 1993. Ms. Bell was sentenced to twenty years in prison for the murder of her husband. I was hired as co-lead counsel on Ms. Bell's appeal. The review of the record demonstrated that the trial transcripts were grossly defective, including extensive discrepancies and omissions which impacted the fairness of her trial or any potential retrial. The Oklahoma Court of Criminal Appeals remanded the matter to the district court for the purpose of correcting the transcript. In the course of those proceedings, it became clear that the trial judge had routinely deprived defendants of the presumption of innocence. Ms. Bell had been denied that presumption, as the trial court had instructed the jury that she was to be "presumed not guilty" rather than "presumed innocent." The notoriety of Ms. Bell's case hastened the appellate court's review and reversal of 42 convictions which had been tainted by the trial judge's faulty instruction. Ultimately, Ms. Bell was granted a new trial and, after further proceedings in the district court, she entered a plea which permitted her release for time served.

Co-counsel:

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Opposing counsel: S.M. "Buddy" Fallis, Esq. (deceased)
Tulsa County District Attorney

9. *In re Williams Companies ERISA Litigation*, 02-CV-153, U.S. District Court for the Northern District of Oklahoma, Honorable Sven E. Holmes; 2002 – 2005.

I was lead Oklahoma counsel in a nationwide class action on behalf of thousands of retirement plan participants, including current and former employees of Tulsa-based Williams Companies. The claims were based on breaches of fiduciary duties by company officials in failing to disclose the true financial condition of Williams and its former telecommunications unit, Williams Communications Group, Inc. As a result, participants were exposed to unreasonable risk which was not disclosed. Instead, the companies encouraged employees to invest their retirement funds in the company's common stock. We obtained a $55 million settlement on behalf of the class in 2005.

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10. *Walker v. Robbins*, 90-C-377-E, U.S. District Court for the Northern District of Oklahoma, Honorable James O. Ellison, 1990 – 1994.

In 1990, I assumed the representation of Ms. Walker, a legally blind, 92 year old woman. Ms. Walker, referred to by family, friends, and the press as "Aunt Lucy," resided in Talala, Oklahoma, with family members. News accounts

reported that a guardian ad litem, armed with a Kansas state court order and a related Oklahoma court order, planned to seize Ms. Walker by body attachment and physically relocate her to Kansas. I was engaged on the afternoon prior to the planned seizure, and prepared a lawsuit which sought preliminary injunctive relief against the guardian. The injunction was granted the next morning. In discovery leading up to the trial, it was discovered that forgeries had been committed in the Kansas court records which were the predicate for the Oklahoma state court order authorizing Ms. Walker's seizure. This discovery led to a prompt resolution of the case on terms that allowed Ms. Walker to stay in Oklahoma.

Co-counsel:	Joel L. Wohlgemuth, Esq. Norman Wohlgemuth Chandler & Dowdell, P.C. 401 South Boston Avenue, Suite 2900 Tulsa, Oklahoma 74103 (918) 583-7571
Opposing Counsel:	Marlin R. Davis, Esq. Marlin R. Davis, P.C. 8908 South Yale Avenue, Suite 245 Tulsa, Oklahoma 74137 (918) 742-0900

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 had extensive involvement in grand jury investigations. These engagements have generally involved white collar investigations, many of which have been concluded without prosecution. It has been especially rewarding when close work with prosecutors and government agencies led to a just resolution, without the consequences of indictment or trial. In addition, by appointment of the Chief Judge of the Northern District of Oklahoma, I have presided over more than 50 mediations as an Adjunct Settlement Judge. My work as an Adjunct has spawned my engagement as a private mediator in diverse legal areas over the last several years. The majority of these matters have been successfully resolved during my involvement, and consequentially have had a positive impact on court dockets in Oklahoma.

I have served on judicial selection committees for the appointment of four judges, two United States Magistrate Judges and two Tulsa County Special District Judges. I chaired one of the committees that selected the Magistrate Judges.

I have not performed any lobbying activities.

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

    I have 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.

    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.

I do not anticipate that any family members would present a conflict of interest. My law partners, Joel L. Wohlgemuth, R. Jay Chandler, and Jo Lynn Jeter, as well as the associates in my firm and a few local attorneys who are close personal friends could present conflicts. If confirmed, I would review cases carefully for any actual or potential conflicts of interest. I would, at all times, adhere to the Code of Conduct for United States Judges, and other applicable laws and regulations in handling 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 the event a potential conflict arises, I would rely upon the Code of Conduct for United States Judges and other applicable canons and statutory provisions, including 28 U.S.C § 455 and Canon 3(c), to determine whether an actual or potential conflict exists. Where necessary, I would disclose, recuse or seek reassignment of the case to another judge.

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

I have served as an Adjunct Settlement Judge in the Northern District of Oklahoma in over fifty mediations. I have also represented indigent criminal defendants free of charge throughout my legal career, including the representation of a capital defendant over a period of eight years which resulted in a change in his sentence following a favorable ruling in the Supreme Court of the United States. I have also provided free legal services in a variety of civil matters, including the representation of an HIV-positive blood donor whose donation was linked to the death of a child. For over twenty years, I have provided pro bono legal counsel to the high school from which I graduated, including work on matters that were litigated.

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 my jurisdiction, there is no formal selection commission to recommend candidates for nomination to the federal courts.

On November 27, 2009, I sent letters to Senator Tom Coburn, Senator Jim Inhofe, and Congressman Dan Boren, conveying my interest in being considered for nomination as a United States District Judge for the Northern District of Oklahoma. These letters included a short resumé.

Since October 13, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 7, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 20, 2012, I met with Senator Inhofe in his Tulsa office. On February 29, 2012, 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
Dowdell, John E.	Northern District of Oklahoma	2/29/2012
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	5a. Report Type (check appropriate type) ☑ Nomination, Date 02/29/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 1/1/2011 to 2/28/2012
7. Chambers or Office Address 401 S. Boston Ave., Suite 2900 Tulsa, OK 74103	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Shareholder and Director	Norman Wohlgemuth Chandler & Dowdell, P.C.
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 Dowdell, John E.	Date of Report 2/29/2012

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	Norman Wohlgemuth Chandler & Dowdell, P.C.	$563,822.77
2. 2011	Norman Wohlgemuth Chandler & Dowdell, P.C.	$318,138.00
3. 2012	Norman Wohlgemuth Chandler & Dowdell, P.C.	$13,333.32
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	Family & Children's Services - salary
2. 2011	School of St. Mary - salary
3. 2012	School of St. Mary - salary
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Dowdell, John E.	Date of Report 2/29/2012

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.	Chase Bank	credit card	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting Dowdell, John E.	Date of Report 2/29/2012

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. Brokerage Account # 1					Exempt				
2. - Greystone Logistics, Inc.	A	Dividend	J	T					
3. -American Funds Capital World Fund	B	Dividend	L	T					
4. -American Funds Growth Fund of America	A	Dividend	K	T					
5. -American Funds Investment Company of America	A	Dividend	J	T					
6. -American Funds New Perspective Fund	A	Dividend	K	T					
7. -American Funds Washington Mutual Fund	A	Dividend	K	T					
8. -Fidelity Advisor Balanced Fund	A	Dividend	J	T					
9. -First Eagle Global Fund	A	Dividend	L	T					
10. -MainStay Government Fund	A	Dividend	J	T					
11. -Oppenheimer Global Allocation Fund	A	Dividend	K	T					
12. -Prudential International Equity Fund	A	Dividend	J	T					
13. -Prudential Jennison Select Growth Fund		None	J	T					
14. -Templeton Global Opportunities Fund	A	Dividend	J	T					
15. -UBS U.S. Allocation Fund	A	Dividend	J	T					
16. -UBS Money Market Account	A	Interest	M	T					
17.									

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Dowdell, John E.	2/29/2012

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)
18. 401K # 1	A	Dividend	O	T					
19. -ABA Stable Assett Return Fund									
20. -ABA Balanced Fund									
21. -ABA Large Cap Equity Fund									
22. -ABA Small-Mid Cap Equity Fund									
23. -ABA Self-Managed Brokerage Account									
24.									
25. IRA # 1	B	Dividend	L	T					
26. -Allianz NFJ Renaissance Fund									
27. -American Funds Capital World Growth Allocation Fund									
28. -American Funds Investment Company of America									
29. -First Eagle Global Fund									
30. -Ivy Asset Strategy Fund									
31. -Oppenheimer Global Allocation Fund									
32. -Prudential International Equity Fund									
33. -Prudential Jennison Select Growth Fund									
34.									

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 Dowdell, John E.	Date of Report 2/29/2012

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. Guardian Whole Life	A	Dividend	K	T					
36. Guardian Whole Life	B	Dividend	L	T					
37.									
38. Tulsa Federal Employee's Credit Union Accounts	A	Interest	J	T					

1 Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2 Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 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 Dowdell, John E.	Date of Report 2/29/2012

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Dowdell, John E.	Date of Report 2/29/2012

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		10	000	Notes payable to banks-secured (auto)		11	000
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		959	714	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		21	400
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		275	240
Real estate owned – personal residence		775	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		363	987				
Cash value-life insurance		77	400				
Other assets itemize:							
NWCD Capital Account		175	000				
				Total liabilities		307	640
				Net Worth	2	053	461
Total Assets	2	361	101	Total liabilities and net worth	2	361	101
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	
Brokerage Account	
American Funds Capital World Fund	$ 54,259
American Funds Growth Fund of America	16,403
American Funds Investment Company of America	4,063
American Funds New Perspective Fund	15,992
American Funds Washington Mutual Fund	15,128
Fidelity Advisor Balanced Fund	8,582
First Eagle Global Fund	73,388
Greystone Logistics, Inc. stock	3,848
MainStay Government Fund	3,580
Oppenheimer Global Allocation Fund	8,306
Prudential International Equity Fund	1,182
Prudential Jennison Select Growth Fund	998
Templeton Global Opportunities Fund	1,583
UBS U.S. Allocation Fund	5,282
UBS Money Market Account	112,508
Retirement Account	
ABA Stable Asset Return Fund	$ 48,389
ABA Balanced Fund	127,195
ABA Large Cap Equity Fund	140,577
ABA Small-Mid Cap Equity Fund	156,466
ABA Self-Managed Brokerage Account	69,915
Allianz NFJ Renaissance Fund	15,185
American Funds Capital World Growth and Income Fund	9,889
American Funds Investment Company of America	17,515
First Eagle Global Fund	15,592
Ivy Asset Strategy Fund	19,400
Oppenheimer Global Allocation Fund	13,097
Prudential International Equity Fund	711
Prudential Jennison Select Growth Fund	681
Total Listed Securities	$959,714

AFFIDAVIT

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

03-01-2012
(DATE)

JOHN E. LOUDELL
(NAME)

Pamela Grimes
NOTARY

Notary Public Oklahoma
OFFICIAL SEAL
PAMELA GRIMES
Rogers County
01015236 Exp. 9-30-13

STATEMENT OF JUDGE MARK E. WALKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF FLORIDA

Judge WALKER. Thank you, Chairman. I thank the Chairman, the Ranking Member, and Senator Coburn for your time and attention this afternoon.

I would also like to, of course, thank the President for nominating me and forwarding my name to you. And I thank Senator Nelson and Senator Rubio for their kind remarks.

I will introduce my family, having previously been introduced by Senator Nelson. My wife of 18 years, Karen Walker, is here with me; our daughters, Sarah and Emily; my folks, Joe and Dotty Walker; my sister, Elizabeth, and her husband, Tom Conway. Unfortunately, my brother, Lieutenant Colonel Larry Walker, just recently retired, and his wife, also Lieutenant Colonel Walker, in that case, Julie Walker, also retired, could not be with us today.

Also, with us today are my cousin, Amy Rhodes; family friends, Ryan Andrews, Special Agent Josh Doyle and his wife, Kate.

I have two judges from the first district court of appeal in north Florida who actually grade my papers, Judge Roberts and Judge Rowe, who are both here, as well as Judge Rowe's law clerk, Tim Moore.

With that, I thank you for your time and consideration.

Senator WHITEHOUSE. Thank you, Judge.

Now, Judge Davis.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**:

   Mark Eaton Walker

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

   United States District Judge for the Northern District of Florida

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.

   Leon County Courthouse
   301 South Monroe Street, Room 365-A
   Tallahassee, Florida 32301

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

   1967; Winter Garden, Florida

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, University of Florida College of Law; J.D., 1992

   1987 – 1989, University of Florida; B.A., 1989

   Summer/Fall 1986, United States Military Academy; no degree awarded

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
Second Judicial Circuit
Leon County Courthouse
301 South Monroe Street, Room 365-A
Tallahassee, Florida 32301
Circuit Judge

2006 – 2008
The Law Offices of Mark E. Walker, P.L.
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301
Sole practitioner

2005 – 2006
Pelham, Andrews & Walker
(currently known as The Pelham Law Firm)
2502-2 Barrington Circle
Tallahassee, Florida 32308
Partner

2004 – 2005
Broad and Cassel
Sun Trust Bank Building, Suite 400
215 South Monroe Street
Tallahassee, Florida 32301
Of Counsel

2000 – 2004
Andrews & Walker, P.A.
(currently known as Law Offices of Steven R. Andrews, P.A.)
822 North Monroe Street
Tallahassee, Florida 32303
Shareholder

1999 – 2000
The Law Offices of Steven R. Andrews, P.A.
822 North Monroe Street
Tallahassee, Florida 32303
Associate

1997 – 1999
The Office of Public Defender, Second Judicial Circuit
Leon County Courthouse
301 South Monroe Street, Suite 401
Tallahassee, Florida 32301
Assistant Public Defender

July 1997
Berger, Davis & Singerman
(currently known as Berger Singerman)
125 South Gadsden Street, Suite 300
Tallahassee, Florida 32301
Associate

1996 – 1997
Hon. Robert L. Hinkle
United States District Court for the Northern District of Florida
United States Courthouse
111 North Adams Street
Tallahassee, Florida 32301
Law Clerk

Summer 1996
Cummings, Lawrence & Vezina
(currently known as Vezina, Lawrence & Piscitelli, P.A.)
The Walker-Lee House
413 East Park Avenue
Tallahassee, Florida 32301
Associate

1994 – 1996
Hon. Stephen H. Grimes
Former Chief Justice of the Florida Supreme Court
315 South Calhoun Street, Suite 600
Tallahassee, Florida 32301
Law Clerk

1993 – 1994
Hon. Emmett Ripley Cox
United States Court of Appeals for the Eleventh Circuit
United States Courthouse
113 St. Joseph Street, Room 433
Mobile, Alabama 36602
Law Clerk

Summer 1993
Winderweedle, Haines, Ward and Woodman
329 Park Avenue North, Second Floor
Winter Park, Florida 32790
Summer Associate

Summer 1992
Career City College

(currently known as City College)
7001 NW Fourth Boulevard
Gainesville, Florida 32607
Paralegal Instructor

Summer 1991
Rumberger Kirk & Caldwell
Lincoln Plaza, Suite 1400
300 South Orange Avenue
Orlando, Florida 32801
Summer Associate

1989 – 1993 (Summers & Holidays)
Winn Dixie, Store #2248 (store closed)
South Dillard Street
Winter Garden, Florida 34787
Part-time employee

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 attended the United States Military Academy as a cadet in the summer and early fall of 1986. I voluntarily withdrew and received an honorable discharge. I registered for selective service upon turning age 18.

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

   2011 Trial Jurist of the Year, Tallahassee Chapter of the American Board of Trial Advocates

   Florida Trend Legal Elite

   AV rating with the Martindale-Hubbell publication

   University of Florida College of Law:
   - Graduated second in class with high honors
   - Senior Managing Editor, Florida Law Review
   - Order of the Coif

   University of Florida:
   - Phi Beta Kappa
   - National Alumni Four Year Scholar (graduated first in class)

Eagle Scout

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.

   Tallahassee Bar Association

   Tallahassee Women Lawyers

   William H. Stafford American Inn of Court

10. **Bar and Court Admission**:

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

       Florida, 1993

       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 Eleventh Circuit, 1993
       United States District Court for the Northern District of Florida, 1996
       United States District Court for the Middle District of Florida, 1996
       Florida State Courts, 1993

       I allowed my memberships in the Eleventh Circuit and the Middle District of Florida to lapse because I was not actively practicing in those courts. I renewed those memberships in 2007 in order to represent clients with matters before those courts. Otherwise, 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.

Economic Club of Florida (approx. 1994)

Golden Eagle Golf & Country Club (2008 – 2010)

Governor's Club (2001 – 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, none of the organizations listed in response to Question 11(a) currently discriminates or previously 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.

Mark E. Walker, *The Godfather's Revenge*, Fla. Bar Journal (Jan. 1, 2007). Copy supplied.

Mark E. Walker, Comment, *Workers' Compensation: Florida's Resistance to Non-Statutory Limits to the Employment-At-Will Doctrine*, 43 Fla. L. Rev. 583 (1992). 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.

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 June 30, 2005, I appeared before the Board of Trustees for Florida A&M University on behalf of a client about a potential lawsuit. Meeting minutes and press coverage supplied.

On June 23, 2005, I wrote a letter to Florida A&M University Board Trustee Chair Challis Lowe on behalf of a client about a potential lawsuit. I no longer have a copy of the letter, but press coverage 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.

Other than for my investiture, I do not have notes, transcripts or recordings for any of the events below as it has generally not been my practice to speak from prepared notes for panel discussions and lectures.

May 13, 2011: Panel discussion on civil trial practice, National Business Institute, Tallahassee, Florida. Audio recording supplied.

2010: Guest Lecturer for Professor Dan Markel's Criminal Procedure class at the Florida State University College of Law, Tallahassee, Florida. I fielded questions regarding criminal procedure. I have no notes, transcripts or recordings. The address of the law school is 425 West Jefferson Street, Tallahassee, Florida 32306.

2010: Panel discussion on the legal job market in Florida at the Florida State University College of Law, Tallahassee, Florida. I fielded questions regarding the legal job market in Florida. I have no notes, transcripts or recordings. The address of the law school is 425 West Jefferson Street, Tallahassee, Florida 32306.

October 16, 2009: Panel discussion on civil trial practice, National Business Institute, Tallahassee, Florida. Audio recording supplied.

January 30, 2009: Remarks during my investiture as a judge, Tallahassee, Florida. Remarks supplied.

2009: Guest Lecturer for Judge Terry Lewis' Civil Procedure class at the Florida State University College of Law, Tallahassee, Florida. I fielded questions

regarding civil procedure. I have no notes, transcripts or recordings. The address of the law school is 425 West Jefferson Street, Tallahassee, Florida 32306.

2007: Guest Lecturer for Professor Stephen Bailey's Business Law class at Florida State University, Tallahassee, Florida. I fielded questions regarding civil trial practice. I have no notes, transcripts or recordings. The address of the university is 600 West College Avenue, Tallahassee, Florida 32306.

2003: Guest Lecturer for Professor Leslei Street's Sociology class at Florida State University, Tallahassee, Florida. I fielded questions regarding civil trial practice. I have no notes, transcripts or recordings. The address of the university is 600 West College Avenue, Tallahassee, Florida 32306.

November 6, 1997: Remarks during a retirement ceremony for Supreme Court Justice Stephen H. Grimes, Tallahassee, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the Florida Supreme Court is 500 South Duval Street, Tallahassee, Florida 32399.

Finally, I have spoken at my church and made brief statements at various fundraisers when I was running for judge. I do not recall the dates or the substance of those remarks, and have no notes, transcripts, or recordings. I have been unable to identify and do not recall any other speeches, remarks, lectures, or panel discussions.

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 time as a litigator, I occasionally responded to press inquiries regarding cases in which I was counsel of record. I have given few interviews since taking the bench. Although I have not maintained a record of such occasions, I have attempted to create as complete a list as possible through searches of public databases, the Internet, and my personal files.

Julie Montanaro, *Tallahassee Judge a Finalist for Federal Bench*, WCTV News, Aug. 2, 2011. Copy supplied.

Jeff Burlew, *Judge Presiding over Hoffman Murder Trial Known for Fairness*, Tallahassee Democrat, Dec. 13, 2009. Copy supplied.

Nic Corbett, *New Jurists Complete Training*, Tallahassee Democrat, Jan. 10, 2009. Copy supplied.

Lindsay Peterson, *Lawyer Sues DOT to View CSX Documents*, Tampa Tribune, Mar. 28, 2008. Copy supplied.

David DeCamp, *More Trouble for Orlando Commuter Rail Project*, St. Petersburg Times Blogs, Mar. 27, 2008. Copy supplied.

Mike Perrin, *Hall of Famer Joe to Coach at Miles*, Birmingham News, Dec. 12, 2007. Copy supplied.

Ex-Ball Player Pleads to Lesser Charge in Prison Investigation, Associated Press, Mar. 22, 2006 (reprinted in multiple outlets). Copy supplied.

Matt Galnor, *Prison Team Player Takes Lesser Charge*, Florida Times-Union, Mar. 22, 2006. Copy supplied.

Brian Landman, *Fired Then Cleared, Coach Sues FAMU*, St. Petersburg Times, Feb. 3, 2006. Copy supplied.

Emily Badger, *FAMU Faces Probation*, Orlando Sentinel, Feb. 2, 2006. Copy supplied.

Randy Beard, *Former FAMU Coach Sues after NCAA Clears Him*, The News-Press, Feb. 2, 2006. Copy supplied.

Randy Beard, *Joe, Cleared by NCAA, Sues FAMU*, Tallahassee Democrat, Feb. 2, 2006 (reprinted in multiple outlets). Copy supplied.

Emily Badger, *NCAA Move Will Delay Joe's Suit*, Orlando Sentinel, Aug. 10, 2005. Copy supplied.

Emily Badger, *Joe Likely to File Suit against Florida A&M*, Orlando Sentinel, July 9, 2005. Copy supplied.

Emily Badger, *Cuts Will Make Life Harder for Coaches*, Orlando Sentinel, July 2, 2005. Copy supplied.

Emily Badger, *Joe May Sue Florida A&M over Unexpired Contract Dispute*, Orlando Sentinel, June 29, 2005 (reprinted in multiple outlets). Copy supplied.

Kim McCoy Vann, *School Board Sued in Sex Case*, Tallahassee Democrat, Apr. 1, 2005. Copy supplied.

James Rosica, *Newest Judge a Study in Contrasts*, Tallahassee Democrat, Aug. 25, 2002. Copy supplied.

James Rosica, *Court Denied Maloy's Request*, Tallahassee Democrat, May 4, 2002. Copy supplied.

James Rosica, *Maloy Petitions Supreme Court*, Tallahassee Democrat, May 3, 2002. Copy supplied.

Bruce Ritchie, *HMOs Win Patients, Fight for Survival*, Tallahassee Democrat, Feb. 6, 2002. Copy supplied.

James Rosica, *Girl Sues Station for Identifying Her*, Tallahassee Democrat, Sept. 15, 2000. Copy supplied.

James Rosia, *Coach Sentenced to 25 Years*, Tallahassee Democrat, Sept. 9, 2000. 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 ran unopposed and was elected as a Circuit Judge, Second Judicial Circuit, on November 4, 2008. I took office on January 6, 2009, and my term ends on January 5, 2015. I was assigned to the criminal division from January 2009 to January 2011, and the family law division from January 2011 to January 2012. Effective January 23, 2012, I have been reassigned to the criminal division.

In Florida, the circuit courts are referred to as courts of general jurisdiction inasmuch as most criminal and civil cases originate at this level. Circuit courts have original jurisdiction over civil disputes in excess of $15,000, criminal prosecution for all felonies, family law, probate and a host of other matters including extraordinary writs.

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

I have presided over approximately 135 trials that have gone to verdict or judgment, including 75 jury trials.

i. Of these, approximately what percent were:

jury trials:	55%
bench trials:	45%
civil proceedings:	45%
criminal proceedings:	55%

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

I have not written any published opinions. During my time on the bench, I have signed hundreds of orders, the vast majority of which were routine orders without legal analysis or proposed orders prepared by counsel based on

my oral pronouncements. In a limited number of cases set for trial, I have issued orders containing legal analysis beyond my oral pronouncements on the record.

On July 12, 2011, I sat by designation with the First District Court of Appeal. I sat on three panels, two of which affirmed without opinion. In the third case, the panel issued a written opinion *per curiam*. *Thornton v. State*, 68 So. 3d 320 (Fla. 1st DCA 2011).

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

1. *State v. Bradshaw*, Case No. 2008 CF 1682 (2009).

Defendant was charged with the execution-style murder of a college student turned confidential informant, Rachel Hoffman. Hoffman's death was the source of marches, protests, a civil lawsuit against the City of Tallahassee and even legislation relating to the use of confidential informants. *See* § 914.28, Fla. Stat. ("Rachel's Law"). Notwithstanding pretrial publicity, we seated a jury in less than three days. After more than a week of testimony, the parties rested. The jury deliberated for more than 22 hours over three days before returning a verdict of guilty. Following the penalty phase, the jury recommended life in prison and, following that recommendation, I sentenced Defendant to life in prison. The judgment and sentence were affirmed on appeal. *Bradshaw v. State*, 64 So. 3d 680 (Fla. 1st DCA 2011).

Defense Counsel:

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P.O. Box 546
Eastpoint, Florida 32328
(850) 222-3456

Clyde Taylor
119 East Park Avenue
Tallahassee, Florida 32301
(850) 224-1191

Charles Hobbs
602 North Adams
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State Attorneys:

Georgia Cappelman
Francis Allman
Eddie Evans
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

2. *State v. Jones*, Case No. 2008 CF 2707 (2009).

Defendant was charged with sexual battery of a physically incapacitated victim for sexually assaulting an intoxicated woman he picked up in his taxi. Two novel issues were presented. First, Defendant argued that he had been charged under the wrong statute because intoxication rendered a person "helpless" not "physically incapacitated." Second, Defendant argued that the State presented insufficient evidence because if the putative victim "blacked out" as she claimed then there was no evidence that she did not consent to sexual relations with Defendant. I denied the Defendant's motion for judgment of acquittal, concluding that intoxication could render a person incapacitated within the meaning of the law. Moreover, viewed in the light most favorable to the State, I held that a jury could reasonably conclude that the victim was unconscious when she was placed in the taxi and thus could not have given consent. The jury found the Defendant guilty. The judgment and sentence were affirmed on appeal. *Jones v. State*, 43 So. 3d 696 (Fla. 1st DCA 2010).

Defense Counsel:	State Attorney:
Leonard Holton 301 South Monroe Street, Suite 401 Tallahassee, Florida 32301 (850) 606-1000	Jon Fuchs 301 South Monroe Street, Suite 475 Tallahassee, Florida 32301 (850) 606-6000

3. *State v. Williams*, Case No. 2008 CF 3830 (2010).

Defendant was charged with sexual battery of his biological daughter when she was under twelve years of age. It was further alleged that Defendant videotaped the sex acts. Prior to trial, Defendant moved to suppress the video and other objects seized from his home, arguing the search warrant was defective. I denied the motion to suppress and the case proceeded to trial where the video was shown to the jury. The jury found Defendant guilty on all counts. I sentenced Defendant to consecutive life terms followed by terms of years totaling 85 years. Defendant's direct appeal is pending.

Defense Counsel:	State Attorney:
John Leace 414 North Meridian Tallahassee, Florida 32301 (850) 577-3555	Stefanie Walters 301 South Monroe Street, Suite 475 Tallahassee, Florida 32301 (850) 606-6000

4. *State v. Mendiola*, Case. No. 2009 CF 229 (2010).

Defendant was charged with sexual battery of her biological son when he was under twelve years of age. At the time of trial, the child was only seven.

Following evidentiary hearings, I found the child competent and permitted the child to testify by closed-circuit television. I granted judgment of acquittal as to several counts and the jury returned a verdict of guilty as to molestation and child abuse. I sentenced Defendant to life in prison. The judgment and sentence were affirmed on appeal. *Mendiola v. State*, 2011 WL 5906090 (Fla. 1st DCA Nov. 28, 2011).

Defense Counsel:	State Attorney:
John Kenny 241 East Sixth Avenue Tallahassee, Florida 32303 (850) 224-9092	Lorena Bueno 301 South Monroe Street, Suite 475 Tallahassee, Florida 32301 (850) 606-6000

5. *State v. Faust*, Case No. 2009 CF 1709 (2010).

Defendant was charged with first degree murder. The State's theory of the case was that Defendant sent females into a home to identify valuables, make sure that the intended target was not armed, and text Defendant when the door was open. The case involved novel issues regarding the admissibility of text messages and cell phone locator information. I admitted the text messages over Defendant's hearsay objections. The jury found Defendant guilty and I sentenced Defendant to life in prison. The judgment and sentence were affirmed on appeal. *Faust v. State*, 69 So. 3d 280 (Fla. 1st DCA 2011).

Defense Counsel:	State Attorney:
David Collins 310 North Jefferson Street Monticello, Florida 32345 (850) 997-8111	Jon Fuchs 301 South Monroe Street, Suite 475 Tallahassee, Florida 32345 (850) 606-6000

6. *State v. Powell*, Case No. 2009 CF 930 (2010).

Defendant was charged with the sexual battery of his stepdaughter when she was under twelve years of age. The case involved critical evidentiary issues involving similar act evidence which I admitted over Defendant's objection. The case was tried twice. The first jury hung. The second jury found Defendant guilty and I sentenced him to life in prison. Defendant's direct appeal is pending.

Defense Counsel:	State Attorney:
Darren Shippy P.O. Box 1019 Tallahassee, Florida 32302 (850) 922-0179	Jon Fuchs 301 South Monroe Street, Suite 475 Tallahassee, Florida 32345 (850) 606-6000

John Eagen
103 North Gadsden Street
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(850) 894-1859

7. *State v. Smith*, Case No. 2008 CF 3488 (2009).

Defendant was charged with attempted murder for repeatedly shooting a man in the parking lot of an apartment complex. This was an unusual case because it was tried three times and I issued bench warrants to secure the attendance of the State's primary witnesses. At the first trial, the State presented the testimony of an eyewitness but could not locate the victim. The jury hung. At the second trial, the State could not locate the eyewitness or the victim but read the prior sworn testimony of the eyewitness from the first trial. Again, the jury hung. At the third trial, the eyewitness and the victim were brought to court on bench warrants. The jury returned a verdict of not guilty.

Defense Counsel:

Leonard Holton
301 South Monroe Street, Suite 401
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(850) 606-1000

State Attorney:

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
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8. *State v. Vathis*, Case No. 1996 CF 1260 (2010).

In 1997, Defendant was sentenced to 25 years for capital sexual battery. After realizing that the crime carried a mandatory life sentence, the judge brought Defendant back to court eight days later and sentenced him to life in prison. Eleven years later, Defendant moved to set aside his sentence. Because a Florida appellate court had squarely addressed the issue – holding that resentencing under these circumstances would violate double jeopardy principles – I was required to set aside Defendant's life sentence. In so ruling, I opined that the appellate court was wrong because I did not believe double jeopardy attached to a sentence until the State's time for appeal had run. The State again did not appeal but instead filed a postconviction motion. I held that double jeopardy had clearly attached at that point so I entered an order denying the State's motion. Copy supplied. The order was affirmed on appeal. *State v. Vathis*, 68 So. 3d 239 (Fla. 1st DCA 2011).

Defense Counsel:

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Attorney General:

Charmaine Millsaps
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9. *Herzog v. Babington*, Case No. 2002 DR 409 (2011).

Mother/Former Wife sought to relocate to Orlando with a minor child because her current husband secured a job with Walt Disney World. Father/Former Husband opposed relocation. After an evidentiary hearing, I granted the Mother's Supplemental Petition to Permit Relocation with Minor Child. Copy supplied.

Counsel for Mother:

Maggie Moody
2940 Kerry Forrest Parkway, Suite 103
Tallahassee, Florida 32309
(850) 656-7753

Counsel for Father:

John Kenny
241 East Sixth Avenue
Tallahassee, Florida 32303
(850) 224-9092

10. *In re Johnson*, Case No. 2010 DP 100 (2011).

The Department of Children and Families sought to terminate parental rights of both the mother and father of two minor children where their paraplegic son sustained third-degree burns from scalding water in a bath tub. The matter proceeded to trial. I granted the Department's motion terminating the father's parental rights but denied as to the mother. Copy supplied.

Counsel for Dep't of Children & Families:

Michael Lee (supervising attorney)
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Tallahassee, Florida 32303
(850) 922-5231

Counsel for Mother:

Catherine Healey
P.O. Box 1019
Tallahassee, Florida 32302
(850) 922-0179

Counsel for Father:

Cydnee Brown
1303 Miccosukee Road
Tallahassee, Florida 32308
(850) 216-1010

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

None of my opinions have been published. Copies of ten of my unpublished decisions are attached.

1. *Herzog v. Babington*, Case No. 2002 DR 409 (Order Granting Supplemental Petition to Permit Relocation with Minor Child). Copy supplied in response to 13(c).

Counsel for Mother:

Maggie Moody
2940 Kerry Forrest Parkway, Suite 103
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(850) 656-7753

Counsel for Father:

John Kenny
241 East Sixth Avenue
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(850) 224-9092

2. *In re Johnson*, Case No. 2010 DP 100 (Final Order Denying Petition for Involuntary Termination of Parental Rights as to the Mother but Adjudicating Children Dependent and Granting Petition for Involuntary Termination of Parental Rights as to the Father). Copy supplied in response to 13(c).

Counsel for Dep't of Children & Families:

Michael Lee (supervising attorney)
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Counsel for Mother:

Catherine Healey
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Counsel for Father

Cydnee Brown
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3. *State v. Jordan*, Case No. 2009 CF 569 (Order Granting Defendant's Motion to Dismiss), *aff'd*, *State v. Jordan*, 41 So. 3d 899 (Fla. 1st DCA 2010). Copy supplied.

Defense Counsel:

Laura Leve
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(850) 893-9254

State Attorney:

Lorena Bueno
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4. *State v. Vathis*, Case No. 1996 CF 1260 (Order Denying State's Motion to Correct Illegal Sentence Pursuant to Rule 3.800(a)), *aff'd*, *State v. Vathis*, 68 So. 3d 239 (Fla. 1st DCA 2011). Copy supplied in response to 13(c).

Defense Counsel:

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Attorney General:

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5. *State v. Reddick*, Case No. 2006 CF 2189 (Order Denying Defendant's 3.850 Motion). Copy supplied.

Defense Counsel:

Cliff Davis
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(850) 997-0113

State Attorney:

Jon Fuchs
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Tallahassee, Florida 32301
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6. *State v. Deluca*, Case No. 2009 CF 716A (Order Granting Motion to Suppress), *rev'd*, *State v. Deluca*, 40 So. 3d 120 (Fla. 1st DCA 2010). Copy supplied.

Defense Counsel:

Paul Villeneuve
254 East Sixth Avenue
Tallahassee, Florida 32303
(850) 561-0707

State Attorney:

Kate Doyle
10119 Ebenshire Court
Oakton, Virginia 22124
(850) 445-9024

7. *State v. Irvin*, Case No. 2000 CF 2553 (Order Denying Defendant's 3.850 Motion), *aff'd*, *Irvin v. State*, 41 So. 3d 894 (Fla. 1st DCA 2010). Copy supplied.

Jermaine Irvin, pro se
Gulf Correctional Institution
699 Ike Steele Road
Wewahitchka, Florida 32465

State Attorney:

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

8. *State v. Ganey*, Case Nos. 2000 CF 3233 & 4968 (Order Denying Petition for Writ of Habeas Corpus). Copy supplied.

James Ganey, pro se
Dade Correctional Institution

State Attorney:

Jon Fuchs
301 South Monroe Street, Suite 475

19000 S.W. 377th Street
Florida City, Florida 33034

Tallahassee, Florida 32301
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9. *State v. Whitehurst*, Case No. 2001 CF 4602 (Order Denying Motion to Correct Illegal Sentence). Copy supplied.

State Attorney:

Derick Whitehurst, pro se
Liberty Correctional Institution
11064 NW Dempsey Barron Road
Bristol, Florida 32321

Jon Fuchs
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10. *State v. Kenon*, Case No. 1994 CF 3413 (Order Denying Motion to Correct Illegal Sentence without Prejudice), *aff'd*, *Kenon v. State*, 59 So. 3d 112 (Fla. 1st DCA 2011). Copy supplied.

State Attorney:

Vincent Kenon, pro se
Jefferson Correctional Institution
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e. Provide a list of all cases in which certiorari was requested or granted.

The First District Court of Appeals reversed my decision in *Garland v. State*, 2010 WL 2671904 (Fla. 1st DCA July 7, 2010). The State of Florida filed a Petition for Writ of Certiorari with the Supreme Court of the United States in *Florida v. Garland*, Case No. 10-1519. The petition was denied on November 14, 2011.

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.

Garland v. State, 2010 WL 2671904 (Fla. 1st DCA July 7, 2010). Defendant was charged with raping a 12 year old girl on one day and raping a 9 year old girl the next day. Defendant was 15 at the time. He pled no contest and was sentenced as an adult to 5 years in prison followed by 10 years of sex offender probation. After his release from prison, Defendant violated his probation by not answering his GPS monitor. My predecessor, Judge Dekker, reinstated his probation. Once back on probation, Defendant robbed a convenience store. He was 21 at the time of the robbery. The matter came before me on Defendant's second violation of probation. After an evidentiary hearing, I

found Defendant to be in violation of probation having committed an armed robbery, and sentenced Defendant to life in prison at the age of 24. Initially, the First District Court of Appeal affirmed, rejecting Defendant's argument that the sentence was cruel and unusual because he was a minor at the time he committed the underlying offenses. *Garland v. State*, 28 So. 3d 925 (Fla. 1st DCA 2010). Thereafter, on its own motion and in light of the Supreme Court's decision in *Graham v. Florida*, ___ U.S. ___, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), which was released after its original opinion issued, the First District Court of Appeal quashed the sentence and remanded for resentencing. The State sought certiorari from the United States Supreme Court, which was denied.

State v. Deluca, 40 So. 3d 120 (Fla. 1st DCA 2010). Defendant, a college student, was charged with possession of cocaine. Defendant moved to suppress the cocaine arguing that his stop and subsequent search were based solely on an anonymous tip. I granted the motion to suppress, concluding that the tip was anonymous and there was insufficient corroboration. Copy supplied in response to 13d. The State appealed, arguing that the call initiating the stop was made by a citizen informant and not an anonymous tipster. The First District Court of Appeal reversed, concluding that the call was made by a citizen informant. On remand, Defendant pled to my successor, Judge Dodson, and was given county jail time.

Doctor v. State, 68 So. 3d 335 (Fla. 1st DCA 2011). Defendant moved for discharge, arguing that the speedy trial time had run. He also argued that the statute of limitations had run on all counts. My predecessor, Judge Dekker, denied the Defendant's motions. On the eve of trial, after the case had been reassigned to me, Defendant sought to plea to the court but wished to preserve his rights to appeal Judge Dekker's rulings. I accepted Defendant's plea with his reservation of appellate rights. Defendant appealed. The First District reversed, concluding that the speedy trial had run and that the statute of limitations barred twelve of fourteen counts. My name appeared on the reversal because the Defendant appealed the Final Judgment and Sentence, which I signed, and not those orders denying his motion to discharge and motion to dismiss entered by Judge Dekker.

I am not aware of any decision where my judgment was affirmed with criticism of my substantive or procedural rulings.

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

As a circuit judge, none of my orders are published. However, I have signed hundreds of orders which are contained in individual court files maintained by the Leon County Clerk of 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.

I have not written any 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 a federal court of appeals.

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

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

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

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

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

In determining whether I should grant a motion to disqualify or whether I should recuse myself, I follow Chapter 38, Florida Statutes, Canon 3E of the Code of Judicial Conduct, Judicial Ethics Opinions, and applicable case law.

While I was assigned to the criminal bench from 2009 through 2010, I denied one motion to disqualify and recused myself *sua sponte* from nine cases involving seven defendants. I have not recused or been asked to recuse since returning to the criminal division in January 2012.

State v. Muldrow, Case No. 2009 CF 1164. Defendant was tried for Felony DUI. During closing arguments in a bifurcated proceeding, his lawyer alluded

to his prior DUI stops. While the jury was deliberating, I directed the parties to brief the issue of whether the ineffective assistance of counsel under these facts could serve as a basis for ordering a new trial. The State moved to disqualify me from hearing Defendant's motion for new trial, arguing that I had prejudged the issue. I granted a new trial and denied the motion for disqualification, citing Rule 3.580, Florida Rules of Criminal Procedure, which provides that a trial court can grant a new trial *sua sponte*. The State appealed. The First District Court of Appeal affirmed. *State v. Muldrow*, 53 So. 3d 1031 (Fla. 1st DCA 2011).

State v. Mims, Case Nos. 2009 CF 1495 & 2578. Defendant was charged with burglarizing a law firm, and he voiced concerns about being treated differently because the "victim" was a law office. Members of the firm at issue contributed to my campaign and knew me personally. Moreover, my former law firm shared a parking lot with the law firm at issue. I recused myself to avoid even the appearance of impropriety.

State v. Duque, Case No. 2007 CF 1948. Defendant was charged with violating probation. I represented him on the underlying charges prior to taking the bench. I recused myself because I previously represented the Defendant on the matter pending before the court.

State v. Rupert, Case No. 2009 CF 3679. The father of the victim mistook me for another judge who set a low bond for the Defendant, and made various threats against me. The situation was extremely unusual. Given a potential plea to the court, I recused myself to avoid even the appearance of impropriety.

State v. Linder, Case No. 2009 CF 3106 & *State v. Hepburn*, Case Nos. 2004 CF 1221 & 2946. In both cases, there were improper *ex parte* communications by counsel with my office to which I did not respond. I recused myself. Thereafter, I instituted new policies with respect to accepting emails from counsel.

State v. Martin, Case No. 2008 CF 2948. I recused myself because the putative victim was a personal friend.

State v. Lamar, Case No. 2008 CF 4334. I was forced to repeatedly admonish defense counsel much to the chagrin of the Defendant. I recused myself to avoid even the appearance of impropriety.

While assigned to the family law division from 2011 to 2012, I did not receive any motions to disqualify. I recused myself *sua sponte* from five cases.

Gallagher v. Gallagher, Case No. 2011 DR 265. I recused myself because I, along with my former law partner, represented the parties on a number of matters before taking the bench.

DOR v. Daly, Case No. 2005 DR 2962 & *Hambrecht v. Hambrecht*, Case No. 2011 DR 2120. I recused myself from both of these cases because my wife and/or her law firm represented one of the parties in both cases.

Davant v. De La Portilla, Case No. 2009 DR 3440. I recused myself because I unwittingly overheard a conversation at Starbucks that related to the details of a home sale which I later learned was the subject of a motion pending before the court. Further, I learned that my former law partner represented the third party who sought to purchase the home.

Pullen v. Bauer, Case No. 1997 DR 2748. In a paternity action spanning some 14 years, I addressed the limited issue of whether a parenting coordinator would be discharged and, if so, the scope of the new parenting coordinator's duties. I reserved on the issue of attorney's fees. One of the parties was upset that I signed the other party's proposed order and moved for rehearing. I denied the motion for rehearing. The aggrieved party attended my Judicial Nominating Commission interview but said nothing. In order to avoid even the appearance of impropriety, I recused myself and one of my colleagues resolved the remaining issue of attorney's fees.

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

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

I have not held any public office other than judicial office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

Excluding my own campaign, I do not recall holding any position or playing any role in a political campaign, political party or election committee.

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

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

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

I served as a law clerk to Judge Emmett Ripley Cox, United States Court of Appeals for the Eleventh Circuit, from 1993 to 1994.

I served as a law clerk to Justice Stephen H. Grimes, Chief Justice of the Florida Supreme Court, from 1994 to 1996.

I served as a law clerk to Judge Robert L. Hinkle, United States District Court for the Northern District of Florida, from 1996 to 1997.

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

I practiced alone from April 2006 to December of 2008.

The Law Offices of Mark E. Walker, P.L.
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301

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

1996
Cummings, Lawrence & Vezina
(currently known as Vezina, Lawrence & Piscitelli, P.A.)
The Walker-Lee House
413 East Park Avenue
Tallahassee, Florida 32301
Associate

1997
Berger, Davis & Singerman
(currently known as Berger Singerman)
125 South Gadsden Street, Suite 300
Tallahassee, Florida 32301
Associate

1997 – 1999
The Office of Public Defender, Second Judicial Circuit

Leon County Courthouse
301 South Monroe Street, Suite 401
Tallahassee, Florida 32301
Assistant Public Defender

1999 – 2000
The Law Offices of Steven R. Andrews, P.A.
822 North Monroe Street
Tallahassee, Florida 32303
Associate

2000 – 2004
Andrews & Walker, P.A.
(currently known as Law Offices of Steven R. Andrews, P.A.)
822 North Monroe Street
Tallahassee, Florida 32303
Shareholder

2004 – 2005
Broad and Cassel
Sun Trust Bank Bldg., Suite 400
215 South Monroe Street
Tallahassee, Florida 32301
Of Counsel

2005 – 2006
Pelham, Andrews & Walker
(currently known as The Pelham Law Firm)
2502-2 Barrington Circle
Tallahassee, Florida 32308
Partner

2006 – 2008
The Law Offices of Mark E. Walker, P.L.
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301
Sole Practitioner

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 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.

After clerking, I worked as an assistant public defender for approximately a year and a half. I divided my time between the appellate section and the trial section of the Public Defender's Office with the bulk of my work in the appellate section. During the course of my employment, I handled approximately 40 appeals, including several oral arguments at the First District Court of Appeal and an oral argument at the Florida Supreme Court, as well as two jury trials and one non-jury trial.

I left the Public Defender's Office in 1999 to join Steven R. Andrews as an associate. Within a year, I became a named shareholder. The overwhelming majority of my work involved criminal defense and civil claims arising from employment disputes, nursing home liability, medical malpractice, automobile accidents, premises liability and a variety of other matters involving serious injury or wrongful death. I practiced in both state and federal court and had several jury trials in state court.

During my last five years of private practice, my work became even more varied with less of an emphasis on personal injury and more of an emphasis on general civil litigation. I continued to practice in both state and federal court and had several jury trials in state and federal court.

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

When I worked for the Public Defender's Office, I represented indigent defendants charged with state crimes.

After I left the Public Defender's Office and joined Steven R. Andrews in private practice, I represented individuals bringing a variety of civil claims. On occasion, I represented individuals charged with crimes who could afford to retain counsel. Finally, I accepted CJA appointments for indigent defendants charged with federal crimes.

During my last five years of private practice, my clients became more varied. While I continued to represent the same sorts of clients as I had during my time with Steven R. Andrews, I also began to do civil defense work representing both individuals and businesses.

Other than my time with the Public Defender's Office, I never specialized.

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

As an Assistant Public Defender assigned to the trial division, I appeared in court frequently. During this time, 100% of my court appearances were in state court and all such appearances were related to criminal cases.

In private practice, I appeared in court frequently. My court appearances were more frequent in criminal cases than in civil matters. Similarly, I appeared more frequently in federal court than state court because federal judges often decide issues on the papers and without hearings.

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: 68%
   3. other courts: 1%
   4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

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

I tried 23 cases to verdict including four non-jury matters. I was sole counsel in five trials, lead counsel in four trials and co-counsel in fourteen trials. Of the non-jury trials, two were arbitrations and one was a hearing at the Florida Division of Administrative Hearings.

i. What percentage of these trials were:
   1. jury: 83%
   2. non-jury: 17%

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 v. Bush*, 98 MM 594, Second Judicial Circuit, Leon County, Florida (Modesitt, J.) (1998).

Defendant was charged with domestic battery and resisting an officer without violence. I represented the defendant and handled every aspect of his case. Through my cross examination, I established that my client acted in self-defense and that he did not resist the officers but complied with their commands. The jury returned a verdict of not guilty.

Opposing counsel: Collin Cherry
The Cherry-Pichard House
1114 East Park Avenue
Tallahassee, Florida 32301
(850) 224-1100

2. *State v. Ervin*, 97 CF 4234, Second Judicial Circuit, Leon County, Florida (Agner, J.) (1999).

Defendant, a college student, was charged with aggravated battery. Steven Andrews and I represented him. While Mr. Andrews served as lead trial counsel, I narrowed and otherwise defined the issues in the case before trial. First, I successfully moved to exclude statements purportedly made by Defendant. Second, I renewed our motion to disqualify the original judge and the case was transferred to Judge Agner for trial. Third, I successfully argued several defense motions including a renewed motion to introduce evidence of secondary gain to impeach the putative victim. At trial, I argued for judgment of acquittal. Defendant was found not guilty.

Opposing counsel: Alberto Dominguez
4143 North Meadow View Drive
Fayetteville, Arkansas 72703
(479) 277-1236

Stephen M. Lampasso
McConnaughy Duffy et al.

500 West Cypress Creek Road, Suite 460
Fort Lauderdale, Florida 33309
(954) 332-0050

Co-counsel: Steven R. Andrews
822 North Monroe Street
Tallahassee, Florida 32303
(850) 681-6416

3. *State v. Johnson*, 01 CF 2526, Second Judicial Circuit, Leon County, Florida (Sjostrom, J.) (2002).

Defendant was charged with public assistance fraud. I represented her and handled every aspect of her case *pro bono*. After investigating the matter and taking depositions, we proceeded to trial. The State claimed that Ms. Johnson committed public assistance fraud by claiming children who lived with her only part-time. I established that Ms. Johnson included those children because she had been instructed to do so by the state worker to whom she submitted the paperwork seeking public assistance. The jury returned a verdict of not guilty.

Opposing counsel: Ginger Boyd
Broad & Cassel
Regions Bank Building, Suite 205A
200 Grand Boulevard
Destin, Florida 32550
(850) 269-0148

4. *White v. Walmart Stores, Inc.*, 01 CA 348, Seventh Judicial Circuit, Putnam County, Florida (Hedstrom, J.) (2003).

Plaintiff, a minor, sought to recover damages for injuries sustained when he fell and struck his head at Walmart. I, along with co-counsel, represented him. I prepared the case for trial and handled most of the discovery, which included some video depositions used at trial. At trial, I called one of our experts and examined several lay witnesses. The jury returned a verdict in favor of Plaintiff, awarding damages to compensate him for post-traumatic migraines.

Opposing counsel: John Tucker
Foley & Lardner LLP
P.O. Box 240
Jacksonville, Florida 32301
(904) 359-2000

Co-counsel: Steven R. Andrews
822 North Monroe Street

Tallahassee, Florida 32303
(850) 681-6416

5. *Rashid v. Nationwide Property & Casualty Ins. Co.*, 02 CA 1327, Second Judicial Circuit, Leon County Florida (Sjostrom, J.) (2003).

Plaintiff, a college student, sought to recover damages for injuries sustained when he was struck by an automobile while walking across a parking lot. I represented the Plaintiff and handled every aspect of his case. While Plaintiff sustained a serious fracture, he had a remarkable recovery. At trial, we faced the difficult task of conveying the extent of his damages given that he recovered better than expected. We succeeded in that endeavor in that the jury awarded Plaintiff full and fair compensation for his injuries.

Opposing counsel: John Herndon
Conroy, Simberg, et al.
325 John Knox Road, #105
Tallahassee, Florida 32303
(850) 383-9103

6. *The Estate of Dixon-Hinkle v. Brual*, 02 CA 287, Eighth Judicial Circuit, Alachua County, Florida (Pierce, J.) (2004).

The decedent was killed in her apartment. I, along with co-counsel, represented her estate. We sued the landlord for negligence, claiming the perpetrator secured access by way of an inadequate exterior door. There were issues with respect to liability in that the housing authority had repeatedly approved the door at issue. There were also issues regarding damages inasmuch as the sole measure of damages was the pain and suffering of a husband who had abandoned the decedent years before her murder. I handled *voir dire*, gave the opening and divided the witnesses with co-counsel. The jury returned a verdict finding the Defendant liable but awarding limited damages.

Opposing counsel: Michael Rywant
Rywant, Alvarez, Jones, Russo & Guyton
P.O. Box 3283
Tampa, Florida 33601
(813) 229-7007

Co-counsel: Gilbert Schaffnit
Law Offices of Gilbert Schaffnit
719 NE First Street
Gainesville, Florida 32601
(352) 378-6593

7. *Starling & McKown v. Slawsby*, 04 CA 2698, Second Judicial Circuit, Leon County, Florida (Lewis, J.) (2005).

Plaintiffs sought to recover damages for injuries sustained in a two-car automobile accident. I, along with co-counsel, represented them. I handled *voir dire*, gave the closing, and divided the witnesses with co-counsel. The case was challenging because both Plaintiffs continued to excel at work in spite of their injuries. Through the effective presentation of expert testimony, we were able to convey to the jury that the Plaintiffs could only maintain their employment with ongoing medical care. The jury awarded fair compensation for past and future medical care, and one Plaintiff was awarded attorney's fees.

Opposing counsel: David Heath
Heath & Rasky, P.A.
261 Pinewood Drive
Tallahassee, Florida 32303
(850) 386-2500

Co-counsel: Maureen Daughton
Broad and Cassel
215 South Monroe Street
Tallahassee, Florida 32301
(850) 681-6810

8. *Bear Stearns v. Magnolia Capital Partners*, NASD Dispute Resolution Arbitration No. 03-07010, Atlanta, Georgia (Richards, Harris, Castro) (2005).

This was a complex securities case involving mortgage backed securities. I, along with co-counsel, represented the Defendants. Bear Stearns sued Magnolia Capital Partners and its members for more than a million dollars in deficiencies. Magnolia Capital Partners and its members, in turn, counterclaimed for the loss of millions of dollars based on Bear Stearns' failure to price the securities at issue and properly set and call margin. Initially, my role was limited. As the arbitration progressed, I assumed more responsibility, presenting the defense experts and ultimately delivering the closing argument. Neither Bear Stearns nor Magnolia Capital Partners were awarded anything save a fine imposed against one of the witnesses in favor of Bear Stearns. Essentially, the claims canceled each other out.

Opposing counsel: Arthur D. Felsenfeld,
Andrews & Kurth, LLP
450 Lexington Avenue
New York, New York 10017
(212) 850-2823

Co-counsel: Stephen Turner
Broad and Cassel

215 South Monroe Street
Tallahassee, Florida 32301
(850) 681-6810

Kelly O'Keefe
Berger Singerman
125 South Gadsden Street, Suite 300
Tallahassee, Florida 32301
(850) 561-3010

9. *Isaac v. Gibbs*, 06 CA 383, Second Judicial Circuit, Leon County, Florida (Lewis, J.) (2007).

Plaintiff sought to recover damages for injuries sustained in a two-car automobile accident. I, along with co-counsel, represented her. Co-counsel, who was new to personal injury work, sought my assistance in a number of automobile cases including this one. I did so pro bono. Each of the cases settled with the exception of this case. I deposed the defense expert in Jacksonville and examined the Plaintiff's experts live at trial. The jury found for the defense.

Opposing Counsel: George Rasky
Heath & Rasky, P.A.
261 Pinewood Drive
Tallahassee, Florida 32303
(850) 386-2500

Co-counsel: Collin Cherry
The Cherry-Pichard House
1114 East Park Avenue
Tallahassee, Florida 32301
(850) 224-1100

10. *Aspen Licensing International v. Omni et al.*, Case. No. 32 133 Y 01006 07, AAA Arbitration, West Palm Beach, Florida (Peter) (2008).

This was a complex trademark/breach of contract case that originated in federal court in the Northern District of Florida. I was lead counsel for the Defendant, Omni, which had discharged its original counsel. I promptly got the case dismissed in federal court and Omni was awarded attorney's fees. The matter proceeded to arbitration. I handled the arbitration by myself on behalf of Omni. After I closed my practice upon my election as a circuit judge, co-counsel took the lead and the matter was subsequently resolved to the satisfaction of Omni.

Opposing Counsel: William Holliman
Holliman, P.A.
118 North Gadsden Street

Tallahassee, Florida 32301
(850) 320-8515

Co-counsel: Moshe Katlowitz
Katlowitz & Associates
270 Madison Avenue, Suite 1203
New York, New York 10016
(212) 271-7600

Martin Fitzpatrick
Broad & Cassel
Sun Trust Bank Building, Suite 400
215 South Monroe Street
Tallahassee, Florida 32301
(850) 681-6810

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

My legal activities have focused almost entirely on litigation. On occasion, however, I have pursued legal activities that either did not involve litigation or did not progress to trial. I have provided advice to clients that involved counseling rather than litigation. For example, I represented clients that cooperated with the State during criminal investigations.

I also represented clients who resolved matters before the commencement of litigation. For example, I represented M.P., a minor, who emigrated from Poland and was repeatedly sexually abused by a coach while attending a local parochial school. Several other law firms turned down the case because it was difficult to understand the victim and her mother's broken English. After a short but extensive investigation, I prepared a detailed complaint to file in federal court predicated upon the Violence Against Women Act and forwarded the proposed complaint to the local Diocese. We settled the case in less than sixty days, thereby substantially reducing the victim's attorney's fees and costs and the potential emotional trauma attendant to protracted litigation given the sensitive nature of her claims. Thereafter, M.P. testified at the criminal trial involving her rape and the local television station played the most salacious portions of her testimony, showing her face from the nose down without disguising her voice. I filed a second action against the station alleging the tort of outrage. I argued that the First Amendment did not preclude an action for "outing" a child rape victim. This second matter also settled. With the settlements, the minor and her family were able to move to another state, secure their citizenship and start a new life.

I have also been active in the legal community outside the practice of law. Most significantly, I have committed significant time to mentoring youth interested in pursuing a legal career as well as young lawyers seeking to chart their own course.

I have never 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.

    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.

    Upon retirement, I will receive payments from the Florida 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 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 partner in the law firm of Holland & Knight and currently serves as Executive Partner of the firm's Tallahassee office. If confirmed, I would recuse myself from any case involving my wife or her firm.

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 in accordance with 28 U.S.C. §455, the Code of Conduct for United States Judges, and all other pertinent statutory provisions or ethical canons.

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 attorney, I performed pro bono hours through the legal aid program associated with the Tallahassee Bar Association, accepting three to four family law cases each year. In addition, on my own initiative, I have accepted many pro bono cases over the years. I note just a few examples:

In 2001, I handled the defense of a public assistance fraud case on a pro bono basis. After investigating the matter and taking depositions, the case proceeded to trial where the defendant was found not guilty. *State v. Johnson*, Case. No. 01 CF 2526, Second Judicial Circuit, Leon County, Florida.

In 2002, a local county commissioner was charged with felonies and removed from office by the Governor pending action by the Florida Senate. In the meantime, the Governor appointed a temporary replacement to fill the vacancy created by the commissioner's removal. Despite the fact that the felony charges were later dismissed, the Florida Senate refused to act so as to ensure that the Governor's appointee would retain the seat. I accepted the case pro bono and filed an Emergency Petition for Writ of Mandamus with the Florida Supreme Court. *Maloy v. McKay*, Case No. 02,856, Florida Supreme Court, Tallahassee, Florida. The Supreme Court denied the petition.

On another occasion in 2006, I handled pro bono the defense of a Bulgarian national charged with rape. After conducting a thorough investigation, my client pled to misdemeanor simple assault and he was permitted to return to Europe. *State v. Nedelchev*, Case No. 05 CF 4204, Leon County, Florida.

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.

By letter dated April 15, 2011, Senators Nelson and Rubio requested that the Florida Federal Judicial Nominating Commission undertake its selection process and identify finalists for U.S. District Judge for the Northern District of Florida. The Commission posted a notice soliciting applications on or about May 2, 2011. On June 1, 2011, I forwarded my application to all 64 members of the statewide Commission. By notice dated June 20, 2011, the Commission acknowledged receipt of all applications and by notice dated July 13, 2011, I was notified that I along with six other applicants would be interviewed by the Northern District Conference of the Florida Federal Judicial Nominating Commission. I was interviewed by the Northern District Conference on July 29, 2011, and notified that same day that I was one of the three finalists. By letter dated August 1, 2011, Senators Nelson and Rubio were provided with the names of the three finalists. I interviewed with Senators Nelson and Rubio on October 5, 2011, in Washington, D.C.

Since November 2, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 9, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 16, 2012, 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
Walker, Mark E.	Northern District of Florida	02/16/2012
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 02/16/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 01/31/2012
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.**	
Leon County Courthouse 301 South Monroe Street, Romm 365_A Tallahassee, Florida 32301	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 Walker, Mark E.	Date of Report 02/16/2012

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. 2012 (YTD)	State of Florida	$11,848.16
2. 2011	State of Florida	$142,177.92
3. 2010	Florida	$142,435.76
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	Holland & Knight LLP
2. 2012	Holland & Knight LLP
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 Walker, Mark E.	Date of Report 02/16/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Walker, Mark E.	02/16/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. Brokerage Account #1					Exempt				
2. -Allianz NFJ Small Cap Value Fund	C	Dividend	L	T					
3. -Dodge & Cox International Stock Fund	B	Dividend	L	T					
4. -Fidelity Contrafund	B	Dividend	N	T					
5. -Goldman Sachs Mid Cap Value Fund	B	Dividend	M	T					
6. Brokerage #2									
7. -T. Rowe Price Capital Appreciation Fund	A	Dividend	K	T					
8. -T. Rowe Price International Growth & Income Fund	A	Dividend	K	T					
9. -T. Rowe Price Mid-Cap Growth & Income Fund	B	Dividend	K	T					
10. Brokerage Account #3									
11. -3M Co. stock	A	Dividend	J	T					
12. -Berkshire Hathaway Inc. Class B Stock	A	Dividend	J	T					
13. -General Electric Co. stock	A	Dividend	J	T					
14. -Microsoft Corp. stock	A	Dividend	J	T					
15. -Oracle Corp. stock	A	Dividend	J	T					
16. -American Funds Growth Fund of America	A	Dividend	J	T					
17. -Blackrock Equity Dividend Fund	A	Dividend	J	T					

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
J =$15,001 - $50,000
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
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 8

Name of Person Reporting	Date of Report
Walker, Mark E.	02/16/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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. -Blackrock Global Allocation Fund	A	Dividend	K	T					
19. -Blackrock High Yield Bond Portfolio	A	Dividend	J	T					
20. -Blackrock US Opportunties Svc Fund	A	Dividend	J	T					
21. -Calamos Market Neutral Income Fund	A	Dividend	J	T					
22. -Cohen & Steers International Realty Fund	A	Dividend	J	T					
23. -College Save Aggressive Growth Portfolio		None	K	T					
24. -College Save Moderate Growth Portfolio		None	K	T					
25. -College Save Growth Portfolio		None	M	T					
26. -Davis New York Venture Fund	A	Dividend	J	T					
27. -Goldman Sachs Absolute Return Tracker	A	Dividend	J	T					
28. -Henderson International Opportunities Fund	A	Dividend	K	T					
29. -ING Global Real Estate Fund	A	Dividend	J	T					
30. -Invesco Developing Markets Fund	A	Dividend	J	T					
31. -IVY Large Cap Growth Fund	A	Dividend	J	T					
32. -JP Morgan Highbridge Dynamic Commodity Strategy	A	Dividend	J	T					
33. -Lazard Emerging Markets Open	A	Dividend	J	T					
34. -Metropolitan West Low Duration Bond Fund	A	Dividend	J	T					

1. Income Gain Codes (See Columns B1 and D4): A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000
2. Value Codes (See Columns C1 and D3): J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $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
Walker, Mark E.	02/16/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
35. -Metropolitan West Total Return Bond Fund	A	Dividend	K	T					
36. -Nuveen Tradewinds International Value Fund	A	Dividend	K	T					
37. -PIMCO High Yield Fund	A	Dividend	J	T					
38. -PIMCO Low Duration Fund	A	Dividend	J	T					
39. -PIMCO Total Return Fund	A	Dividend	J	T					
40. -Royce Total Return Fund	A	Dividend	J	T					
41. -RS Global Natural Resource Fund	A	Dividend	J	T					
42. -RS Partners Fund	A	Dividend	J	T					
43. -Rydex/SGI Managed Futures Strategy Fund	A	Dividend	J	T					
44. -Williams Blair International Growth	A	Dividend	J	T					
45. Other Investments									
46. -ProBank Money Market & Checking Acounts	A	Interest	K	T					
47. -Bank of America Money Market & Checking Accounts	B	Interest	M	T					
48. -Morgan Stanley Money Market Account	A	Interest	K	T					
49. -Holland & Knight Capital Account		None	M	T					
50. -Leatherneck LLC		None	J	W					
51. -Florida Prepaid College Plans		None	K	T					

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

2 Value Codes (See Columns C1 and D3)
R - Cost (Real Estate Only)
S =Assessment
T =Cash Market
V - Other
W =Estimated

3 Value Method Codes (See Column C2)
Q =Appraisal
U =Book Value

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Walker, Mark E.	Date of Report 02/16/2012

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

None.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Walker, Mark E.	Date of Report 02/16/2012

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: s/ Mark E. Walker

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		298	321	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	130	805	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 – see schedule		669	900	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		130	425				
Cash value-life insurance							
Other assets itemize:							
Holland & Knight Capital Account		140	175				
Leatherneck LLC		10	000				
Florida Prepaid College Plans		28	927	Total liabilities			0
				Net Worth	2	408	553
Total Assets	2	408	553	Total liabilities and net worth	2	408	553
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	
3M Co. stock	$ 171
Berkshire Hathaway Inc. Class B stock	7,850
General Electric Co. stock	5,679
Microsoft Corp. stock	14,039
Oracle Corp. stock	13,585
Allianz NFJ Small Cap Value Fund	72,527
American Funds Growth Fund of America	13,583
Blackrock Equity Dividend Fund	4,029
Blackrock Global Allocation Fund	30,111
Blackrock High Yield Bond Portfolio	2,370
Blackrock US Opportunities Svc Fund	6,716
Calamos Market Neutral Income Fund	2,835
Cohen & Steers International Realty Fund	1,474
College Save Aggressive Growth Portfolio	21,833
College Save Moderate Growth Portfolio	21,030
College Save Growth Portfolio	199,961
Davis New York Venture Fund	13,644
Dodge & Cox International Stock Fund	58,972
Fidelity Contrafund	324,940
Goldman Sachs Absolute Return Tracker	763
Goldman Sachs Mid Cap Value Fund	133,129
Henderson International Opportunities Fund	24,494
ING Global Real Estate Fund	5,108
Invesco Developing Markets Fund	8,998
IVY Large Cap Growth Fund	3,876
JP Morgan Highbridge Dynamic Commodity Strategy	2,520
Lazard Emerging Markets Open	2,609
Metropolitan West Low Duration Bond Fund	1,910
Metropolitan West Total Return Bond Fund	22,650
Nuveen Tradewinds International Value Fund	15,991
PIMCO High Yield Fund	8,439
PIMCO Low Duration Fund	6,921
PIMCO Total Return Fund	6,207
Royce Total Return Fund	2,726
RS Global Natural Resource Fund	762
RS Partners Fund	804
Rydex/SGI Managed Futures Strategy Fund	5,006
T. Rowe Price Capital Appreciation Fund	22,331
T. Rowe Price International Growth & Income Fund	15,610
T. Rowe Price Mid-Cap Growth Fund	19,673
William Blair International Growth	4,929
Total Listed Securities	$1,130,805

Real Estate Owned	
Personal residence	$ 500,000
Condominium	169,900
Total Real Estate Owned	$ 669,900

AFFIDAVIT

I, Mark E. Walker, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/17/2012
(DATE)

Mark E. Walker
(NAME)
Mark E. Walker

Lilly M. Crockett
(NOTARY)

LILLY M. CROCKETT
Commission # EE 110986
Expires August 20, 2015
Bonded Thru Troy Fain Insurance 800-385-7019

STATEMENT OF JUDGE BRIAN J. DAVIS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA

Judge DAVIS. Thank you, Chairman Whitehouse. I, too, want to join the panel in expressing gratitude to you, Ranking Member Lee and Senator Coburn for the opportunity to be heard today and convening this Committee for that purpose.

I'd like to also extend my appreciation to Senator Nelson and Senator Rubio for putting my name forward and for their introduction today.

I extend, as well, gratitude to the Florida nominating commission for reporting me to the Senators; and, of course, will be ever grateful to the President of the United States for his nomination for this great honor.

I have visiting with me today, as Senator Nelson kindly began to explain, family members, not all of whom are here, but certainly, most importantly, my wife of 35 years, Tanya, is with me; my daughter, Cicely Davis, who has my favorite third-grader and granddaughter with her, Brynne Davis.

I have visiting from Jacksonville a god-daughter, Sonya Speights, as well as relatives from South Carolina, a cousin, Roberta Balthrop. I have, as well, from New York, a niece and her husband, Natasha Jules-Taylor and Reginald Taylor; and, the newest member of our family, Gabrielle Elizabeth Taylor, who is soon to be a 2-year-old and has, as has been observed, been remarkably well behaved during the hearing, for which I thank her.

[Laughter.]

Judge DAVIS. I would also like to thank family members for being present through the Webcast. My sister in New Orleans I'm sure is in attendance, as is my son and daughter-in-law, Brian and Ebony Davis, with my two grandsons; my sister in New Orleans, Sheila St. Etienne (ph).

I'm sure I have a number of friends joining and associates and colleagues joining by Webcast from Jacksonville, Florida, and Nassau and Clay Counties, and I thank them for being here with me, as well.

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).

   Brian Jordan Davis

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

   United States District Judge for the Middle District of Florida

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.

   Nassau County Historic Courthouse
   416 Centre Street
   Fernandina Beach, Florida 32034

   Residence: Jacksonville, Florida

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

   1953; Jacksonville, Florida

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

   1977 – 1980, The University of Florida College of Law; J.D., 1980
   1970 – 1974, Princeton University; B.A., 1974

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

   1994 – Present
   State of Florida
   4th Judicial Circuit

416 Centre Street
Fernandina Beach, Florida 32034
Circuit Court Judge

1991 – 1994
State Attorney's Office
4th Judicial Circuit
330 East Bay Street
Jacksonville, Florida 32202
Chief Assistant State Attorney

1988 – 1991
Terrell Hogan (formerly known as Brown, Terrell, Hogan, Ellis, McClamma, Yegelwel and Davis; Brown, Terrell, Hogan, Ellis, McClamma and Yegelwel)
Blackstone Building, Suite 804
233 East Bay Street
Jacksonville, Florida 32202
Partner (1991)
Associate (1988 – 1991)

1982 –1988
State Attorney's Office
4th Judicial Circuit
330 East Bay Street
Jacksonville, Florida 32202
Assistant State Attorney

1980 – 1982
Mahoney, Hadlow and Adams, P.A.
Barnett Bank Building
Jacksonville, Florida 32202
Associate

1974 – 1979
American Can Company
American Lane
Greenwich, Connecticut 06830
Employee Relations Coordinator

Other Affiliations (Uncompensated):

2009 – Present
Jacksonville Public Education Fund
245 Riverside Avenue, Suite #310
Jacksonville, Florida 32202
Board Member

2006 – 2012
OneJax
1022 Park Street, Suite #302
Jacksonville, Florida 32204
Board Member

2008 – 2009
The Alliance for World Education, Inc.
4019 Boulevard Center Drive
Jacksonville, Florida 32207
Board Member

2001; 2007 – 2009
Florida Partners in Crisis
175 Marlin Drive
Merritt Island, Florida 32952
Board of Trustees (2007 – 2009)
Board of Directors, Member-at-Large (2001)

1993 – 2006
National Conference for Community and Justice (formerly National Conference of Christians and Jews)
4401 Emerson Street, Suite #9
Jacksonville, Florida 32207
Board Member

1991 – 1993
Hubbard House, Inc.
P.O. Box 4909
Jacksonville, Florida 32201
Board Member

1991 – 1993
Help Center
511 West 11th Street
Jacksonville, Florida 32206
Board Member

1989 – 1999
Pace Center for Girls
2933 University Boulevard, North
Jacksonville, Florida 32211
Board Member

1986 – 1988
Ebenezer United Methodist Church
9114 Norfolk Boulevard
Jacksonville, Florida 32208
Chairman, Board of Trustees

1985
D.W. Perkins Bar Association
P.O. Box 2156
Jacksonville, Florida 32203
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 never served in the military. I did 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.

   The Chief Justice Henry Lee Anstead, Justice for All Award (2004)
   Equal Opportunity Award, Jacksonville Urban League (2003)
   American Board of Trial Advocates, Judge of the Year (2002)
   Dedicated Service Award, National Conference for Community and Justice Board of Directors (2002)
   Appreciation Award, 125th Fighter Wing, for Outstanding Contribution to Black History Month Celebration (2001)
   Public Citizen of the Year Award, National Association of Social Workers (2000)
   Appreciation for Outstanding Service to Scouting Award, Greater Grant A.M.E. Church (2000)
   Appreciation Award, 10th Annual Dr. Martin Luther King, Jr., Holiday Celebration, Jacksonville Area Legal Aid, Inc. (1999)
   Hubbard House Domestic Peace Award (1999)
   Florida Coalition Against Domestic Violence, Outstanding Contributions Award (1999)
   Boy Scouts of America Silver Beaver Award for Distinguished Service to Youth (1998)
   Martin Luther King, Jr. Humanitarian Award, Jewish Federation (1997)
   African-American Achievers Award, J.M. Family Enterprises, Inc. (1995)
   Appreciation Award, Blacks in Government (1993)
   Appreciation Award, 65th National Armed Robbery / Homicide Conference, Jacksonville Sheriff's Office (1992)
   University of Florida, Law Review, Student Works, Editor (1979 – 1980)

Miller-Schroeder Memorial Prize, Honorable Mention, Princeton University, Undergraduate Thesis (1974)
Eagle Scout (1968)

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

Academy of Florida Trial Lawyers (1989 – 1990)
American Bar Association (1982 – 1984)
Association of Trial Lawyers of America
National College of Trial Advocacy Faculty (1989 – 1992)
Chester Bedell Inn of Court (1989 – 1991; 1995)
D.W. Perkins Bar Association
President (1985)
Founder, Annual Scholarship Banquet
Florida Bar Association (1981 – Present)
Grievance Committee Member (1989 – 1991)
Commission on the Legal Needs of Children Member (1999 – 2002)
Florida First District Court of Appeals
Judicial Nominating Commission (1992 – 1995)
Vice-Chair (1993)
Florida Supreme Court
Civil Jury Instruction Committee (1996 – 2000)
District Court of Appeal Workload and Jurisdiction Assessment Committee (2006)
Judicial Branch Governance Study Group (2010)
Treatment Based Drug Court Steering Committee (2000 – 2002)
Commission on Trial Court Performance and Accountability (2002 – Present)
Committee on Trial Court Performance and Accountability (1998 – 2002)
Governor's Guardian Ad Litem Working Group (2002)
Jacksonville Bar Association
Law Week Committee Chair (1981)
Pro Bono / Legal Aid Committee (1991 and 1993)
Nassau County Bar Association (2009 – Present)
Nassau County Inn of Court (2009 – Present)
National Bar Association (1985 – 1994; 2011 – Present)
National Black Prosecutors Association
Charter Member (1984)
National District Attorneys Association (1983 – 1988; 1991 – 1993)
Phi Delta Phi Legal Fraternity (1980)
University of North Florida Pre-Law Studies Program Advisory Board (1997 – 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, 1981

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 Fifth Circuit, 1981
United States Court of Appeals for the Eleventh Circuit, 1981
United States District Court for the Middle District of Florida, 1981

Following my appointment as an Assistant State Attorney in 1982, I allowed my Federal Court memberships to lapse.

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.

Alliance for World Education, Inc.
    Board Member (2008 – 2009)
American Beach Homeowners' Association (2007 – Present)
Biscayne Estates Homeowners' Association (1989 – Present)
Boy Scouts of America
    Eagle Scout (1968)
    Assistant Scout Master, Troop 51 (1982 – 1984)
    District Commission Member (1992)
    Council Executive Board (1995)
    Urban Scouting Commissioner (1995)
    Merit Badge Counselor (2010)
    Nominating Committee Chair (2011)
Community Foundation's Quality Education Forum (2005 – Present)
Duval County Public Schools District Strategic Plan Task Force (2008 – 2009)
Ebenezer United Methodist Church
    Chairman, Council of Ministries (1982 – 1990)

Chairman, Board of Trustees (1986 – 1988)
Vice-Chairman, Administrative Board (1982 – 1985)
Pastor-Parish Relations Committee (1999 – 2010)
Florida Partners in Crisis
Board of Trustees (2007 – 2009)
Board of Directors, Member-at-Large (2001)
Help Center
Board Member (1991 – 1993)
Vice-Chair (1993)
Hubbard House
Board Member (1991 – 1993)
Jacksonville Community Council, Inc.
Study Co-Chair (2002)
Race Relations Implementation Task Force (2002 – 2005)
Jacksonville Jaguars Foundation
Advisory Board Member (1995 – Present)
Jacksonville Public Education Fund
Board Member (2009 – Present)
Jacksonville Urban League
Volunteer (2000 – Present)
Leadership Jacksonville (1987 – Present)
Learning to Finish Leadership Council (2007 – 2008)
Mayor's Task Force on Domestic Violence
Chair (1997 – 1999)
NAACP
Life Member (1985 – Present)
National Conference for Community and Justice (formerly National Conference of Christians and Jews)
Board Member (1993 – 2006)
Omega Psi Phi Fraternity (1982 – Present)
OneJax
Board Member (2006 – 2012)
Chair-Elect (2012)
Chairman, Advocacy Committee (2011 – 2012)
Pace Center for Girls
Board Member (1989 – 1999)
Project Breakthrough
Co-Chair (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.

The Boy Scouts of America at one time limited its membership to boys. In 1998, its programs were expanded to include girls. Omega Psi Phi is a college fraternity limited to young men. To the best of my knowledge, the remaining organizations listed in 11a do not currently 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.

With Gary Chartrand, Cindy Edelman, Carol Alexander, John Anderson, Ann Baker, John D. Baker, Poppy Clements, Ronnie Ferguson, Shannon Perry, Kenneth Reddick, Cleve Warren, Delores Barr Weaver, and Rev. Torin T. Dailey, *Guest Column: Jacksonville Needs a Community Goal to Create a Generation of Readers*, Florida Times-Union, July 20, 2011. Copy supplied.

With Gary Chartrand, Cindy Edelman, Carol Alexander, John Anderson, Ann Baker, John D. Baker, Jordan Baker, Poppy Clements, Ronnie Ferguson, Shannon Perry, Cleve Warren, Delores Barr Weaver, and Rev. Torin T. Dailey, *Guest Column: Go Easy on School Budget Cuts*, Florida Times-Union, Mar. 20, 2011. Copy supplied.

Introduction to Chapter 3, Dr. Alvin White, Education is Not a Four Letter Word (2010). Copy supplied.

Letter to the Editor, *Learning is a Lifelong Goal*, Florida Times-Union, June 10, 2006. Copy supplied.

From a Letter to Assistant Warden Randall Mobley, Correctional Compass Newsletter, September, 1999. Copy supplied.

In my last year of law school I published a short article in the Florida Bar Association's Real Estate Section's Newsletter. Despite my search efforts, I have not been able to locate a copy of the article, but my recollection is that it discussed a case that explored the limits of durable powers of attorney.

I searched my files and publicly available internet sources to create the most comprehensive response to this question possible, but there may be other published material I have been unable to recall or 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.

Florida Supreme Court Commission on Trial Court Performance and Accountability:

Recommendations on Resolving Civil Disputes, December 2011. Copy supplied.

Trial Court Integrated Management Solution (Working Draft Report), October 17, 2011. Copy supplied.

Recommendations for the Provision of Court Interpreting Services in Florida's Trial Courts, November 1, 2010. Copy supplied.

Revised Judge Case Count by Divisional Assignment Report for Calendar Year 2010, 2010. Copy supplied.

Recommendations for the Provision of Court Reporting Services in Florida's Trial Courts (Supplemental Report), November 2009. Copy supplied.

Ensuring Access to Justice: Serving Florida's Self-Represented Litigants (Supplemental Report), December 2008. Copy supplied.

Recommendations on Senior Judge Resources in the Judicial Weighted Workload Model, September 2008. Copy supplied.

Recommendations for Alternative Dispute Resolution Services in Florida's Trial Courts, August 2008. Copy supplied.

Ensuring Access to Justice: Serving Florida's Self-Represented Litigants, April 2008. Copy supplied.

Recommendations for the Provision of Court Reporting Services in Florida's Trial Courts, October 2007. Copy supplied.

In re: Amendments to Rule 2.240, Rules of Judicial Administration – Determination of Need for Additional Judges, July 2007. Copy supplied.

Recommendations for Improving Governance and Operations for Appointed Counsel and Due Process Services, January 31, 2007. Copy supplied.

Court Reporting in Florida's Trial Courts *Post-Revision 7*, February 2005. Copy supplied.

Administrative and Operational Support for Court-Appointed Counsel and Indigent Due Process Costs, November 2004. Copy supplied.

Report and Recommendations, December 2002. Copy supplied.

Case Management Workshop, June 2001 (the Commission was then known as the Committee on Trial Court Performance and Accountability). Copy supplied.

Report and Recommendations, December 1999 (the Commission was then known as the Committee on Trial Court Performance and Accountability). Copy supplied.

Florida Supreme Court District Court of Appeal Workload and Jurisdiction Assessment Committee:

Report and Recommendations, November 2006. Copy supplied.

Jacksonville Community Council, Inc.:

Beyond the Talk: Improving Race Relations (Final Implementation Report), April 2005. Copy supplied.

Race Relations Progress Report, 2005. Copy supplied.

Beyond the Talk: Improving Race Relations, JCCI, Summer 2002. Copy supplied.

Florida Bar Association Commission on the Legal Needs of Children:

Final Report, June 2002. Copy supplied.

Treatment and Services Subcommittee Final Report, June 2002. Copy supplied (Appendix B of the June 2002 Final Report).

Draft Recommendations, January 11, 2002. Copy supplied.

Interim Report, March 2001. Copy supplied.

Florida Bar Association coverage of one meeting at which I and the other members discussed our initial recommendations is also supplied (January 15, 2001).

Florida Supreme Court Civil Jury Instruction Committee:

In re Standard Jury Instruction-Civil Cases (No. 00-2), July 5, 2001. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 00-1), March 8, 2001. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 99-2), August 17, 2000. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 99-1), July 6, 2000. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 98-4), February 25, 1999. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 98-3), October 8, 1998. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 98-2), October 8, 1998. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 98-1), April 2, 1998. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 97-2), February 5, 1998. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 97-1), October 16, 1997. Copy supplied.

Standard Jury Instructions-Civil Cases, 6.13-Collateral Source Rule, October 16, 1997. Copy supplied.

Standard Jury Instructions-Civil Cases (No. 96-1), February 13, 1997. Copy supplied.

Other Committee Reports:

In Brief: Reading Proficiency, Spring 2011. As a member of the Jacksonville Public Education Fund, I voted to approve the research for and publication of this report although I did none of the research or writing myself. Copy supplied.

Florida Supreme Court Judicial Branch Governance Study Group Report, January 31, 2011. Copy supplied.

2011: A Progress Report, Jacksonville Public Education Fund, 2011. Copy supplied.

Duval County Public Schools District Strategic Plan, 2009. Copy supplied.

Nassau County Mental Health Court Business Plan, October 19, 2007. Copy supplied.

Since 2005, I have been a part of the Forum on Quality Education, created by the Community Foundation, and participated in discussions about educational issues in Duval County. The findings of the forum are incorporated into the report, "Creating Opportunity, Taking Action," May 2007. Copy supplied.

Final Report of the Guardian Ad Litem Working Group, September 15, 2002. Copy supplied.

Term Report of the Florida Supreme Court Treatment Based Drug Court Steering Committee. Copy supplied.

Strategy to Eradicate Domestic Violence, Mayor's Domestic Violence Task Force Report, November, 1998. Copy supplied.

I have searched my records and my memory and have not identified other responsive 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.

March 9, 2009: I appeared before the Nassau County Board of Commissioners to discuss the Mental Health Court. Video available at http://tinyurl.com/nbocmar2009. My presentation begins at 01:50.

October 31, 2007: I appeared before the Nassau County Board of Commissioners to discuss the Mental Health Court. I have been unable to obtain notes, a transcript or recording of the meeting, but press coverage is supplied.

September 10, 2007: I appeared before the Nassau County Board of Commissioners to discuss the Mental Health Court. I have been unable to obtain notes, a transcript or recording of the meeting.

October 13, 2005: I gave remarks during a Duval County Public Hearing on School Discipline. The hearing was convened by the Florida State Conference NAACP, Advancement Project, and the NAACP Legal Defense and Educational

Fund, Inc. Transcript supplied (I have supplied the pages on which I am quoted, however the quotes on pages 78-80 and 91 are misattributed to me).

July 21, 1992: I testified before the Florida Advisory Committee to the United States Civil Rights Commission about racial tensions in Florida. My testimony before the commission's committee in Jacksonville, Florida was recorded in its March 1996 report, Racial and Ethnic Tensions in Florida. A copy of the report is supplied.

Since 2002, I have been a member of the Florida Supreme Court's Trial Court Performance and Accountability Commission and occasionally made remarks during meetings. I have been unable to obtain meeting minutes from prior to 2009, but minutes since September 2009 of the meetings I attended are supplied.

Having searched my records, memory and publicly available internet sources, I have not identified any other testimony, official statements or other communications relating to matters of public policy or legal interpretation.

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.

October 9, 2011: Justice for All, Men's Day Program, Simpson United Methodist Church, Jacksonville, Florida. A copy of my remarks is supplied.

August 3, 2010: Remarks at Data Busters' Awards Ceremony, Northeast Florida Community Action Agency, Fernandina Beach, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the NFCAA is 4070 Boulevard Center Drive, Building 4500, Suite 200, Jacksonville, Florida 32207.

2010: Remarks as a panelist for Justice Program Day of Project Breakthrough, OneJax, Jacksonville, Florida. I have no notes, transcripts or recordings. The address of OneJax is 1022 Park Street, Suite 302, Jacksonville, Florida 32204.

November 4, 2009: Remarks at luncheon with the University of North Florida Pre-Law Board of Advisors, Jacksonville, Florida. I spoke on the topic of Social Responsibility, Law and Professionalism. I have no notes, transcripts or recordings. The address of the University of North Florida is 1 UNF Drive, Jacksonville, Florida 32224.

October 25, 2009: Remarks on Christian men, Franklintown United Methodist Church Men's Day program, Fernandina Beach, Florida. I have no notes, transcripts or recordings. The address of United Methodist is 1415 Lewis Street, Fernandina Beach, Florida 32304.

Late 2008: I introduced speakers during a Racial Equity workshop, OneJax and the Aspen Institute, Jacksonville, Florida. I have no notes, transcripts or recordings. The address of OneJax is 1022 Park Street, Suite 302, Jacksonville, Florida 32204. The address of the Aspen Institute is 1 Dupont Circle NW, Suite 700, Washington, DC 20036.

March 1, 2007: Remarks during a membership luncheon, D.W. Perkins Bar Association, Jacksonville, Florida. I have no notes, transcripts or recordings. The bar association does not have a physical address.

January 31, 2007: Remarks during an American Beach day program, American Beach Property Owners' Association, Fernandina Beach, Florida. I have no notes, transcripts or recordings. The address of the ABPOA is P.O. Box 6123, Fernandina Beach, Florida 32035.

November 9, 2006: I said a prayer at a lunch held at Walker's Landing at Amelia Island Plantation for Judge Robert E. Williams on the occasion of his becoming a senior judge. A copy of my remarks is supplied.

November 4, 2006: Panelist on youth issues at the Fall Festival of Praise, Parenting the Next Generation Conference, Open Arms Ministries, Jacksonville, Florida. I have no notes, transcripts or recordings. Open Arms Ministries has no physical address.

October 18, 2006: I spoke to Nassau County community leaders about the need for a mental health court, Yulee, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the Nassau County Court Annex is 76347 Veteran's Way, Suite 456, Yulee, Florida 32097.

September 9, 2006: Living Through Giving program for Community Hospice of Northeast Florida, Jacksonville, Florida. I helped present awards and scholarships during the program. I have no notes, transcripts or recordings. The address of Community Hospice is 4266 Sunbeam Road, Jacksonville, Florida 32257.

May 5, 2006: Remarks at ceremony honoring victims of domestic violence, Nassau County Judicial Annex, Yulee, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the Nassau County Court Annex is 76347 Veteran's Way, Suite 456, Yulee, Florida 32097.

April 28, 2006: Remarks during a National Crime Victims Rights Week program, Nassau County Judicial Annex, Yulee, Florida. I have no notes, transcripts or recordings. The address of the Nassau County Court Annex is 76347 Veteran's Way, Suite 456, Yulee, Florida 32097.

January 31, 2006: American Beach Day Proclamation program, American Beach Property Owners' Association, Fernandina Beach, Florida. I have no notes, transcripts or recordings. The address of the ABPOA is P.O. Box 6123, Fernandina Beach, Florida 32035.

2006 – present: As co-chair of Project Breakthrough, an initiative of OneJax, I help facilitate meetings on race relations in Jacksonville four times each year. I have no notes, transcripts or recordings. The address of OneJax is 1022 Park Street, Suite 302, Jacksonville, Florida 32204.

December 16, 2005: I briefly welcomed the Florida Bar Board of Governors to the Circuit at the Board's meeting, Amelia Island, Florida. I have no notes, transcripts or recordings. The address of the Florida Bar is 651 East Jefferson Street, Tallahassee, Florida 32399.

November 17, 2005: Panelist for a judicial symposium on professionalism, Jacksonville Bar Association, Jacksonville, Florida. I have no notes, transcripts or recordings. The address of the Jacksonville Bar is 841 Prudential Drive, Suite 1320, Jacksonville, Florida 32207.

October 21, 2005: Remarks delivered at Leadership Day event, Mattie V. Rutherford Alternative Education Center, Jacksonville, Florida. I have no notes, transcripts or recordings. The address of the center is 1514 Hubbard Street, Jacksonville, Florida 32206.

June 5, 2005: James Weldon Johnson Festival Public Forum & Founder's Luncheon, Jacksonville, Florida. I served as a moderator of a forum about the life and work of James Weldon Johnson. I have no notes, transcripts or recordings. The festival does not have a physical address.

May 2005: No Longer Children, Baptist Youth Program, Fernandina Beach, Florida. A copy of my remarks is supplied.

January 1, 2005: Remarks at New Year's Day commemoration of President Lincoln signing the Emancipation Proclamation, Nassau County Branch of the National Association for the Advancement of Colored People, Fernandina Beach, Florida. I swore in new NAACP officers and served as a guest speaker. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the Nassau County Branch of the NAACP is P.O. Box 16641, Fernandina Beach, Florida 32035.

October 23, 2004: Remarks during a program commemorating Martin Luther King, Jr., Nassau County Branch of the National Association for the Advancement of Colored People, Fernandina Beach, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the Nassau County Branch of the NAACP is P.O. Box 16641, Fernandina Beach, Florida 32035.

October 18, 2004: Remarks during a town hall meeting on drug use, Nassau Alcohol, Crime and Drug Abatement Coalition, Fernandina Beach, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the coalition is 435 Citrona Drive, Fernandina Beach, Florida 32034.

October, 2004: I offered greetings during the 24th annual Nassau County Community Development Corporation banquet, Fernandina Beach, Florida. I have no notes, transcripts or recordings. The CDC does not have a physical address.

May 18, 2004: Drugs: Not In My Kid, Not In My County panel, Nassau Alcohol, Crime & Drug Abatement Coalition, Fernandina Beach, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the coalition is 435 Citrona Drive, Fernandina Beach, Florida 32034.

September 10, 2003: Remarks at African-American Professionals Seminar, sponsored by the Continuing Education Department of the University of North Florida, Jacksonville, Florida. I have no notes, transcripts or recordings. The address of UNF is 1 UNF Drive, Jacksonville, Florida 32224.

March 2003: Remarks during National Alliance for the Mentally Ill luncheon, National Alliance for the Mentally Ill, Fernandina Beach, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the Florida NAMI is 1030 East Lafayette Street, Suite 10, Tallahassee, Florida 32301.

November 24, 2002: Remarks at the Interfaith Thanksgiving Service at Riverside Avenue Christian Church, Peace and Hope of Freedom, Jacksonville, Florida. A copy of my remarks is supplied.

September 18, 2002; Panelist during the Working Together: Race Relations Within Our Legal Community seminar, Jacksonville Bar Association, Christian Legal Society, and D.W. Perkins Bar Association, Jacksonville, Florida. I have no notes, transcripts or recordings. The address of the Jacksonville Bar is 841 Prudential Drive, Suite 1320, Jacksonville, Florida 32207. The address of the Christian Legal Society is 8001 Braddock Road, Suite 302, Springfield, Virginia 22151. The D.W. Perkins Bar Association does not have a physical address.

September 13, 2002: Remarks at Founders Anniversary Banquet, Nasitra Club, Jacksonville, Florida. A copy of my remarks is supplied.

June 7, 2002: Keynote Address at Annual Banquet, Clay County NAACP, Events Hall of Clay County Council on Aging. I have no notes, transcripts or recordings. The Clay County NAACP can be reached through its president, Gwendolyn Hunter, P.O. Box 1081, Orange Park, Florida 32067.

February 2002: Remarks at Black History Extravaganza, Jefferson Davis Middle School, Jacksonville, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The event was sponsored by Team Up, Communities in Schools, 3100 University Boulevard South, Suite 300, Jacksonville, Florida 32216.

2002: Brief acceptance remarks to convey my gratitude upon receiving the Judge of the Year award, American Board of Trial Advocates. I have no notes, transcripts or recordings. The address of ABOTA is 2001 Bryan Street, Suite 3000, Dallas, Texas 75201.

October 18, 2001: Remarks at Preventing School Violence forum, Mandarin High School, Jacksonville, Florida. I was a member of a panel on school violence and bullying. I have no notes, transcripts or recordings. The address of Mandarin High is 4831 Greenland Road, Jacksonville, Florida 32258.

May 14-15, 2001: I participated in a workshop on case management, which was conducted by the Committee on Trial Court Performance and Accountability. A report on the workshop discussions and findings was released by the Committee, of which I was a member, and is supplied in response to 12(b).

June 2, 2000: I lectured on "Sanctions and Incentives," National Association of Drug Court Professionals, San Francisco, California. I have no notes, transcripts or recordings. The address of the NADCP is 1029 North Royal Street, Suite 201, Alexandria, Virginia 22314.

January 16, 2000: Martin Luther King, Jr. Service Keynote Address, St. Paul's by the Sea, Jacksonville Beach, Florida. I have no notes, transcripts or recordings. The address of St. Paul's by the Sea is 416 12th Avenue North, Jacksonville, Florida 32250.

January 5-6, 2000: I was a panelist on "The Role of the Juvenile and Family Drug Court Judge" and "Applying Incentives and Sanctions Within a Strengths-Based Framework," National Association of Drug Court Professionals, Phoenix, Arizona. I have no notes, transcripts or recordings. The address of the NADCP is 1029 North Royal Street, Suite 201, Alexandria, Virginia 22314.

March 14, 1999: Helping Our Children Find Their Way, Jacksonville Department of Juvenile Justice Annual Conference. A copy of my remarks is supplied.

January 23, 1999: Remarks during the Beautillion Militaire program, Jacksonville Chapter of Jack & Jill of America, Jacksonville, Florida. I gave words of encouragement to the students being honored for their academic, athletic, and leadership abilities. I have no notes, transcripts or recordings. The Jacksonville Chapter of Jack & Jill of America does not have a physical address.

January 18, 1999: Freedom is Not Free, remarks delivered at Emancipation Proclamation Celebration. A copy of my remarks is supplied.

January 18, 1999: I made remarks at the Martin Luther King celebration, Jacksonville Area Legal Aid, Jacksonville, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of Jacksonville Area Legal Aid is 126 West Adams Street, #101, Jacksonville, Florida 32202.

1999: Brief remarks of gratitude upon receiving the Hubbard House Domestic Peace Award. I have no notes, transcripts or recordings. The address of Hubbard House is P.O. Box 4909, Jacksonville, Florida 32201.

October 24, 1998: To Lose a Brother, Omega Psi Phi Regional Meeting, Embassy Suites, Jacksonville. A copy of my remarks is supplied.

August 13, 1998: Comments made at the Investiture of Judge Ingraham Drayton, Duval County Courthouse. A copy of my remarks is supplied.

March 21, 1998: Remarks during "Living Legends of Jacksonville," Jacksonville, Florida. I am unable to recall the sponsoring organization, and I have no notes, transcripts or recordings.

September 27, 1997: Moderator for "Race Relations and America's Public Education System," First National Dialogue of President Clinton's Race Initiative and the National Conference for Community and Justice, Jacksonville, Florida. The panel discussed the role of public education in addressing racism in America. I have no notes, transcripts or recordings. The address of the NCCJ is 1095 Day Hill Road, Suite 100, Windsor, Connecticut 06095.

May 27, 1997: Remarks at Fifth Grade Recognition Awards, Mt. Herman Exceptional Educational Center. A copy of my remarks is supplied.

January 19, 1997: Acceptance Speech for the Jewish Federation Humanitarian Award. A copy of my remarks is supplied.

October 1996: Remarks at Pre-Law Program, University of North Florida. A copy of the remarks is supplied.

March 9, 1996: Unity Week Panel, Jacksonville, Florida. I emceed a panel on race relations sponsored by a citizen group called Unity. I have no notes,

transcripts or recordings, but press coverage is supplied. The citizens' group, Unity, does not have a physical address.

December 16, 1995: Lest We Forget, Clay County NAACP Luncheon, Jacksonville, Florida. A copy of my remarks is supplied.

May 10, 1995: Remarks at American Society for Industrial Security, Naval Air Station Cecil Field. A copy of my remarks is supplied.

March 31, 1995: Classroom Girl Scouting / Boy Scouting Recognition Breakfast, Prime Osborn Convention Center. A copy of my remarks is supplied.

October 1992: As a faculty member of the Association of Trial Lawyers of America's College of Trial Advocacy, I taught an Essentials of Civil Litigation Seminar in. Reno Nevada and prepared a paper entitled Ready, Set . . . Settle!. I have no notes, transcripts or recordings, and I no longer have a copy of the paper. The address of the American Association of Justice (formerly ATLA) is 777 Sixth Street NW, Suite 200, Washington, DC 20001.

Because of my interest in children and community-building, as a private attorney and assistant state attorney and later as a judge I have frequently agreed to speak with students in Duval County's schools and to various civic and religious organizations. I have also judged numerous mock trials, administered oaths of office, and conducted courthouse tours. I have not maintained records of all of these events, but have tried to create as complete a list as possible by searching my personal records, public databases, and the internet. Despite these efforts, however, there may be other remarks or presentations that I have been unable to recall or identify.

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.

Mary Kelli Palka, *Ex-Mayor Preached Being Fair, Being Just*, Florida Times-Union, Apr. 24, 2011. Copy supplied.

Wendi Zongker, *Program Keeps the Mentally Ill Out of State Jails*, Florida Times-Union, Apr. 22, 2008. Copy supplied.

Shannon Malcolm, *Mental Health Court Runs Smoothly*, Fernandina Beach News Leader, Apr. 3, 2008. Copy supplied.

Shannon Malcolm, *County to Support Mental Health Court*, Fernandina Beach News Leader, Sept. 20, 2007. Copy supplied.

Mary Hurst, *5 Families Open Hearts, Homes*, Florida Times-Union, Nov. 25, 2006. Copy supplied.

Shannon Malcolm, *'Mental Health Court' Envisioned*, Fernandina Beach News Leader, Nov. 15, 2006. Copy supplied.

New Homes for 8 Children, Fernandina Beach News Leader, Nov. 15, 2006. Copy supplied.

David Hunt, *Nassau Courts May Soon Help, Not Punish, the Mentally Ill*, Florida Times-Union, Nov. 3, 2006. Copy supplied.

Mary Hurst, *Mental Health Court Proposed*, Florida Times-Union, Oct. 18, 2006. Copy supplied.

Jefferson Street Pool Renamed for Julius Guinyard, Jacksonville Free Press, Oct. 13-19, 2005. Copy supplied.

Benjamin Price, *Black Mold in Courthouse*, Fernandina Beach News Leader, Aug. 24, 2005. Copy supplied.

Derek L. Kinner, *Mold Growth Discovered in Courthouse*, Florida Times-Union, Aug. 20, 2005. Copy supplied.

David Decamp, *Liberal-Minded Meeting Urges Supreme Court Fight*, Florida Times-Union, July 12, 2005. Copy supplied.

Tonyaa Weathersbee, *Scouts Can Learn Key Skills for Life*, Florida Times-Union, Jan. 14, 2004. Copy supplied.

Jim Schoettler, *Ruling Imperils Statewide DUI Cases*, Florida Times-Union, Jan. 8, 2004. Copy supplied.

Jessie-Lynne Kerr, *Juvenile Advocate Jones, 65, Succumbs to Cancer*, Florida Times-Union, Mar. 1, 2003. Copy supplied.

Kimberly Kappel, *Jacksonville Judge to Replace Retired Brooke*, Fernandina Beach News Leader, Jan. 8, 2003. Copy supplied.

Study Reveals City Leadership Must Take Helm to Improve Race Relations, Jacksonville Free Press, Sept. 25, 2002. Copy supplied.

Alliniece T. Andino, *Eliminating Racial Disparities the Goal*, Florida Times-Union, Sept. 18, 2002. Copy supplied.

Alliniece T. Andino, *Report on Race Relations Out Today*, Florida Times-Union, Sept. 17, 2002. Copy supplied.

Rose Marie Preddy, *Race Relations Focus of Sept. 18 Seminar*, Daily Record, Aug. 26, 2002. Copy supplied.

Mike Sharkey, *The Judges: Brian Davis*, Daily Record, Dec. 3, 2001. Copy supplied.

Alliniece T. Andino, *JCCI Takes On Race Issue*, Florida Times-Union, Oct. 24, 2001. Copy supplied.

Dana Treen, *Police Show Kids Better Path*, Florida Times-Union, Aug. 8, 2001. Copy supplied.

Alliniece T. Andino, *Race Profiling Exists but Not Excessive, Glover Says*, Florida Times-Union, June 23, 2001. Copy supplied.

Vivian Wakefield, *Restitution Orders Make Parents Liable for Children's Delinquent Acts*, Times-Union, Mar. 8, 2001. Copy supplied.

Patrick Boyle, *In New Courts, Kids on Drugs Get the Treatment*, Youth Today, Apr. 1, 2000. Copy supplied.

Vivian Wakefield, *State Courts Trying to Recruit Minorities*, Florida Times-Union, Jan. 24, 1999. Copy supplied.

David Bauerlein, *Businesses Prodded on Domestic Violence*, Florida Times-Union, Nov. 20, 1998. Copy supplied.

Beau Halton, *A Reduction in City's Race Tension*, Florida Times-Union, Apr. 25, 1996. Copy supplied.

Judge Orders Two Teens Held in Sniper Scare, United Press International, Nov. 12, 1992. Copy supplied.

Diane Hirth, *Prison Terms May Be Slashed with Reforms*, South Florida Sun-Sentinel, Feb. 23, 1992. Copy supplied.

4- to 6-Year-Olds Won't Face Trial on Vandalism Charges, Associated Press, Oct. 10, 1991 (reprinted in multiple outlets). Copy supplied.

Thief Gets Bonus from State Month after Firing, Orlando Sentinel, June 28, 1987. 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.

In February 1994, I was appointed as a Circuit Court Judge in the 4th Judicial Circuit by Governor Lawton Chiles. I have been re-elected twice without opposition. The Circuit Court is the highest trial level Court in Florida and has jurisdiction over all juvenile, family and probate proceedings, as well as felony criminal cases and civil cases involving disputes of over $15,000. The Circuit Court also has jurisdiction over the appeals from county court cases as well as certiorari review of local administrative decisions. I have been assigned to the civil, family, juvenile, probate, domestic violence, drug court and mental health court benches and have served in both Duval and Nassau counties.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 625

i. Of these, approximately what percent were:

jury trials:	5%
bench trials:	95%
civil proceedings:	80%
criminal proceedings:	20%

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

In connection with the Circuit Court's trial jurisdiction I have not written any published opinions. I have entered hundreds of written orders. All are maintained in case files by the Clerk of the Court. The vast majority are routine orders without findings of fact or legal analysis, or orders prepared for me by counsel following my oral rulings. I cannot compile a list of orders containing legal analysis and findings of fact, such as would appear in an opinion. Those orders too are on file with the Clerk of the Court. Because they are not published, I cannot provide citations for them without reviewing each and every case file.

In connection with the Circuit Court's jurisdiction regarding appeals from county court cases, I have authored the following unpublished opinions.

Mercer v. State of Florida, Case No. 06-1-AP
Boatright v. State of Florida, Case No. 09-2-AP
National Revenue Service, Inc. v. Smith, Case No. 08-2-AP
Petty v. State of Florida, Case No. 09-3-AP
Parr v. Butler, Case No. 10-1-AP
Richardson v. Somerset Apartments, Case No. 10-2-AP
Dehner v. State of Florida, Case No. 11-2-AP

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. *The Florida Bar v. Gentry*, Case No. 92,332

In September 1995 and October 1998, I served as a referee in two contested Florida Bar disciplinary actions against an attorney, which involved the filing of frivolous federal litigation in one case and the use of abusive and vulgar language toward a client in another. In the original case a guilty plea was accepted and cost and fees imposed. In the latter an admonishment for minor misconduct was issued, an apology required, and costs imposed. This was my only opportunity to serve as a referee in a disciplinary matter, and post-punishment proceedings raised interesting questions regarding the public dissemination of disciplinary actions.

Bar counsel:	Frances R. Brown-Lewis, Esq. The Florida Bar 12500 Edgewater Drive Orlando, FL 32804 (407) 425-5424
Pro se:	Richard Ellis Gentry, Esq. 125 Twin Lake Grove Drive Interlachen, FL 32148 (386) 684-3433

2. *Hamilton v. Whip and Ryan Foods*, Case No. 02-24-CA, and *Johnson v. Whip and Ryan Foods*, Case No. 02-25-CA

In September 2004, in Nassau County, I presided over the trial of consolidated automobile negligence cases resulting in a verdict in excess of $1 million for each plaintiff. Plaintiff's co-counsel, however, failed to disclose directly adverse interests to a former client, having obtained conditional consents to his representation, and thereby forfeited more than $300,000 in attorney's fees. Order supplied.

Counsel for Plaintiff:	Eric S. Block, Esq. 6817 Southpoint Parkway, Suite #2502 Jacksonville, FL 32216 (904) 475-9400 Charles E. Earnhardt, Esq. P.O. Box 411987

Melbourne, FL 32941
(321) 751-5585

Counsel for Defendant: L. Johnson Sarber, Esq.
P.O. Box 447
Jacksonville, FL 32201
(904) 398-0900

3. *Hogan v. Baptist Medical Center*, Case No. 06-44-CA

In September 2008, in Nassau County, I presided over the trial of a negligence action in which a surgeon alleged injury on a "dunking booth" loaned by a volunteer fire department to a hospital for use in a fund-raising event. The jury returned a defense verdict, which was reversed on appeal. After a motion seeking a change of venue was denied, the case settled. Order supplied.

Counsel for Plaintiff: Arthur I. Jacobs, Esq.
961687 Gateway Boulevard, Suite #201-I
Fernandina Beach, FL 32034
(904) 261-3693

Charles Sorenson, Esq.
136 East Bay Street
Jacksonville, FL 32202
(904) 356-6071

Counsel for Defendants: Joseph B. Stokes, Esq.
P.O. Box 41589
Jacksonville, FL 32203
(904) 355-4401

Teresa Arnold-Simmons, Esq.
1 Independent Drive, Suite #1650
Jacksonville, FL 32202
(904) 354-5500

4. *Huckleby v. Masters*, Case No. 06-118-CA

In March 2011, in Nassau County, I presided over a two and one-half week personal injury trial arising from defendant's logging truck's collision with plaintiff's vehicle after bypassing a regulatory check point to avoid fines. The jury returned a verdict in excess of $30 million, the largest on record in Nassau County. The plaintiff suffered severe and complex brain damage and sought punitive damages.

Counsel for Plaintiff:	Steve Pajcic, Esq. Robert Link, Esq. 1 Independent Drive, Suite #1900 Jacksonville, FL 32202 (904) 358-8881
Counsel for Defendant:	Eric Leach, Esq. 815 South Main Street, Suite #200 Jacksonville, FL 32207 (904) 346-3800
	William Stone, Esq. 201 North Hogan Street, Suite #400 Jacksonville, FL 32202 (904) 493-3764

5. *Carlton Dunes Condominium Association, Inc. v. Nassau Beach Development*, Case No. 06-27-CA

In 2006, Carlton Dunes Condominium Association, Inc. brought this construction defect case regarding 7 condominium buildings located on Amelia Island in Nassau County. Breach of contract, breach of statutory warranty, and violation of building code causes of action were alleged against more than 20 defendants including contractors, architects and sub-contractors. The shear number of claims, cross-claims and defendants qualified the litigation as complex. Through active case management the matter was ultimately settled at mediation for undisclosed sums. Order supplied.

Counsel for Plaintiff:	Adam G. Adams, III, Esq. 1 Independent Drive, Suite #1300 Jacksonville, FL 32202 (904) 359-8797
Counsel for Defendants:	Denise Anderson, Esq. 777 South Harbor Island Boulevard, Suite 500 Tampa, FL 33602 (813) 281-1900
	Lilburn R. Railey, III, Esq. 15 North Eola Drive Orlando, FL 32801 (407) 648-9119

6. *Housing Assistance Corporation of Nassau County, Inc. v. Fernandina Beach, RRH Limited, et al.*, Case No. 05-556-CA

This case involved the alleged theft of a business opportunity to own and manage an affordable housing project for the benefit of Nassau County residents. The Housing Assistance Corporation ("HAC") of Nassau County, Inc. had a contract to acquire the Countryside Apartments, an affordable housing apartment complex in Nassau County. Just prior to the closing, it was alleged that defendants conspired with a third party, enabling that party to buy the property from underneath HAC's feet and take over HAC's prearranged financing. The case was tried over the course of four days in 2009, and the jury returned a verdict in favor of HAC. Collection efforts continue.

Counsel for Plaintiff: Jennifer A. Mansfield, Esq.
50 North Laura Street, Suite #3900
Jacksonville, FL 32202
(904) 353-2000

Bryce Ackerman, Esq.
125 N.E. First Avenue, Suite #1
Ocala, FL 34470
(352) 732-8121

Counsel for Defendant: E. Lanny Russell, Esq.
225 Water Street, Suite #1800
Jacksonville, FL 32202
(904) 359-7700

7. *Carter v. Brown & Williamson Tobacco Corp.*, Case No. 95-00934-CA

In August 1996, in Duval County, I presided over the trial of a products liability case resulting in a $750,000 verdict and judgment against a cigarette manufacturer. It was the first time a cigarette company had been held liable for damages to an individual claiming injury from a cigarette-related disease. The case presented complex questions regarding statutes of limitations and first impression federal preemption claims. The defendants appealed the verdict. It was overturned by the 1st District Court of Appeals, but its decision was quashed by the Florida Supreme Court. *Carter v. Brown and Williamson*, 728 So. 2d 344 (Fla. 1st DCA 1999), *rev'd*, 778 So. 2d 932 (Fla. 2000). Order supplied.

Counsel for Plaintiff: Woody Wilner, Esq.
444 East Duval Street, 3rd Floor
Jacksonville, FL 32202
(904) 446-9817

Counsel for Defendant: J.W. Pritchard, Jr., Esq.
9585 Waterford Road
Jacksonville, FL 32257
(904) 731-2147

8. *State v. Mummery*, Case No. 10-1017-CF

The defendant in this case, an 18-year-old female, was arrested in 2010 for burglary of a home while she was intoxicated. A screening at the Nassau County jail revealed the existence of mental illness. The defendant was referred to the Mental Health Court over which I preside by periodically reviewing participants' treatment and behavioral progress, rewarding achievements and sanctioning failures. The defendant graduated from the Court's supervised program after 20 months, prevailing over chronic depression, a suicide attempt, hospitalization, joblessness and inpatient treatment to eventually excel in treatment, educational goals and self esteem.

Counsel for Prosecution: Joseph S. Hamrick, Esq.
State Attorney's Office
76347 Veterans Way, Suite #2105
Yulee, FL 32097
(904) 548-4700

Counsel for Defendant: Christofer Anne Clayton, Esq.
Law Office of the Public Defender
4th Judicial Circuit
76347 Veterans Way, Suite #2065
Yulee, FL 32097
(904) 548-4750

9. *In the Interest of A.C.*, Case No. 06-293-CJ

In October 2006, 15-year-old A.C. came to the Court's attention in connection with a charge of battery on a public or private education employee. A.C. had experienced behavioral and cognitive problems as early as preschool and suffered physical and sexual abuse at a young age. It was eventually determined that A.C. was developmentally delayed and suffered from post-traumatic stress disorder, oppositional defiant disorder, and attention deficit hyperactivity disorder. It was determined that she was incompetent to stand trial for the offenses for which she had been detained, and the Department of Children and Families, Department of Juvenile Justice, and Agency for Persons with Disabilities seemed unable to fashion a course of treatment or means of protecting or providing for the child. Repeated hearings and requirements that agencies charged with the child's care fashion a means of addressing her unique and severe problems ultimately resulted in an appropriate group home placement. Order supplied.

Counsel for Prosecution: Donna G. Thurson, Esq.
State Attorney's Office
4th Judicial Circuit
220 East Bay Street
Jacksonville, FL 32202
(904) 630-2400

Counsel for Defendant: Tom Townsend, Esq.
Law Office of the Public Defender
76347 Veterans Way, Suite #2065
Yulee, FL 32097
(904) 548-4750

10. *City of Fernandina Beach v. McGill Aviation Corporation*, Case No. 04-394-CA

In 2005, the City of Fernandina Beach sought to evict its airport's fixed base operator, McGill Aviation, which claimed the city had breached its lease agreement by unilaterally taking portions of the premises leased to McGill Aviation. The litigation resulted in injunctive relief and a lengthy arbitration resulted in McGill Aviation maintaining its right to operate at the airport and an award of significant attorney's fees in its favor.

Counsel for Plaintiff: James W. Middleton, Esq.
50 North Laura Street, Suite #2600
Jacksonville, FL 32202
(904) 598-6100

Counsel for Defendant: Steve Durant, Esq.
6550 St. Augustine Road, Suite #105
Jacksonville, FL 32257
(904) 652-2600

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. *Mercer v. State of Florida*, Case No. 06-1-AP. Copy supplied.

Counsel for Appellant: Donna P. Levine, Esq.
324 Datura Street, Suite #145
West Palm Beach, FL 33401
(561) 820-8782

Counsel for Appellee: Eric C. Roberson, Esq.
Assistant State Attorney
Nassau County Judicial Annex
76347 Veterans Way
Yulee, FL 32097
(904) 548-4700

2. *White v. Shorstein and Plotkin*, Case No. 08-104-CA. Copy supplied.

Wesley F. White, Esq.
Assistant State Attorney
Nassau County Judicial Annex
Yulee, FL 32097
(904) 548-4700

Harry L. Shorstein, Esq.
6550 Saint Augustine Road, Suite #303
Jacksonville, FL 32217
(904) 642-3332

Jay Plotkin, Esq.
444 East Duval Street, 3rd Floor
Jacksonville, FL 32202
(904) 446-9817

3. *National Revenue Service, Inc. v. Smith*, Case No. 08-2-AP. Copy supplied.

Counsel for Appellant: Jeffrey H. Northcutt, Esq.
1814 Cedar River Drive
Jacksonville, FL 32210
(904) 982-7527

Appellee was Pro se

4. *Scott v. RDL Logistics, LLC and Livesay*, Case No. 08-414-CA. Copy supplied.

Counsel for Plaintiff: Clyde W. Davis, Esq.
960185 Gateway Boulevard, Suite #104
Fernandina Beach, FL 32034
(904) 261-2848

Counsel for Defendants: Arthur L Jacobs, Esq.
961687 Gateway Boulevard, Suite #201-I
Fernandina Beach, FL 32034
(904) 261-3693

5. *Parr v. Butler*, Case No. 10-1-AP. Copy supplied.

Counsel for Appellant:	Arthur I. Jacobs, Esq. 961687 Gateway Boulevard, Suite #201-I Fernandina Beach, FL 32034 (904) 261-3693
Counsel for Appellee:	Joshua K. Martin, Esq. 96191 Ridgewood Circle Fernandina Beach, FL 32034 (904) 432-8333

6. *Richardson v. Somerset Apartments*, Case No. 10-2-AP. Copy supplied.

Neither party was represented by counsel

7. *Dehner v. State of Florida*, Case No. 11-2-AP. Copy supplied.

Counsel for Appellant:	Curtis S. Fallgatter, Esq. 200 East Forsyth Street Jacksonville, FL 32202 (904) 353-5800
Counsel for Appellee:	Beverly Collins, Esq. Assistant State Attorney Office of the State Attorney 76347 Veterans Way, Suite #2105 Yulee, FL 32097 (904) 548-4700

8. *Hamilton v. Whip and Ryan Foods*, Case No. 02-24-CA, and *Johnson v. Whip and Ryan Foods*, Case No. 02-25-CA. Copy supplied in response to 13(c).

Counsel for Plaintiff:	Eric S. Block, Esq. 6817 Southpoint Parkway, Suite #2502 Jacksonville, FL 32216 (904) 475-9400 Charles E. Earnhardt, Esq. P.O. Box 411987 Melbourne, FL 32941 (321) 751-5585
Counsel for Defendant:	L. Johnson Sarber, Esq. P.O. Box 447

Jacksonville, FL 32201
(904) 398-0900

9. *Brown v. Lancaster*, Case No. 04-28-CA. Copy supplied.

Counsel for Plaintiff: Joseph M. Ripley, Jr., Esq.
Gerald S. Bettman, Esq.
5515 Phillips Highway
Jacksonville, FL 32207
(904) 737-5503

Counsel for Defendants: Daniel S. Brim, Esq.
P.O. Box 746
Fernandina Beach, FL 32035
(904) 261-6113

10. *Cawthorn v. State of Florida*, Case No. 04-2-AP. Copy supplied.

Counsel for Appellant: William Mallory Kent, Esq.
1932 Perry Place
Jacksonville, FL 32207
(904) 398-8000

Counsel for Appellee: Donna Gregory Thurson, Esq.
State Attorney's Office
220 East Bay Street
Jacksonville, FL 32202
(904) 630-2400

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

To the best of my knowledge, certiorari has not been requested from the Supreme Court of the United States in any of my cases.

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.

Power v. Boyle, 60 So. 3d 496 (Fla. 1st DCA 2011). I held the facts adduced sufficient to establish the requisite two incidents of violence necessary to the issuance of an injunction against violence under § 784.046 Fla. Stat. (2010). The 1st DCA found the incidents involving neighbors were immature and uncivil, but did not constitute violence or stalking for purposes of the statute.

Nassau County v. Titcomb, 41 So. 3d 270 (Fla. 1st DCA 2010). Nassau county residents sued to stop the development of areas designated as wetlands. They asserted that they had standing to challenge the county water management's ruling that the area was uplands, not wetlands, and the ordinance approving its development because they enjoyed the natural resources at issue by fishing, boating, hiking, etc. They argued that the county's action was inconsistent with its Comprehensive Plan. I agreed with plaintiffs and struck down the ordinance. The 1st DCA affirmed my conclusion that plaintiffs had standing but reversed my order quashing the development ordinance, finding that the ordinance was consistent with the Comprehensive Plan which contemplated re-categorization. Order supplied.

M.M. v. State, 36 So. 3d 797 (Fla. 1st DCA 2010). Pursuant to § 812.025 Fla. Stat. (2009) the 1st DCA reversed my final order of adjudication and disposition in adjudicating a juvenile delinquent of the offenses of grand theft and dealing in stolen property arising from the same course of conduct.

Hogan v. Gray Gable, 30 So. 3d 573 (Fla. 1st DCA 2010). I presided over a jury trial that resulted in a verdict for the defense in this personal injury suit alleging injuries sustained from a dunking booth. The 1st DCA remanded for a new jury trial, finding that I erred in failing to determine if a dunking booth, the instrumentality of injury, was in substantially similar condition to its previous use where the absence of previous injury was a feature of the trial. Order supplied.

T.F. v. State, 20 So. 3d 988 (Fla. 1st DCA 2009). The 1st DCA remanded for further proceedings my acceptance of a juvenile's plea of guilty, finding an insufficient record to determine its voluntariness.

Fashingbauer v. Fashingbauer, 19 So. 3d 401 (Fla. 1st DCA 2009). The 1st DCA affirmed in part and reversed in part the final judgment for dissolution of marriage I entered in this case. The DCA disagreed with the treatment of one beach lot as marital property, finding that the parties' use of marital funds to pay taxes on the lot did not convert it into a marital asset. Order supplied.

Haddock v. Carmody, 1 So. 3d 1133 (Fla. 1st DCA 2009). I found that Florida Statutes § 196.061 (2005) was unconstitutional as applied to plaintiffs because it deprived them of their homestead tax exemption, and that plaintiffs were entitled to exemption. The 1st DCA reversed both findings.

State v. D.A.G., 995 So. 2d 601 (Fla. 1st DCA 2008). My order vacating a juvenile's eight and a half year old adjudication as void was reversed by the 1st DCA because it held the motion to vacate was untimely.

J.W.J. v. State, 994 So. 2d 1223 (Fla. 1st DCA 2008). The 1st DCA affirmed my adjudication of delinquency for felony charges, and affirmed in part and reversed in part my imposition of certain special conditions of probation.

Strassner v. Strassner, 982 So. 2d 1224 (Fla. 1st DCA 2008). The 1st DCA reversed and remanded for further proceedings my decision to impute minimum wage to a former wife in calculating her child support obligation because of my failure to also find the actual ability to earn said sum and a deliberate refusal to work on the former wife's part. Order supplied.

Craig v. Craig, 982 So. 2d 724 (Fla. 1st DCA 2008). The 1st DCA reversed that portion of my final judgment for dissolution of marriage dealing with equitable distribution because it found that there was no evidence to support the finding that the subject land coud be subdivided and sold for the prices assumed. Order supplied.

Jones v. Atkinson, 974 So. 2d 573 (Fla. 1st DCA 2008). I presided over a jury trial in this automobile injury case that resulted in a verdict apportioning liability evenly between the parties. I granted plaintiff's motion for new trial based on the compromise verdict. The 1st DCA reversed, finding that the issues at trial were "hotly contested" and disagreed with my finding that the record was "devoid of significant evidence" of the plaintiff's negligence. Order supplied.

M.S.G. III v. State, 971 So. 2d 273 (Fla. 1st DCA 2008). The 1st DCA upheld the Court's finding that a juvenile engaged in an affray, but reversed the Court's finding that the juvenile had deliberately disrupted a school function because there was no evidence that he acted with deliberate intent.

W.W. Plastering v. Chisholm Construction, Inc., 898 So. 2d 276 (Fla. 1st DCA 2005). The 1st DCA reversed my award of attorney's fees to defendants, finding that an initial motion for fees made in connection with an earlier action that was voluntarily dismissed could not carry forward to a new case filed by the same plaintiff seeking to foreclose a mechanic's lien. Order supplied.

State Dept. of Transportation v. Nassau Partners Limited, 878 So. 2d 1286 (Fla. 1st DCA 2004). I awarded costs to the landowner in an eminent domain case. The 1st DCA affirmed my order with respect to the landowner's entitlement to fees, but remanded for additional "specific findings" as a matter of first impression regarding the necessity of hours expended and reasonableness of rate. Order supplied.

Martin v. Wilcox, 876 So. 2d 695 (Fla. 1st DCA 2004). The 1st DCA required on remand that I consider the merits of a landowner's motion attacking a settlement agreement after the entry of an order approving the agreement where, pursuant to the agreement, the landowner had reserved the right to collaterally attack the agreement within 60 days. Order supplied.

K.S. v. State, 840 So. 2d 1116 (Fla. 1st DCA 2003). I adjudicated the juvenile guilty of trespassing in a park. The 1st DCA reversed, finding that no evidence of willfulness or notice had been presented.

Brown & Williamson Tobacco Corp. v. Carter, 723 So. 2d 833 (Fla. 1st DCA 1998). The 1st DCA reversed the jury's verdict and remanded the case with instructions that it be dismissed because the claim was barred by the statute of limitations, trial evidence was preempted by the federal cigarette labeling and advertising act and plaintiffs were allowed to proceed on an unpleaded claim. The Florida Supreme Court quashed the 1st DCA's decision and sustained the jury's verdict. *See Carter v. Brown and Williamson Tobacco Court*, 778 So. 2d 932 (Fla. 2000). Order supplied in response to Question 13(c).

A.S. v. State, 763 So. 2d 1216 (Fla. 1st DCA 2000). I conducted a disposition hearing for a high risk juvenile. The juvenile's mother was not present for the hearing. The 1st DCA required a new disposition hearing because there was no evidence that the juvenile's mother had received proper notice of the hearing.

A.B. v. State, 763 So. 2d 1218 (Fla. 1st DCA 2000). The 1st DCA reversed my adjudication of delinquency and order of high-risk commitment and remanded for further proceedings, finding that I had erred in denying the child's motion to withdraw his guilty plea.

S.D.W. v. State, 746 So. 2d 1232 (Fla. 1st DCA 1999). I found the juvenile guilty of one count of battery on a school board official and one count of battery. The 1st DCA affirmed the conviction of battery on a school official but overturned the conviction for battery because it found there was no evidence that the juvenile had intended to kick anyone during the second incident. The court also remanded with instructions to conform the written order with my oral pronouncements at sentencing.

Keiser v. Old Line Ins. Co. of Am., 735 So. 2d 612 (Fla. 1st DCA 1999). My order awarding attorney's fees was reversed in the absence of a transcript and sufficient factual findings regarding the reasonableness of hours expended and rates charged.

Russ v. City of Jacksonville, 734 So. 2d 508 (Fla. 1st DCA 1998). I presided over a false arrest trial in which a verdict was returned for the defendant. The 1st DCA reversed and remanded for a new trial, holding that I had the authority to vacate or modify an interlocutory ruling of a predecessor judge and that certain impeachment evidence should have been admitted.

Brown & Williamson Tobacco Corp. v. Carter, 728 So. 2d 344 (Fla. 1st DCA 1999). The 1st DCA found the question of attorney's fees to be moot in light of its decision on the merits in *Brown & Williamson Tobacco Corp. v. Carter*, 723 So. 2d 833 (Fla. 1st DCA 1998). However, its ruling on the merits was reversed.

See Carter v. Brown & Williamson Tobacco Corp., 778 So. 2d 932 (Fla. 2000). Order supplied.

Boone v. Mastroianni, 709 So. 2d 192 (Fla. 1st DCA 1998). The 1st DCA issued a per curiam reversal based on *Smith v. Welton*, 710 So. 2d 135 (Fla. 1st DCA 1998), which held that Florida's statute authorizing property appraisers to adjust assessment values violated protections afforded homestead properties by Florida's constitution. *Smith* and *Boone* were consolidated before the Florida Supreme Court, which held that the appraisers lacked authority under the statute to retroactively adjust the assessments, and thus affirmed only the result of the 1st DCA's opinion. *Smith v. Welton*, 729 So. 2d 371 (Fla. 1999). Order supplied.

Maersk Line Limited v. Weaver, 708 So. 2d 347 (Fla. 1st DCA 1998). The 1st DCA required the dismissal of a complaint for failing to state a cause of action for the tort of outrageous conduct causing severe emotional distress and found as a result that the Court did not have personal jurisdiction over the foreign defendant. Order supplied.

Boney v. Collier Custom Homes, Inc., 694 So. 2d 52 (Fla. 1st DCA 1997). The 1st DCA, per curiam, remanded for further proceedings following the reversal of my order to dismiss the case. Order supplied.

Wetzel v. Wetzel, 671 So. 2d 234 (Fla. 1st DCA 1996). The 1st DCA remanded the final judgment of dissolution of marriage and directed the parties to present additional evidence so that the Court could make factual findings supporting the award of rehabilitative alimony and equitable distribution. Order supplied.

Irwin v. Perryman, 666 So. 2d 959 (Fla. 1st DCA 1996). Upon confession of error, the 1st DCA reversed and remanded my order regarding the former husband's child support obligation so as to deduct from gross income state income tax paid, and required the Court to conform its order regarding the length of child support payment to Florida Statutes § 743.07 (1993). Order 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 member of a trial level court, the decisions I issue result in unpublished orders and judgments. Those orders and judgments that I have personally written are stored in my computer in a directory for each type of case (civil, juvenile or family) and filed with the Clerk of Court. The orders and judgments that were not written by me, but which were submitted by the parties for my review and execution, are filed in the Court file which is maintained by the Clerk of 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.

I have authored no 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 a federal court of appeals.

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

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

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

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

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

Our jurisdiction does not have an "automatic" recusal system. Florida Rule of Judicial Administration 2.160(e) provides that a motion to recuse must be filed within a reasonable time not to exceed 10 days after the discovery of the facts that would require disqualification. The motion must be served upon the judge and the judge must rule within 30 days of service. If the judge does not rule within 30 days, the motion is automatically granted. A judge may not dispute the allegations in a motion to recuse, but must accept the allegations in a motion to recuse as true and then determine whether those facts, if true, would warrant recusal.

I have been able to locate the following cases in which either I recused sua sponte or motions to recuse or disqualify me were filed:

Amelia Island Plantation Community Association, Inc. v. Pollock, Case No. 03-109-CA. A Motion to Disqualify was filed by the defendant alleging scheduling difficulties, a previous association with opposing counsel, a *sua sponte* ruling and a suggestion that the

Court had predetermined the outcome of the case. In determining whether to recuse myself, I asked whether I could set aside the emotions raised by the aspersions cast and concluded in fairness to the defendant that I could not. The baselessness of the motion and the defendant's status as a former judicial officer compelled me to refer her conduct to the Florida Bar Association for investigation. The defendant was sanctioned by the Florida Bar Association.

Morgan v. Morgan and Morgan v. Nelson, Case Nos. 03-935-CA and 05-39-CA. I recused myself voluntarily on this matter because of my friendship with all of the parties.

Carswell v. Adams, Case No. 06-420-CA. I recused myself sua sponte in this matter because of my friendship with the decedent and his family.

TAMA Radio Licenses of Jacksonville v. D.B. Zwirn Special Opportunities Fund, Case No. 08-75-CA. I recused myself *sua sponte* from this matter in light of my friendship with plaintiff's counsel.

Dawkins v. Stiles, Case No. 09-616-CA. I initially denied a motion to recuse filed by the plaintiff in this matter as legally insufficient. After further reflection on the nature of the controversy and the fact of the Court's residency within the community from which the cause of action arose – a reason different from that alleged in the plaintiff's motion – I recused myself.

First Union National Bank v. McCormick, Case No. 04-4-AP. I recused myself from the appeal in this case because it was my order being appealed.

Lewis v. Green, Case No. 05-1-AP. I recused myself from this matter because it was my order that was the subject of the appeal.

Destrez v. Air France, Case No. 05-153-CC. I recused myself from this matter because it was my order that was the subject of the appeal.

BAC Home Loans Servicing v. Austin, Case No. 09-1154-CA. I recused myself from this cause of action because I was a personal friend and neighbor of the defendants.

Baker v. Futch, Case No. 06-728-DR, *Wyche v. Futch*, Case No. 06-729-DR, *Doyle v. Futch*, Case No. 06-733-DR, *Futch v. Baker*, Case No. 06-746-DR, and *Futch v. Baker*, Case No. 06-747-DR. I recused myself in this case upon the pro se movant's request because although untrue, movant's factual allegations (taken as true, as required by Florida rule) would have prompted a reasonable and prudent person to fear an inability to get a fair and impartial trial.

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

    a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or

appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I served as an Assistant State Attorney from 1982 to 1988. I was appointed by State Attorney Ed Austin (deceased). I also served as Chief Assistant State Attorney from 1991 to 1994. I was appointed by State Attorney Harry Shorstein.

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

I served as a volunteer in the 1986 campaign of Governor Bob Graham for the United States Senate. I was responsible for helping to get out the vote.

I served as a volunteer in the 1991 campaign of former State Attorney Ed Austin for Mayor of the City of Jacksonville. I was responsible for helping to get out the vote.

In 2000 and 2006, I ran unopposed for and was elected to the Circuit Court 4th Judicial Circuit Court bench.

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 clerk to a judge.

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

I have never practiced law alone.

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

1980 – 1982
Mahoney, Hadlow and Adams, P.A.
Barnett Bank Building

Jacksonville, Florida 32202
Associate

1982 – 1988
State Attorney's Office
4th Judicial Circuit
220 East Bay Street
Jacksonville, Florida 32202
Assistant State Attorney

1988 – 1991
Terrell Hogan (formerly known as Brown, Terrell, Hogan, Ellis, McClamma, Yegelwel and Davis; Brown, Terrell, Hogan, Ellis, McClamma and Yegelwel)
Blackstone Building, Suite 804
233 East Bay Street
Jacksonville, Florida 32202
Partner (1991)
Associate (1988 – 1991)

1991 – 1994
State Attorney's Office
4th Judicial Circuit
220 East Bay Street
Jacksonville, Florida 32202
Chief Assistant State 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 began my practice of law in September 1980 as an associate attorney at Mahoney, Hadlow and Adams, P.A. I was a member of the labor law division. My primary responsibility was research and litigation support for senior partners.

Beginning in March 1982, I practiced criminal law as a prosecutor in the State Attorney's Office. My responsibilities ranged from the decision to

charge through the trial of defendants for misdemeanor and felony offenses.

In 1988, I became an associate attorney at Brown, Terrell, Hogan, Ellis, McClamma and Yegelwel, a 6-person civil litigation law firm. As an associate attorney I managed a caseload that included various tort actions at various stages of litigation. I was typically responsible for client intake, case investigation, witness development and preparation, discovery practice, motion practice, and both jury and non-jury trials. By May 1991, I was offered a partnership in the firm.

In July 1991, I accepted an appointment as Chief Assistant State Attorney and again practiced criminal law with the same, though diminished, individual case responsibility but enhanced supervisory responsibilities for approximately 60 attorneys.

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

At Mahoney, Hadlow and Adams, P.A., my labor law practice was primarily on behalf of management. Typical clients included business, banking and manufacturing interests.

During my first term of service in the State Attorney's Office, the State of Florida was my client and I typically worked closely with citizen victims of crime. During that time, I specialized in economic crime, consumer fraud, homicide, sexual battery and juvenile prosecutions.

As an associate attorney with Brown, Terrell, Hogan, Ellis, McClamma and Yegelwel, clients were typically plaintiffs seeking monetary damages for a variety of torts including personal injury, medical malpractice and wrongful death.

Finally, as Chief Assistant State Attorney I once again represented the State of Florida. I was involved in supervising the various prosecutorial and administrative responsibilities of the office. I also assisted the State Attorney in the development of office policy and procedures.

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 have regularly appeared in court for clients. As an associate attorney, early in my practice, such appearances were rare. As an Assistant State Attorney my appearances in court were almost daily. When I returned to private practice and

as Chief Assistant State Attorney, the frequency of appearances decreased, but was still regular.

i. Indicate the percentage of your practice in:
   1. federal courts: >1%
   2. state courts of record: 99%
   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.

As an attorney, I tried approximately 70 cases to verdict or judgment. In 75% of these I was either lead or sole counsel.

i. What percentage of these trials were:
   1. jury: 35%
   2. non-jury: 65%

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

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

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 Florida v. Cummings*, Case No. 86-785-CF

In September 1986, in Duval County, I was chief trial counsel for the State of Florida in this armed robbery prosecution before the Honorable Louis Safer, 4th Judicial Circuit Court. The case was significant because of the defendant's previous acquittal of a related robbery and the defendant's habitual offender status. I gave the opening statement, presented and cross-examined witnesses and argued in closing against defendant's contention of misidentification. The defendant was found guilty as charged.

Counsel for Defendant: Michael Edwards, Esq.
218 East Ashley Street
Jacksonville, FL 32202
(904) 350-9800

2. *State of Florida v. Roberts*, Case No. 87-2600-CF

In September 1987, in Duval County, I was chief trial counsel for the State of Florida in this murder prosecution before the Honorable William Wilkes, 4th Judicial Circuit Court. The case involved a domestic violence decapitation. I gave the opening statement, presented and cross-examined witnesses and argued in closing against defendant's contention of misidentification. The defendant was found guilty.

Counsel for Defendant: Alan Chipperfield, Esq.
Office of the Public Defender
35 North Main Street
Gainesville, FL 32601
(352) 338-7375

3. *State of Florida v. Braddy*, Case No. 87-43583-CF

In October 1987, I was chief trial counsel in this second degree murder prosecution before the Honorable L. Page Haddock, 4th Judicial Circuit Court. The case involved the domestic violence shooting of the victim in the back. The proffered defense was that the gun accidentally discharged. I gave the opening statement, presented fact and expert witnesses, and argued in summation. The defendant was found guilty as charged.

Counsel for Defendant: Alan Chipperfield, Esq.
Office of the Public Defender
25 North Main Street
Gainesville, FL 32601
(352) 338-7375

4. *Simpson v. The Celotex Corporation, et al.*, Case No. 87-15087-CA

In December 1988, I was trial co-counsel for the plaintiff in the negligence civil conspiracy and strict liability trial against an asbestos manufacturer before the Honorable A. C. Soud, Jr., 4th Judicial Circuit Court. I gave an opening statement, presented fact and expert witnesses and argued in summation. The claims of five separate plaintiffs were tried before a single jury. The jury returned four damage awards.

Co-counsel for Plaintiff:	Wayne Hogan, Esq. Evan Yegelwel, Esq. 233 East Bay Street, 8th Floor Jacksonville, FL 32202 (904) 632-2424
Counsel for Defendant:	Frank Perritt, Esq. 945 Arbor Lane Jacksonville, FL 32207 (904) 396-2487
	William Burns, Esq. 1 Independent Drive, Suite #1900 Jacksonville, FL 32202 (904) 358-8881

5. *Johnson v. Carney & Sons Trucking Services, Inc.*, Case No. 88-14815-CA

In July 1989, in Duval County, I was trial co-counsel for plaintiff in a negligence action against an asphalt trucking company before the Honorable Lawrence Fay, 4th Judicial Circuit Court. The case involved the company's failure to supervise and investigate the habitual traffic offender status of its at-fault driver. I offered expert and fact witness testimony. A verdict of $325,000 was returned.

Co-counsel for Plaintiff:	Jim Terrell, Esq. 233 East Bay Street, 8th Floor Jacksonville, FL 32202 (904) 632-2424.
Counsel for Defendant:	Hal Catlin, Esq. 1792 Lake Miona Drive The Villages, Florida, 32162 (352) 391-1970

6. *Edenfield v. W. W. Gay Mechanical Contractors, Inc.*, Case No. 86-9574-CA

In April 1990, in Duval County, I was chief trial counsel for plaintiff in a negligence action before the Honorable Lawrence D. Fay, 4th Judicial Circuit Court. The case

involved engineering and immunity issues regarding a subcontractor, and disabling burns suffered by the plaintiff. I offered an opening statement, presented fact and expert witnesses, cross-examined defense witnesses and presented the closing argument. The jury returned a verdict of $225,000.

Co-counsel for Plaintiff:	Jim Terrell, Esq. 233 East Bay Street, 8th Floor Jacksonville, FL 32202 (904) 632-2424
Counsel for Defendant:	Bruce Bullock, Esq. 5515 Phillips Highway, Suite #2 Jacksonville, FL 32207 (904) 731-0535

7. *Powell v. State of Florida*, Case No. 85-2659

In July 1990, in Hillsborough County, I was trial co-counsel for plaintiff in a negligence action before the Honorable J. Rogers Padgett, 13th Judicial Circuit Court. The suit was against the Hillsborough County State Attorney's Office for failing to protect an estranged wife horribly burned by her husband against whom she was to testify for the State. I examined prosecutors and made opening and closing arguments. The jury returned a $2.3 million verdict, which was reversed on appeal, *Powell v. State*, 586 So. 2d 1180 (Fla. 2nd DCA 1991).

Co-counsel for Plaintiff:	James D. Clark, Esq. 101 South Franklin Street Tampa, FL 33602 (813) 250-0608
Counsel for Defendant:	David McClain, Esq. 320 West Kennedy Boulevard, Suite #600 Tampa, FL 33606 (813) 221-1331
	Pamela Lutton, Esq. Attorney General's Office 400 South Monroe Street, #PL 01 Tallahassee, FL 32399 (850) 414-3300

8. *Holland v. Jacksonville Apartment Associates, Ltd., et al.*, Case No. 89-10275-CA

In August 1991, in Duval County, I was trial co-counsel for plaintiff in a premises liability trial against apartment owners before the Honorable Charles Mitchell, 4th Judicial Circuit Court. The case involved the provision of inadequate security for tenants

and the plaintiff, who was raped by an intruder, despite knowledge of increasing neighborhood crime. I prepared the plaintiff and fact and expert witnesses for trial and assisted in the cross-examination of defense witnesses. The jury returned a verdict in excess of $1 million.

Co-counsel for Plaintiff:

Jim Terrell, Esq.
233 East Bay Street, 8th Floor
Jacksonville, FL 32202
(904) 632-2424

Annette Ritter, Esq.
7936 Fallon Oaks Lane
Jacksonville, FL 32277
(904) 744-7391

Counsel for Defendant:

R. J. Inman, Esq.
2252 Gulf Life Tower
Jacksonville, FL 32202
(904) 396-2537

Noah Jenerette, Esq.
231 East Adams Street
Jacksonville, FL 32202
(904) 353-6241

David Etheridge, Esq.
225 Water Street
Jacksonville, FL 32202
(904) 355-4401

9. *State of Florida v. Parker*, Case No. 90-12598-CF

In March 1993, in Duval County, I was trial co-counsel for the State of Florida in this felony murder trial before the Honorable Alban E. Brooke, 4th Judicial Circuit Court. The case presented a difficult causation issue arising from the death of an elderly citizen during a purse snatching by a habitual offender. The jury had to decide whether death resulted from the minimal force and emotional trauma associated with the purse's snatching or natural causes. I prepared and presented the victim's testimony, expert witnesses and gave a closing argument. The defendant was found guilty.

Co-counsel for Plaintiff:

Michael S. Tyde, Esq.
4004 Atlantic Boulevard
Jacksonville, FL 32207
(904) 398-2212

Counsel for Defendant: Charlie Adams
610 Blodgetts Lane
Jacksonville, FL 32206
(904) 751-2939

10. *State of Florida v. Sutton*, Case No. 93-4386-CF

In September 1993, in Duval County, I was chief trial counsel for the State of Florida in this attempted first degree murder prosecution before the Honorable Hudson Oliff, 4th Judicial Circuit Court. A co-defendant was simultaneously tried by a second jury and the crime involved the attempted killing of an 11-year-old in his mother's presence. I prepared and presented witnesses, gave the opening statement, and cross-examined witnesses. The defendant was found guilty.

Co-counsel for Plaintiff: Bernie de La Rionda, Esq.
State Attorney's Office
220 East Bay Street
Jacksonville, FL 32202
(904) 630-2400

Counsel for Defendant: Charlie Adams, Esq.
610 Blodgetts Lane
Jacksonville, FL 32206
(904) 751-2939

Refik Eler, Esq.
Office of the Public Defender
25 North Market Street
Jacksonville, FL 32202
(904) 630-1530

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 re: The Death of Alexander
In September 1983, I was co-counsel to the Grand Jury, State of Florida, Duval County, investigating the police shooting death of Alexander. This was significant in that the investigation occurred in a highly charged context imbued with allegations of racial prejudice. The Grand Jury found the shooting justified as it occurred during a struggle over the officer's gun by a motorcyclist fleeing a traffic violation.

In re: Report of the Grand Jury
In June 1992, I was co-counsel to the Grand Jury, State of Florida, Duval County, investigating the death of U.S. Navy Petty Officer First Class Smith. Petty Officer Smith died when his vehicle careened into the St. Johns River from the open middle span of the Main Street Bridge, which carried no warning lights, sirens, traffic arms or safety barriers. A highly critical presentment resulted in the Department of Transportation remedying the defects, and reorganizing its structure and procedures regarding vehicular and pedestrian safety on the bridge.

In re the Death of Smith
In March 1993, I was counsel to the Grand Jury, State of Florida, Nassau County, investigating the police shooting death of a mentally ill United States Navy Seal. While the Grand Jury did not find criminal liability, its presentment severely criticized the Nassau County Sheriff's Office and recommended sweeping changes in its operation as it relates to crisis management.

Drug Court and Mental Health Court
As Chief Assistant State Attorney I was instrumental, with State Attorney, Harry Shorstein, in establishing the first drug court in the 4th Judicial Circuit in 1992. Later I had the privilege from the bench of presiding over the court in Duval County and establishing the Circuit's first Juvenile Drug Court in 1997. In 2007, I established the first Mental Health Court in the Circuit in Nassau County, over which I have continuously presided.

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 financial or business interests from which I might expect to be compensated in the future. I do participate in the Florida Retirement System and maintain a vested benefit therein payable monthly upon attaining normal retirement age. I also anticipate receiving income through the State of Florida's Deferred Compensation Plan established under Internal Revenue Code 457.

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, commitment, or agreements to pursue outside employment.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If confirmed, I will adhere to the Code of Conduct for United States Judges and other applicable authority regarding the conflicts of interest and recuse myself accordingly. I am not aware of any potential conflicts of interest presently.

    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 intend to be guided by the Code of Conduct for United States Judges in resolving any conflicts of interest that might arise.

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.

    Florida's Canons of Judicial Conduct prohibit judges from practicing law. Accordingly, during all of my judicial career I have chosen to serve the disadvantaged by serving in leadership roles with organizations whose missions were concerned with the varied needs

of the disadvantaged. Similar ethical considerations prevented my representation of disadvantaged clients while serving as a prosecutor early on in my career.

In private practice I provided pro bono representation through the Jacksonville Legal Aid Association and offered legal advice to non-profit organizations serving the disadvantaged as a board member. I currently devote several hours each week to organizations whose agendas impact the disadvantaged of my community.

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 June 4, 2009, I submitted an application to the Florida Federal Judicial Nominating Commission. On July 21, 2009, I interviewed with the Middle District Conference of the Judicial Nominating Commission in Orlando, Florida, and was notified by the Commission that my name, along with two others, was being submitted to Senators Nelson and Martinez. In August 2009, I interviewed with Senator Nelson and Senator Martinez at Senator Nelson's Orlando office. Subsequently, Senator Nelson notified me that he was submitting my name, along with two others, to the White House for consideration in connection with the nomination. I was not nominated at that time.

On June 14, 2011, I submitted an application to the Florida Federal Judicial Nominating Commission in connection with the current vacancy. On August 4, 2011, I interviewed with the Middle District Conference of the Judicial Nominating Commission in Orlando, and was notified by the Judicial Nominating Commission that my name, along with three others, was being submitted to Senators Nelson and Rubio. On October 12, 2011, I interviewed with Senator Nelson and Senator Rubio in their Washington, DC offices. Both Senators advised me they were submitting my name, along with three others, to the White House for consideration in connection with the nomination. Since November 2, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 7, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 29, 2012, 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. On November 10, 2011, I was contacted by Jeffrey Barber of the Department of Justice regarding my cooperation with FBI processes associated with the pre-nomination process.

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
Davis, Brian J.	U.S. District Court, Middle District of Florida	02/29/2012
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 - Nominee	☑ Nomination, Date 02/29/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 02/29/2012
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 300 North Hogan Street Jacksonville, FL 32202	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Member, Board of Directors	OneJax, Inc
2.	Co-Chair	Project Breakthrough
3.	Member, Board of Directors	Jacksonville Public Education Fund
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 Davis, Brian J.	Date of Report 02/29/2012

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

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	State of Florida Judicial Salary	$142,177.00
2. 2011	State of Florida Judicial Salary	$142,177.00
3. 2012	State of Florida Judicial Salary	$23,696.00
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	Florida Retiement System Disability Income
2. 2012	Florida Retirement System Disability Income
3. 2011	Unum Life Insurance Co. Disability Benefit Income
4. 2012	Unum Life Insurance Co. Disability Benefit Income
5. 2011	Unum Life Insurance Co. Long Term Care Benefit Income
6. 2012	Unum Life Insurance Co. Lond Term Care Benefit Income

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 Davis, Brian J.	Date of Report 02/29/2012

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.	Nationwide Advantage Mortgage Company	Mortgage on Rental Property, Jacksonville, Florida	K
2.	CitiMortgage	Mortgage on Investment Property, Jacksonville, Florida	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Davis, Brian J.	02/29/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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)
1. Regions Bank Accounts	A	Interest	K	T	Exempt				
2. American Funds: American Mutual Fund	A	Dividend	J	T					
3. ING 457 Plan, Fixed Account	D	Dividend	M	T					
4. Rental Property, Jacksonville, Florida (2010 $80,000)	D	Rent	K	R					
5. Investment Property, Jacksonville, Florida (2003 $45,000)		None	K	R					
6. MetLife Variable Annuity, Fixed Account	A	Int./Div.	J	T					
7. BlackRock Mid-Cap Growth Equity Fund	A	Dividend	J	T					
8. NorthWestern Mutual Variable Annuity									
9. -T Rowe Price Equity Income Fund	A	Dividend	J	T					
10. - JanusFocused Appreciation Fund	A	Dividend	J	T					
11. -NorthWestern Mutual Growth Stock Fund	A	Dividend	J	T					
12. - Russell Aggressive Equity Fund	A	Dividend	J	T					
13. -Russell International Equity Fund	A	Dividend	J	T					
14. -Franklin Templeton International Growth Fund	A	Dividend	J	T					
15. - Russell Non-US Fund	A	Dividend	J	T					
16. - NorthWestern Mutual Select Bond Fund	A	Dividend	J	T					
17. - Russell Core Bond Fund	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $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 Davis, Brian J.	Date of Report 02/29/2012

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, 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. - NorthWestern Mutual High Yield Bond Fund	A	Dividend	J	T					
19. - Russell Global Estate Securities Fund	A	Dividend	J	T					
20. -NorthWestern Mutual Guaranteed Interst Fund 1	A	Interest	J	T					
21. NorthWest Mutual Whole Life Policy #1	A	Dividend	J	T					
22. NorthWest Mutual Whole Life Policy #2	A	Dividend	K	T					
23. NorthWest Mutual Whole Life Policy#3	C	Dividend	L	T					
24.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less P =$50,001 - $100,000 P3 =$25,000,001 - $50,000,000	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 M =$250,001 - $500,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 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 Davis, Brian J.	Date of Report 02/29/2012

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

I. Positions. 2 Project Breakthrough is an unincorporated association without revenues or expenses.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Davis, Brian J.	Date of Report 02/29/2012

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 Brian J. Davis

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		43	354	Notes payable to banks-secured (auto)		34	041
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		301	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		5	000	Real estate mortgages payable – see schedule		364	922
Real estate owned – see schedule		406	400	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		65	400				
Cash value-life insurance		92	649				
Other assets itemize:							
Florida Retirement System Pension Plan	1	241	515				
Annuities							
				Total liabilities		398	963
				Net Worth	1	752	265
Total Assets	2	151	228	Total liabilities and net worth	2	151	228
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		6	422	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	
Citigroup stock	$785
Travelers stock	581
American Funds American Mutual Fund	4,238
BlackRock Mid-Cap Growth Equity Fund	8,007
ING Fixed Account annuity	242,992
MetLife Fixed Interest Account annuity	12,079
Northwestern Mutual Select Variable Annuity	33,228
Total Listed Securities	$301,910

Real Estate Owned	
Personal residence	$107,400
Vacation home	220,400
Investment property	31,900
Rental property	46,700
Total Real Estate Owned	$406,400

Real Estate Mortgages Payable	
Personal residence	$27,207
Vacation home	271,735
Investment property	35,764
Rental property	30,216
Total Real Estate Mortgages Payable	$364,922

AFFIDAVIT

I, Brian Jordan Davis, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 1, 2012
(DATE)

Brian Jordan Davis
(NAME)

KAREN J. LOCKETT
Notary Public, State of Florida
My Comm. Expires Sept. 27, 2014
Commission No. EE 19444

(NOTARY)

3/1/12

Senator WHITEHOUSE. Thank you, Judge Davis.

In deference to Senator Coburn's pressing schedule, Senator Lee and I have agreed to defer so that he may proceed with his questions.

Senator Coburn.

Senator COBURN. Thank you, Mr. Chairman.

I would just ask for unanimous consent that my questions for these nominees be placed into the record.

Senator WHITEHOUSE. Without objection.

Senator COBURN. And the ability to submit additional questions on the basis of the responses to those questions.

Senator WHITEHOUSE. Consistent with whatever the protocol is of the Judiciary Committee. I do not want to trump that.

Senator COBURN. You sound like a lawyer.

[Laughter.]

Senator COBURN. Thank you, Mr. Chairman.

Congratulations to all of you.

Senator WHITEHOUSE. Welcome. We are delighted that you are here and I congratulate you on the great honor of having been nominated by the President to a lifetime position on the Federal judiciary.

I have practiced before Federal judges. I have been inspired by them, terrified by them, various things. And it is a position of great importance that you will be entering into, assuming a successful and rapid conclusion of the nomination process.

As I noted to Judge Bacharach, do not be discouraged that there is not a lot of turnout. What you want is uneventfulness, and, so far, it looks so good.

As I said before, judges must respect the role of Congress as the duly elected representatives of the American people. You must decide cases based on the law and the facts. You must not prejudge any case, but give fair and equal hearing to all parties who come before you.

You must respect the precedent that provides the framework for your decision, and you must limit yourself to the issues that are properly presented to you by the case at hand.

Can each of you satisfy that standard?

Judge GRIMM. Senator Whitehouse, let me just say that it is my opportunity to be terrified of a U.S. Senator instead of having it the other way around.

Senator WHITEHOUSE. Our bark is a lot worse than our bite. Do not worry about us.

Judge GRIMM. Absolutely, the criteria——

Senator WHITEHOUSE. We do not have power of contempt the way judges do.

Judge GRIMM. And what I can assure you, Senator Whitehouse, if I am fortunate enough to be confirmed, that those criteria that you have identified will be essential to the way in which I approach the job.

Mr. DOWDELL. I concur, Mr. Chairman. The factors that you have set forth here and in the prior hearing really are a roadmap for the obligations of and the temperament of and the success of the rule of law, and I fully agree with your description.

Judge WALKER. Likewise, Chairman, I certainly agree with your description and I would like to think that that is how I have conducted myself since I have been a State court judge.

Senator WHITEHOUSE. Judge Davis.

Judge DAVIS. Chairman Whitehouse, my answer wouldn't be any different than any of my colleagues. I agree with those principles. I believe I have applied them during my term on the bench and my intention would be to continue to do that.

Senator WHITEHOUSE. And let me ask you the same question that I asked Judge Bacharach about juries. A jury trial can be an inconvenience. It can press on the schedule of the court. Particularly in criminal matters, very often there is enormous incentive applied to try to avoid a trial and, at the same time, the jury of peers no less than three times in the Constitution and Bill of Rights.

And as I said, none other than de Tocqueville described it as a means of the sovereignty of the American people. I consider it to be not just a fact-finding tool, but an important institution in the American system of government, and would like to hear your thoughts on that, as you will be in a position to encourage or discourage access to a jury in the course of your duties.

Judge Grimm.

Judge GRIMM. Thank you, Senator Whitehouse. In my 15.5 years as a magistrate judge, I have had the honor to preside over many jury trials, both civil and criminal, and it has always humbled me and amazed me at the skill and the seriousness with which they do their job.

Our juries are judges of the fact. Judges are judges of the law. In my courtroom, we all stand when the jury walks in because if they stand for the judge, then we stand for the jury.

And I talk to every jury after every jury trial and I continue to be absolutely amazed at the way eight ordinary citizens in a civil case and 12 in a criminal case can find out what is fair and right and take their job seriously. It is nothing short of inspirational, and it is a feature of our system.

In Great Britain, where we took our common law tradition, civil jury trials have all but disappeared and it is central to the fabric of what our country is that we rely upon ordinary citizens not only in the determination of guilt or innocence, but also in the decision to charge felonies by service on a grand jury.

It is an honor to work with them in that process.

Mr. DOWDELL. I concur with Judge Grimm's comments. I feel, as you do, Chairman Whitehouse, that it is an important institution. It is a structural component of our system of law, of our rule of law. Indeed, the absence of jury in certain settings is considered to be structural error for a reason, and it would be my practice to intend to foster jury trials, not to limit them.

Senator WHITEHOUSE. Judge Walker.

Judge WALKER. As a sitting judge, I can tell you that it is not unusual for me to have a jury return a verdict at midnight or 1 a.m. and return to the courthouse the next morning to start a jury trial and have a charging conference with the second group of lawyers at 7 a.m.

And I can assure you, just as I have done as a State court judge, if I am fortunate enough to be reported out of Committee and become a Federal trial judge, that I will—my interest and my calendar will be subordinated to the interest of ensuring access to the courts and moving jury trials forward.

As I tell every jury that I select, as Thomas Jefferson said, "The right to trial by jury is the only anchor yet imagined by man by which a government can be held to the principles of its constitution." I think Thomas Jefferson was spot on and I—that is how I conduct myself.

Senator WHITEHOUSE. Thank you, Judge Walker. I will add that quote to my jury list.

Judge Davis.

Judge DAVIS. Senator, I have had an opportunity to interact with juries in the civil arena, in the criminal arena, as a lawyer, as a prosecutor, and as a practitioner, and I have also, obviously, observed them and interacted with them as a judge.

I am fond of telling them, because I believe it to be true, that next to military service, there is no greater service that a citizen of the United States or the State of Florida can contribute to our democracy.

I have found juries to be amazingly attentive to their duties to serve and serve consistent with the oath that they take, despite the inconvenience, and I believe that it is both a fundamental right and responsibility of citizenship and am honored to be a part of the process in which that citizenship duty is exercised.

Senator WHITEHOUSE. And, Judge Davis, is it true that you have been nominated to fill a judicial position that is a designated judicial emergency?

Judge DAVIS. Yes, that is correct, Senator.

Senator WHITEHOUSE. Good to know.

Let me just conclude by mentioning to Mr. Dowdell that your friend, Richard Burr, was here earlier. I know I made that a matter of record, but while you are here, I wanted to pass on his very good wishes toward you from your days at Wake Forest and, as well, my former colleague and head of the organization that I was then a part of, the National Association of Attorneys General.

I had the chance to work with Attorney General Edmondson quite closely and developed a very high regard for him, and he speaks very highly of you, as well, and I want to make sure those complements are a part of this part of the hearing, as well.

So I wish you all well. Your level of uneventfulness is so far very promising. I hope it continues and that we can see you through to a rapid and successful confirmation.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

Judge Davis, I had a couple questions for you regarding a speech you gave on December 16, 1995 to the Clay County NAACP luncheon.

In this speech, you refer to a number of historical events and try to describe the significance of those events as they relate to race relations in the world.

There are a couple segments of the speech that I just wanted to talk to you about and make sure I understand correctly.

One of the statements began with an event that occurred on December 9, 1994 and in summarizing that event, you said, "Dr. Jocelyn Elders, Surgeon General of the United States, is asked by the President to resign after being misinterpreted about student sex education, reminding us, lest we forget, that politically correct is spelled with capital letters for melanin impregnated females."

Just a few paragraphs later, you refer to another event related to a surgeon general nominee, where you said, on February 2, 1995, President Clinton nominates Dr. Henry W. Foster, Jr., former chair of the department of obstetrics and gynecology at Mary Medical College as surgeon general, but the Senate filibustered so as not to confirm the doctor because of a controversy over the number of abortions the doctor performed early in his career, reminding us, again, lest we forget, that politically correct is also spelled with capital letters for melanin impregnated males.

Can you tell us sort of what you meant by those two statements, what you were referring to?

Judge DAVIS. Thank you, Senator, for posing that question.

I actually have given some thought to those comments and others in connection with this hearing. As a preface, let me say that I've given a number of speeches. I think I have submitted about 178 pages of speeches to this Committee.

I didn't realize until this process that I had given this many speeches and I had never taken the opportunity to look back on them as a whole with an objective and critical eye.

I've had an opportunity to do that now. The speeches—the comments that you refer to, as well as some others and sprinkled through other speeches that I've given over some 30 years of—since my graduation from law school, have been part of a body of work, speeches that have been designed primarily to engage people in the community in which I live around issues concerning matters of race.

My heritage and my experience causes me to believe that matters of race remain among some of the most serious issues that we face in America, and that was no less true in the community in which I lived, practiced law, and sat as a judge.

If you look at the body of work over the years that I have been publicly speaking, I think what will be discerned is that the thrust of those was to get people engaged in trying to address problems surrounding racial issues in their community.

The thrust was to—when directed to children, for example, was to have them embrace education as a means of being part of the solution to some of the problems as opposed to part of the problems.

I had the distinct pleasure around this subject to co-chair a citizen study that involved over 9 months of consideration every week for 2 to 3 hours a week, matters of face, from people of all walks of life in the community, white, black, Hispanic, Asian, men and women, who volunteered to come address this subject. The result of that effort was to present a report in the community in which I live about racial matters and their impact and solutions that might be found.

One of the things that came out of it, for example, was an annual report in which the community actually looks at and examines so-

lutions to problems and identifies ways to do that on an annual basis.

Having said all that, if you will allow me, Senator, because it is a sensitive subject and one that I would like to get some clarity to, if I could, having said all that, I have come to the conclusion, in looking at those specific remarks and others, that despite my use of rhetoric and hyperbole and exaggeration as a means of persuading and motivating people to be involved, that some of the comments—and the tools that I just identified are tools trial lawyers learn to motivate and persuade people—that despite that, I have found that some of the comments were inappropriate.

The ones that you mention were inappropriate for the reason that an impression could be gotten from them that somehow the court maintained a racial prejudice. I have concluded, in the future, that I will not make those kinds of comments. I will not use those kinds of tools to motivate and persuade people, because I don't believe it's fair for possible participants in the court process to have to wonder about whether the court has a bias or not.

Having said that, I don't intend to stop the work in the community that I've begun and have worked around for very many years, because I think it's important for judges to be involved in their community around issues that are important to the community.

Finally, if you will give me this last opportunity, what I would hope would happen in the Committee, Senator, is that you would look at my entire record of public service, both as a prosecutor and as a judge, and find in it, as I have, that there has not been one formal complaint or informal suggestion of racial bias on my part and that if you look and find, as I did when I looked, that what exists is a reputation that I have been a fair, impartial, informed and respectful judge and that if I'm reported out of this Committee and confirmed, I can assure you that that's a reputation I will continue to earn.

Senator LEE. Thank you.

With the Chair's indulgence, I would like to just follow-up on this a little bit more and make sure we have covered the ground. Thank you for your answer and I appreciate and agree with the fact that there are few issues that have been more contentious in American history or that are more important to our day-to-day lives than those issues that involve race relations. And so I appreciate your concern for this issue.

I also appreciate your statement to the effect that as a sitting judge, it would not be your inclination to make statements like those ones again.

But I want to follow-up on another statement made in the same speech on kind of a different vein. You refer to the fact that on September 12, 1995, "400 people protest outside the home of Supreme Court Justice Clarence Thomas because of his opinions in rulings affecting affirmative action and voting rights, reminding us, lest we forget, how easy it is for some of us to forget history."

So to some extent, I think what this is insinuating is that that particular member of the Court, Justice Thomas, has forgotten history.

So my question to you is, as an Article 3 judge within the Federal judiciary, does this statement reflect or would you otherwise

experience difficulty employing decisions rendered by the Supreme Court authored by Justice Thomas?

Judge DAVIS. Not at all, Senator. Actually, that particular reference was to the sentiment as being expressed by the protestors. I respect Justice Thomas as a sitting member of the United States Supreme Court. When he is in the majority, his decisions are the law of this land. And as a sitting judge, Article 3 or otherwise, I'm bound to support and apply that law, and that would be my—that has been understanding and that would continue to be my intention, whether I am confirmed or not.

As a judge, I think the Supreme Court's authority, when applicable, is controlling.

Senator LEE. So your criticism in there was not directed toward the Justice, it was directed toward the protestors. Do I understand that correctly?

Judge DAVIS. I was echoing the—I was echoing the criticism of the protestors in trying to motivate an audience to action around matters of race.

Senator LEE. Does this also fit into the category of statements that, as an Article 3 Federal judge, you might not be inclined to make?

Judge DAVIS. I think it does only because I am confident it is improper for sitting judges to comment on the decisions and disagreement with the decisions of sitting judges.

It not only would be proper as an Article 3 judge, my acknowledgment to you today is that it was probably improper for me to do it then.

Senator LEE. Thank you. Thank you. I appreciate that.

Senator WHITEHOUSE. Well, I will call this hearing to a conclusion. We are delighted, I think, as a Committee to see folks of your caliber and your integrity and your experience come before us. It is not an easy task to be a district judge. There are times when it is the loneliest job in town. And I know that you are aware of that responsibility as you embark on it, and I salute you for your willingness to dedicate yourself to this particular path.

And as I said before, I wish you well as your nomination process goes forward. It is advisable to be as rapid as you can with the strictures of thoroughness applying in responding to the questions that the members of the Committee may send you as a matter of record and as soon as your files are complete, we will do our very best to make sure that you are brought up at the Committee for Committee vote and then to the floor and then, with any luck, confirmation.

I wish you well in that process and congratulate you on this honor, and thank your families for having taken the trouble to join you here and to grace this chamber with their presence.

The hearing is concluded.

[Whereupon, at 3:50 p.m., the hearing was concluded.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Robert E. Bacharach
Nominee to be United States Circuit Judge for the Tenth Circuit
to the Written Questions of Senator Chuck Grassley

1. **According to guidelines of ABA Standing Committee on the Federal Judiciary, an appellate nominee is expected to possess "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." Please elaborate on your experiences as a Magistrate Judge or otherwise that demonstrates this ability.**

   Response: In over 13 years as a magistrate judge, I have shown my ability to write well and harmonize bodies of law through the authorship of over 1,600 judicial opinions. These abilities are also illustrated in six law articles that I have written for publication in the Indiana Law Review, Oklahoma Law Review, Memphis State University Law Review, Oklahoma City University Law Review, and Washington University Law Quarterly. And in 12½ years of legal practice, I demonstrated my writing skill and ability to harmonize existing law through the drafting of hundreds of legal briefs. I was honored to receive a unanimous rating of "well qualified" by the ABA.

   a. **How many of your opinions or Report and Recommendations that District Judges adopted have been published as binding precedent for future cases?**

      Response: Four of my decisions have been published. *See Stanphill v. Health Service Corp.*, 627 F. Supp. 2d 1244 (W.D. Okla. 2008); *Petzold v. Jones*, 619 F. Supp. 2d 1143 (W.D. Okla. 2008), *aff'd*, 349 Fed. Appx. 295 (10th Cir. 2009), *cert. denied*, __ U.S. __, 130 S. Ct. 3394 (2010); *Galloway v. Howard*, 624 F. Supp. 2d 1305 (W.D. Okla. 2008), *certificate of appealability denied*, 352 Fed. Appx. 2009 (10th Cir. 2009); *Jones v. Oklahoma*, 567 F. Supp. 2d 1309 (W.D. Okla. 2008). (In my questionnaire, I stated on pages 37-38 that only one of my decisions had been published. Upon re-review, I realized that statement was incorrect and I apologize for the oversight regarding the number of published opinions.)

2. **According to your Senate Questionnaire, a District Judge has refused to adopt your Report and Recommendation in 19 cases. Three of the cases that I find troubling involved prisoners bringing what could be construed as frivolous and harassing suits against correctional employees. *See Parker v. Standifird*, 2011 U.S. Dist LEXIS 129966 (District Judge grants motion to dismiss where inmate sued parole board based on Equal Protection grounds claiming he was treated differently than similarly situated inmates because he killed "white police officer."); *Henry v. Stewart*, Case No. CIV-01-1374-R (2003) (District Judge grants defendants summary judgment motion where inmate brought multiple claims against correctional employees); *Thomas v. Jordan*, Case No. CIV-04-1716-L (2005) (District Judge grants defendants summary judgment motion where inmate brought Eighth Amendment suit based on visibly exposed electrical wires).**

a. Looking back on these cases and focusing on *Parker* and *Henry* in particular, are there any parts of your original analysis that you recognize as being inadequate or incorrect based on the law? Please explain.

Response: As requested, I have focused on *Parker* and *Henry* in my answer. In *Parker*, the Respondent presented the district judge with an 18-page brief that had not been submitted at the time of my ruling. Respondents' Oklahoma Pardon and Parole Board Objection to the Report and Recommendation of April 8, 2011, *Parker v. Standifird*, Case No. CIV-10-1395-D (W.D. Okla. May 12, 2011). And in *Henry*, the Defendants presented the district judge with a 32-page brief and eight exhibits that had not been submitted when I issued the report and recommendation on the summary judgment motion. *See* Defendants' Objection to September 10, 2003 Report and Recommendation on Preliminary Review and Dispositive Motions, Brief and Exhibits 1-8, *Henry v. Stewart*, Case No. CIV-01-1374-R (W.D. Okla. Oct. 30, 2003). I do not know if the district judges' contrary conclusions in *Henry* or *Parker* were affected by the briefs or exhibits presented for the first time after my issuance of the rulings. Although I respect the district judges' contrary decisions, I continue to believe that my analysis in all three cases was correct based on the briefs and evidence that had been presented to me.

b. Please explain your approach to distinguishing between frivolous lawsuits and non-frivolous lawsuits. Does a Judge have any role in weeding out frivolous lawsuits?

Response: A judge bears a substantial role in weeding out frivolous lawsuits. For example, a judge bears a duty to screen the initial complaint for frivolousness when the claimant:

- appears *in forma pauperis*,
- is a prisoner suing the governmental entity or employee, or
- is an inmate suing over prison conditions.

See 28 U.S.C. §§ 1915(e)(2)(B)(i), 1915A(b)(1); 42 U.S.C. § 1997e(c)(1). In determining whether a lawsuit is frivolous, I focus on the existing precedents. Under these decisions, a claim is considered "frivolous" if the "factual contentions are clearly baseless" or the legal theory is "indisputably meritless." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). In 13 years, I have issued hundreds of reports and recommendations to summarily dismiss complaints — without a motion being filed — based on my conclusion that the complaint was facially invalid.

3. **What is the most important attribute of a judge, and do you possess it?**

   Response: In my view, the most important attribute of a judge is the ability to put aside one's own ego and personal feelings and to focus solely on application of the existing law to the facts. I believe that I have this attribute and that it is reflected in each of my judicial decisions over the last 13 years.

4. **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 every judge should be courteous and respectful to all of the court participants, including the attorneys and parties. The most important element of judicial temperament is humility. This quality allows judges to listen more effectively and maintain courtesy to others. I believe that I have shown the temperament that I would desire in the judiciary.

5. **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.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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 look first to the underlying text. For example, if the issue involved statutory interpretation, I would initially consider the wording of the law. If the matter involved constitutional interpretation, I would turn first to the underlying constitutional provision. If the meaning of the words is unambiguous within the context of the factual scenario, I would regard the text as dispositive. If ambiguities remained, I would closely consider decisions by the Tenth Circuit Court of Appeals and Supreme Court in related contexts. In some circumstances, other secondary sources — such as the legislative history of a statute, the drafters' intent with respect to a constitutional provision, or persuasive authority from other courts — would bear consideration.

7. **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 best judgment of the merits to decide the case?**

Response: If I were fortunate enough to be reported out of the committee and confirmed, I would continue to apply precedents of the Tenth Circuit Court of Appeals or Supreme Court even if I believed they involved serious errors.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: The Court would begin with a strong presumption of constitutionality behind the statute. However, if the matter is otherwise justiciable, the Court should declare a federal statute unconstitutional if it determines that Congress exceeded its constitutional powers or infringed a constitutional right.

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. **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: Generally, I think the principle of stare decisis weighs against a court's repudiation of its own precedents. If the Tenth Circuit Court of Appeals is sitting en banc, however, the court could overrule its earlier precedent if it conflicts with another of its precedents or a Supreme Court decision.

11. **Please describe with particularity the process by which these questions were answered.**

    Response: I received the questions on May 16, 2012, drafted responses over the next few days, discussed them with an official of the Department of Justice, and asked him to submit my answers.

12. **Do these answers reflect your true and personal views?**

    Response: Yes.

Responses of Robert E. Bacharach
Nominee to be United States Circuit Judge for the Tenth 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 is that a judge's function is to apply the law to the facts in every case without regard to his or her own feelings, sympathies, or ideology. To carry out this important function, the judge should work hard to determine what the law actually is rather than what it should be.

   The judge's role in our constitutional system is fundamental. As Chief Justice Marshall stated in *Marbury v. Madison*, 1 Cranch. 137, 2 L. Ed. 60 (1803), the judge bears an important role in reviewing the constitutionality of laws. More broadly, however, judges often represent the last resort for resolution of private disputes and allegations of criminal wrongdoing. The establishment of an objective, fair forum for resolution of these private and public issues — through a judge's work — is central to the judiciary's function in Article III, Section 2 of the Constitution.

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: For 13 years as a United States Magistrate Judge, I have attempted to treat every litigant — rich or poor, plaintiff or defendant — with respect and fairness. I believe that these efforts are reflected in the procedural handling and analysis in all of my cases.

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: My view is that judges in the district court and circuit court of appeals are bound by stare decisis. In our judicial system, a magistrate judge or district judge bears an obligation to follow precedential decisions issued by the Tenth Circuit Court of Appeals and United States Supreme Court. In the absence of *en banc* consideration, a Tenth Circuit judge bears the same obligation. The Supreme Court has the opportunity to overrule its own precedents. But this opportunity should only be exercised sparingly and in a principled manner.

Responses of Brian J. Davis
Nominee to be United States District Judge for the Middle District of Florida
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No

   a. **If not, please explain.**

      Response: The Constitution is not subject to change except by amendment and ratification as specified in Article V.

2. **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

   a. **Please explain.**

      Response: The Constitution should be interpreted according to its text and the authoritative decisions of the United States Supreme Court and the 11th Circuit Court of Appeals.

3. **In Federalist Paper 45, James Madison wrote: "The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and infinite." Do you agree with Madison that the powers of the Congress are fundamentally limited?**

   Response: Yes

4. **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

   a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

      Response: While foreign or international laws may be relevant to issues of conflicts of law and treaty interpretation, there are no instances in which they may be used to interpret the United States Constitution except for any United States Supreme Court precedent that requires doing so.

5. **In a speech, you stated: "Universal education is necessary and the elimination of the extremes of wealth and poverty of our world is a good to be sought."[1] While we all agree eliminating extreme poverty is a noble goal, is it not antithetical to a capitalist system to strive to eliminate "extreme wealth"?**

   Response: Yes

   a. **What did you mean by this statement?**

      Response: I agree that in a capitalist system those who are successful are entitled to enjoy the financial rewards of their success. My intention in making this statement was not to question this principle; rather, I meant to focus on the relative disparity between the very rich and the very poor and advocate for the elimination of that disparity by improving the lives of those in poverty through education.

[1] Davis Senate Attachments, page 2537.

Responses of Brian J. Davis
Nominee to be United States District Judge for the Middle District of Florida
to the Written Questions of Senator Chuck Grassley

1. **In your confirmation hearing, Senator Lee asked several questions about a speech you gave in 1995. In particular, Senator Lee noted that you said:**

   "Dr. Jocelyn Elders, Surgeon General of the United States, is asked by the President to resign after being misinterpreted about student sex education, reminding us, lest we forget, that politically correct is spelled with capital letters for melanin impregnated females." And,

   "President Clinton nominates Dr. Henry W. Foster, Jr., former chair of the department of obstetrics and gynecology at Mary Medical College as surgeon general, but the Senate filibustered so as not to confirm the doctor because of a controversy over the number of abortions the doctor performed early in his career, reminding us, again, lest we forget, that politically correct is also spelled with capital letters for melanin impregnated males."

   Before answering his question, you said you had reviewed the materials you submitted. You said, "The speeches -- the comments that you refer to, *as well as some others* and sprinkled through other speeches that I've given over some 30 years of -- since my graduation from law school, have been part of a body of work, speeches that have been designed primarily to engage people in the community in which I live around issues concerning matters of race." And again, "I have come to the conclusion, in looking at those specific remarks *and others*, that despite my use of rhetoric and hyperbole and exaggeration as a means of persuading and motivating people to be involved, that some of the comments -- and the tools that I just identified are tools trial lawyers learn to motivate and persuade people -- that despite that, I have found that some of the comments were inappropriate." (emphasis added)

   a. **To what other statements are you referring?**

      Response: The remarks referenced later in the hearing by Senator Lee and identified in your questions are other examples of inappropriate statements. Both the context and audience to whom the referenced remarks were directed, however, are important in considering their impact. The purpose of the remarks and speeches was to motivate people already committed to work against racial injustice to continue to do so to the improvement of the entire community. Nonetheless, I now recognize that a number of my statements could be misunderstood – that I was maintaining or was advocating a racial or other bias. Such misconstruction is best avoided by my fashioning remarks that do not permit such inferences in any context. That will be my intention in the future.

   b. **Please identify the comments and speeches you have made that you now find inappropriate.**

Response: Any speech I have made containing any comment which easily permits a misconstruction of racial or other bias when viewed out of its intended context would be considered inappropriate. The comments and speeches of which I am aware that fall into this category include my comments and speeches concerning Dr. Elders, Dr. Foster, Supreme Court Justice Thomas and my use of the word "bias" in a speech to the Jacksonville Department of Juvenile Justice annual conference.

2. **In answering Senator Lee's question, you said, "The ones that you mention were inappropriate for the reason that an impression could be gotten from them that somehow the court maintained a racial prejudice." However, your comments about Dr. Foster, for instance, were as follows: "President Clinton nominates Dr. Henry W. Foster, Jr., former chair of the department of obstetrics and gynecology at Meharry Medical College as surgeon general, but the Senate filibustered so as not to confirm the doctor because of a controversy over the number of abortions the doctor performed early in his career, reminding us, again, lest we forget, that politically correct is also spelled with capital letters for melanin impregnated males."**

   a. **What is your understanding of why Republicans opposed Dr. Foster's nomination?**

      Response: I am not sure what motivated the Republican opposition to Dr. Foster's nomination. The purpose of the remark was to note concerns raised in the African American community and to encourage the listener to examine the motivation.

   b. **Do you believe your comments were inappropriate because you assigned a racial motivation to Republican opposition, or because, as you said at your hearing, your comments suggested a racial bias?**

      Response: The comments were inappropriate in that they could be interpreted as assigning a racial motivation to Republican opposition to Dr. Foster and therefore that I lacked impartiality.

3. **Senator Lee also asked you about comments regarding Justice Thomas. In your speech, you said: "400 people protest outside the home of Supreme Court Justice Clarence Thomas because of his opinions in rulings affecting affirmative action and voting rights, reminding us, lest we forget, how easy it is for some of us to forget history." Based on your response, it remains unclear whether you believed Justice Thomas had forgotten history, or the protestors outside his house had done so. Please clarify.**

   Response: It was the position of the protestors that Justice Thomas had forgotten history. I referenced the protestors' sentiment in the remark for the purposes of reminding the audience of the importance of remembering our country's racial history. Nevertheless, I acknowledge that my comment might have been interpreted as an inappropriate criticism of a Supreme Court Justice by a sitting judge. I did not intend such a criticism and regret that I did not speak more clearly.

4. **Just to clarify a few more questions regarding your 1995 speech. You stated that Dr. Jocelyn Elders was asked to resign by President Clinton "after being misinterpreted about student sex education." Your comments refer to a statement Dr. Elders made before the United Nations on AIDS awareness day. Following the speech, Dr. Elders was asked whether she would consider promoting teaching masturbation to students. To which she replied, "With regard to masturbation, I think that it is something that is a part of human sexuality and part of something that should perhaps be taught."**

    a. **What part of that controversial statement was misunderstood?**

    Response: I believe some people thought Dr. Elders was advocating teaching children how to perform a sexual act. I think that impression was a misunderstanding.

    b. **Is it your view that race was a factor in Dr. Elder's resignation?**

    Response: I do not know if race was a factor in Dr. Elders' resignation.

5. **In a speech you gave at an Interfaith Thanksgiving Service, you said that "Universal education is necessary and the elimination of the extremes of wealth and poverty of our world is a good to be sought." Please explain what you meant by this statement. How would you propose accomplishing the elimination of "extreme wealth?"**

    Response: My intention in making this statement was to focus on the relative disparity between the very rich and the very poor and advocate for the elimination of that disparity by improving the lives of those in poverty through education.

6. **In a speech you gave at the Jacksonville Department of Juvenile Justice annual conference you said, "You might surmise from that litany that I bring a bias to the bench. I do.... I am buoyed and comforted today because despite my bias, something judges are not supposed to have, the people with whom I work share the same bias. They must."**

    a. **Please explain what you mean by this statement. What bias do you bring to the bench?**

    Response: It is important to underscore the importance of the audience and context here. My remarks were to people charged with helping to keep children out of trouble. "Bias" in retrospect was a poor choice of words. I meant that I bring a genuine concern for children to the bench, and I wanted to emphasize that the members of the audience shared that concern because of the kind of work they had chosen to do. My thought at the time was that admitting a "bias" would be an effective rhetorical device. But I don't consider my concern for children to be a "bias" in the improper sense of that word, and in individual cases it has no impact on my ability to carry out my duty to apply the law to the facts.

b. **Given these comments, do you believe victims of crimes committed by juveniles will feel comfortable with you presiding over their case?**

Response: I am confident when viewed in context the comments, as well as my record as a prosecutor and sitting juvenile court judge, will cause victims of crimes committed by juveniles to feel comfortable with me presiding over their cases.

7. **You indicated in your questionnaire that you have virtually no experience in federal court. How are you preparing to handle cases as a federal judge, if confirmed?**

Response: I am studying federal statutes, rules of procedure and other differences between the state and federal jurisdiction. In addition, I would bring what I believe are transferrable judicial skills developed from my 18 years of experience on the state bench. I have and, if confirmed, would continue to use the judicial education resources of the Administrative Office of the United States Courts. If confirmed, my colleagues on the federal bench would also be resources from whom I can learn.

8. **Since United States v. Booker, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?**

Response: The goal of attaining consistency in sentencing across courts for similarly situated defendants is an important one which I support. I would therefore always consider and be guided by the Federal Sentencing Guidelines and give them substantial deference.

a. **Under what circumstances would you be willing to depart from the Guidelines?**

Response: Though advisory following United States v. Booker, in light of their purpose, I would give substantial deference to Federal Sentencing Guideline ranges, departing only when appropriate consistent with the policy statements and official commentary of the Sentencing Commission and the decisions of the United States Supreme Court and the 11th Circuit Court of Appeals.

b. **Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?**

Response: Please see my answer to question 8.a above.

9. **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: I agree entirely that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw.

10. **You have suggested that 'the system' has failed minority youth and have strongly advocated for systemic changes to address race relations.**

a. **What is the role of a judge in advocating for systemic changes to address these issues?**

Response: A judge's role in the justice system, subordinate to none, is to determine facts and impartially apply law. Secondarily, judges also maintain an ethical obligation as reflected in both state and federal canons and codes of conduct to work to improve the administration of justice.

b. **Do you believe that an individual's race affects his or her ability to succeed as an adult?**

Response: I believe that people, practices and institutions which consider race as indicative of value can affect an individual's ability to succeed.

11. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is impartiality. The absence of that quality absolutely erodes the respect necessary to the function of our courts to civilly resolve disputes. I am confident I have and will continue to remain impartial and unbiased in my decision making.

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: Judges must possess qualities of patience, attentiveness, studiousness and calmness. They must be good communicators, assure fairness and engender respect. I believe engendering respect for the institution of the court to be the most important. I achieve that outcome by consistently exhibiting all of the referenced attributes and by always being respectful to parties, counsel and participants.

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: If confirmed I will faithfully follow and apply United States Supreme Court authority, decisions of the 11th Circuit Court of Appeals and all other binding federal authority regardless of my personal views.

14. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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: Regarding cases of statutory first impression the clear language of the legislation, if discernible, would control. Ambiguity might be resolved from rules of statutory construction designed to guide interpretation. Related or similar statutes and case law construing them then should be looked to and finally, with caution, a court may consider legislative history.

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 best judgment of the merits to decide the case?

Response: A district court judge's obligation is to follow and apply the decisions of the Supreme Court and Court of Appeals. If confirmed, I would follow and apply applicable precedent, regardless of my personal beliefs.

16. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Only a clear exceeding of constitutional limitations on congressional power or unlawful infringement of a constitutional right permit courts to consider declaring legislation unconstitutional. Duly enacted laws are presumed constitutional.

17. 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 currently employ a differential case management model which assesses the complexity of cases early and allocates resources based thereon. If confirmed, I would continue to employ a similar model on the federal bench. I would also continue to employ case management orders and hearings to organize and allocate time around discovery issues and dispositive motions. My practice and intention would be to maximize the use of resources like the assistance of magistrates, law clerks and mediation and settlement tools when available. I do and would continue to render timely rulings to improve case flow.

18. 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 firmly believe that organizing and management of caseloads is among a judge's most important administrative responsibilities. Through the regular use of the tools described above I would be active in controlling the pace and conduct of litigation.

19. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on May 17, 2012, I privately and personally fashioned my responses on May 18, 2012, and later reviewed them with a representative of the Department of Justice. I authorized the Department of Justice to submit my responses to the Senate Judiciary Committee on May 21, 2012.

20. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Brian J. Davis
Nominee to be United States District Judge for the Middle District of Florida
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 characterized by an imperative to listen openly and completely, to analyze and weigh facts fairly and impartially, to apply the law as enacted, to communicate decisions concisely and clearly and to imbue proceedings with respect and dignity. Judges' roles are defined and limited by the Constitution to dispute resolution through and by 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: The best assurance to litigants, plaintiffs or defendants, of fair treatment regardless or political beliefs or station or status in life is gleaned from my record of more than a quarter century of public service, 18 years of which have been from the bench. That record would reveal an unwavering allegiance to my oath of office to fairness, impartiality and justice. If confirmed my intention would be to continue that allegiance.

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: By oath judges are bound to follow controlling precedent. With the exception of matters of first impression courts are equally bound by stare decisis. Adherence to its principles provide for a critical component of the rule of law.

Responses of John E. Dowdell
Nominee to be United States District Judge for the Northern District of Oklahoma
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

   a. **If not, please explain.**

      Response: The Constitution changes only through the amendment process, as set forth in Article V of the Constitution. A court's job is to interpret and apply the Constitution, not to add or amend the rights contained therein.

2. **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.

   a. **Please explain.**

      Response: The principles of the Constitution remain the same, unless and until the Constitution is amended, as set forth in Article V of the Constitution. If confirmed as a district court judge, I would apply the binding constitutional interpretations set forth by the Supreme Court and United States Court of Appeals for the Tenth Circuit.

3. **In Federalist Paper 45, James Madison wrote: "The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and infinite." Do you agree with Madison that the powers of the Congress are fundamentally limited?**

   Response: Yes.

4. **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.

   a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: I would not consider foreign law when interpreting the Constitution unless required to do so by binding Supreme Court precedent.

Responses of John E. Dowdell
Nominee to be United States District Judge for the Northern District of Oklahoma
to the Written Questions of Senator Chuck Grassley

1. **On a few occasions, you have represented capital defendants on appeal. Do you hold any personal convictions or religious beliefs that inhibit you from enforcing the death penalty in appropriate cases?**

   Response: No.

2. **Do you believe that the death penalty is an acceptable form of punishment?**

   Response: Yes, the Supreme Court has held the death penalty to be constitutional, except in limited circumstances. If confirmed as a district court judge, I would follow binding precedent of the Supreme Court and the United States Court of Appeals for the Tenth Circuit.

3. **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: If confirmed as a district court judge, I would not look to foreign law to interpret the Eighth Amendment unless directed to do so by binding Supreme Court precedent.

   a. **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. If confirmed, I would not consult foreign law to determine the meaning of the United States Constitution unless directed to do so by binding Supreme Court precedent.

4. **Please explain your relationship with the organization Just Cause, Inc. What is the nature and purpose of this organization?**

   Response: I was an incorporator and director of Just Cause, Inc. It was established as a not-for-profit corporation for the purpose of pursuing relief for persons who had been denied fundamental rights in criminal or civil matters.

5. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is to render decisions fairly and impartially, applying the relevant law to the facts without bias or prejudgment. I believe I possess this attribute.

6. **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 patient, fair, open-minded, and prompt. Included within these traits should be a willingness to listen carefully to all of the parties' facts and arguments with a respectful but firm demeanor. It is important that the judge's temperament convey to the parties a clear sense that they have been heard and an understanding that, regardless of the outcome, the decision has been rendered in accordance with the rule of law. I believe I meet this standard.

7. **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.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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 involving the interpretation of a statute or constitutional provision, I would first consider the statutory text or provision in the context of its plain and ordinary meaning. Where the language of the statute or constitutional provision is clear, it would be applied. If the language of a statute is unclear, I would consider the context of the statutory framework in which it appears to ascertain the provision's meaning. If the meaning of a constitutional provision or statute cannot otherwise be determined, I would then review Supreme Court, United States Court of Appeals for the Tenth Circuit, and other circuit court precedent for analogous cases.

9. **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 best judgment of the merits to decide the case?**

   Response: As a district court judge, I would be bound by the precedent of the Supreme Court and the United States Court of Appeals for the Tenth Circuit. I would, in all instances, apply such precedent.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: Federal statutes are presumed to be constitutional. However, a federal court must declare a federal statute to be unconstitutional if the issue is properly presented and the statute violates a constitutional provision or if Congress exceeded its authority under the Constitution in enacting the provision.

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 would continually monitor the cases on my docket; set firm, realistic scheduling deadlines in civil and criminal matters; enforce those scheduling deadlines; conduct hearings on dispositive motions and other significant case issues; encourage settlement as appropriate; work in conjunction with United States Magistrate Judges to expedite cases; and rule on matters in a timely manner. In addition, I would strive to be available to the parties with regard to issues that may arise in their cases.

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 believe judges have a role in controlling the pace and conduct of litigation. As noted in my response to Question 11, I would work to ensure that all motions are promptly determined; that reasonable scheduling is established early in the litigation process; and that cases are diligently monitored. As an additional tool to ensure the litigation process proceeds smoothly and efficiently, I would be accessible to parties by way of status conferences and other means.

13. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on May 16, 2012. I prepared my answers on May 16 and 17, 2012. I submitted them to a representative of the Department of Justice on May 17, 2012, and discussed those responses with that representative. On May 21, 2012, I authorized the transmittal of my answers to the Committee.

14. Do these answers reflect your true and personal views?

Response: Yes.

Responses of John E. Dowdell
Nominee to be United States District Judge for the Northern District of Oklahoma
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 to approach each case with an open mind, a willingness to listen to all the facts, and a diligent effort to identify the relevant law and to apply that law to the facts without bias or prejudice. This process would, at all times, be undertaken with humility and with a recognition of the important role that federal judges play in our constitutional system of government. The role of a district court judge is limited under the Constitution to deciding actual cases or controversies. A judge must decide cases fairly and promptly, applying the binding precedent of higher courts in a manner which affords predictability to litigants.

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 will take an oath to administer justice equally to the poor and to the rich. I would fully abide by that oath. Throughout my career as a litigator in civil and criminal matters, I have represented clients both big and small, from large corporations to indigents. I have appeared before many judges in my practice, and I have gained an understanding that, regardless of a party's status or the issues at stake, all should be treated fairly and consistently in the eyes of the court. I also had the honor of serving as a law clerk for a judge on the United States Court of Appeals for the Tenth Circuit. There, I witnessed first hand the fair treatment and dignity accorded to all litigants before the Court, regardless of their status. That lesson has inspired me in the practice of law, and it serves as a model I would seek to replicate on the bench, if confirmed.

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: District court judges are required to follow precedent of the Supreme Court and United States Courts of Appeals, and must be fully committed to the principle of stare decisis. The Supreme Court and United States Courts of Appeals sitting en banc overrule their own cases in limited circumstances. District court judges must always follow controlling precedent.

Responses of Paul William Grimm
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

   a. **If not, please explain.**

      Response: The only way that the Constitution may be changed is through the amendment process, which is laid out by the document itself.

2. **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.

   a. **Please explain.**

      Response: If confirmed as a United States District Judge, my approach to constitutional interpretation would be to first apply binding Supreme Court and Fourth Circuit precedent. If there is no applicable Supreme Court or Fourth Circuit authority, I would consider the text of the Constitution itself. If this did not resolve the issue, I would look to decisions from other Circuit Courts and District Courts interpreting the constitutional provision for guidance.

3. **In Federalist Paper 45, James Madison wrote: "The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and infinite." Do you agree with Madison that the powers of the Congress are fundamentally limited?**

   Response: Yes. The powers of Congress are explicitly enumerated in Article I of the Constitution. The Tenth Amendment states that all "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

4. **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: Because the United States Constitution is a uniquely American document, I do not believe that it is ever proper for judges to rely on foreign or international law in

interpreting the Constitution, unless expressly required to do so by controlling Supreme Court precedent, and only to the extent required by that precedent.

a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

   Response: Please see my response to Question 4.

Responses of Paul William Grimm
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Chuck Grassley

1. **In *Victor Stanley v. Creative Pipe*, you imposed sanctions on the defendant for repeatedly delaying production, deleting and destroying evidence, and misrepresenting discovery production to opposing counsel. Understandably, you entered a default judgment and imposed attorney fees and costs against the offending party. However, you went a step further ordering the defendant "be imprisoned for a period not to exceed two years, unless and until he pays to Plaintiff the attorney's fees and costs." The district court generally accepted your report and recommendation, but rejected the prison sentence saying, "I do not think that's the way to proceed." In hindsight, do you believe you exercised proper judicial temperament in this case? Please explain why or why not.**

   Response: I do believe that I exercised proper judicial temperament in the *Victor Stanley v. Creative Pipe* case, in light of the extraordinary facts and circumstances of the case, by recommending a sanction of civil contempt that included imprisonment not to exceed two years, unless and until the defendant paid the plaintiff's fees and costs. I supplemented my report and recommendation with an order that the prison sentence would not be imposed if the defendant demonstrated that he lacked the funds to pay the plaintiff's fees and costs. This recommended sanction was made following a finding by clear and convincing evidence that the defendant committed civil contempt of court by violating orders of the court that he preserve and produce evidence, and that he did so willfully to thwart the court's orders, resulting in prejudice to the plaintiff's ability to prove its case. The Federal Rules of Civil Procedure specifically authorize a court to treat as a contempt of court the failure to obey a prior court order. I recognize that imprisonment is an unusual sanction for contempt of court and that it should be reserved for extraordinary circumstances. In the *Victory Stanley* case, however, I believe that such a sanction was appropriate—and reflected proper judicial temperament—because it was necessary to ensure that the defendant complied with the court order to pay the plaintiff's fees and costs. I respect the District Court's decision not to adopt that portion of my recommendation.

2. **In *Kennedy v. Villa St. Catherine's* the case rested on the scope of the exemption afforded religious organizations in the "employment of individuals" under Title VII of the Civil Rights Act. In interpreting the statutes meaning, you cited the need to start with the statutes plain language, but immediately declared the statues meaning was "unclear." You then embarked on analysis of legislative history. You held that the law provided a narrow religious exemption that applied only to "employment decisions" -- namely the hiring and firing of individuals. The appellate court disagreed with your analysis saying your "narrow reading of employment is simply incompatible with the actual language" of the statute.**

a. **I am concerned about the cursory review you appeared to give text of the statute in this case. What is your view on the proper approach for interpreting constitutional and statutory text?**

Response: The proper approach for a United States District Judge to follow in interpreting constitutional and statutory text is to apply binding Supreme Court and Circuit Court authority regarding the meaning of the text. If there is no such binding authority, then the court should carefully review the text of the constitutional or statutory provision itself, and if the meaning is clear, enforce it as written. If this does not resolve the issue, the court should look to decisions from other Circuit Courts or District Courts interpreting the constitutional provision or statute for guidance. If none exist, then the court should consider clearly discernible expressions of legislative intent, if permitted to do so by governing Supreme Court and binding Circuit Court authority regarding proper statutory construction. If confirmed as a United States District Judge, I would employ this method of interpreting constitutional or statutory text.

b. **Do you agree that in interpreting a statute one must look at the "statute as a whole" and not interpret a phrase in "isolation?" What approach did you take in the *Kennedy* case?**

Response: I agree that in interpreting a statute one must look at the statute as a whole and not interpret a phrase in isolation, and if confirmed as a United States District Judge, I will follow this approach. In the *Kennedy* case, I endeavored to interpret the statute as a whole, but found that the statute alone did not resolve the very specific issue of first impression presented in the case. Because at that time there were no Supreme Court, Circuit Court, or District Court cases addressing the specific issue presented, I endeavored to resolve the issue by examining the legislative history of the statute, as explained by Fourth Circuit and other case law. In addition, in accordance with Supreme Court precedent regarding the proper method of statutory construction, I considered the administrative interpretation of the statute by the EEOC, the agency charged by Congress with enforcing the act. If confirmed as a United States District Judge and called upon to resolve a case presenting similar issues as in *Kennedy*, I would follow the Fourth Circuit's interpretation of the statute as stated in *Kennedy v. St. Joseph's Ministries, Inc.*, 657 F.3d 189 (4th Cir. 2011).

c. **What do you see as the role of legislative history in interpreting a statute?**

Response: In interpreting a statute, the court should look to binding Supreme Court and Circuit Court authority. If there is no applicable Supreme Court or Circuit Court authority, the court should look to the text of the statute itself, taken as a whole. If this does not resolve the issue, the court should look to non-binding decisions from other Circuit and District Courts for guidance. If this does not resolve the issue, the court may then consider the legislative history of

the statute, if permitted to do so by Supreme Court or Circuit Court authority regarding appropriate methods of statutory construction.

3. **In *Kennedy v. Villa St. Catherine's*, your narrow construction of the religious exemption in Title VII makes me wonder if you may similarly read other statutory and constitutional protections afforded to religious organizations and individuals narrowly.**

   a. **Do you believe that ministers and other clergy should be treated as any other leader of an organization?**

   Response: I have not comprehensively researched the issue of when the Constitution and other federal law require ministers and other clergy to be treated the same as any other leader of an organization, and therefore have not formed an opinion on the topic. If confirmed as a United States District Judge and called upon to consider this issue, I would apply applicable Supreme Court and Fourth Circuit precedent to the facts of the case. If the issue involved application of the ministerial exception to Title VII of the Civil Rights Act of 1964 in employment discrimination cases, I would apply the Supreme Court's unanimous decision in *Hosanna-Tabor Church v. EEOC*, 132 S. Ct. 694 (2012), as more fully described in my answer to Question 3.b, below.

   b. **What is your understanding of the scope of the "ministerial exemption" given the Supreme Court's unanimous decision in *Hosanna-Tabor Church v. Equal Employment Opportunity Commission*?**

   Response: In *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S. Ct. 694 (2012), the Supreme Court held that there is a ministerial exception to Title VII of the Civil Rights Act of 1964 "that precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers." *Id.* at 705. The Court also held that the exception applied to the individual at issue—a "called" teacher, regarded by the religious organization "as having been called to [her] vocation by God through a congregation." *Id.* at 699–700, 707–09. In so holding, the Supreme Court made clear that the exception "is not limited to the head of a religious congregation." *Id.* at 707. The Court noted that it was "reluctant, however, to adopt a rigid formula for deciding when an employee qualifies as a minister" for purposes of the exception. *Id.* at 707. Thus, in *Hosanna-Tabor*, the Supreme Court did not undertake to exhaustively describe the full scope of the ministerial exception, nor did it specifically limit application of that exception. If confirmed as a United States District Judge and required to determine the scope of the ministerial exception, I would carefully consider and follow *Hosanna-Tabor*, any other applicable Supreme Court precedent, and applicable Fourth Circuit precedent.

4. **This administration has shown a disregard for the rights of religious liberty and exercise of conscience protected by the First Amendment.**

a. **What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?**

Response: I have not undertaken a comprehensive study of the current state of the law with regard to the interplay between the establishment and free exercise clauses of the First Amendment. If confirmed as a United States District Judge and required to consider this relationship, I would apply binding Supreme Court and Fourth Circuit authority interpreting the relevant constitutional provisions. If there is no applicable Supreme Court or Fourth Circuit authority, I would carefully consider the text of the relevant constitutional provisions. If this does not resolve the issue, I would consider decisions from other Circuit Courts or District Courts that have interpreted the constitutional provision for guidance.

b. **What is your understanding of the heighted protections afforded by the Religious Freedom Restoration Act?**

Response: I have not undertaken a comprehensive study of the Religious Freedom Restoration Act. However, the stated purpose of the Act, 42 U.S.C. § 2000bb, is "to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened." Under that test, the Government is required to demonstrate a compelling state interest in order to justify placing a burden on an individual's constitutional right of free exercise of religion. This test applies to any action by the federal government that substantially burdens the free exercise of religion. If confirmed as a United States District Judge and required to consider the heightened protections afforded by the Religious Freedom Restoration Act, I would carefully consider and apply the plain text of the statute and all applicable Supreme Court and Fourth Circuit precedent.

c. **How would you approach a case where First Amendment religion rights were at issue?**

Response: If confirmed as a United States District Judge and presented with a case where First Amendment religion rights were at issue, I would follow binding Supreme Court and Fourth Circuit authority. If there is no applicable Supreme Court or Fourth Circuit authority, I would carefully consider the text of the First Amendment. If this did not resolve the issue, I would consider decisions from other Circuit Courts or District Courts for guidance.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is personal and judicial integrity. Such integrity requires fairness, humility, and hard work. I possess these qualities and have practiced them for fifteen years as a United States Magistrate Judge.

6. **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 must display a dignified, respectful, patient, and even-handed temperament. It is important to display all these elements of temperament to ensure that all parties feel that they have been fairly and impartially treated. I have displayed these characteristics throughout my time as a United States Magistrate Judge.

7. **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.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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 first would review the plain language of the provision of the Constitution or law at issue. If this did not resolve the issue, I would look to Supreme Court and Fourth Circuit precedent involving similar or analogous issues. I also would consider the decisions of other Circuit Courts and District Courts for guidance. If necessary, I would consider the clearly articulated or ascertainable legislative intent of the constitutional provision or statute, if permitted to do so by Supreme Court and Fourth Circuit authority regarding proper statutory construction.

9. **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 best judgment of the merits to decide the case?**

Response: If confirmed as a United States District Judge, I would faithfully apply Supreme Court and Fourth Circuit precedent and would fully apply these decisions regardless of my views about how they were rendered.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: It is only appropriate for a federal trial court to declare a statute enacted by Congress unconstitutional if the statute violates a provision of the Constitution or, if by enacting the statute, Congress has exceeded its constitutional authority.

11. 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: Because the United States Constitution is a uniquely American document, I do not believe that it is ever proper for judges to rely on foreign or international law, or the views of the "world community," in interpreting the Constitution, unless expressly required to do so by controlling Supreme Court precedent, and then, only to the extent required by that precedent.

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: As a United States Magistrate Judge for more than fifteen years, I have managed my caseload efficiently by actively supervising the pretrial process, setting firm scheduling deadlines, and promptly ruling on all motions. If confirmed, I would continue this approach.

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: Judges play a vital role in controlling the pace and conduct of litigation. In addition to the steps I outlined in my response to Question 12, I would hold early pretrial conferences with counsel to set a reasonable schedule, implement procedures to expedite discovery, refer cases for settlement conferences when appropriate, promptly dispose of pretrial dispositive motions, and set a firm trial date for all cases that require trial.

14. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on May 16, 2012, and promptly prepared responses, which I forwarded to the Department of Justice on May 17, 2012. I spoke by telephone to a representative of the Department of Justice about finalizing my answers on May 18, 2012 and May 21, 2012, and thereafter authorized the representative to submit my responses to the Senate Judiciary Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Paul William Grimm
Nominee to be United States District Judge for the District of Maryland
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 trial judge must have personal and judicial integrity; display impartiality and fairness, humility, professionalism, and courtesy toward lawyers and parties; and have a willingness to work hard and efficiently. A judge demonstrates these attributes by carefully managing his or her docket, expeditiously ruling on motions, and deciding all cases impartially based on the established facts and controlling law. A judge's role in our constitutional system is a limited one. It is to find the facts impartially and expeditiously and to apply the existing law faithfully, as established by the Supreme Court and applicable Circuit Court authority, while focusing solely on the issues properly before 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: As I have done for more than fifteen years as a United States Magistrate Judge, I can provide my absolute assurance that in the courtroom and in my written orders resolving matters without trial, all parties will be treated fairly, regardless of political affiliation, economic status, or belief, and without regard to whether they are a plaintiff or defendant.

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 adhere strictly to the doctrine of stare decisis, which is a bedrock of our judicial system. The doctrine ensures that cases are decided consistent with established law and guards against arbitrary decisions. Adherence to the doctrine of stare decisis is one important means by which judges properly perform their limited role in our constitutional system. It also promotes public perception that our judicial system is impartial because cases with similar facts have similar outcomes. All District and Circuit Courts are bound to adhere to principles of stare decisis.

Responses of Mark E. Walker
Nominee to be United States District Judge for the Northern District of Florida
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

   a. **If not, please explain.**

      Response: The fundamental principles embedded in the Constitution are immutable.

2. **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.

   a. **Please explain.**

      Response: The fundamental principles embedded in the Constitution are immutable.

3. **In Federalist Paper 45, James Madison wrote: "The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and infinite." Do you agree with Madison that the powers of the Congress are fundamentally limited?**

   Response: Yes.

4. **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.

   a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

      Response: I would not rely on foreign or international laws in determining the meaning of the Constitution.

Responses of Mark E. Walker
Nominee to be United States District Judge for the Northern District of Florida
to the Written Questions of Senator Chuck Grassley

1. **In a case comment you wrote while in law school, you criticized the Florida Supreme Court for its refusal in a worker's compensation case to create a judicially recognized exception to the employment-at-will doctrine. You stated, "The Florida Supreme Court cloak[ed] its decision in the mantle of judicial deference to proper legislative authority. Judicial nonactivism, however, smacks of activism." You advocated for a "[b]road[] constru[ction]" of the relevant statute in order to better pursue th[e] perceived legislative goal.**

   a. **What did you mean by the term "judicial nonactivism"?**

      Response: I meant that a court does not discharge its constitutional obligation if it ignores the plain language of a statute and advances a particular agenda either through action or inaction. With that said, my analysis in the case comment was flawed. While I argued the court should recognize a common law tort for retaliatory discharge, I recognize now that it would have been improper for the Florida Supreme Court to rely on section 440.205 to create such a cause of action. As you noted, I wrote the case comment as a law student. As a sitting judge, I would not interpret a statute in such a manner and my record so reflects.

   b. **What has been your approach as a judge when you have to interpret a statute?**

      Response: First, I look to see if the Florida Supreme Court or any of the five state appellate courts have interpreted the statute. Under Florida law, I am bound to follow all five appellate courts unless there is a conflict among appellate courts. Second, if faced with a case of first impression, I start with the plain language of the statute. If the statute is unambiguous, the inquiry ends. If an ambiguity exists, then I apply canons of statutory construction and consider case law construing analogous language.

   c. **When, if ever, do you think it would be appropriate for a judge to look beyond the text of a statute?**

      Response: If the statute at issue is ambiguous, then I would apply canons of statutory construction and consider case law construing analogous language. In so stating, I do not believe that I would be looking beyond the text of the statute. Rather, I would be using such tools to interpret ambiguous language.

   d. **How might your approach to statutory interpretation as a federal judge be different than your experience as a state judge?**

      Response: If confirmed, I do not believe my approach to statutory interpretation as a federal judge would be different than my experience as a state judge.

2. **You have spent the majority of your career in state court. What are some of the changes that you would expect as you move to federal court? How will you prepare for those new duties?**

   Response: While I spent a majority of my career in state court, I also have significant experience in federal court. I began my career by clerking for both Judge Cox of the United States Court of Appeals for the Eleventh Circuit and Judge Hinkle of the United States District Court for the Northern District of Florida. Moreover, while in private practice, I regularly handled cases in the United States District Court for the Northern District of Florida.

   The greatest challenge for any new trial judge is case management and presiding over trials. As a state judge, I have successfully managed a docket of approximately 1,000 cases. Moreover, I have presided over more than 75 jury trials including a high profile death penalty case. While I continue to learn and grow as a state judge, I believe I will have less of a learning curve if I am confirmed and move to federal court based on my experience as a state judge.

   For me, the biggest change will be to master new areas of the law. For example, I have had limited exposure to ERISA, bankruptcy, and other complex areas of federal law. With that said, I welcome the opportunity to learn and will take advantage of the many resources made available through the Federal Judicial Center. Moreover, I am a quick study and will employ the same strong work ethic for which I am known as a state judge.

3. **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 fairly and impartially interpret and apply the law. I believe I possess that attribute and have earned the reputation as a fair and impartial state judge.

4. **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 open-minded, even-tempered, thoughtful, patient and respectful. I believe I meet this standard and have earned such a reputation as a state judge.

5. **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.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on 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 case of first impression involving the interpretation of a statute, I would start with the plain language of the provision at issue. If the provision were unambiguous, the inquiry would end. If an ambiguity existed, then I would apply canons of statutory construction and consider case law construing analogous language.

7. **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 best judgment of the merits to decide the case?**

   Response: I would, without qualification, follow precedent from the United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit regardless of my personal views.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: A court should not reach the constitutionality of a statute if a case can be resolved on other grounds. If a court reaches the issue, then the court must start its analysis with a strong presumption that the statute is constitutional. A statute should be declared unconstitutional only if Congress has clearly exceeded its authority or the statute clearly runs afoul of a provision of the Constitution.

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: As a state judge, I have managed a caseload of almost 1,000 cases. If confirmed, I would apply the same lessons learned while on the state bench. First, a judge must effectively use staff. Second, a judge must set and enforce deadlines for the litigants. Third, a judge must promptly rule. At the end of the day, however, there is no substitute for hard work. A judge must be prepared to work long hours and weekends to keep the docket moving.

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: Yes. I will use all mechanisms at my disposal to control my docket including the practices described above in response to question number nine.

11. **Please describe with particularity the process by which these questions were answered.**

    Response: On May 16, 2012, an attorney from the Department of Justice Office of Legal Policy emailed me the questions. I provided my initial responses the same day. Over the next couple of days, I edited my responses before submitting my final responses on May 21, 2012.

12. **Do these answers reflect your true and personal views?**

    Response: Yes.

Responses of Mark E. Walker
Nominee to be United States District Judge for the Northern District of Florida
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 to treat everyone who appears before me with respect and to respect the rule of law. As for the role of a judge, a judge must fairly and impartially interpret and apply the law, not make 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: I have served as a state court judge since January 6, 2009. During that time, I have earned a reputation for fairness and integrity. If confirmed as a district court judge, I will continue to treat all litigants fairly and respectfully regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff.

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 essential to our legal system. A district court judge must follow controlling precedent. Under extraordinary circumstances, a Court of Appeals sitting en banc or the United States Supreme Court may reconsider its prior decisions.

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Standing Committee on the Federal Judiciary
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VIA EMAIL AND FIRST CLASS MAIL

January 24, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Magistrate Judge Robert E. Bacharach
To the United States Court of Appeals for the Tenth Circuit

Dear Chairman Leahy:

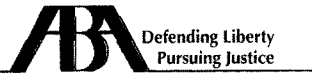
The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Robert E. Bacharach who has been nominated for a position on the United States Court of Appeals for the Tenth Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Judge Bacharach is "Well Qualified" for the position.

A copy of this letter has been provided to Magistrate Judge Bacharach.

Sincerely,

Allan J. Joseph
Chair

cc: Magistrate Judge Robert E. Bacharach
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)



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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
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VIA EMAIL AND FIRST CLASS MAIL

March 1, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Hon. Brian J. Davis
To the United States District Court for the Middle District of Florida

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Hon. Brian J. Davis who has been nominated for a position on the United States District Court for the Middle District of Florida. As a result of our investigation, the Committee is of the unanimous opinion that Judge Davis is "Well Qualified" for this position.

A copy of this letter has been provided to Judge Davis.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Brian J. Davis
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

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Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
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March 1, 2012

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 John E. Dowdell
To the United States District Court for the Northern District of Oklahoma

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of John E. Dowdell who has been nominated for a position on the United States District Court for the Northern District of Oklahoma. As a result of our investigation, a substantial majority of the Committee is of the opinion that Mr. Dowdell is "Well Qualified". A minority of the Committee is of the opinion that Mr. Dowdell is "Qualified" for this position.

A copy of this letter has been provided to Mr. Dowdell.

Sincerely,

Allan J. Joseph
Chair

cc: John E. Dowdell, Esq.
The Honorable Kathy Ruemmler
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq.(via email

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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
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VIA EMAIL AND FIRST CLASS MAIL

February 16, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Magistrate Judge Paul W. Grimm
To the United States District Court for the District of Maryland

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Paul W. Grimm who has been nominated for a position on the United States District Court for the District of Maryland. As a result of our investigation, the Committee is of the unanimous opinion that Judge Grimm is "Well Qualified" for this position.

A copy of this letter has been provided to Magistrate Judge Grimm.

Sincerely,

Allan J. Joseph
Chair

cc: Magistrate Judge Paul W. Grimm
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

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VIA EMAIL AND FIRST CLASS MAIL

February 16, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Hon. Mark E. Walker
To the United States District Court for the Northern District of Florida

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of the Hon. Mark E. Walker who has been nominated for a position on the United States District Court for the Northern District of Florida. As a result of our investigation, the Committee is of the unanimous opinion that Judge Walker is "Well Qualified" for this position.

A copy of this letter has been provided to Judge Walker.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Mark E. Walker
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

Federal Bar Association

Office of the President

Lawrence R. Baca
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February 9, 2012

The Honorable Patrick Leahy
United States Senate
437 Russell Senate Bldg
Washington, DC 20510

RE: Magistrate Judge Robert E. Bacharach, Nominee for the Tenth Circuit Court of Appeals

Dear Senator Leahy:

I write to recommend that Magistrate Judge Robert E. Bacharach be confirmed to fill the open seat on the Tenth Circuit Court of Appeals.

I have known Judge Bacharach for over a decade and know him to be a man of the highest intelligence and exceptional integrity. I know Judge Bacharach from my work with the Federal Bar Association (FBA); I am a Past President of the FBA (2009-2010). However, because the FBA does not take official positions on the nominations of judges, my endorsement of Judge Bacharach is personal.

You will hear from others all that I would say about his exceptional work ethic and fairness. Therefore, I write you primarily from the perspective of an American Indian bar leader. I have served as President of the National Native American Bar Association three times and am currently its Treasurer. At the United States Department of Justice, where I worked for 32 years, I was the Deputy Director of the Office of Tribal Justice at the time of my retirement. These positions give me a unique perspective on a judgeship in a circuit where federal Indian law questions arise frequently.

Because I was Chairman of the FBA Indian Law Section for 20 years I have had many opportunities to talk about a variety of Indian law issues with Judge Bacharach at FBA meetings over the past decade. While Judge Bacharach has no litigation experience or expertise in the field of Indian law, he is not unfamiliar with federal Indian law. He is always thoughtful when discussing Indian law issues, he listens well to any proposition put forward and he asks the right questions. Those are the keys to why he would make an exceptional appellate judge. He has the keen ability to analyze an issue of federal Indian law and ask the right questions, then discuss the case intelligently.

There is no expectation that federal judges will be specialists in any area of law. It is in the nature of appellate work that the judge must be a generalist. As a litigant I can direct the judge to what he or she needs to know. In Judge Bacharach I know there is an exceptional mind

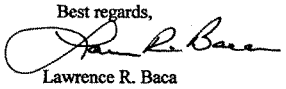
that will grasp the issues, ask the right questions and render an opinion with a thoughtful and compassionate approach. From my extensive discussions with him, I have every confidence that Judge Bacharach can analyze and address any federal Indian law issue that would come before the Tenth Circuit Court of Appeals and render a sound, fair and well-reasoned opinion.

Judge Bacharach is an excellent nominee for the Tenth Circuit Court of Appeals. He is an extremely dedicated and hard-working individual. He brings 12 years of judicial experience to his nomination.

As you know, magistrate judges are chosen by sitting federal district court judges. Judge Bacharach clearly had the respect of those judges before whom he had practiced at the time of his selection. Since that time, he has developed a track record that demonstrates their judgment was correct. The continued respect he has from the district judges who selected him is demonstrated in their letters of recommendation to President Obama in support of his nomination.

I urge strongly that the Senate confirm Robert E. Bacharach for the Tenth Circuit Court of Appeals.

Best regards,



Lawrence R. Baca

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March 7, 2012

The Honorable Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Re: Judge Robert E. Bacharach

Dear Senators Leahy and Grassley:

I am writing in support of Magistrate Judge Robert E. Bacharach's nomination to the Tenth Circuit Court of Appeals.

I have known Judge Bacharach for over six years through our work together for the Federal Bar Association (the "FBA"). His academic record, intelligence and legal experience—as a judicial clerk for the Chief Judge of the Tenth Circuit, in private practice as a litigator in a major law firm and as a Magistrate Judge—demonstrate Judge Bacharach's high qualifications for this Court of Appeals position. But equally important is the person behind those credentials. Judge Bacharach undertakes everything he does with zeal, dedication, a keen eye and a smile on his face. His enthusiasm is infectious and he is even-tempered, fair, thoughtful and resourceful.

I have had the opportunity of observing him with other judges and practitioners, including former Chief Judge, William Holloway. Judge Bacharach is highly respected, admired, liked and appreciated by his colleagues. He willingly takes on tasks for his judicial position, the practice of law and his community. He typifies the adage—if you want something done properly and efficiently, give it to a busy man. These are the attributes we need to have in our judges. Judge Bacharach will be an excellent addition to the Tenth Circuit Court of Appeals.

I am supporting Judge Bacharach's nomination as an individual, a lawyer who has been practicing before the federal courts for nearly 40 years. This year, I have the privilege of serving as the National FBA President. As you may know, the mission of the association is to serve the needs and interests of the federal practitioner, public and private, the federal judiciary and the public they serve. To this end, the FBA has been concerned over the judicial vacancy crisis and, without supporting individual candidates, has worked toward filling these vacancies with qualified candidates.

Mayer Brown LLP operates in combination with other Mayer Brown entities with offices in Europe and Asia and is associated with Tauil & Chequer Advogados, a Brazilian law partnership.

Therefore, as the FBA President, I applaud the Senate Judiciary Committee for its efforts toward addressing these vacancies. As an individual, I urge you to approve Judge Bacharach's well-deserved nomination.

Sincerely,

Fern C. Bomchill

OPENING STATEMENT BY SENATOR BENJAMIN L. CARDIN

ON THE NOMINATION OF JUDGE PAUL WILLIAM GRIMM

TO BE UNITED STATES DISTRICT JUDGE, DISTRICT OF MARYLAND

SENATE JUDICIARY COMMITTEE HEARING

Wednesday, May 9, 2012

I am pleased to join with Senator Mikulski in recommending that the Judiciary Committee favorably report Judge Paul William Grimm of Maryland to be a US District Judge for the District of Maryland. Let me also welcome Judge Grimm's family and friends to today's hearing, and thank them for the sacrifices they make.

Judge Grimm was nominated to fill the upcoming vacancy that will be created when US District Judge Benson E. Legg takes senior status in less than a month.

Judge Grimm brings a wealth of experience to this position. Earlier in his career he served in the military in the Judge Advocate General's Corps, handled commercial litigation in private practice, and served as a state Assistant Attorney General in Maryland. He has sat as a federal magistrate judge in Maryland for 15 years.

Judge Grimm was born in Japan and received his undergraduate degree from the University of California in 1973, and graduated from the University of New Mexico School of Law in 1976. Judge Grimm was admitted to the Maryland Bar in 1977.

Judge Grimm has strong roots, legal experience, and community involvement in the state of Maryland. Judge Grimm lives with his family in Towson, which is in Baltimore County, Maryland.

Judge Grimm began his legal career after graduating law school back in Maryland, as a Captain in the U.S. Army Judge Advocate General's Corps at Aberdeen Proving Ground, Maryland. He then worked in the Pentagon before heading back to the Baltimore region, alternating between working in private practice and working in the state attorney general's office, while continuing to serve as an active duty US Army JAG Corps Officer with occasional stints in the Pentagon.

In 1997, Judge Grimm was selected as a Magistrate Judge by the judges of the US District Court for the District of Maryland. In 2006, Judge Grimm became the Chief US Magistrate Judge in Baltimore.

In 2009, Chief Justice John Roberts appointed Judge Grimm to serve as a member of the Advisory Committee for the Federal Rules of Civil Procedure. In 2010 he was designated as Chair of the Civil Rules Committee's Discovery Subcommittee.

Let me expand a bit on that last point. As is evident from the Chief Justice's appointment, Judge Grimm is a nationally recognized expert on cutting edge issues of law and technology. He has written numerous authoritative opinions, books and articles on the subjects of evidence, civil procedure, and trial advocacy. He also continues to inspire the next generation of lawyers by teaching classes at our two law schools in Maryland, and on several occasions Professor Grimm has been awarded the title of "outstanding adjunct faculty member."

As a Magistrate Judge, Judge Grimm is responsible for handling routine criminal matters such as issuing search warrants, conducting preliminary criminal proceedings, and presiding over misdemeanor criminal cases. Judge Grimm is also responsible for handling civil cases, where he presides over bench and jury trials, with the consent of the parties. Judge Grimm also conducts settlement conferences, resolves discovery disputes, and handles other non-dispositive matters at the referral of US District Judges.

Judge Grimm has estimated that in his 15 years as a Magistrate Judge he has presided over approximately 50 civil trials and 150 criminal misdemeanor trials, including both jury and bench trials.

Judge Grimm received a unanimous rating of "well qualified," the highest possible rating for a judicial nominee, from the American Bar Association's Standing Committee on the Federal Judiciary.

I am absolutely confident that Judge Grimm possesses the qualifications, temperament, and passion for justice that will make him an outstanding United States District Court Judge for the District of Maryland. He will serve the people of Maryland very well in this position. I therefore recommend the Committee favorably approve this nomination and send it to the full Senate for confirmation.

Oklahoma Bar Association

RESOLUTION TO

THE UNITED STATES SENATE

***WHEREAS**, Robert E. Bacharach exemplifies the highest standards of the legal profession, has given unselfishly of his time and talents to further the legal profession, has served the Oklahoma Bar Association with distinction and compassion;*

***WHEREAS**, Robert E. Bacharach has consistently demonstrated that he possesses the demeanor, intelligence and legal skills to serve in the highest offices of his profession and the public;*

***WHEREAS**, Robert E. Bacharach has served his profession, his community, his state, and his nation with courageous, devoted and tireless service to insure that the rule of law prevails and that there be liberty and justice for all;*

***WHEREAS**, Robert E. Bacharach has received a nomination from President Barack Obama to serve as a judge of the Tenth Circuit Court of Appeals pending confirmation by the United States Senate;*

***BE IT RESOLVED**, on behalf of the Oklahoma Bar Association, the Board of Governors unqualifiedly and wholeheartedly supports the confirmation of Robert E. Bacharach to the position of judge of the Tenth Circuit Court of Appeals;*

***BE IT FURTHER RESOLVED**, the Board of Governors requests the honorable members of the United States Senate for favorable confirmation of Robert E. Bacharach.*

***IN WITNESS WHEREOF**, this Resolution is unanimously Adopted by the Oklahoma Bar Association Board of Governors this 5th day of March, 2012.*

OKLAHOMA BAR ASSOCIATION

BY: Cathy M. Christensen
CATHY M. CHRISTENSEN, President

ATTESTED:
John M. Williams
JOHN MORRIS WILLIAMS, Executive Director

OKLAHOMA BAR ASSOCIATION

March 27, 2012

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 E. Dowdell to the United States District Court for the Northern District of Oklahoma

Dear Chairman Leahy:

Enclosed please find a Resolution from the Oklahoma Bar Association Board of Governors who wholeheartedly endorse and support confirmation of John E. Dowdell to the position of Judge of the United States District Court for the Northern District of Oklahoma.

It is the Oklahoma Bar Association Board of Governor's opinion that John E. Dowdell exemplifies the highest standards of the legal profession and would be a tremendous asset to the judiciary.

Please feel free to contact me if you have any questions or need additional information.

Sincerely,

Cathy Christensen

Cathy M. Christensen
2012 President

CMC/dhb
Enc.
CC: Members of the Judiciary Committee
with copy of Resolution

Cathy M. Christensen
2012 PRESIDENT
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Cathy@CathyChristensenLaw.com

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Oklahoma City, OK 73152-3036
office 405.416.7000
fax 405.416.7001
toll free 800.522.8065

Oklahoma Bar Association

RESOLUTION TO THE UNITED STATES SENATE

***WHEREAS**, John E. Dowdell exemplifies the highest standards of the legal profession, has given unselfishly of his time and talents to further the legal profession, has served the Oklahoma Bar Association with distinction and compassion;*

***WHEREAS**, John E. Dowdell has consistently demonstrated that he possesses the demeanor, intelligence and legal skills to serve in the highest offices of his profession and the public;*

***WHEREAS**, John E. Dowdell has served his profession, his community, his state, and his nation with courageous, devoted and tireless service to insure that the rule of law prevails and that there be liberty and justice for all;*

***WHEREAS**, John E. Dowdell has received a nomination from President Barack Obama to serve as a judge of the United States District Court for the Northern District of Oklahoma pending confirmation by the United States Senate;*

***BE IT RESOLVED**, on behalf of the Oklahoma Bar Association, the Board of Governors unqualifiedly and wholeheartedly supports the confirmation of John E. Dowdell to the position of judge of the United States District Court for the Northern District of Oklahoma ;*

***BE IT FURTHER RESOLVED**, the Board of Governors requests the honorable members of the United States Senate for favorable confirmation of John E. Dowdell.*

***IN WITNESS WHEREOF**, this Resolution is unanimously Adopted by the Oklahoma Bar Association Board of Governors this 14th day of March, 2012.*

OKLAHOMA BAR ASSOCIATION

BY: Cathy Christensen
CATHY M. CHRISTENSEN, President

ATTESTED:
JOHN MORRIS WILLIAMS, Executive Director

March 21, 2012

The Honorable Tom Coburn
U.S. Senate Committee on the Judiciary
172 Russell Senate Office Building
Washington, D.C. 20510

Re: Nomination of Judge Robert E. Bacharach for the Tenth Circuit Court of Appeals

Dear Senator Coburn:

It is my sincere pleasure to write in support of Magistrate Judge Robert E. Bacharach's nomination to the Tenth Circuit Court of Appeals.

Through the Federal Bar Association (FBA), I have had the honor of working with Judge Bacharach in our capacities as Circuit Vice Presidents for the past several years. In addition, I am originally from the State of Oklahoma where I attended the University of Oklahoma as an undergraduate and as a law student, and where I maintain a significant number of contacts in the legal and judicial arenas.

Judge Bacharach's academic record, intelligence, legal experience, demeanor, and character demonstrate unquestionably his qualifications for appointment to the Tenth Circuit Court of Appeals. I can attest personally to the rigorous academic challenges of the University of Oklahoma. Clearly, Judge Bacharach excelled as a student and adjunct professor of law. He graduated with high honors and ranked 8th out of 195 students at Washington University's Law School. He served on the law review and was named to the Order of the Coif and Order of the Barristers, among his many honors.

In his professional career, he served as a law clerk for the Honorable William J. Holloway, Jr., Chief Judge, U.S. Court of Appeals for the Tenth Circuit. Thereafter, he spent approximately 12 years litigating for the esteemed law firm of Crowe & Dunlevy in Oklahoma City where he was considered an outstanding trial attorney. As a Magistrate, he has chaired various committees on local civil procedure rules and criminal justice and has used

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his intellect and even-handedness to achieve positive outcomes. He is a highly respected member of the bench with regard to his knowledge and fairness and is well known for his adherence to the concept of judicial neutrality.

I note that the American Bar Association unanimously rated Judge Bacharach as "well qualified" for appointment to the Tenth Circuit Court of Appeals. I further note that he is supported by other judges on both sides of the political aisle. Finally, I am so pleased to hear that both you and Senator Inhofe are supportive of Judge Bacharach's confirmation.

I urge the Committee to move the nomination of Judge Bacharach expeditiously to address the continuing crisis in judicial vacancies. Without doubt, I can say that Judge Bacharach would be an excellent and welcome choice to fill the vacancy on the Tenth Circuit Court of Appeals. Please do not hesitate to contact me if I may be of further assistance.

Sincerely,

Lauren L. Fuller, J.D., C.F.E.
Director, Government Relations

Introduction of Mr. John Dowdell
Nominee to the Northern District of Oklahoma

- I am pleased to introduce Mr. John Dowdell of Tulsa, Oklahoma, whom the president has nominated to the Northern District of Oklahoma.
- Mr. Dowdell has impressive credentials. He attended Bishop Kelley High School in Tulsa and then received his B.A. from Wake Forrest University in 1978 and his J.D. from the University of Tulsa College of Law in 1981.
- While attending Wake Forrest, Mr. Dowdell played football with some notable teammates - Senator Richard Burr.
- Following graduation, he clerked for Judge William J. Holloway, Jr. on the 10th Circuit, for whom Judge Bacharach also clerked.
- Mr. Dowdell then joined Norman & Wohlgemuth as an associate. In 1987, he became a shareholder and the firm became Norman Wohlgemuth Chandler & Dowdell.
- He has been involved in six cases before the U.S. Supreme Court, and the Court granted cert in two of them. He also has litigated before the 10th Circuit on numerous occasions.
- Beginning in 1999, he conducted over 50 mediations on a *pro bono* basis while serving as an Adjunct Settlement Judge in the Northern District.
- He also has performed extensive *pro bono* criminal representation, including handling appeals in several criminal cases. And, he has provided Bishop Kelley with free legal counsel over the course of his career.
- Mr. Dowdell has consistently given back to his community serving on the Board of Directors of Bishop Kelley High School and as its President from 2004-2007.
- He has received a number of honors, including being rated as one of Oklahoma's "Super Lawyers" from 2006-2011 and being named a Top Commercial Litigation Lawyers by American Litigation Magazine. He also received the Jack R. Givens Award for Professionalism and Service in 1998 and the Distinguished Service Award of the American Inns of Court in 1993.
- The Oklahoma Bar Association Board of Governors endorses his nomination and passed a resolution praising his demeanor, intelligence, and legal skills. I'd like to place that resolution in the hearing record.
- Mr. Dowdell is here with his wife and four sons.

Introduction of Judge Robert Bacharach
Nominee to the 10th Circuit Court of Appeals

- I am pleased to introduce Judge Robert Bacharach of Edmond, Oklahoma, whom the president has nominated to the 10th Circuit Court of Appeals.
- Judge Bacharach demonstrated his ability to excel early on when he received his B.A., *with high honors*, from the University of Oklahoma in 1981 and his J.D., *order of the coif*, from Washington University School of Law in 1985.
- Following law school, he clerked for fellow Oklahoman, Chief Judge William J. Holloway, Jr., on the 10th Circuit.
- After his clerkship, Judge Bacharach joined Crowe & Dunlevy, and in 1994, he became a shareholder.
- In 1999, he was appointed by the judges of his district court as a United States Magistrate Judge for the Western District of Oklahoma.
- In addition to serving as a magistrate judge, from 1997 to 1999, Judge Bacharach also served as an adjunct professor at the University of Oklahoma School of Law.
- Judge Bacharach is the recipient of a number of awards, including the 2007 Leadership in Law Award from The Journal Record, the 2006 Earl W. Kinter Award for Distinguished Service from the Federal Bar Association, and the 2006 Special Presidents Award from the Federal Bar Association.
- Judge Bacharach also performs significant legal services outside of his judicial role.
    - He has served on the Federal Bar Association since 2004 and currently is Vice-President for the Tenth Circuit. And, he previously served in other leadership positions, including as President of the Oklahoma City Chapter, Vice President of the Oklahoma City Chapter, and on the Board of Directors of the Oklahoma City Chapter.
    - He also served on the Board of Directors of the Oklahoma County Bar Association from 2004-2007.
    - Judge Bacharach has served for three years on the Oklahoma Bar Association's committee, "Lawyers Helping Lawyers," which helps attorneys who are experiencing personal problems such as depression, alcoholism, and drug dependency.
    - And, he currently is on the Board of Directors of the Lawyers Helping Lawyers Foundation.
    - Judge Bacharach further served his community as the Director and Executive Committee Member of Big Brothers Big Sisters of Greater Oklahoma City from

1998-2001. And, he was on the Board of Trustees of the Temple B'nai Israel during the same period.

- He also has performed extensive *pro bono* legal work for various clients over the years.

- The Committee has also received a number of letters supporting Judge Bacharach's nomination, including recommendations from:
  - Judge Miles-LeGrange, Chief District Court Judge for the Western District of Oklahoma;
  - Fellow members of the Federal Bar Association Lawrence R. Baca, Lauren L. Fuller, and Fern Bomchill;
  - Dean of the University of Oklahoma College of Law Joseph Harroz, Jr.;
  - General Counsel and lecturer at Oklahoma City University Mr. J. William Conger;
  - Dean Emeritus and Professor of Law at Oklahoma City University Lawrence K. Hellman;
  - President of the Oklahoma County Bar Association Laura McConnell-Corbyn; and
  - Crowe & Dunlevy attorneys William G. Paul and Harry A. Woods, Jr.
- In addition, the Oklahoma Bar Association passed a resolution praising Judge Bacharach's legal abilities and supporting his confirmation to the circuit court.
- I ask that these letters and the resolution be placed in the hearing record.
- Judge Bacharach is joined here by his wife, Rhonda, and his 3 1/2-year-old daughter Olivia Harper.

OKLAHOMA CITY UNIVERSITY
Office of General Counsel

February 13, 2012

The Honorable James M. Inhofe
United States Senate
205 Russell Senate Office Building
Washington, DC 20510

Re: Robert E. Bacharach, Nominee for United States Court of Appeals for the Tenth Circuit

Dear Senator Inhofe:

I am pleased to join with fellow Past Presidents of the Oklahoma Bar Association in support of President Obama's nomination of Magistrate Judge Robert E. Bacharach, Western District of Oklahoma, for appointment to the United States Court of Appeals for the Tenth Circuit. I have known Judge Bacharach since he began his practice at Crowe & Dunlevy in 1987. I have appeared before him many times and know him to be a fair-minded jurist with a keen intellect and judicial temperament.

He is a distinguished graduate of the University of Oklahoma with high honors and a graduate of the Washington University School of Law where he ranked 8th out of 195 students. His academic record is superb.

Judge Bacharach is very active in the legal profession serving in leadership positions in numerous professional organizations. He is also very active in our community and has served on numerous boards of civic organizations.

Judge Bacharach is one of the most respected judges in our state, and I recommend him to you without reservation. If you have questions or comments, please do not hesitate to contact me.

Very truly yours,

J. William Conger
University General Counsel and
Distinguished Lectured in Law

JWC:gd

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JOSEPH HARROZ, JR.

2511 MCGEE DR.
NORMAN, OK 73072

March 19, 2012

The Honorable Tom Coburn, M.D.
United States Senate
172 Russell Senate Office Bldg.
Washington, DC 20510

Re: Judge Robert E. Bacharach, Candidate for Appointment to the Tenth Circuit Court of Appeals

Dear Senator Coburn:

It is my understanding that Magistrate Judge Robert E. Bacharach is being considered for an appointment to the Tenth Circuit Court of Appeals. I am very pleased to recommend such an outstanding and qualified candidate.

For over a decade, Judge Bacharach has served as a United States Magistrate Judge for the Western District of Oklahoma. All who have encountered Judge Bacharach know he has served the judicial system with integrity, diligence, and dedication. His impressive legal mind and deep sense of fairness make him an excellent judge.

Judge Bacharach's academic qualifications are noteworthy. He graduated eighth in his class at Washington University School of Law. He served on the executive editorial board for the law review and is a member of the Order of the Coif. His insightful articles have been published in the Oklahoma Law Review, Indiana Law Review, Oklahoma City University Law Review, Memphis State University Law Review, and the Washington University Law Quarterly.

Judge Bacharach's past and current work experiences make him well-suited for a Tenth Circuit Court of Appeals appointment. He has over twelve years of practical legal experience as a practicing attorney. He was a litigator, shareholder, and director at Crowe & Dunlevy, one of Oklahoma's oldest and most esteemed law firms. Prior to working at Crowe & Dunlevy, he clerked for two years for the Tenth Circuit's then-Chief Judge William Holloway, Jr. As a clerk, Judge Bacharach gained an important and essential understanding of the workings of the appellate court. His legal opinions as a Magistrate Judge are exceptionally well-reasoned and well-written.

In my opinion, Judge Bacharach's background, character, and intellect make him an exceptional choice for the Tenth Circuit Court of Appeals. He is a man of the highest integrity and has served as a role model to many in the legal community.

I am honored to offer my sincerest and strongest recommendation for Judge Bacharach. If you would like to discuss this further, please do not hesitate to contact me at 405-325-4884 or jharroz@ou.edu.

Respectfully,

Joseph Harroz, Jr.
Dean and Director
Fenelon Boesche Chair of Law

OKLAHOMA CITY UNIVERSITY
SCHOOL OF LAW
Office of the Dean

March 21, 2012

The Honorable James M. Inhofe
United States Senate
205 Russell Senate Office Building
Washington, DC 20510

Re: Nomination of Robert E. Bacharach

Dear Senator Inhofe:

I write to encourage you to support the nomination of Magistrate Judge Robert E. Bacharach for a position on the United States Court of Appeals for the Tenth Circuit. I have known Judge Bacharach for fifteen years. During my time as dean of Oklahoma City University School of Law, between 1998 and 2011, I had many occasions to interact with him and his professional colleagues from the judiciary and the bar. On the basis of these interactions, I am confident that Judge Bacharach would serve with distinction on the Tenth Circuit if he is confirmed.

Judge Bacharach's unusually well-rounded professional background includes top flight academic performance at rigorous academic institutions, a lengthy period of high level legal practice with an esteemed law firm, and a lengthy period of service as a federal magistrate judge. In each stage of his career, he has earned an unassailable reputation for competence, open-mindedness, even-handedness, courtesy, and professionalism. This combination of qualities has enabled him to be a highly successful and respected mediator and judge. He will bring these same qualities with him to the work at the circuit court level.

Judge Bacharach has no agenda other than to do justice. He has no edge about him. He is deferential and uncommonly polite. He is punctilious in adhering to the highest ethical standards and seeking to avoid even the appearance of impropriety, as demonstrated by his careful recusal policy. He follows the law rather than his emotions or public sympathies.

Judge Bacharach is a fair-minded person, a good listener, and a willing participant and leader in organizations and activities that strive to enrich the professional lives of lawyers while encouraging lawyers and judges to adhere to the highest values of service above self.

In sum, I commend Robert Bacharach to you as a judicial nominee with impeccable credentials, deep Oklahoma roots, a distinguished record, and an unbounded commitment to public service. It is safe to expect that he will serve with honor and distinction because he is already doing so and has done so for a considerable period of time.

Sincerely yours,

Lawrence K. Hellman

Lawrence K. Hellman
Dean Emeritus and Professor of Law

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HARTZOG CONGER
CASON & NEVILLE

February 28, 2012

The Honorable Tom Coburn, MD
United States Senate
172 Russell Senate Office Building
Washington, DC 20510

Re: The Magistrate Judge Robert E. Bacharach, Candidate for the Tenth Circuit Court of Appeals

Dear Senator Coburn:

I write to recommend that Magistrate Judge Robert E. Bacharach be confirmed to the Tenth Circuit Court of Appeals. I currently have the privilege of serving as the President of the Oklahoma County Bar Association. I have been active with the Oklahoma County Bar Association as a member of the Board of Directors and as an officer for over a decade.

I first came to know Judge Bacharach when he was in private practice with the firm Crowe & Dunlevy, a very well-respected firm in Oklahoma City. Judge Bacharach was a very respected litigation attorney, handling complex litigation at the highest level. As a member of the private bar, Judge Bacharach was known to have the highest degree of ethics, integrity and character.

We were delighted when Judge Bacharach was selected to become a Magistrate Judge with the United States District Court for the Western District of Oklahoma. During the past approximately 12 years, Judge Bacharach has shown himself to be hardworking, dependable, thoughtful, and well-rounded. Judge Bacharach's written opinions are thoroughly researched and clearly and thoughtfully written. Judge Bacharach's oral presentations are exceptional both in their clarity and in their content.

As an officer of the Oklahoma County Bar Association, I have had many opportunities to work with Judge Bacharach in connection with his generous contribution of his time and energy to the work and development of the Oklahoma County Bar Association. He is always willing to step up and take on those responsibilities that are designed to enhance both the reputation and the development of members of the bar.

It is without hesitation that I urge you to confirm Judge Bacharach for appointment to the Tenth Circuit Court of Appeals. I am confident that Judge Bacharach will make the Senators of

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this State, the citizens of this State, and the President of the United States extremely proud as he serves as a Judge of the Tenth Circuit Court of Appeals.

Very truly yours,

HARTZOG CONGER CASON & NEVILLE

Laura McConnell-Corbyn

Laura McConnell-Corbyn

LHM:mit

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES COURTHOUSE
200 N. W. 4TH STREET
OKLAHOMA CITY, OKLAHOMA 73102

CHAMBERS OF
VICKI MILES-LAGRANGE
CHIEF JUDGE

405-609-5400

March 7, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Judge Bob Bacharach, Nominee for Appointment to the Tenth Circuit Court of Appeals

Dear Senator Leahy and Senator Grassley:

Judge Bob Bacharach is a nominee for a judgeship on the Tenth Circuit Court of Appeals. He is an outstanding jurist and my colleagues and I enthusiastically and wholeheartedly recommend him for the Tenth Circuit position.

Let me tell you a little about Judge Bacharach and the roles in which I have observed him. I first saw Judge Bacharach when he was in private practice. Before appointment as a United States Magistrate Judge, he practiced civil litigation for 12½ years at Crowe & Dunlevy in Oklahoma City. He tried the first case that I had after my appointment to the bench. I still remember what an excellent job he did in that trial. After that experience, he handled a number of cases before me when he was a litigator at Crowe & Dunlevy. He was always extremely well prepared, diligent, and polite and respectful both to the Court and to opposing counsel. He was a great trial lawyer.

In early 1999, the other district judges and I appointed Bob to serve as a United States Magistrate Judge. We had over 100 applications, and the selection of Bob was an easy one. We knew that we were lucky to have Bob as a Magistrate Judge, and he's been remarkable in this position for over 12 years. He is an absolutely great Magistrate Judge. His research and writing are excellent, his temperament is superb, his preparation is top-notch, and he is a wonderful colleague to all of the judges and in general to the entire court family.

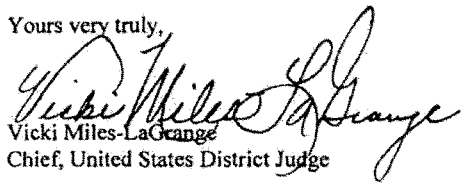
His credentials speak for themselves. From an academic standpoint, he has excelled. He graduated 8th in his class out of almost 200 students at Washington University at St. Louis Law School. In law school, he served on the law review board and earned many awards, including the award for the best law review note. After graduation, he clerked for two years for then-Chief Judge Bill Holloway of the Tenth Circuit Court of Appeals, where he again excelled. During the course of his clerkship and career as a litigator and judge, he has published numerous law review articles on a wide range of topics, including securities law, First Amendment law, Section 1983, and *pro se* litigation. His articles have been published in the Indiana Law Review, Memphis State University Law Review, Oklahoma Law Review, Oklahoma City University Law Review, and Washington University Law Quarterly.

Judge Bacharach has shown that he does what the law requires and has never allowed his personal views to influence his judicial decisions. As you will see in his writings - such as the law review article coauthored with Professor Entzeroth - Judge Bacharach has a deep and abiding belief in judicial neutrality.

As you know, the American Bar Association has unanimously rated Judge Bacharach "well qualified" for the Tenth Circuit judgeship. And, Senator Inhofe and Dr. Coburn have expressed support for Judge Bacharach.

All of the other judges and I — Republicans and Democrats alike — enthusiastically and wholeheartedly recommend Judge Bob Bacharach for the Tenth Circuit position. All of us believe very strongly that Judge Bacharach would be a superb choice for the position.

Yours very truly,



Vicki Miles-LaGrange
Chief, United States District Judge

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March 19, 2012

The Honorable Jim Inhofe
United States Senator
State of Oklahoma
205 Russell Senate Office Building
Washington, DC 20510 -3603

The Honorable Tom Coburn
United States Senator
State of Oklahoma
172 Russell Senate Office Bldg.
Washington, DC 20510

RE: Judge Robert E. Bacharach
Candidate for Appointment to the Tenth Circuit Court of Appeals

Dear Senator Inhofe and Senator Coburn:

I write to in support of Magistrate Judge Robert E. Bacharach's nomination to the United States Court of Appeals for the Tenth Circuit.

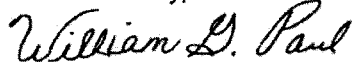
I have known Judge Bacharach for over 20 years as a colleague at the law firm of Crowe & Dunlevy and later through his service as a United States Magistrate Judge for the United States District Court for the Western District of Oklahoma. I recommend Judge Bacharach highly.

As former general counsel for Phillips Petroleum, I have had the opportunity to observe a great number of fine lawyers and jurists. I have observed the manner in which they practice, analyze the law and facts, apply the law and make judicial determinations. Without hesitation, based on my personal observations of Judge Bahcarach, there is no finer example our judicial system could have than Judge Robert E. Bacharach. He is fair, dedicated, and possesses a keen legal mind. He will be an oustanding addition to the Court of Appeals for the Tenth Circuit.

As a past president of the American Bar Association, I concur with the American Bar Association Standing Committee on the Federal Judiciary's recommendation of Judge Bacharach as "well qualified". Based on the standards set for such nominations, — specifically judicial temperament, professional competence, and integrity, a finer individual you could not find.

I enthusiastically support Judge Robert E. Bacharach for appointment to the United States Court of Appeals for the Tenth Circuit.

Sincerely,



William G. Paul

WGP/kaw

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February 6, 2012

The Honorable Tom Coburn, M.D.
United States Senate
172 Russell Senate Office Building
Washington, DC 20510

Re: Robert E. Bacharach, Nominee for United States Court of Appeals for the Tenth Circuit

Dear Senator Coburn:

I write in support of the nomination of The Honorable Robert E. Bacharach for appointment to the United States Court of Appeals for the Tenth Circuit and to encourage you to support approval of the nomination by the Judiciary Committee of the United States Senate and the full United States Senate.

I have known Mr. Bacharach for more than 25 years. During the 12 years that he practiced law with Crowe & Dunlevy, I was a shareholder/director of Crowe & Dunlevy. It was my good fortune to work extensively with Mr. Bacharach on several cases, involving substantial factual and legal issues. I was extremely impressed with Mr. Bacharach's legal skills, including research, writing, analysis, judgment, common sense, and reliability.

During the time Mr. Bacharach has been a magistrate judge, I have continued to have contact with him, including appearing before him on matters. Mr. Bacharach always exhibits an outstanding judicial temperament. He treats all participants in his proceedings with respect, and he exhibits a high degree of professionalism and civility.

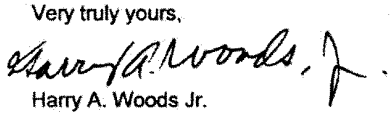
In 2004, I served as president of the Oklahoma Bar Association and, in that capacity, had contact with lawyers and judges throughout the State of Oklahoma. From comments made by many of them, it is clear that Mr. Bacharach enjoys an excellent reputation with Oklahoma's bench and bar.

He served with distinction as president of the Oklahoma City Federal Bar Association ("FBA"), composed of lawyers who practice in federal court and federal judges. During his tenure as president of the Oklahoma City chapter of the FBA, the chapter's programs were of the highest and most interesting caliber that I experienced

throughout my many years of membership in the chapter. Indeed, the national FBA recognized his exceptional leadership, and awarded him its highest award.

In my opinion, Judge Bacharach is an outstanding choice for this position. He exhibits a strong combination of ability, dedication, integrity, temperament and experience that make him ideally suited to serve as a judge of the Tenth Circuit.

Very truly yours,



Harry A. Woods Jr.

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