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S. HRG. 112–72, Pt. 6

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

JANUARY 26, FEBRUARY 15, AND FEBRUARY 29, 2012

Serial No. J–112–4

PART No. 6

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CONTENTS

WEDNESDAY, JANUARY 26, 2012

STATEMENTS OF COMMITTEE MEMBERS

Page

Cardin, Hon. Benjamin, a U.S. Senator from the State of Maryland, prepared statement 345
Durbin, Hon. Richard J., a U.S. Senator from the State of Illinois 1
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa, prepared statement 354
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement 363

PRESENTERS

Boozman, Hon. John, a U.S. Senator from the State of Arkansas presenting Kristine Gerhard Baker Nominee to be District Judge for the Eastern District of Arkansas 8
Cardin, Hon. Benjamin L., a U.S. Senator from the State of Maryland presenting George Levi Russell III, Nominee to be District Judge for the District of Maryland 6
Kyl, Hon. Jon, a U.S. Senator from the State of Arizona presenting Andrew David Hurwitz, Nominee to be Circuit Judge for the Ninth Circuit 4
Mikulski, Hon. Barbara, a U.S. Senator from the State of Maryland presenting George Levi Russell III, Nominee to be District Judge for the District of Maryland 5
Pryor, Hon. Mark L., a U.S. Senator from the State of Arkansas presenting Kristine Gerhard Baker Nominee to be District Judge for the Eastern District of Arkansas 7

STATEMENTS OF THE NOMINEES

Baker, Kristine Gerhard, Nominee to be U.S. District Judge for the Eastern District of Arkansas 100
Questionnaire 101
Hurwitz, Andrew David, Nominee to be U.S. Circuit Judge for the Ninth Circuit 10
Questionnaire 11
Lee, John Z., Nominee to be U.S. District Judge for the Eastern District of Illinois 147
Questionnaire 148
Russell, George Levi, III, Nominee to be U.S. District Judge for the District of Maryland 244
Questionnaire 245
Tharp, John J. Jr., Nominee to be U.S. District Judge for the Northern District of Illinois 178
Questionnaire 179

QUESTIONS AND ANSWERS

Responses of Kristine Gerhard Baker to questions submitted by Senators Grassley and Klobuchar 290
Responses of Andrew D. Hurwitz to questions submitted by Senators Coburn, Grassley, Klobuchar and Sessions 295

Page

Responses of John Z. Lee to questions submitted by Senators Grassley and Klobuchar 317
Responses of George Levi Russell, III to questions submitted by Senators Grassley and Klobuchar 324
Responses of John J. Tharp, Jr., to questions submitted by Senators Grassley and Klobuchar 329

SUBMISSIONS FOR THE RECORD

American Bar Association, Allan J. Joseph, Chair, Washington, DC:
Kristine G. Baker, November 2, 2011, letter 335
Andre Hurwitz, November 2, 2011, letter 336
John Z. Lee, November 2, 2011, letter 337
George L. Russell, III, November 10, 2011, letter 338
John J. Tharp, Jr., November 10, 2011, letter 339
Asian American Bar Association (AABA), Mehpara A. Sulerman, President, Chicago, Illinois, January 20, 2012, letter 340
Asian American Institute (AAI), Michael P. Chu, President, and Tuyet Le, Executive Director, Chicago, Illinois, January 17, 2012, joint letter 343
Boozman, Hon. John, a U.S. Senator from the State of Arkansas, Award list 344
Cummings, Hon. Elijah E., a Representative in Congress from the State of Maryland, January 27, 2012, letter 352
Foreman, Fred, Circuit Judge, Nineteenth Judicial Circuit, Waukegan, Illinois, January 18, 2012, letter 353
Huckabay, Mike, Attorney at Law, Huckabay Law Firm, Little Rock, Arkansas, December 12, 2011, letter 358
Kirk, Hon. Mark, a U.S. Senator from the State of Illinois, prepared statement 359
Law clerks (former) to Justice Hurwitz, January 19, 2012, joint letter 361
Lufrano, Michael R., Chicago, Illinois, January 18, 2012, letter 366
Park, Samuel S., President, Korean American Bar Association, Chicago, Illinois, January 13, 2012, letter 368
Schwartz, Allen C., Executive Director, Carpls Legal Aid, Chicago, Illinois, February 14, 2011, letter 370
Smedstad, Heather, Corporate Vice President, McDonald's, Oak Brook, Illinois, January 19, 2012, letter 372
Tharp, John J. Jr., Nominee to be U.S. District Judge for the Northern District of Illinois, January 30, 2012, letter 373

WEDNESDAY, FEBRUARY 15, 2012

STATEMENTS OF COMMITTEE MEMBERS

Coons, Hon. Christopher A., a U.S. Senator from the State of Delaware 375
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa 376
prepared statement 677

PRESENTERS

Brown, Hon. Scott P., a U.S. Senator from the State of Massachusetts presenting Timothy S. Hillman, Nominee to be U.S. District Judge for the District of Massachusetts 377
Brown, Hon. Sherrod, a U.S. Senator from the State of Ohio presenting Jeffrey J. Helmick, Nominee to be U.S. District Judge for the Northern District of Ohio 380
Clyburn, Hon. James E., a U.S. Representative from the State of South Carolina presenting Mary Geiger Lewis, Nominee to be U.S. District Judge for the District of South Carolina 383
Graham, Hon. Lindsey, a U.S. Senator from the State of South Carolina presenting Mary Geiger Lewis, Nominee to be U.S. District Judge for the District of South Carolina 383
Kerry, Hon. John, a U.S. Senator from the State of Massachusetts presenting Timothy S. Hillman, Nominee to be U.S. District Judge for the District of Massachusetts 376

Page

Lautenberg, Hon. Frank R., a U.S. Senator from the State of New Jersey presenting Patty Schwartz, Nominee to be U.S. Circuit Judge for the Third Circuit 378
Menendez, Hon. Robert, a U.S. Senator from the State of New Jersey presenting Patty Schwartz, Nominee to be U.S. Circuit Judge for the Third Circuit 379

STATEMENTS OF THE NOMINEES

Helmick, Jeffrey J., Nominee to be U.S. District Judge for the Northern District of Ohio 463
Questionnaire 465
Hillman, Timothy S., Nominee to be U.S. District Judge for the District of Massachusetts 561
Questionnaire 562
Lewis, Mary Geiger, Nominee to be U.S. District Judge for the District of South Carolina 509
Questionnaire 510
Schwartz, Patty, Nominee to be U.S. Circuit Judge for the Third Circuit 384
Questionnaire 386

QUESTIONS AND ANSWERS

Responses of Jeffrey J. Helmick to questions submitted by Senators Grassley and Klobuchar 626
Responses of Timothy S. Hillman to questions submitted by Senators Grassley and Klobuchar 621
Responses of Mary Geiger Lewis to questions submitted by Senators Coburn, Grassley and Klobuchar 637
Responses of Patty Shwartz to questions submitted by Senators Coburn, Grassley and Klobuchar 656

SUBMISSIONS FOR THE RECORD

American Bar Association, Benjamin H. Hill, III, Chair, Tampa, Florida:
Jeffrey James Helmick, May 12, 2011, letter 670
Timothy S. Hillman, December 1, 2011, letter 672
Mary G. Lewis, March 17, 2011, letter 673
Patty Shwartz, October 5, 2011, letter 675
Daniel, E. Bart, Attorney at Law, Charleston, South Carolina, February 10, 2012, letter 676
Guryan, Sheppard A., Attorney at Law, Lasser Hochman, LLC, Roseland, New Jersey, January 9, 2012, letter 683
Hall, Kevin A., Hall & Bowers, LLC, Attorneys at Law, January 23, 2012, letter 685
Wagoner, Mark, State Senator, 2nd District, Columbus, Ohio, February 3, 2012, letter 687
Wilkins, William W., Member, Nexsen/Pruet, Columbus, Ohio, February 10, 2012 688
Zouhary, Judge Jack, U.S. District Court, Toledo, Ohio 689

WEDNESDAY, FEBRUARY 29, 2012

STATEMENTS OF COMMITTEE MEMBERS

Franken, Hon. Al, a U.S. Senator from the State of Minnesota 691
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa 691
prepared statement 948
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement 950

PRESENTERS

Levin, Hon. Carl, a U.S. Senator from the State of Michighan presenting Gershwin A. Drain Nominee to be U.S. District Judge for the Eastern District of Michigan 692

Page

Nelson, Hon. Bill, a U.S. Senator from the State of Florida presenting Robin S. Rosenbaum Nominee to be U.S. District Judge for the Southern District of Florida 693

STATEMENTS OF THE NOMINEES

Drain, Gershwin A., Nominee to be U.S. District Judge for the Eastern District of Michigan 754
Questionnaire 756
Rosenbaum, Robin S., Nominee to be U.S. District Judge for the Southern District of Florida 823
Questionnaire 825
Taranto, Richard Gary, Nominee to be U.S. Circuit Judge for the Federal Circuit 694
Questionnaire 703

QUESTIONS AND ANSWERS

Responses of Gershwin A. Drain to questions submitted by Senators Coburn, Grassley, Klobuchar, Lee, and Sessions 899
Responses of Robin S. Rosenbaum to questions submitted by Senators Coburn, Grassley, and Klobuchar 917
Responses of Richard Gary Taranto to questions submitted by Senators Coburn, Grassley, Klobuchar, and Lee 922

SUBMISSIONS FOR THE RECORD

American Bar Association, Allan J. Joseph, Chair, Washington, DC:
Gershwin A. Drain, November 17, 2011, letter 944
Robin S. Rosenbaum, December 1, 2011, letter 945
Richard G. Taranto, November 10, 2011, letter 946
Farr, H. Bartow, III, Washington, DC, February 23, 2012, letter 947
Lawers, February 16, 2012, joint letter 952
Rubio, Hon. Marco, a U.S. Senator from the State of Florida, prepared statement 958
Stabenow, Hon. Debbie, a U.S. Senator from the State of Michigan, prepared statement 963

ALPHABETICAL LIST OF NOMINEES

Baker, Kristine Gerhard, Nominee to be U.S. District Judge for the Eastern District of Arkansas 100
Drain, Gershwin A., Nominee to be U.S. District Judge for the Eastern District of Michigan 754
Helmick, Jeffrey J., Nominee to be U.S. District Judge for the Northern District of Ohio 463
Hillman, Timothy S., Nominee to be U.S. District Judge for the District of Massachusetts 561
Hurwitz, Andrew David, Nominee to be U.S. Circuit Judge for the Ninth Circuit 10
Lee, John Z., Nominee to be U.S. District Judge for the Eastern District of Illinois 147
Lewis, Mary Geiger, Nominee to be U.S. District Judge for the District of South Carolina 509
Rosenbaum, Robin S., Nominee to be U.S. District Judge for the Southern District of Florida 823
Russell, George Levi, III, Nominee to be District Judge for the District of Maryland 244
Schwartz, Patty, Nominee to be U.S. Circuit Judge for the Third Circuit 384
Taranto, Richard Gary, Nominee to be U.S. Circuit Judge for the Federal Circuit 694
Tharp, John J., Nominee to be U.S. District Judge for the Northern District of Illinois 178

NOMINATION OF HON. ANDREW DAVID HURWITZ, OF ARIZONA, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT; KRISTINE GERHARD BAKER, OF ARKANSAS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS; JOHN Z. LEE, OF ILLINOIS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS; JOHN J. THARP, JR., OF ILLINOIS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS; AND HON. GEORGE LEVI RUSSELL III, OF MARYLAND, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

THURSDAY, JANUARY 26, 2012

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

The Committee met, pursuant to notice, at 2:15 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Richard J. Durbin, presiding.

Present: Senators Durbin and Kyl.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Good afternoon. This hearing of the Judiciary Committee will come to order. Today we consider five judicial nominees to the Federal bench: Andrew Hurwitz, nominated to serve on the U.S. Court of Appeals for the Ninth Circuit; Kristine Baker, nominated to the Eastern District of Arkansas; George Russell, nominated to the District Court of Maryland; and two nominees for the Northern District of Illinois, John Lee and Jay Tharp. Each of these nominees has the support of their home State Senators, and I commend President Obama for sending them to the Senate for consideration.

At these hearings it is traditional for nominees to be introduced to the Committee by Senators from their home States. I am going to first turn to my Ranking Member and friend, Senator Jon Kyl of Arizona, for opening remarks he has relative to the nomination

of Andrew Hurwitz. After Senator Kyl speaks, I will invite my colleagues at the witness table to make their introductions, and I know they have busy schedules, so after each of you has introduced your nominee, you are certainly free to leave.

Senator Kyl will be introducing Justice Hurwitz; Senator Mikulski and Senator Cardin for Judge Russell; Senators Pryor and Boozman for nominee Baker.

I will now introduce the two district court nominees from Illinois, John Lee and Jay Tharp. Before I do, I want to say with some sadness that my colleague Mark Kirk cannot be with us today. As we all know, he suffered a medical illness last Saturday, is hospitalized, and he has all of our thoughts and prayers with him every moment of the way until he returns. He fully supports both of these nominees, and we will enter his statement into the record reflecting that fact. We look forward to Mark's quick return to the Senate. Senator Kirk and I both support these nominees. These two will fill vacancies that have been identified as judicial emergencies by the Administrative Office of the U.S. Courts, and we will work together to see that the nominees are confirmed.

The first Illinois nominee is going to be John Lee, nominated to the Chicago-based seat formerly occupied by Judge David Coar. He is currently a partner at the law firm of Freeborn & Peters where his practice concentrates on commercial litigation. Born to Korean parents, Mr. Lee came to this country as an immigrant at the age of 5. His father was a coal miner, his mother a nurse. They settled in Chicago's Albany Park neighborhood in a one-bedroom apartment that got a little crowded when they were later joined by Mr. Lee's grandmother and his younger brother.

From his humble beginnings, Mr. Lee went to Harvard College, graduating magna cum laude, then earned his law degree cum laude from Harvard Law School. After law school, he worked as a trial attorney in the Department of Justice Environment and Natural Resources Division, representing the United States in litigation. After his tenure at the Justice Department, Mr. Lee worked at the law firms of Mayer Brown and Grippo & Elden before joining Freeborn & Peters in 1999. His practice has focused on antitrust, intellectual property, environmental, and other complex litigation matters. He has received numerous awards and recognitions, including being named a Leading Lawyer from 2008 through 2011 by the Leading Lawyers Network. He has a distinguished record of community service in the Chicago area, serves as the president of the board of directors of the Asian Human Services of Chicago, an organization that provides social services to Asian American immigrant communities. He serves on the board of directors and was past president of the Coordinated Advice and Referral Program for Legal Services, which is a Legal Services hotline in Cook County, serving more than 50,000 low-income individuals each year. Additionally, Mr. Lee is a member of the board of directors of the Asian American Bar Association of Chicago.

Mr. Lee's nomination is historic. If confirmed—and I trust he will be—Mr. Lee would be the first Korean American ever to serve as a Federal Article III judge in Illinois. He would also be only the second Korean American to serve as a Federal district judge in our Nation's history. He is joined here by family and friends that I

know he will have the opportunity to introduce when he comes to the table.

Our other Illinois nominee is Jay Tharp, nominated to fill the Chicago district court seat open with the fact that Judge Blanche Manning is taking senior status. He is currently a partner in the Chicago office of Mayer Brown, where he is co-leader of the firm's securities litigation and enforcement practice.

He has quite a military history in his family. He was born into a military family, the son of a lieutenant colonel in the Marine Corps. I might also add that he told me that he had a grandfather who was serving in the Marines in World War I, so it is a distinguished career in the Marine Corps including himself and his son, who is currently training in the Marine Corps.

He attended Duke University on an ROTC scholarship, an undergraduate degree summa cum laude, commissioned as a second lieutenant in the Marine Corps, served on active duty with the Marines from 1982 to 1987, achieving the rank of captain, earning the Navy Achievement Medal and the Navy Distinguished Midshipman Award.

After his military service, Mr. Tharp attended Northwestern University Law School where he graduated magna cum laude, served on the Northwestern University Law Review, served as judicial clerk for Judge Joel Flaum of the Seventh Circuit, then worked as Assistant U.S. Attorney from 1992 to 1997 in the appellate and general crimes divisions, also on the Organized Crime Drug Enforcement Task Force.

After his tenure as Federal prosecutor, he joined Mayer Brown where his practice specializes in complex commercial litigation and criminal investigations with a focus on securities fraud.

He has received numerous recognitions, including being named an Illinois Super Lawyer from 2009 through 2011, served as the adjunct professor of trial advocacy at Northwestern University Law School, a member of the Law Fund Board at Northwestern, served for a year as vice chair of the Chicago Bar Association Judicial Evaluation Committee.

At this point I would like to ask consent to include in the record the statement that I mentioned earlier by Senator Mark Kirk, who actually brought his name to nomination, and without objection, we will include that in the record at this point. I am sure Senator Kirk, were he here, would be joining in supporting both of these nominees enthusiastically.

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

Senator DURBIN. Senator Kirk and I each have established a bipartisan process with screening committees that are bipartisan in nature, and we each have an ultimate veto on the other's choice, so this is clearly a bipartisan effort from start to finish. Upon the strong recommendation of the committee, Senator Kirk came to me and suggested Mr. Tharp, and I agree with that choice, and I look forward to working with him, as he is going to work with me, to help Mr. Lee become a Federal district court judge as well.

Mr. Tharp is also joined by family and friends whom I am sure he will be introducing when he comes to the table.

Let me turn first to the first panel, the Ninth Circuit Court nominee, and I am going to ask Senator Kyl if he would be kind enough to introduce him.

PRESENTATION OF HON. ANDREW DAVID HURWITZ, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT, BY HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you very much, Mr. Chairman, and it is a privilege for me to introduce to the Committee Justice Andy Hurwitz from the State of Arizona to serve on the Ninth Circuit Court of Appeals. Senator McCain could not be here today but asked me to express his strong support for the nominee as well.

A bit about Justice Hurwitz. He received his undergraduate degree from Princeton University and law degree from Yale, where he was the note and comment editor of the Yale Law Journal. He served as a law clerk to Judge Jon Newman of the United States District Court for Connecticut and Judge Joseph Smith of the U.S. Court of Appeals for the Second Circuit, and finally to Associate Justice Potter Stewart of the United States Supreme Court.

He has served on the Arizona Supreme Court since the year 2003. Before joining the Arizona Supreme Court, Justice Hurwitz was a partner in the Phoenix firm of Osborn & Maledon, where his practice focused on appellate and constitutional litigation, administrative law, and civil litigation. He is a member of the bar both in Arizona and Connecticut and received the highest grade on the Arizona bar examination back when he took it, and I will not tell you what year.

He has argued cases before the United States Supreme Court. He served as chief of staff to the Governor of the State of Arizona, and I have known him since those days 30 years ago. That was Governor Babbitt, and then also Governor Mofford in 1988. He has been a member of the Arizona Board of Regents from 1988 through 1996, also having served as president of the board. That is the entity in Arizona that has jurisdiction over all of our universities and colleges.

He has taught regularly at Arizona State University Law College. He delivered the Willard H. Pedrick Lecture at the College of Law in 1999, and that is a big deal. I am going to be doing that this year, so I can tell you I am honored to do that. He was appointed by Chief Justice Rehnquist in 2004 as a member of the Advisory Committee on the Federal Rules of Evidence and reappointed to a second term by Chief Justice Roberts. It is very easy to see and it is obvious to those of us who have been in Arizona a long time why Justice Hurwitz was awarded the ABA's highest rating, unanimous well qualified.

So it will be my privilege to support his nomination, and I am honored to be able to introduce him to the panel today.

Senator DURBIN. Senator Kyl, thank you very much, and the other nominees, I am sure, are honored by the presence of four of our colleagues, and I would like to turn at this moment to Senator Barbara Mikulski.

PRESENTATION OF HON. GEORGE LEVI RUSSELL III, 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 Durbin, Senator Kyl, and to you, Senator Durbin, we express our good wishes to Senator Kirk as well.

Today Senator Cardin and I are both delighted and enthusiastic to introduce to the Committee Judge George Russell III to serve on the United States District Court for Maryland. We want to thank Senator Leahy and Senator Grassley and their excellent staff for moving this procedure along.

We are so enthusiastic to bring this nominee, and as I look at taking this issue—Senator Cardin and I take this recommendation very seriously, and when I consider a nominee for the Federal bench, I have four criteria: absolute personal integrity, judicial competence and temperament, a commitment to core constitutional principles, and a history of civic engagement in Maryland. We want someone who both understands and grasps the law, but understands the human condition as well. I mention these standards because this is exactly what we are talking about, about Judge George Levi Russell III.

Mr. Russell already serves as a judge. He serves on the circuit court of the State of Maryland. It is a testimony to his commitment and the belief of those who appoint judges that he will render impartial justice by the fact that this man was recommended by a Republican Governor, Governor Ehrlich, and he has served with distinction there.

He comes with a wonderful education. He went to Morehouse for his undergraduate degree, the University of Maryland for his law degree, passed the bar, and has worked both in the public domain as well as in the private sector.

As a young attorney, he served as a law clerk for Judge Robert Bell, the chief judge for the Maryland Court of Appeals. He also worked in the public area for 10 years as an Assistant U.S. Attorney handling criminal and civil cases and then, because of his deft skills with people, was asked to be the community outreach coordinator to help reduce violent crime. He also then worked in the private sector working for three well-known Maryland law firms.

He is a homegrown guy, born and raised in Baltimore. His father is one of the most beloved and esteemed jurists in Maryland. His father, George Russell, Jr., was a legal pioneer, serving as the city's first African-American circuit judge, but he was not only the first, he served with such great distinction.

This George Russell maintains his—is well known and well respected for the number of cases that he has presided over, over 2,700. He is well known for having the appropriate judicial temperament in a hard-scrabble court, which is the Baltimore City Circuit Court, and at the same time to really be able to render justice in a way that everyone has confidence.

He has maintained his connection to everyday people by serving on the board of directors of the Enoch Pratt Library, his deep commitment to the empowerment of all. He has been a Big Brother, and he served in the Community Law Center.

So whether it is working in a private law firm as a skilled and deft litigator, as a tough, strong prosecutor, as someone who has already demonstrated a judicial ability, this is George Russell. He is joined here today by his mother and father, by his wife and his children, and by his in-laws. So when you have the endorsement of the Maryland Bar and your in-laws and the two hometown Senators, I think that is a pretty good set of recommendations.

Senator DURBIN. Thank you, Senator Mikulski.

Senator Cardin.

PRESENTATION OF HON. GEORGE LEVI RUSSELL III, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, BY HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Senator Durbin, Senator Kyl, thank you very much for the opportunity to introduce Judge Russell to the Committee. I join Senator Mikulski in my enthusiastic support for his confirmation, and I would ask consent that my statement be made part of the record.

Senator DURBIN. Without objection.

Senator CARDIN. Let me just summarize a few points.

Senator Mikulski mentioned how we take these appointments or recommendations very, very seriously. Like Senator Durbin, we have a nonpartisan process to try to get the very best on the Federal bench, and we think Judge Russell is the very best for this lifetime appointment to the district court for the District of Maryland.

I want to thank Judge Russell for his commitment to public service. He has been a trial court judge. He has served our community well. I want to thank him, his wife, and his entire family for the sacrifices that they make. This is a family commitment.

Senator Mikulski mentioned his father, who is here, a person whom I have known all my life. I have known the Russell family all my life. Judge Russell's father was a pioneer and leader in our community and has been a role model for many of our leaders today. I admire him greatly for his skills as a judge. He served on the same bench that my father served on, and we are good friends. He has been a civic leader and a person whom we look up to as one of the giants in the legal profession. His son is following in those footsteps. The family knows public service. His wife is a district court judge in Baltimore, so this is a family that takes public service very, very seriously.

Senator Mikulski mentioned the experience of Judge Russell, and I will not repeat it. But I do want to point out that he has been a prosecutor; he has handled civil cases in the U.S. Attorney's Office. He has experience in the private sector of law, and he has trial experience as a judge. I think that is the type of experience that we look at and we can judge that he will be the type of person we would want to have for a lifetime appointment on our district court.

He also brings community commitment. Senator Mikulski mentioned the Enoch Pratt Library where he is a trustee. There is Big Brothers and Big Sisters he is involved in; the Community Law Center, where he serves on the board of directors.

I asked him the question during the interview process why he wanted to be a Federal judge. I ask that usually routinely of our nominees. His answer was one that came from his heart about how he really wants to help the community and serve the community, and he thinks he can serve the people best by what he is doing on the bench.

He has taken on some of the toughest problems in our community. He is known for taking on drug violence. He is known for taking on mental health issues. And I think that sensitivity will serve him well on the district court.

I strongly encourage the Committee to report out his nomination. He has my strong support.

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

Senator DURBIN. Thank you very much, Senator Cardin. You and Senator Mikulski are welcome to stay, but I also understand with your schedules you may have to absent yourself. But I am sure it is a great honor to your nominee that you are both present here and supportive of his candidacy.

I would like to now introduce Senator Mark Pryor of Arkansas to speak to the nomination of Kristine Baker.

PRESENTATION OF KRISTINE GERHARD BAKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS, BY HON. MARK L. PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman, and I want to thank you and Senator Kyl for allowing me to come here today and introduce Kris. G. Baker. I would also like to thank her family and friends who made the trip. I am not sure if all of her family is here because it is awfully quiet in the room right now. Her four children, who are all 8 years old and under, came in my office earlier, and it was like having four little Arkansas tornadoes running around my office. But I kind of thought if she can handle these kids, she can handle any lawyer in the courtroom. So, anyway, I am glad that she brought them, and it is great to have them here.

I am really honored to sit here today and recommend her for confirmation as a Federal judge in the Eastern District of Arkansas, and I am also honored to be joined by Senator Boozman. I think one of the things that John and I both know is that Kris has earned a reputation in legal circles, in the business community, and also around the State of Arkansas as a hard-working and brilliant attorney.

While this Committee has seen its fair share of polarizing nominees and controversial nominations, you will not find that in Kris Baker. She is very well respected for her extensive experience in civil matters and has a strong commitment to a fair and impartial legal system.

I have a three-pronged approach when considering judges. First, I ask, Is the person qualified? Second, do they have the proper judicial temperament? And, third, do they have the ability to be fair and impartial? I am not only comfortable that she passes these, but I am confident that she far exceeds all of these standards. And as

you learn about this nominee, I think you will feel the same way about her.

She currently practices law as a partner in the law firm of Quattlebaum, Grooms, Tull & Burrow in Little Rock, and she specializes in commercial, employment, and First Amendment litigation. In fact, before the hearing, one of her law partners, Steve Quattlebaum, who came up from Little Rock to be with her today, told me, "I just do not know what I would have done without her all these years."

She joined the firm as an associate in the year 2000 and became a partner in 2002. Previously, she worked at the law firm of Williams & Anderson in Little Rock from 1998 to 2000. She began her career as a law clerk to Hon. Susan Webber Wright of the U.S. District Court for the Eastern District of Arkansas, from 1996 to 1998. She earned her law degree with honors from the University of Arkansas School of Law and her B.A. from St. Louis University in 1993.

It is not just her friends and family who think a lot of her, but she has been recognized as one of Chambers and Partners' America's Leading Lawyers for Business, named a Rising Star by Mid-South Super Lawyers, and listed with the Best Lawyers in America, the Martindale-Hubbell Bar Register of Preeminent Women Lawyers, and she has been named an Arkansas Business' Forty Under 40.

So character and integrity are two qualities that she also has, and she has done extensive pro bono work representing clients in a variety of cases through the Pulaski County Bar Association's Volunteer Organizations Center for Arkansas Legal Services that we call "VOCALS" down in Little Rock by helping elderly and sick prisoners receive the proper medical care. She is also involved in many other community and school organizations and efforts.

So I am very confident that she has what it takes to be a great Federal judge, and I want to thank the Committee again for giving her the consideration, and I would encourage you all to give her a good vote as she goes through the Committee.

Senator DURBIN. Thanks, Senator Pryor.

Senator Boozman.

PRESENTATION OF KRISTINE GERHARD BAKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS, BY HON. JOHN BOOZMAN, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BOOZMAN. Thank you, Senator Durbin and Senator Kyl, for allowing me to speak today at this really very important hearing. I am proud to be here to introduce and support, along with Senator Pryor, Kristine G. Baker's nomination as United States District Judge for the Eastern District of Arkansas. Her extensive experience and her impressive background I think unanimously qualifies her for the position of district judge.

I also would like to acknowledge her family. Her husband, John, is with us, and her four children. I know they are awfully proud of their wife and mom. Why don't you guys stand up? Again, this is an active little family. I have got three daughters, so I cannot relate to the little boys.

She was born in Colorado Spring, Colorado; moved to the State of Arkansas in 1994; received her J.D. from the University of Arkansas School of Law, where she graduated with high honors, was ranked No. 3 in her class. She was articles editor for the Arkansas Law Review, a member of the Board of Advocates, and a member of the University of Arkansas First Amendment National Moot Court Team.

Upon graduation, as Mark mentioned, she clerked for Susan Wright, then chief judge for the Eastern District of Arkansas. As also mentioned, Kris currently is in the Quattlebaum, Grooms, Tull & Burrow law firm, in which she became a partner in 2002, joined the firm in 2000. Her practice has been devoted to litigation in really a diverse range of topics, which is so important in assuming the position that she will be in, including allegation of deceptive trade practices, breach of contract, breach of fiduciary duty, and fraud. She also handles First Amendment and Freedom of Information Act issues and has received several awards and accolades, including being recognized in commercial litigation in Chambers and Partners' America's Leading Lawyers for Business, listed with the Best Lawyers in America in the areas of commercial litigation, litigation of First Amendment, litigation of labor and employment law, individuals' employment law, management and labor law, named Best Lawyers 2012 Little Rock Litigation, and the list goes on and on. And I ask unanimous consent to put all of this in the record.

Senator DURBIN. Without objection.

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

Senator BOOZMAN. Kris has had extensive jury trial experience, has also served as counsel in non-jury trials, arbitration, and very successful in that area. She is a member of the Pulaski County Bar Association, the Volunteer Organizations Center for Arkansas Legal Services, and devotes significant time each year to pro bono cases, which, again, is very important.

She is very active in her church, affiliated with the Presbyterian Village, Our Lady of the Holy Souls Catholic Church, Dress for Success Little Rock, and the March of Dimes.

So I believe that one of the most important things that we do in the Senate is the confirmation of judges, the process of selecting people with the right temperament and qualifications. I believe that Kris Baker will do an excellent job and we will all be proud of her future service on the bench. I congratulate her on her nomination and strongly support her confirmation.

With that, I yield.

Senator DURBIN. Thank you, Senator Boozman. Thank you, Senator Pryor. We appreciate your being here today.

Now the Committee will move to the consideration of the nominees. As is the custom of the Committee, the first panel will consist of the circuit court nominee, the Ninth Circuit nominee, Andrew Hurwitz, and I would ask, while we are changing some of the identification cards here, if Justice Hurwitz would please come to the witness table.

Remain standing for just one moment, please. If you would please raise your right hand. Do you affirm that the testimony you are about to give before this Judiciary Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Justice HURWITZ. I do.

Senator DURBIN. Thank you. Let the record reflect that the witness answered in the affirmative.

I might say to Senator Kyl, my only chance to ever be in a movie was a movie called "Contagion," which they filmed in Chicago, and I administered that oath. I thought I did it flawlessly, but I was lost on the cutting room floor.

[Laughter.]

Senator DURBIN. So I practiced for it a lot before I got here, Justice Hurwitz, as you can tell. Thank you for being here. Please at this moment, if you would be kind enough to introduce family and friends who are in attendance, and you are welcome to make an opening statement.

STATEMENT OF HON. ANDREW DAVID HURWITZ, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Justice HURWITZ. Thank you, Senator Durbin, Senator Kyl. I do not have a formal statement today. I do want to thank the President for his confidence in me in making this nomination. I want to thank Senators Durbin and Kyl for holding this hearing. And I want to thank Senator McCain for his support and also Congressman Pastor for his support in this process.

I do want to introduce some guests who are here with me today:

The most educated person in our family, Dr. Sally Hurwitz, my wife, the associate dean of the Mary Lou Fulton Teachers College at Arizona State University;

My baby brother, Gary, who is a practicing lawyer in Pennsylvania, and his wife, Holly;

And five friends of longstanding whom I will not embarrass with their titles and how I met them: We have back here Brian de Vallance; Molly Broad; Hattie Babbitt; Iris Roman Burnett, whom I have known since I was a very small child. And have I forgotten someone in this group? I do not think I have.

And I also wanted to say hello to my children, who are watching online today, my three children; to my chambers family and colleagues at the court; and—I suspect they can hear me—to my father and mother, who are no longer with us, but I think are listening from someplace else.

[The biographical information of Justice Hurwitz follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Andrew David Hurwitz

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

   United States Circuit Judge for the Ninth 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.

   Arizona Supreme Court
   1501 West Washington Street
   Phoenix, Arizona 85007

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

   1947; New York, New York

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

   1968 – 1972, Yale Law School; J.D., 1972 (Member of class of 1971, graduated one semester after entering class because of military service)

   1964 – 1968, Princeton University; A.B., *cum laude*, 1968

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

2003 – present
Arizona Supreme Court
1501 West Washington Street
Phoenix, Arizona 85007
Vice Chief Justice (2009 – present)
Justice (2003 – 2009)

1977 – 1980; 1988; 1994 – 1995; 2001; 2004 – present
Sandra Day O'Connor College of Law
(formerly known as Arizona State University College of Law)
1100 South McAllister Avenue
Tempe, Arizona 85287
Adjunct Professor (1977 – 1980; 1988; 2004 – present)
Distinguished Visitor from Practice (2001)
Visiting Professor of Law (1994 – 1995)

1974 – 1980; 1983 – 2003
Osborn Maledon, PA (and predecessor firms, Meyer Hendricks Victor Osborn & Maledon, PA and Martori Meyer Hendricks & Victor, PA)
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012
Shareholder (1977 – 1980; 1983 – 2003)
Associate (1974 – 1977)

January – April 1988
Office of Arizona Governor Rose Mofford
1700 West Washington Street
Phoenix, Arizona 85007
Chief of Staff (volunteer capacity, while on leave from law firm)

1980 – 1983
Office of Arizona Governor Bruce Babbitt
1700 West Washington Street
Phoenix, Arizona 85007
Chief of Staff

1973 – 1974
Hon. Potter Stewart (deceased)
Supreme Court of the United States
1 First Street NE
Washington, D.C. 20543
Law Clerk

1972 – 1973
Hon. J. Joseph Smith (deceased)
United States Court of Appeals for the Second Circuit
450 Main Street
Hartford, Connecticut 06103
Law Clerk

January – August 1972
Hon. Jon O. Newman
United States District Court for the District of Connecticut
(now Senior Judge, United States Court of Appeals for the Second Circuit)
450 Main Street
Hartford, Connecticut 06103
Law Clerk

Summer 1971
Orrick Herrington & Sutcliffe
405 Howard Street
San Francisco, California 94105
Summer Clerk

Summer 1971
Lewis & Roca
40 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
Summer Clerk

September 1969 – January 1970; June – September 1970
Jacobs Grudberg & Belt
350 Orange Street
New Haven, Connecticut 06503
Law Clerk

Summer 1968
New Jersey Department of Community Affairs
101 South Broad Street
Trenton, New Jersey 08608
Summer Intern

Other Affiliations (uncompensated):

1992 – 2003
Children's Action Alliance
4001 North Third Street, Suite 160
Phoenix, Arizona 85012
Board of Directors (1999 – 2003)
Secretary (2002 – 2003)

1989 – 2003
Arizona State University Research Park
8750 South Science Drive
Tempe, Arizona 85284
Board of Directors

1994, 1996, 1998
Arizona Court of Appeals, Division I
State Courts Building
1501 West Washington
Phoenix, Arizona 85007
Judge Pro Tempore

1992 – 1993
Arizona Board of Regents
220 North Central Avenue, Suite 230
Phoenix, Arizona 85004
President

1986 – 1988
Arizona Center for Law in the Public Interest
202 East McDowell Road, Suite 153
Phoenix, Arizona 85004
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.

Connecticut Army National Guard/US Army Reserve, April 1969 to May 1975; last rank Specialist 5; Honorable Discharge

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.

   500 Leading Judges in America, *Lawdragon* Magazine (2006)

   Best Lawyers in America (1995 – 2005)

   America's Leading Lawyers for Business, Chambers USA (2003)

   Willard H. Pedrick Lecture, Sandra Day O'Connor College of Law, Arizona State University (1999)

   Top score, State of Arizona Bar Examination (July 1974)

   Note & Comment Editor, Yale Law Journal (1971 – 1972)

   Benjamin N. Cardozo Prize for Best Brief in Moot Court (appeals), Yale Law School (1970)

   Phi Beta Kappa, Princeton University (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.

   Advisory Committee on Federal Rules of Evidence

   American Bar Association

   American Bar Foundation
   Life Fellow (2009 – present)
   Fellow (2004 – 2009)

   American Judicature Society

   American Law Institute

   Arizona Courts Ad Hoc Committee on Rules of Evidence
   Chair (2010 – 2011)

   Arizona Foundation for Legal Services and Education (formerly Arizona Bar Foundation)
   Sustaining Fellow (2004 – present)

Commission on Technology of the Arizona Judicial Council
Chair (2009 – present)
Chair, E-Court Subcommittee (2006 – present)

Horace Rumpole Inn of Court

Maricopa County Bar Association

National Conference of Bar Examiners, Torts Drafting Committee

Pima County Commission on Trial Court Appointments
Acting Chair (2005 – 2009)

State Bar of Arizona
Committee on Rules of Professional Conduct (1985 – 1990)
Examination and Bar Review Committee (1986 – 1987)
Supreme Court Board of Governors Liaison (2003 – 2005)
Task Force on Professionalism (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, 1973
Arizona, 1974

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, 1976
United States Court of Appeals for the Second Circuit, 1977
United States Court of Appeals for the Seventh Circuit, 1987
United States Court of Appeals for the Ninth Circuit, 1975
United States District Court for the District of Arizona, 1975
United States District Court for the District of Connecticut, 1977
United States Tax Court, 1987

There have been no lapses in membership.

11. **Memberships**:

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

Arizona Board of Regents (1988 – 1996)
President (1992 – 1993)
Ad Hoc Committee on University Access and Retention (1989)
Committee on Enrollment Growth (1993 – 1994)

Arizona Center for Law in the Public Interest
Board of Directors (1986 – 1988)

Arizona State University Research Park
Board of Directors (1989 – 2003)

Arizona Town Hall (1992 – 2004)

Children's Action Alliance
Board of Directors (1999 – 2003)
Secretary (2002 – 2003)

City of Phoenix
Chair, Street Environment Committee (1989 – 1990)
Chair, Neighborhood Improvement Committee (1986 – 1988)

Northern Arizona Princeton University Alumni Association (1983 – present)

Phoenix Swim Club (approx. 2001 – present)

Princeton Alumni Schools Committee (1983 – present)

United States Masters Swimming Association (approx. 2001 – present)

University Club of Phoenix (late-1980s to 1990s)

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

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above discriminates or previously discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

Possible Responses to the ACTL/IAALS Report: The Arizona Experience, 43 Ariz. St. L.J. 461 (2011). Copy supplied.

Justice Respectfully Disagrees with Robb, Arizona Republic, Oct. 27, 2009. Copy supplied.

Ring Cycle, Arizona Attorney (Mar. 2006). Copy supplied.

Jon O. Newman and the Abortion Decisions: A Remarkable First Year, 46 N.Y.L. Sch. L. Rev. 231 (2002-2003). Copy supplied.

Dear Al: It's Time to Avert Crisis, Arizona Republic, Dec. 1, 2000. Copy supplied.

Everyone Needs to Contribute to Civility, Arizona Business Gazette, Apr. 29, 1999. Copy supplied.

Diversity Works for Law Schools, Society, Arizona Business Gazette, Apr. 22, 1999. Copy supplied.

Universities Not Awash in Money, Arizona Republic, June 28, 1993. Copy supplied.

Graduation Rates: The Dilemma and the Challenge, Phoenix Gazette, Nov. 30, 1992. Copy supplied.

A Threat to Phoenix's Future, Phoenix Gazette, Mar. 12, 1987. Copy supplied.

Taxpayer Suits and the Aggregation of Claims: The Vitiation of Flast *by* Snyder, 79 Yale L.J. 1577 (1970). Copy supplied.

The Jurisprudence of Arthur J. Goldberg. Senior Thesis Presented to the Faculty of the Department of Politics and the Woodrow Wilson School of Public and International Affairs, Princeton University, Apr. 16, 1968. 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.

Since 2010, I have served as chair of the Arizona Courts Ad Hoc Committee on Rules of Evidence. The committee issued a set of proposed revisions to the Arizona Rules of Evidence. Proposal supplied.

In 2010, Arizona Supreme Court Chief Justice Berch wrote a tribute to retiring Chief Justice McGregor, which I and the other justices signed. Copy supplied.

As a member of the Arizona Supreme Court, I endorsed *The Sedona Conference Cooperation Proclamation*, which advocates cooperation by parties in the discovery process. Copy supplied.

As a member of the Advisory Committee on the Federal Rules of Evidence, I voted to update the Evidence Rules in October 2007. A copy of a memo that includes the proposals with my and other committee members' comments on the proposals is supplied.

While I was a member of the Advisory Committee on the Federal Rules of Evidence, the committee also submitted reports to the Standing Committee on Rules of Practice and Procedure in 2005 and 2009. Copies supplied.

Since 2006, I have served on the e-Court subcommittee of the Arizona Judicial Council Commission on Technology and, since 2009, have also served as chair of the Commission. Each year, the Commission releases an Information Technology Strategic Plan and I have served since the release of the Fiscal Year 2007 report. Reports for FY 2007-2011 are available at http://www.azcourts.gov/cot/HistoricalMaterials.aspx. The report for FY 2012 is available at http://www.azcourts.gov/cot/StrategicPlans.aspx. I do not play a role in creating these reports, but do, as a commissioner, authorize the filing of the reports with the Arizona Judicial Branch.

Report of the Task Force on Professionalism, Mar. 21, 2005. Copy supplied.

In 1994, I led an effort to require annual reports from Arizona universities on whether they were meeting certain goals, known as the "Hurwitz Measures," with respect to undergraduate education. Meeting minutes from the 1994 discussion of

the goals are supplied, along with executive summaries of the 1995 and 1996 reports on the goals.

In 1993 and 1994, I chaired a statewide commission on enrollment growth in Arizona universities. A copy of the final report is supplied.

Our Common Commitment: Enhancing Ethnic Minority Integration and Achievement in Arizona's Universities, Arizona Board of Regents, Ad Hoc Committee on University Access and Retention, September 1989. 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.

Since 2009, I have made comments and given several presentations about my work on Arizona court committees to the Arizona Judicial Council on several occasions. Meeting minutes supplied.

On January 13, 2003, May 5, 2002, and March 7, 2002, I appeared before the Commission on Appellate Court Appointments to interview for a spot on the Arizona Supreme Court. I have no notes, transcripts or recordings, but press coverage of the January 2003 appearance is supplied.

In January 1993, in my capacity as a member of the Arizona Board of Regents, I testified before the Arizona Senate Education Committee in support of separating university tuition and fee revenues from state funding. I have been unable to obtain a transcript or recording, but press coverage is supplied.

On April 14, 1988, I testified before the Arizona Senate Government Committee about Governor Mofford's support for a state holiday to honor Martin Luther King, Jr. I have been unable to obtain a transcript or recording, but press coverage is supplied.

In 1984 or 1985, I wrote a letter on behalf of a client to the Arizona Department of Health Services regarding scientist Woodrow Monte's petition to ban NutraSweet. I do not have a copy of the original letter, but press coverage is supplied.

Between 1988 and 1996, I served on the Arizona Board of Regents. I often offered my policy views and also participated in voting on policies before the Board. Meeting minutes from July 1994 to the end of my tenure in 1996 are available at http://tinyurl.com/azregents. Additional press coverage of my statements on policy matters during meetings is also supplied.

In addition to the January 1993 instance listed above, I have testified before committees of the Arizona legislature on several other occasions in my capacity as a member of the Arizona Board of Regents concerning higher education issues. I have no copies of any such testimony. I have contacted the Arizona House of Representatives and Arizona Senate, and have been informed that their databases only identify those who testified before legislative committees since 2002, and that a search of those databases does not reveal my name as one who provided testimony. I have been informed that the only way to determine who provided testimony before the effective date of the databases is to search the minutes of each committee in each house of the legislature year by year.

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 28, 2011 – Symposium on the Restyled Federal Rules of Evidence, Williamsburg, Virginia. I have no notes, transcript, or recording. The presentation was sponsored by the Marshall-Wythe School of Law, College of William & Mary, P.O. Box 8795, Williamsburg, Virginia 23187 and the Advisory Committee on the Federal Rules of Evidence, Administrative Office of the U.S. Courts, One Columbus Circle, NE, Suite 4-170, Washington, DC 20544.

October 12, 2011 – Comments for Bar Orientation, State Bar of Arizona, Phoenix, Arizona. A copy of my remarks is supplied.

October 6, 2011 – Updates to the Rules of Evidence, Presentation to the State Bar of Arizona, Phoenix, Arizona. A copy of my PowerPoint presentation is supplied. Copy of recording supplied.

June 23, 2011 – Rules of Evidence, Presentation to Arizona Judicial Conference, Paradise Valley, Arizona. A copy of my PowerPoint presentation is supplied.

April 27, 2011 – Presentation to the Yavapai County Bar Association, Prescott, Arizona. A copy of my PowerPoint presentation is supplied.

April 14, 2011 – Presentation to the Arizona Association of Defense Counsel, Phoenix, Arizona. A copy of my PowerPoint presentation is supplied.

February 25, 2011 – Nuts and Bolts Seminar, State Bar of Arizona, Phoenix, Arizona. A copy of my notes is supplied. Copy of recording supplied.

February 25, 2011 – State Bar Seminar on the Economic Loss Rule, Phoenix, Arizona. A copy of my notes is supplied. Copy of recording supplied.

February 23, 2011 – Presenter of CLE on the Rules of Evidence, Yavapai County Bar Association. I handed out a copy of the rules proposal supplied in response to 12(b).

January 21, 2011 – Swore in Superior Court Judge Peter Thompson, Phoenix, Arizona. I administered the Oath of Office and did not make additional remarks. I have no notes, transcript or recording. The address of the Superior Court is 201 West Jefferson, Phoenix, Arizona 85003.

January 21, 2011 – Presentation to the Forensic Science Academy, Phoenix, Arizona. I handed out a copy of the rules proposal supplied in response to 12(b) and additional handouts that are supplied.

October 29, 2010 – Presentation to the American College of Trial Lawyers, Phoenix, Arizona. A copy of my notes is supplied. Copy of recording supplied.

July 21, 2010 – Tour of the Arizona Supreme Court and dinner with members of Gen Next. I have no notes, transcript or recording. The address of Gen Next is 4100 MacArthur Boulevard, Suite 325, Newport Beach, California 92660.

July 15, 2010 – Panel on Pleading, State Bar of Arizona CLE by the Sea, Coronado, California. A copy of my notes is supplied. Copy of recording supplied.

July 15, 2010 – *Arizona Appellate Practice*, Presentation at CLE by the Sea. Copy of recording supplied.

June 25, 2010 – Meet the Justices panel, 2010 Arizona Supreme Court Review, State Bar of Arizona. I believe a recording of this event was made, and will supply a copy if I am able to obtain it.

June 12, 2010 – *New Topics in Evidence*, Presentation at the State Bar Convention, Tucson, Arizona. A copy of my PowerPoint presentation is supplied.

May 14, 2010 – Speech at the Graduation of the State Bar Leadership Institute, Phoenix, Arizona. A copy of my notes and press coverage are supplied.

May 11, 2010 – Presentation at the Duke Conference on Civil Litigation, Advisory Committee on Civil Rules, Durham, North Carolina. A copy of a report summarizing the event is supplied.

April 27, 2010 – Speech at Phoenix School of Law, Arizona Government Symposium, Phoenix, Arizona. Remarks supplied.

April 15, 2010 – Speech to the Federal Bar Association, Tucson, Arizona. A copy of my notes is supplied.

April 9, 2010 – *Meet the Bench*, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

March 23, 2010 – Speech to the Yale Club of Phoenix, Tempe, Arizona. A copy of my notes is supplied.

February 12, 2010 – *The Federal Rules Amendment Process*, Presentation to the Federal District Conference, Phoenix, Arizona. A copy of my notes is supplied.

February 10, 2010 – Remarks to the Maricopa County Justices of the Peace, Phoenix, Arizona. A copy of my notes is supplied.

January 22, 2010 – Speech to the State Bar Appellate Section, Phoenix, Arizona. A copy of my notes is supplied.

January 8, 2010 – Brief Remarks for "We the People," Phoenix, Arizona. A copy of my remarks is supplied.

November 19, 2009 – Arizona Supreme Court Technology Broadcast Introduction. Recording available at http://azcourts.gov/educationservices/COJETClassroom/VideoCenter/Broadcasts.aspx#BC_ITYGTDW.

October 28, 2009 – Remarks at the Condemnation Summit, Phoenix, Arizona. A copy of my notes is supplied.

October 13, 2009 – Speech to the Federalist Society (debate about judicial selection methods), Phoenix, Arizona. A copy of my notes is supplied and a letter to the editor that I wrote based on my remarks is supplied in response to 12(a).

September 10, 2009 – Remarks to the Bench and Bar Luncheon, Phoenix, Arizona. A copy of my notes is supplied.

June 19, 2009 – *2009 Updates in Evidence*, Presentation to the Arizona Judicial Conference, Phoenix, Arizona. I have no notes, transcript or recording. The address of the Arizona Supreme Court is 1501 West Washington, Phoenix, Arizona 85007.

June 6, 2009 – *An Inside Look at the Supreme Court*, Speech to the Arizona Association of Defense Counsel, Scottsdale, Arizona. A copy of my notes is supplied.

May 27, 2009 – *The Best Judges or the Best Judges Money Can Buy? Judicial Selection and Judicial Independence*, Speech to the Valley Citizens League, Phoenix, Arizona. A copy of my remarks is supplied.

May 15, 2009 – Commencement Speech, Sandra Day O'Connor College of Law at Arizona State University, Tempe, Arizona. A copy of my remarks is supplied.

April 30-May 1, 2009 – Faculty during 11th Annual Complex Litigation Conference focusing on attorney-client privilege, Sedona Conference. I spoke about Federal Rule of Evidence 502. I have no notes, transcript or recording. The address of the Sedona Conference is 5150 North 16th Street, Suite A-215, Phoenix, Arizona 85016.

April 18, 2009 – Remarks to the American College of Trial Lawyers, Sedona, Arizona. A copy of my notes is supplied.

April 2-3, 2009 – Remarks at Wake Forest Symposium on the Third Restatement of Torts, Winston-Salem, North Carolina. A copy of my notes and an audio recording are supplied. In the recording, my remarks begin around 58:30.

April 7, 2009 – *Insiders Perspective on the U.S. Supreme Court*, State Bar Presentation, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

April 7, 2009 – Speaker at Unprofessional Conduct CLE, State Bar of Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

March 2009 – Remarks, State Bar seminar Solo Practitioner/Small Firms. A copy of my notes is supplied.

February 6, 2009 – *Statutory Interpretation and the Role of the Judiciary*, State Bar CLE, Phoenix, Arizona. A copy of my notes is supplied.

February 5, 2009 – Judge for final round of First Amendment & Media Law Moot Court Competition, ABA Forum on Communications Law. I have no notes, transcript or recording. The address of the ABA Forum is MS 18.2, 321 North Clark Street, Chicago, Illinois 60654.

January 30, 2009 – Remarks during the Chris Nakamura Judicial Outreach Workshop. I have no notes, transcript or recording, but Pima County Bar

coverage is supplied. The address of the Bar Association is 177 North Church Avenue, #101, Tucson, Arizona 85701.

November 14, 2008 – Speech to the State Bar Leadership Academy, Phoenix, Arizona. A copy of my notes is supplied.

November 10, 2008 – Speech to the Scottsdale Rotary Club, Scottsdale, Arizona. A copy of my remarks is supplied.

November 7, 2008 – Remarks at the Investiture of G. Murray Snow, U.S. District Court for the District of Arizona, Phoenix, Arizona. A copy of my remarks is supplied.

November 4, 2008 – Panelist, Panel on Merit Selection, State Bar of Arizona, Tempe, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

November 2008 – Speech to the Scottsdale Bar Association, Scottsdale, Arizona. A copy of my notes is supplied.

October 21, 2008 – *The First Amendment: Why it Matters*, Remarks at the Walter Cronkite School of Journalism, Phoenix, Arizona. I have no notes, transcript or recording. The presentation was sponsored by the Walter Cronkite School of Journalism, Arizona State University, 555 North Central Avenue, Phoenix, Arizona 85004.

October 16, 2008 – *An Inside Look at the Supreme Court*, Speech to the Arizona Courts Association, Parker, Arizona. A copy of my notes is supplied.

September 20, 2008 – *Defining and Encouraging Lawyer Professionalism: The Recent Arizona Experience*, Speech to the American Bar Association Section of Environment, Energy and Resources. A copy of my remarks is supplied.

June 16, 2008 – *Laying the Foundation for Evidentiary Law*, presentation to the Arizona Judicial Conference, Phoenix, Arizona. A copy of the outline of the course is supplied.

May 22, 2008 – Q&A Panel, Supreme Court Review CLE, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016. Copy of recording supplied.

April 24, 2008 – Speech regarding Larry Hammond's Receipt of the Justice Award, American Judicature Society, Scottsdale, Arizona. A copy of my remarks is supplied.

April 11, 2008 – Special Action Procedure CLE, State Bar of Arizona seminar, Phoenix, Arizona. A copy of my notes is supplied.

April 8, 2008 – *Unprofessional Conduct*, Remarks to the Scottsdale Bar Association, Scottsdale, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the Scottsdale Bar Association, 7145 East First Street, Scottsdale, Arizona 85251.

February 2008 – Remarks on Supreme Court law clerks, "Conversations on the Supreme Court" course, James E. Rogers College of Law. I have no notes, transcript or recording. The address of the College of Law is P.O. Box 210176, Tucson, Arizona 85721.

January 7, 2008 – Remarks at New Judge Orientation, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the Supreme Court of Arizona, 1501 West Washington Street, Phoenix, Arizona 85007.

December 1, 2007 – Speaker on *Ring v. Arizona* during a "Stories from the Gavel: Arizona Case Law" lecture series, Arizona Historical Society, Tucson, Arizona. A copy of my outline is supplied.

December 2007 – Ring Lecture, Federal Bar Association. I used the same outline as supplied for the December 1, 2007 event.

December 2007 – Death Penalty Seminar, Federal Public Defenders Office, Phoenix, Arizona. A copy of my notes is supplied.

November 2007 – *Is it Ethical to be Unprofessional*, Webcast on Professionalism, State Bar of Arizona, Phoenix, Arizona. A copy of my notes is supplied. Copy of recording supplied.

September 12, 2007 – *Managing the Capital Case in Arizona*, presentation to the National Judicial College, Phoenix, Arizona. A copy of my PowerPoint presentation is supplied.

September 7, 2007 – *The Supreme Court Rules Process and Notable Actions from the Most Recent Rules Agenda*, Bench and Bar Luncheon. A copy of my notes is supplied.

September 2007 – Remarks at Law Clerk Orientation, Phoenix, Arizona. A copy of my notes is supplied.

August 8, 2007 – Speech to the Court Services Division, Phoenix, Arizona. A copy of my notes is supplied.

June 21, 2007 – *Marbury v. Madison*, remarks at the Arizona Judicial Conference. I have no notes, transcript, or recording. The presentation was sponsored by the Judicial College of Arizona, 1501 West Washington, Phoenix, Arizona 85007.

May 8, 2007 – Moderator for a panel on a book by Clint Bolick that dealt with judicial activism versus judicial deference, Federalist Society, Phoenix Chapter. I have no notes, transcript or recording. The Society does not have a physical address, but its current president is Paul Avelar, 398 South Mill Avenue, Suite 301, Tempe, Arizona 85281.

May 4, 2007 – Q&A Panel, Supreme Court Review CLE, Tempe, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

May 2, 2007 – Discussed selection of state court judges with winners of the Law Day Essay contest, co-sponsored by the Arizona Supreme Court, Maricopa Bar Association and Arizona Foundation for Legal Services and Education. I have no notes, transcript or recording. The address of the Arizona Supreme Court is 1501 West Washington Street, Phoenix, Arizona 85007. The address of the Maricopa Bar Association is 303 East Palm Lane, Phoenix, Arizona 85004. The address of the AFLSE is 4201 North 24th Street, Suite 210, Phoenix, Arizona 85016.

May 2007 – Discussed separation of powers with students from Glendale Mountain Ridge's *We the People* team for a Law Day event. I have no notes, transcript or recording. The address of Mountain Ridge is 22800 North 67th Avenue, Glendale, Arizona 85310.

Spring 2007 – Judge for the final round of the James E. Rogers College of Law Moot Court program. I have no notes, transcript or recording. The address of the College of Law is P.O. Box 210176, Tucson, Arizona 85721.

February 27, 2007 – Administered Oath of Office to State Representative Jonathan Paton. I have no notes, transcript or recording. The address of the House of Representatives is 1700 West Washington, Room 341, Phoenix, Arizona 85007.

December 18, 2006 – Speaker, Arizona Criminal Justice Information Sharing Symposium. I believe this event was sponsored by the Arizona Supreme Court. I have no notes, transcript or recording. The address of the Supreme Court is 1501 West Washington Street, Phoenix, Arizona 85007.

December 2006 – State Bar Motion Practice CLE, Phoenix, Arizona. A copy of my notes is supplied.

November 11, 2006 – Panelist for discussion of capital punishment, Council of Appellate Lawyers, American Bar Association. I have no notes, transcript or recording, but ABA coverage is supplied. The address of the ABA is 321 North Clark Street, Chicago, Illinois 60654.

November 2006 – Business Roundtable Meeting, Phoenix, Arizona. A copy of my notes is supplied.

October 10, 2006 – *An Inside Look at the Supreme Court*, Speech to the Arizona Trial Lawyers Association, Tucson, Arizona. A copy of my notes is supplied.

September 18, 2006 – Panel discussion on "The Rights and Responsibilities of an Independent Judiciary" during a Constitution Day event, James E. Rogers College of Law. Video of the event is available at http://www.law.arizona.edu/frontpage/events/constitutionday2006.cfm.

September 2006 – Speech to the Federalist Society Mixer, Phoenix, Arizona. A copy of my notes is supplied.

August 14, 2006 – Speech to First Year Students at the Arizona State University College of Law, Phoenix, Arizona. A copy of my notes is supplied.

June 14, 2006 – *An Ethical Conundrum for Government Attorneys – Who's Your Client*, speech to the National Conference of Regulatory Attorneys, Scottsdale, Arizona. A copy of my notes is supplied.

May 6, 2006 – Speech to the Primerus Convocation, Scottsdale, Arizona. A copy of my notes is supplied.

March 8, 2006 – *An Inside Look at the Supreme Court*, speech to the J. Reuben Clark Law Society, Phoenix, Arizona. A copy of my notes is supplied.

March 3, 2006 – Remarks at the Dobbs Symposium on Economic Torts, Tucson, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by University of Arizona College of Law, P.O. Box 210176, Tucson, Arizona 85721.

February 24, 2006 – *Advanced Evidence; The Confrontation Clause and Crawford*, speech to Limited Jurisdiction Judges (New Judge Orientation), Phoenix, Arizona. A copy of my notes is supplied.

December 2005 – Remarks at National Association of Attorneys General Seminar, Phoenix, Arizona. A copy of my notes is supplied.

December 2005 – Remarks on Motion Practice, State Bar of Arizona Seminar. A copy of my notes is supplied.

November 18, 2005 – Brief Remarks upon receiving a plaque from the State Bar of Arizona Board of Governors for serving as the Board's Supreme Court Liaison. I have no notes, transcript or recording. The address of the State Bar is 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 18, 2005 – Remarks during awards luncheon of the State Bar of Arizona Annual Convention. I have no notes, transcript or recording, but bar coverage is supplied. The address of the State Bar is 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 17, 2005 – Remarks during a seminar on "Civil Rights in Wartime: From *Korematsu* to *Hamdi* and Beyond," State Bar of Arizona Appellate Practice Section, State Bar of Arizona Annual Convention. I have no notes, transcript or recording, but press coverage is supplied. The address of the State Bar is 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 16, 2005 – Host of "Stump the Lawyer" during State Bar of Arizona Annual Convention. I have no notes, transcript or recording. The address of the State Bar is 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 15, 2005 – Remarks on insurance disclosure decision, Arizona State Bar Board of Governors meeting. Meeting summary supplied.

June 2005 – Remarks to Spirit of the Senses, Phoenix, Arizona. A copy of my notes is supplied.

May 2005 – Remarks regarding Japanese Internment and Executive Power, State Bar Convention, Tucson, Arizona. A copy of my notes is supplied.

April 9, 2005 – *An Inside Look at the Supreme Court*, speech to the Arizona Association of Defense Counsel, Las Vegas, Nevada. A copy of my notes is supplied.

March 17, 2005 – Talk at the Federal Bar Association, Phoenix, Arizona. A copy of my notes is supplied.

January 19, 2005 – Speech to the Apache Junction Rotary Club, Apache Junction, Arizona. A copy of my notes is supplied.

November 18, 2004 – Speaker at "More Sex, Murder, and the Media," State Bar of Arizona CLE. Copy of recording supplied.

September 2004 – Speech to the Arizona Chamber of Commerce Public Policy Committee, Phoenix, Arizona. A copy of my notes is supplied.

June 25, 2004 – *The United States Supreme Court: The Year in Review*, Remarks at the Arizona Judicial Conference, Tucson, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the Judicial College of Arizona, 1501 West Washington, Phoenix, Arizona 85007.

May 1, 2004 – Served as a moot court judge for an oral argument reenactment of *Brown v. Board of Education*, Office of the Governor of Arizona and the Hayzel B. Daniels Bar Association. I have no notes, transcript or recording. The address of the Office of the Governor is Executive Tower, 1700 West Washington Street, Phoenix, Arizona 85007. The Hayzel B. Daniels Bar is now known as the Arizona Black Bar, whose address is P.O. Box 628, Phoenix, Arizona 85001.

April 16, 2004 – Q&A Panel, Supreme Court Review CLE, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

April 2004 – Remarks On Supplemental Briefs and Oral Arguments (Location and sponsor unknown). A copy of my notes is supplied.

March 2004 – Remarks at the Phoenix Chamber of Commerce Public Policy Committee meeting in support of a merit system for judicial selection. I have no notes, transcript or recording, but press coverage is supplied. The address of the Chamber of Commerce is 201 North Central Avenue, Phoenix, Arizona 85004.

January 15, 2004 – *Reflection from Our Justice*, remarks to the Appellate Practice Section, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

January 5, 2004 – Performed swearing-in ceremony for Phoenix Mayor Phil Gordon. I have no notes, transcript or recording. The address of the Phoenix Mayor's Office is 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003.

October 23, 2003 – Remarks for Bar Admission Ceremony, Phoenix, Arizona. A copy of my remarks is supplied.

October 17, 2003 – *Changes in the Capital Sentencing Law*, Panel Member, Tucson, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

October 15, 2003 – Brown Bag Lunch CLE/COJET Session, Phoenix, Arizona. A copy of my remarks is supplied.

September 17, 2003 – Speech to the Yavapai County Bar Association. I have no notes, transcript, or recording. The presentation was sponsored by the Yavapai County Bar Association, P.O. Box 11679, Prescott, Arizona 86304.

September 16, 2003 – Speech to the Arizona Chapter of American Corporate Counsel, Phoenix, Arizona. A copy of my notes is supplied.

August 16, 2003 – Speech to First Year Students at the Arizona State University College of Law, Tempe, Arizona. A copy of my notes is supplied.

July 18, 2003 – Remarks on *Ring* and Other Criminal Law Issues, CLE By the Sea, San Diego, California. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

June 17, 2003 – *Open Forum for Appellate Court Judges*, Arizona Judicial Conference, Phoenix, Arizona. A copy of my outline is supplied.

June 17, 2003 – *Supreme Court Update*, remarks to the Arizona Judicial Conference, Phoenix, Arizona. A copy of my notes is supplied.

April 17, 2003 – Speech to the Federal Bar Association, Phoenix, Arizona. A copy of my remarks is supplied.

April 17, 2003 – Q&A Panel, Supreme Court Review CLE. I have no notes, transcript, or recording. The presentation was sponsored by the State Bar of Arizona, 4201 North 24th Street, Suite 200, Phoenix, Arizona 85016.

March 17, 2003 – Remarks at Investiture, Tempe, Arizona. A copy of my remarks is supplied.

March 13, 2003 – Speech, Larry Hammond's Receipt of the Learned Hand Award, Phoenix, Arizona. A copy of my remarks is supplied.

March 3, 2003 – *Gubernatorial Transitions*, speech to the Harvard Club of Phoenix, Phoenix, Arizona. I have no notes, transcript, or recording. The presentation was sponsored by the Harvard Club of Phoenix, P.O. Box 34496, Phoenix, Arizona 85067.

October 3, 2002 – Discussion of the *Ring* decision with Kent Cattani, Federalist Society at the Arizona State University College of Law. I have no notes, transcript or recording. The Society does not have a physical address, but its current president is Paul Avelar, 398 South Mill Avenue, Suite 301, Tempe, Arizona 85281.

October 19, 2001 – *Effective Oral Advocacy*, remarks to the Arizona Appellate Practice Institute, Phoenix, Arizona. A copy of my materials is supplied.

February 15, 2001 – Presentation about representation of the PGA tour, Federal Bar Association Phoenix Chapter. I have no notes, transcript or recording, but FBA coverage is supplied. The FBA Phoenix Chapter does not have a physical address.

April 5, 1999 – *Willard H. Pedrick Lecture*, Arizona State University College of Law, Tempe, Arizona. A copy of the lecture is supplied.

December 14, 1995 – ASU Winter Graduation Remarks, Tempe, Arizona. A copy of my remarks is supplied.

December 1995 – ASU West Winter Graduation Remarks, Phoenix, Arizona. A copy of my remarks is supplied.

October 12, 1995 – Remarks to the Judicial College of Arizona, Phoenix, Arizona. A copy of my outline is supplied.

March 24, 1995 – *Remarks on Appellate Oral Advocacy*, Speech to the Arizona Appellate Practice Institute, Phoenix, Arizona. A copy of my remarks is supplie

November 5, 1993 – Remarks on the Dedication of Law Library (ASU), Tempe, Arizona. A copy of my remarks is supplied.

October 27, 1993 – *Defending a Deposition* (Sponsor and Location Unknown). A copy of my notes is supplied.

May 14, 1993 – Remarks at Northern Arizona University Commencement, Flagstaff, Arizona. A copy of my remarks is supplied.

February 12, 1993 – *So, You Want to Be an Appellate Lawyer?; Remarks on Appellate Strategy*, presentation to the State Bar of Arizona Appellate Practice Institute, Phoenix, Arizona. A copy of my remarks is supplied.

August 1992 – Arizona State University Summer Graduation Remarks. A copy of my remarks is supplied.

May 1991 – Arizona State University (ASU) Graduation Remarks, Tempe, Arizona. A copy of my remarks is supplied.

December 21, 1990 – Arizona State University (ASU) Graduation Remarks. I have no notes, transcript or recording, but press coverage is supplied.

As a member and later as President of the Arizona Board of Regents from 1988 t 1996, I regularly gave remarks on behalf of the Board at the commencement ceremonies of the three state universities and on other occasions. Other than those remarks listed above, I gave a number of other speeches, but have been unable to identify the dates and locate any notes, recordings and reports of these speeches. The address of the Arizona Board of Regents is 220 North Central Avenue, Suite 230, Phoenix, Arizona 85004.

I have administered the Oath of Office to a number of officials on multiple occasions. Other than the occasions listed above, I have been unable to identify the dates of the other times I have appeared at these events.

Additionally, I have also judged a number of moot court competitions and provided feedback to participants. Other than the occasions listed above, I have been unable to identify the dates of the other competitions.

Public Q&A Sessions

The Arizona Supreme Court typically goes "on the road" several times a year to hear oral arguments at locations throughout the State. After the conclusion of arguments, the Justices normally take questions from the audience, and during those sessions, typically lasting for about one-half hour, I would have answered a question or two about the Court's operations. Based on agendas and public announcements, I have identified the following list of public question and answe sessions. I have no notes or transcripts. Unless otherwise indicated, video is available for recordings from 2007 to present at http://azcourts.gov/AZSupremeCourt/LiveArchivedVideo.aspx. In each case th sponsoring organization was the Arizona Supreme Court, 1501 West Washingtor Street, Phoenix, Arizona 85007.

September 22, 2011, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

March 22, 2011, Sandra Day O'Connor College of Law at Arizona State University (Tempe, Arizona).

November 2, 2010, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

September 27, 2010, Nogales High School (Nogales, Arizona).

April 13, 2010, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

February 11, 2010, Sandra Day O'Connor College of Law at Arizona State University (Tempe, Arizona).

March 24, 2009, Sandra Day O'Connor College of Law at Arizona State University (Tempe, Arizona).

November 6, 2008, James E. Rogers College of Law, University of Arizona (Tucson, Arizona). Video not available.

September 25, 2008, Glassford Hill Middle School (Prescott Valley, Arizona)

April 29, 2008, Payson High School (Payson, Arizona).

March 25, 2008, Sandra Day O'Connor College of Law at Arizona State University (Tempe, Arizona). Video not available, but press coverage is supplied.

October 31, 2007, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

October 2, 2007, Coolidge High School (Coolidge, Arizona).

April 18-19, 2007, Kingman High School (Kingman, Arizona).

November 1, 2006, James E. Rogers College of Law, University of Arizona (Tucson, Arizona). Press coverage supplied.

October 3, 2006, Chinle Community Center (Chinle, Arizona).

November 1, 2005, James E. Rogers College of Law, University of Arizona (Tucson, Arizona).

September 29, 2005, Kofa High School (Yuma, Arizona).

April 26, 2005, Coconino High School (Flagstaff, Arizona).

April 20, 2005, Buena High School (Sierra, Vista, Arizona).

November 4, 2004, Rincon High School (Tucson, Arizona). Press coverage supplied.

October 28, 2004, Eastern Arizona College (Thatcher, Arizona).

April 29, 2004, Prescott High School (Prescott, Arizona).

January 13, 2004, Mesa High School (Mesa, Arizona).

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 whe they are available to you.

Because I have held several public positions, I have had frequent interactions wi the press, both formal and informal. An exhaustive search of my personal recor and various electronics databases revealed the following list of articles for whicl was interviewed or offered a comment:

Jim Walsh, *Municipal Court Praised for Case Management Goal*, Arizona Republic, June 29, 2011. Copy supplied.

Richard Ruelas, *Anti-Federal Health Care, Circa 1960s*, Arizona Republic, Apr 17, 2010. Copy supplied.

Ginger Thompson, *Napolitano Appears to Straddle Political Divide*, New York Times, May 19, 2009. Copy supplied.

Christian Palmer, *Arizona Supreme Court Chief Justice McGregor Announces Retirement During State of Judiciary Address*, Arizona Capitol Times, Mar. 27, 2009. Copy supplied.

Richard de Uriarte, *Mail in My Vote?!*, Arizona Republic, Oct. 31, 2006. Copy supplied.

I was interviewed by Todd Peppers for his books, *Courtiers of the Marble Palac* (Stanford University Press, 2006). The page on which my interview was incorporated is supplied.

Tim Eigo, *Openness and Accomplishment*, Arizona Attorney, July/Aug. 2005. Copy supplied.

Kim Smith, *Legacy of "Good Judgment,"* Arizona Daily Star, July 2, 2005. Cop supplied.

Judiciary Discipline Going Public, Arizona Republic, June 13, 2005. Copy supplied.

Susan Mercer Hinrichs, *McGregor Ready for Challenge as State's New Chief Justice*, Arizona Republic, Apr. 11, 2005. Copy supplied.

Skip Card, *Court of Dreams*, New York State Bar Journal, Mar./Apr. 2005. Cop supplied.

Michael Kiefer, *Justices May Weigh Same-Sex Marriage*, Arizona Republic, Ma 25, 2004. Copy supplied.

Howard Fischer, *Hurwitz to Join Ariz. Supreme Court Monday*, Arizona Daily Star, Mar. 16, 2003. Copy supplied.

David Pittman, *Babbitt: Environmental Steward or Sellout?*, Tucson Citizen, Ma 15, 2003. Copy supplied.

Barry Cohen, *Court Nominee Balances Devotion to Law, Politics*, Jewish News c Greater Phoenix, Feb. 21, 2003. Copy supplied.

C.T. Revere, *Q&A: Andrew Hurwitz*, Tucson Citizen, Jan. 31, 2003. Copy supplied.

Chip Scutari and Robbie Sherwood, *State Supreme Court Gets New Justice*, Arizona Republic, Jan. 28, 2003. Copy supplied.

Howard Fischer, *Phoenix Lawyer Gets High Court Slot*, Arizona Daily Star, Jan. 28, 2003. Copy supplied.

Paul Davenport, *Lawyer Who Argued against Napolitano in Death Penalty Case Goes to State High Court*, Associated Press, Jan. 27, 2003. Copy supplied.

C.T. Revere and Shella Calamba, *High Court Vacancy*, Tucson Citizen, Jan. 22, 2003. Copy supplied.

Barrett Marson, *Napolitano Transition Goes Into Full Swing*, Arizona Daily Star, Nov. 12, 2002. Copy supplied.

Paul Davenport, *Transition Team Leaders Say Party Ties Not a Factor for Napolitano Picks*, Associated Press, Nov. 11, 2002 (quotes re-printed in multiple outlets). Copy supplied.

Paul Davenport, *Transition Veterans Head Team for Governor-Elect*, Associated Press, Nov. 11, 2002. Copy supplied.

On October 16, 2002, I gave an interview to David Kader about the *US West* case The interview was referenced in Kader's article, *The Arizona Supreme Court: Its 2001-2002 Decisions*, 35 Ariz. St. L.J. 311 (2003). Copy of the article supplied.

ABC Wins Appeal over Hidden Camera Investigation of Medical Lab, Reporter's Committee for Freedom of the Press, Sept. 24, 2002. Copy supplied.

Howard Fischer, *State Laws Give Little Privacy*, Arizona Daily Star, Sept. 21, 2002. Copy supplied.

John Gibeaut, *Death Penalty a Lively Issue*, 88 A.B.A.J. 30 (Aug. 2002). Copy supplied.

Joan Huls, *Ring Cycle Continues: Arizona Capital Sentencing at U.S. Supreme Court*, 38 Arizona Attorney 24 (July/Aug. 2002). Copy supplied.

John Gibeaut, *States Revisit Death Sentence Cases*, 1 ABA Journal eReport 25, June 28, 2002. Copy supplied.

Paul Duggan, *New Rulings Don't Fling Open Death Row Doors*, Washington Post, June 27, 2002. Copy supplied.

David Lindorff, *Another Strike against the Death Penalty*, Salon.com, June 25, 2002. Copy supplied.

Ruling Buys Time for Death Row Prisoners, Arizona Republic, June 25, 2002. Copy supplied.

Joan Biskupic, *Jury, not Judge, Must Rule on Death*, USA Today, June 25, 2002 Copy supplied.

Interview on Fox on the Record with Greta Van Susteren, Fox News Network, June 24, 2002. Transcript supplied.

Dave Lindorff, *Antonin Scalia's Crisis of Conscience*, Salon.com, June 12, 2002 Copy supplied.

High Court Focuses on Death Penalty, Corrections Professional, May 24, 2002. Copy supplied.

William E. Gibson, *Justices Weigh Case That Could Affect Up to 870 on Death Row*, Orlando Sentinel, Apr. 23, 2002 (re-printed in multiple outlets). Copy supplied.

Sergio Bustos, *Supreme Court to Decide Whether 1997 Death Sentence Was Fa*, USA Today, Apr. 22, 2002. Copy supplied.

Robbie Sherwood, *Arizona Faces Supreme Court*, Arizona Republic, Apr. 21, 2002. Copy supplied.

Foster Klug, *Ariz. Case Could Affect Death Penalty*, Associated Press, Apr. 21, 2002 (re-printed in multiple outlets). Copy supplied.

Tony Mauro, *Court Set for Life or Death Argument*, Daily Report, Apr. 15, 200 (re-printed in multiple outlets). Copy supplied.

Joseph Barrios, *Should It Be Up to the Judge?*, Arizona Daily Star, Mar. 5, 2002 Copy supplied.

Robbie Sherwood, *Napolitano Faces Test in Top Court*, Arizona Republic, Feb. 17, 2002. Copy supplied.

Judge, Jury and Executioner: Arizona Death Row Case Could Have an Effect o Montana Law, Missoula Independent, Jan. 17 – Jan. 24, 2002. Copy supplied.

Tony Mauro, *Apprendi Opens Doors to Questions*, New Jersey Law Journal, Jar 18, 2002 (re-printed in multiple outlets). Copy supplied.

Tribes Weighing Casino Initiative, Arizona Republic, July 12, 2001. Copy supplied.

Judge Rules Hohokam Irrigation Can Sell Electricity, Associated Press, Dec. 20 2000. Copy supplied.

Anne Brady, *Phone Battle Is Heating Up in Arizona – Qwest Hopes to Strength Its Competitive Position in Local-Service Market*, Wall Street Journal, Sept. 13, 2000. Copy supplied.

Tom Collins, *Qwest*, Tucson Citizen, Aug. 11, 2000. Copy supplied.

Kathleen Ingley, *3 Initiatives Face Legal Challenges*, Arizona Republic, Aug. 3. 2000. Copy supplied.

Jodi Weisberg, *Blackmun Remembered by Local Legal Community*, Arizona Journal, Mar. 22, 1999. Copy supplied.

Hull Picks Lawyer as New State Gaming Director, Associated Press, Jan. 15, 1999. Copy supplied.

ABC Show Lawsuit Mostly Dismissed, Associated Press, Dec. 18, 1998 (re-print in multiple outlets). Copy supplied.

Jerry Kammer, *Do Media Have Right to Lie? Lawsuit against ABC Asks*, Times Picayune, Dec. 10, 1998. Copy supplied.

Pila Martinez, *Regent Davis to Quit, Join NAU*, Arizona Daily Star, Feb. 10, 1998. Copy supplied.

Cellular and PCS Strategies Collide in Phoenix, Communications Today, Aug. 11, 1997. Copy supplied.

Howard Fischer, *Cellular Phone Spat Goes to Court Over 'Roaming'*, Arizona Daily Star, Aug. 8, 1997. Copy supplied.

Susan C. Thomson, *Arizona Official Seen as 'Quiet,' 'Affable'*, St. Louis Post-Dispatch, Mar. 9, 1997. Copy supplied.

John Schwartz, *Defense Lawyer a Hit in Courtroom*, Business Journal-Phoenix & the Valley of the Sun, Feb. 23, 1996. Copy supplied.

John Schwartz, *Philosophies Vary as Law Firms Regroup*, Business Journal-Phoenix and the Valley of the Sun, May 26, 1995. Copy supplied.

Alisa Wabnik, *Bottom Line: Uncertainty Reigns on How to Meet Costs of Growt*, Arizona Daily Star, May 3, 1995. Copy supplied.

Alisa Wabnik, *Growing Pains; Enrollment Surge May Push In-State Students Elsewhere*, Arizona Daily Star, Apr. 30, 1995. Copy supplied.

Alisa Wabnik, *Journalism, Statistics Edging Toward UA Ax*, Arizona Daily Star, Jan. 19, 1995. Copy supplied.

Alisa Wabnik, *Clinton Considering Naming Pacheco to U.S. Advisory Post*, Arizona Daily Star, Feb. 17, 1994. Copy supplied.

Karen D. Stein, *Adventure in Form*, Architectural Record, Jan. 1994. Copy supplied.

John Dougherty, *Star Gate*, Phoenix News Times, June 16, 1993. Copy supplied

Jane Erikson and Janet Kornblum, *ASU School of Medicine is Proposed – Minorities Targeted for Training, Service*, Arizona Daily Star, June 11, 1993. Copy supplied.

Geoffrey A. Campbell, *Bruce Babbitt, Prospect for Supreme Court, Would Bring States' Rights Philosophy to Post*, Bond Buyer, June 11, 1993. Copy supplied.

Mike Dorsher, *Peers Praise Finalists as Fair Budget Cutters*, Wisconsin State Journal, May 23, 1993. Copy supplied.

Darrin Hostetler, *The Prof Is In the Pudding*, Phoenix New Times, May 5, 1993. Copy supplied.

Pauline B. Yearwood, *Catch 22 at ASU: Education Dollars Eroding Statewide*, Greater Phoenix Jewish News, Apr. 23, 1993. Copy supplied.

NAU Puts Cuts on Hold, Prescott Courier, Oct. 22, 1992. Available at http://tinyurl.com/nauputs.

Maureen O'Connell, *State Regents Decide to Delay Setting Tuition*, Arizona Daily Star, Oct. 9, 1992. Copy supplied.

Arizona St Woes, Associated Press, Sept. 3, 1992. Copy supplied.

Ray Schultze, *President of Regents Respected*, Phoenix Gazette, July 20, 1992. Copy supplied.

Ray Schultze, *Regents Head: Universities Need Stable Funding*, Phoenix Gazett July 20, 1992. Copy supplied.

Kris Mayes, *Hurwitz Set to Confront Regent Issues*, State Press, June 18, 1992. Copy supplied.

Untitled, Associated Press, Feb. 6, 1992. Copy supplied.

Lourdes Medrano Leslie, *Symington Plan for Universities' Budget Surprises Regents*, Arizona Daily Star, Jan. 14, 1992. Copy supplied.

Philip Martin, *When Heads Rolled at DPS*, Phoenix New Times, Dec. 4, 1991. Copy supplied.

Mary K. Reinhart, *Symington Proposes Abolition of Board of Regents – Calls for Trustees for Each University*, Arizona Daily Star, Oct. 10, 1991. Copy supplied.

William H. Carlile, *'Mother Mofford' Happy to Not be Governor Anymore*, San Francisco Examiner, Mar. 10, 1991. Copy supplied.

Darrin Hostetler, *Blowing the Whistle on the Regents*, Phoenix New Times, June 13, 1990. Copy supplied.

Bishop Told to Distance Herself from Husband, Prescott Courtier, May 8, 1990. Available at http://tinyurl.com/bishoptold.

Coor Gets Top Money, Prescott Courier, June 15, 1989. Available at http://tinyurl.com/coorgets.

Student Leaders Blast Hike, Mohave Daily Miner, Nov. 6, 1988. Available at http://tinyurl.com/studentleaders.

Mofford Says She Didn't Intend Disclosure Omissions, Prescott Courier, May 1, 1988. Available at http://tinyurl.com/moffordsays.

Mecham Aides Quit, Another Will Leave, Prescott Courier, Apr. 8, 1988. Available at http://tinyurl.com/mechamaides.

Larry Lopez, *Mofford Orders Mecham's Personal Staff Off the Payroll*, Associated Press, Apr. 6, 1988. Copy supplied.

Ric Clarke, *Pulling a Switch: Mofford's Team Made Changes Work Smoothly*, Mesa Tribune, Mar. 20, 1988. Copy supplied.

Mofford Has Witness Tampering Report, Prescott Courier, Mar. 17, 1988. Available at http://tinyurl.com/moffordhas.

Larry Lopez, *Acting Governor's Chief Aide Advised Impeachment Witness*, Associated Press, Mar. 15, 1988. Copy supplied.

Lori Weinraub, *Untitled*, United Press International, Mar. 15, 1988. Copy supplied.

Lori Weinraub, *Untitled*, United Press International, Mar. 14, 1988. Copy supplied.

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Joel Nilsson, *Babbitt Aides Say Transportation, Health Care on List of 6 Key Issues*, Arizona Republic, Jun. 15, 1980. Copy supplied.

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Joel Nilsson, *Phoenix-Mesa Trip by Rail Excites Many*, Arizona Republic, Feb. 24, 1980. Copy supplied.

John Winters, *120 Globe Residents Asked to Evacuate*, Arizona Republic, Jan. 22, 1980. Copy supplied.

Marilyn Taylor, *Governor Declares Globe Emergency*, Arizona Republic, Jan. 17, 1980. Copy supplied

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Bill King, *Top Aide to Babbitt Will Stress Planning*, Arizona Republic, Dec. 31, 1979. Copy supplied.

Anthony J. Sommer, *Long-Sought Fellow Ivy Leaguer Finally Joins Bruce Babbitt Team*, Phoenix Gazette, Dec. 15, 1979. Copy supplied.

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

Judge Pro Tempore, Arizona Court of Appeals (Division 1). I served on two panels of the Court of Appeals (an intermediate appellate court) in 1993 and 1996, under a program in which private practitioners were appointed to serve with two sitting judges in an effort to reduce the court's backlog. I was appointed in each case to do so by the presiding judge of the court of appeals. This is the intermediate appellate court in Arizona, which has jurisdiction over appeals from virtually all judgments of the superior court, a court of general trial jurisdiction.

Justice, Arizona Supreme Court, March 2003 to present (Vice Chief Justice, July 2009 – present). I was appointed by the Governor and retained in a 2006 general election for a

six year term. The Court has discretionary appellate jurisdiction over all cases decided in the Arizona Court of Appeals, special action (extraordinary writs jurisdiction), and direct appeal jurisdiction over death penalty cases and certain elections appeals. We also have discretionary jurisdiction in appeals involving attorney and judicial discipline.

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

I have only served as an appellate judge

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.

See attached list of cases.

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

1. *Citizen Publishing Co. v. Miller (Elleithee)*, 210 Ariz. 513, 115 P.3d 107 (2005).

The issue in this case was whether a suit for intentional infliction of emotional distress could lie against a newspaper for printing a letter to the editor stating: "We can stop the murders of American soldiers in Iraq . . . Whenever there is an assassination or another atrocity we should proceed to the closest mosque and execute five of the first Muslims we encounter." The suit was filed by two plaintiffs on behalf of a putative class of Islamic-Americans in the circulation area of the *Tucson Citizen*. The trial judge refused to dismiss the intentional infliction claim and the court of appeals, by a split vote, declined to exercise special action (mandamus) jurisdiction, thus leaving the trial court's decision standing.

The Court unanimously held (in an opinion I authored) that the letter to the editor was protected by the First Amendment, and did not constitute either an incitement to imminent lawless action, fighting words, or a true threat of violence.

Counsel: David J. Bodney, Steptoe & Johnson, LLP, 201 East Washington Street, Suite 1600, Phoenix, Arizona 85004, 602-257-5212 (for Citizen Publishing Co.); Herbert Beigel, Herbert Beigel & Associates, 63561 East Vacation Drive, Tucson, Arizona 85379, 520-797-9188 (for Elleithee, et al.).

2. *Kromko v. Ariz. Bd. of Regents*, 216 Ariz. 190, 165 P.3d 168 (2007).

The issue in this case was whether tuition charged at three Arizona state universities during the 2003-04 academic year violated a state constitutional provision requiring that the "instruction furnished shall be as nearly free as possible." The suit was filed on behalf of a putative class of students against the Board of Regents, which under the state constitution governs the universities and sets tuition.

The Court unanimously held (in an opinion I authored) that the suit presented a nonjusticiable political question, entrusted to another branch of state government for resolution, in part because there were no judicial standards by which the issue could be decided.

Counsel: Paul Gattone, Payson & Gattone, 360 South Covenant, Tucson, Arizona 85701, 602-623-4466 (for Kromko, et al.); Paula S. Bickett, Daniel P. Schaack, Office of the Attorney General, 1275 West Washington Street, Phoenix, Arizona 85007, 602-542-4266 (for Board of Regents, et al.).

3. *State Farm Ins. Cos. v. Premier Manufactured Sys., Inc.*, 217 Ariz. 222, 172 P.3d 410 (2007).

The issue in this case was whether liability among tortfeasors in strict product liability actions is joint and several or several only.

The Court unanimously held (in an opinion I authored) that a statute adopted by the Arizona Legislature abolishing joint and several liability in all but certain cases extended to products liability actions, and that in such actions, liability is several only.

Counsel: John D. Sittu, Belknap & Sittu, PC, 11010 North Tatum Boulevard, Suite 103, Phoenix, Arizona 85028, 602-264-2223 (for State Farm); Stanley G. Feldman, Haralson Miller Pitt Feldman & McAnally, PC, One South Church Avenue, Suite 900, Tucson, Arizona 85701, 520-792-3836 (for amicus Arizona Trial Lawyers Association (argued)); Robert L. Greer, Baird Williams & Greer, 6225 North 24th Street, Suite 125, Phoenix, Arizona 85016, 602-256-9400 (for Premier Manufactured Systems).

4. *Seisinger v. Siebel*, 220 Ariz. 85, 203 P.3d 483 (2009).

   The issue in this case was whether a statute which prescribed qualifications for expert witnesses in medical malpractices cases conflicted with Arizona Rule of Evidence 702, and was therefore unconstitutional as encroaching upon the Arizona Supreme Court's preemptive rule making powers.

   In a 4-1 decision (I authored the majority opinion), the Court held that (a) there was a direct conflict between the statute and the Evidence Rule; but (b) the statute was substantive in nature, and therefore did not violate the Arizona Constitution's separation of powers doctrine. The court also held that the statute, being substantive, did not apply retroactively to the case before it, which had been filed before the statute became effective and involved events prior to that date. One judge (sitting by designation with our Court) concurred only in the result, concluding that the challenged statute was unconstitutional.

   Counsel: James J. Syme, Jr., 13210 West Van Buren, #102, Goodyear, Arizona 85338, 623-932-2070 (for Seisinger); Eileen GilBride, Jones Skelton & Hochuli, PLC, 2901 North Central Avenue, Suite 800, Phoenix, Arizona 85012, 602-263-1700 (for Seibel).

5. *State v. Western Union Fin. Svcs., Inc.*, 220 Ariz. 567, 208 P.3d 218 (2009).

   The issue in this case was whether an Arizona court could seize Western Union money transfers sent from other states to Mexico.

   In a 4-1 decision (I authored the majority opinion) the Court held that because the state court was solely seeking to exercise in rem jurisdiction over the wire transfers, and the transfers were not located within the state, the warrant was not enforceable. The Court noted that the State could have sought to exercise in personam jurisdiction over Western Union and sought court orders concerning the wire transfers, but could not proceed simply against the transfers themselves to establish jurisdiction. One judge (sitting by designation with our Court) dissented.

   Counsel: Karl M. Tilleman, Steptoe & Johnson, LLP, 201 East Washington Street, Suite 1600, Phoenix, Arizona 85004, 602-257-5244, and Charles G. Cole, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036, 202-429-3000 (for Western Union); Cameron Holmes, Office of the Attorney General, 1275 West Washington, Phoenix, Arizona 85007, 602-542-8482 (for State).

6. *Turken v. Gordon*, 223 Ariz. 342, 224 P.3d 158 (2010).

   The issue in this case was whether an agreement between the City of Phoenix and a private developer violated the Gift Clause of the Arizona Constitution.

which prohibits governmental entities from making "any donation or grant, by subsidy or otherwise" to any private corporation.

The Court unanimously held (in an opinion I authored) that the particular agreement likely violated the Gift Clause. The opinion sought to clarify the Court's previous Gift Clause jurisprudence. However, because the City and the developer had relied on our previous jurisprudence in structuring the agreement, the Court decided to apply its clarification of previous law prospectively only. The Court therefore affirmed the dismissal of the plaintiff's claims in this particular case.

Counsel: Clint Bolick, Goldwater Institute, 500 East Coronado Road, Phoenix, Arizona 85004, 602-462-5000 (for Turken, et al.); Timothy Berg, Fennemore Craig PC, 3003 North Central Avenue, Suite 2600, Phoenix, Arizona 85012, 602-916-5421, and Lisa T. Hauser, Gammage & Burnham, Two North Central Avenue, 15th Floor, Phoenix, Arizona 85004, 602-256-4462 (for Gordon, et al.).

7. *State v. Gant*, 216 Ariz. 1, 162 P.3d 640 (2007), *aff'd sub nom. Arizona v. Gant*, 556 U.S. 332 (2009).

This case presented an important and unsettled Fourth Amendment issue: Whether a warrantless search of an arrestee's car is constitutional when the arrestee is handcuffed and seated in the back of a patrol car under the supervision of a police officer, and the scene is otherwise secured.

A divided (3-2) Arizona Supreme Court held that the search-incident-to arrest exception to the Fourth Amendment's warrant requirement, as explicated in *Chimel v. California*, 395 U.S. 752 (1969), and *New York v. Belton*, 453 U.S. 454 (1981), did not justify the search. The Supreme Court of the United States granted certiorari and affirmed the opinion of our Court, which was written by Justice Rebecca White Berch and in which I joined.

Counsel: Randall M. Howe (currently an Assistant United States Attorney), 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85005, 602-514-7689 (for the State); Thomas F. Jacobs, 271 North Stone Avenue, Tucson, Arizona 85701, 520-628-1622 (for Gant).

8. *Gibson v. Kasey*, 214 Ariz. 141, 150 P.3d 228 (2007).

The issue in this case was whether persons who are prescribed drugs owe a duty of care to others to whom they give the drugs. The trial court had held that the defendant, who allegedly had caused the death of a coworker by furnishing prescription drugs to her at an office party, could not be liable in negligence, as he owed the woman no duty of care. The intermediate appellate court held that a duty existed because the harm was foreseeable.

In a unanimous opinion (authored by Justice Scott Bales) our Court held that the trial court had erred. The opinion rejected the notion that foreseeability played any role in the duty determination. I concurred in the opinion of the Court, but wrote separately to suggest that Arizona consider in a future case adopting the approach of the Third Restatement of Torts, which recognizes that any actor generally had a duty to exercise reasonable care when the actor's conduct creates a risk of physical harms to others, and that a no-duty determination ought to be made by common law courts only when a strong policy against potential liability could be identified.

Counsel: James F. Brook, James F. Brook & Associates, 7150 East Camelback Road, Suite 415, Scottsdale, Arizona 85251, 480-990-0104 (for Gibson); Christopher Robbins, currently with Ehmann DeCiancio, PLLC, 1250 West Washington, Tempe, Arizona, 85281, 602-889-2440 (for Kasey).

9. *Ariz. Together v. Brewer (Protect Marriage Arizona)*, 214 Ariz. 118, 149 P.3d 742 (2007).

This case involved the "separate amendment" rule of the Arizona Constitution, which requires that if more than one proposed constitutional amendment is submitted to the voters at an election, each proposed amendment must be submitted in such a way as to allow the voters to vote for or against them separately. A long line of Arizona cases had held that a single proposed amendment that dealt with more than one subject could not be placed on the ballot under this rule. The proposed amendment at issue in *Arizona Together* sought to define "marriage" and prohibit the State from providing a legal status for unmarried persons similar to that of marriage.

In a unanimous decision (authored by Chief Justice Ruth McGregor), the Court held that the proposed amendment did not violate the "single subject rule" and could be placed on the ballot. In so doing, the Court sought to clarify its previous "single subject" jurisprudence, which had focused on whether a voter who favored one provision of a proposed amendment could reasonably be expected to view another provision as dependant on the first. I had previously suggested that the "reasonable voter test" was unworkable in *Clean Elections Inst., Inc. v. Brewer*, 290 Ariz. 241, 248, 99 P.3d 570, 577 (2004) (concurring opinion) and the Court adopted that suggestion in *Arizona Together*. I joined the majority opinion, but wrote separately to emphasize that the Court's inquiry should be limited to whether various provisions of a proposed amendment were logically related to each other.

Counsel: Peter A. Gentela, Arizona House of Representatives, 1700 West Washington, Suite H, Phoenix, Arizona 85007, 602-926-5544, and Benjamin Bull, Alliance Defense Fund, 15100 North 90th Street, Scottsdale, Arizona, 85260, 480-444-0200 (for Protect Marriage Arizona); Lisa T. Hauser,

Gammage & Burnham, Two North Central, 15th Floor, Phoenix, Arizona 85004, 602-256-4462, and Charles Blanchard, Department of the Air Force, 1740 Air Force Pentagon, Washington, D.C. 20330, 703-697-0941 (for Arizona Together).

10. *Lofts at Fillmore Condo. Ass'n v. Reliance Commercial Constr., Inc.*, 218 Ariz. 574, 190 P.3d 733 (2008).

The issue in this case was whether the purchaser of a home can sue a home-builder who was not the vendor of the residence under an implied warranty of workmanship and habitability.

The Court unanimously held (in an opinion I authored) that the absence of contractual privity did not bar the suit. This was an issue of first impression and of practical significance in Arizona, because homebuilders will often sell their products to a separate company which markets the buildings, and there is thus often no privity between the construction company and the original buyer.

Counsel: John F. McGuire, 2550 Fifth Avenue, San Diego, California 92103, 619-618-2984, and Curtis S. Ekmark, Ekmark & Ekmark LLC, 6720 North Scottsdale Road, Suite 261, Scottsdale, Arizona 85253, 480-922-9292 (for Lofts at Fillmore); Jeffrey D. Holland, The Statesmen Group, 9300 East Raintree Drive, Suite 200, Scottsdale, Arizona 85260, 480-248-3300 and Kyle A. Israel, Israel & Gerity, PLLC, 3300 North Central Avenue, Suite 2000, Phoenix, Arizona 85012, 602-274-4400 (for Reliance Commercial).

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. *Citizen Publishing Co. v. Miller (Elleithee)*, 210 Ariz. 513, 115 P.3d 107 (2005). Counsel: David J. Bodney, Steptoe & Johnson, LLP, 201 East Washington Street, Suite 1600, Phoenix, Arizona 85004, 602-257-5212 (for Citizen Publishing Co.); Herbert Beigel, Herbert Beigel & Associates, 63561 East Vacation Drive, Tucson, Arizona 85379, 520-797-9188 (for Elleithee, et al.).

2. *Kromko v. Ariz. Bd. of Regents*, 216 Ariz. 190, 165 P.3d 168 (2007). Counsel: Paul Gattone, Payson & Gattone, 360 South Covenant, Tucson, Arizona 85701, 602-623-4466 (for Kromko, et al.); Paula S. Bickett, Daniel P. Schaack, Office of the Attorney General, 1275 West Washington Street, Phoenix, Arizona 85007, 602-542-4266 (for Board of Regents, et al.).

3. *State Farm Ins. Cos. v. Premier Manufactured Sys., Inc.*, 217 Ariz. 222, 172 P.3d 410 (2007). Counsel: John D. Sittu, Belknap & Sittu, PC, 11010 North Tatum Boulevard, Suite 103, Phoenix, Arizona 85028, 602-264-2223 (for State Farm); Stanley G. Feldman, Haralson Miller Pitt Feldman & McAnally, PC, One South Church Avenue, Suite 900, Tucson, Arizona 85701, 520-792-3836 (for amicus Arizona Trial Lawyers Association (argued)); Robert L. Greer, Baird Williams & Greer, 6225 North 24th Street, Suite 125, Phoenix, Arizona 85016, 602-256- 9400 (for Premier Manufactured Systems).

4. *Lofts at Fillmore Condo. Ass'n v. Reliance Commercial Constr., Inc.*, 218 Ariz. 574, 190 P.3d 733 (2008). Counsel: John F. McGuire, 2550 Fifth Avenue, San Diego, California 92103, 619-618-2984, and Curtis S. Ekmark, Ekmark & Ekmark LLC, 6720 North Scottsdale Road, Suite 261, Scottsdale, Arizona 85253, 480-922-9292 (for Lofts at Fillmore); Jeffrey D. Holland, The Statesmen Group, 9300 East Raintree Drive, Suite 200, Scottsdale, Arizona 85260, 480-248-3300 and Kyle A. Israel, Israel & Gerity, PLLC, 3300 North Central Avenue, Suite 2000, Phoenix, Arizona 85012, 602-274-4400 (for Reliance Commercial).

5. *Seisinger v. Siebel*, 220 Ariz. 85, 203 P.3d 483 (2009). Counsel: James J. Syme, Jr., 13210 West Van Buren, #102, Goodyear, Arizona 85338, 623-932-2070 (for Seisinger); Eileen GilBride, Jones Skelton & Hochuli, PLC, 2901 North Central Avenue, Suite 800, Phoenix, Arizona 85012, 602-263-1700 (for Seibel).

6. *State v. Western Union Fin. Svcs., Inc.*, 220 Ariz. 567, 208 P.3d 218 (2009). Counsel: Karl M. Tilleman, Steptoe & Johnson, LLP, 201 East Washington Street, Suite 1600, Phoenix, Arizona 85004, 602-257-5244 and Charles G. Cole, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036, 202-429-3000 (for Western Union); Cameron Holmes, Office of the Attorney General, 1275 West Washington, Phoenix, Arizona 85007, 602-542-8482 (for State).

7. *Turken v. Gordon*, 223 Ariz. 342, 224 P.3d 158 (2010). Counsel: Clint Bolick, Goldwater Institute, 500 East Coronado Road, Phoenix, Arizona 85004, 602-462-5000 (for Turken, et al.); Timothy Berg, Fennemore Craig PC, 3003 North Central Avenue, Suite 2600, Phoenix, Arizona 85012, 602-916-5421, and Lisa T. Hauser, Gammage & Burnham, Two North Central Avenue, 15th Floor, Phoenix, Arizona 85004, 602 256-4462 (for Gordon, et al.).

8. *Jones v. Sterling*, 210 Ariz. 308, 110 P.3d 1271 (2005). Counsel: Lee Brooke Phillips, 323 North Leroux Street, Suite 101, Flagstaff, Arizona 86001, 928-779-1560 (for Jones, et al.); Cari McConeghy-Harris, 9280 South Kyrene, Suite 119, Tempe, Arizona 82584, 480-223-5896, and Sheila Polk, Yavapai

County Attorney, 255 East Gurley, Prescott, Arizona 86301, 928-771-3344 (for State parties in interest).

9. *Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Props., Ltd.*, 226 Ariz. 262, 246 P.3d 343 (2011). Counsel: George Paul, Lewis and Roca, 40 North Central Avenue, Suite 1900, Phoenix, Arizona 85004, 602-262-5326 (counsel for Planning Group); Daniel P. Beeks, Sherman & Howard, LLC, 2800 North Central Avenue, Suite 1100, Phoenix, Arizona 85004, 602-240-3000 (counsel for Lake Mathews).

10. *Fushek v. State*, 218 Ariz. 285, 183 P.3d 536 (2008). Counsel: Michael Manning, Stinson Morrison Hecker, 1850 North Central Avenue, Suite 2100, Phoenix, Arizona 85004, 602-279-1600, and Thomas M. Hoidal, 111 West Monroe Street, Phoenix, Arizona 85003, 602-254-0202 (counsel for Fushek); Dianne Gunnels Rowley, Maricopa County Attorneys' Office, 301 West Jefferson Street, Phoenix, Arizona 85003, 602-506-3411 (for State).

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

State v. Styers, 227 Ariz. 186, 254 P.3d 1132 (2011) (Hurwitz, J., dissenting), *cert. denied*, Oct. 31, 2011 (No. 11-6674)

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174 (2011), *cert. denied*, Oct. 17, 2011 (No. 11-5816)

State v. Delahanty, 226 Ariz. 502, 250 P.3d 1131 (2011), *cert. denied*, Oct. 3, 2011 (No. 10-10453)

State v. Gomez, 226 Ariz. 165, 244 P.3d 1163 (2010), *cert. denied*, 131 S. Ct. 2460 (2011)

State v. Gallardo, 225 Ariz. 560, 242 P.3d 159 (2010), *cert. denied*, 131 S. Ct. 1796 (2011)

State v. Chappell, 225 Ariz. 229, 236 P.3d 1176 (2010), *cert. denied*, 131 S. Ct. 1485 (2011)

State v. Villalobos, 225 Ariz. 74, 235 P.3d 2177 (2010), *cert. denied*, 131 S. Ct. 901 (2011)

State v. Womble, 225 Ariz. 91, 235 P.3d 244 (2010), *cert. denied*, 131 S. Ct. 832 (2010)

State v. Hargrave, 225 Ariz. 1, 234 P.3d 569 (2010), *cert. denied*, 131 S. Ct. 317 (2010)

State v. Garcia, 224 Ariz. 1, 226 P.3d 370 (2010), *cert. denied*, 131 S. Ct. 75 (2010)

State v. Kuhs, 223 Ariz. 376, 224 P.3d 192 (2010), *cert. denied*, 131 S. Ct. 228 (2010)

State v. Kiles, 222 Ariz. 25, 213 P.3d 174 (2009), *cert. denied*, 130 S. Ct. 3274 (2010)

State v. Speer, 221 Ariz. 449, 212 P.3d 787 (2009), *cert. denied*, 130 S. Ct. 1520 (2010)

State v. Bearup, 221 Ariz. 163, 211 P.3d 684 (2009), *cert. denied*, 130 S. Ct. 2372 (2010)

State v. Valverde, 220 Ariz. 582, 208 P.3d 233 (2009), *cert. denied*, 130 S. Ct. 640 (2009)

Mayer Unified School Dist. v. Winkleman, 219 Ariz. 562, 201 P.3d 523 (2009), *cert. denied*, 130 S. Ct. 363 (2009)

State v. Martinez, 218 Ariz. 421, 189 P.3d 348 (2008), *cert. denied*, 129 S. Ct. 494 (2008)

State v. Boggs, 218 Ariz. 325, 185 P.3d 111 (2008), *cert. denied*, 129 S. Ct. 764 (2008)

State v. McCray, 218 Ariz. 252, 183 P.3d 503 (2008), *cert. denied*, 555 U.S. 841 (2008)

State v. Cruz, 218 Ariz. 149, 181 P.3d 196 (2008), *cert. denied*, 129 S. Ct. 900 (2009)

State v. Velazquez, 216 Ariz. 300, 166 P.3d 91 (2007), *cert. denied*, 553 U.S. 1014 (2008)

State v. Garza, 216 Ariz. 56, 163 P.3d 1006 (2007), *cert. denied*, 552 U.S. 1107 (2008)

State v. Gant, 216 Ariz. 1, 162 P.3d 640 (2007), *aff'd*, 556 U.S. 332 (2009)

State v. Andriano, 215 Ariz. 497, 161 P.3d 540 (2007), *cert. denied*, 552 U.S. 923 (2007)

State v. Morris, 215 Ariz. 324, 160 P.3d 203 (2007), *cert. denied*, 552 U.S. 1106 (2008)

State v. Smith, 215 Ariz. 221, 159 P.3d 531 (2007), *cert. denied*, 552 U.S. 985 (2007)

State v. Hampton, 213 Ariz. 167, 140 P.3d 950 (2006), *cert. denied*, 549 U.S. 1132 (2007)

State v. McGill, 213 Ariz. 147, 140 P.3d 930 (2006) (Hurwitz, J., concurring in part and dissenting in part), *cert. denied*, 549 U.S. 1324 (2007)

State v. Ellison, 213 Ariz. 116, 140 P.3d 899 (2006), *cert. denied*, 549 U.S. 1000 (2006)

State v. Berger, 212 Ariz. 473, 134 P.3d 378 (2006) (Hurwitz, J., concurring), *cert. denied*, 549 U.S. 1252 (2007)

In re General Adjudication of All Rights to Use Water in Gila River System and Source, 212 Ariz. 64, 127 P.3d 882 (2006), *cert. denied*, 549 U.S. 1156 (2007)

State v. Johnson, 212 Ariz. 425, 133 P.3d 735 (2006), *cert. denied*, 549 U.S. 1022 (2006)

State v. Newell, 212 Ariz. 389, 132 P.3d 833 (2006), *cert. denied*, 549 U.S. 1056 (2006)

In re General Adjudication of All Rights to Use Water in Gila River System and Source, 212 Ariz. 64, 127 P.3d 882 (2006), *cert. denied*, 549 U.S. 1156 (2007)

Maricopa-Stanfield Irr. & Drainage Dist. v. Robertson, 211 Ariz. 485, 123 P.3d 1122 (2005), *cert. denied*, 547 U.S. 1163 (2006)

In re Hamm, 211 Ariz. 458, 123 P.3d 652 (2005), *cert. denied*, 547 U.S. 1149 (2006)

State v. Cromwell, 211 Ariz. 181, 119 P.3d 448 (2005), *cert. denied*, 547 U.S. 1151 (2006)

State v. Anderson, 211 Ariz. 59, 116 P.3d 1219 (2005), *cert. denied*, 546 U.S. 895 (2005)

State v. Glassel, 211 Ariz. 33, 116 P.3d 1193 (2005), *cert. denied*, 547 U.S. 1024 (2006)

State v. Martinez, 210 Ariz. 578, 115 P.3d 618 (2005), *cert. denied*, 546 U.S. 1044 (2005)

State v. Roseberry, 210 Ariz. 360, 111 P.3d 402 (2005), *cert. denied*, 546 U.S. 945 (2005)

State v. Anderson, 210 Ariz. 327, 111 P.3d 369 (2005), *cert. denied*, 546 U.S. 895 (2005)

State v. Carreon, 210 Ariz. 54, 107 P.3d 900 (2005), *cert. denied*, 546 U.S. 854 (2005)

State v. Hampton, 208 Ariz. 241, 92 P.3d 871 (2004), *cert. denied*, 549 U.S. 1132 (2007)

In re Peasley, 208 Ariz. 27, 90 P.3d 764 (2004), *cert. denied*, 543 U.S. 928 (2004)

Kerr v. Killian, 207 Ariz. 181, 84 P.3d 446 (2004), *cert. denied sub nom. Moran v. Hibbs*, 543 U.S. 810 (2004)

Petersen v. City of Mesa, 207 Ariz. 35, 83 P.3d 35 (2004), *cert. denied*, 543 U.S. 814 (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.

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.

I have not authored an unpublished opinion while on the Arizona Supreme Court. I authored two unpublished memorandum decisions while serving as a Judge Pro Tempore for the Arizona Court of Appeals in 1993 and 1996. I have copies of those decisions and assume they also can be located at the office of the clerk of the Court of Appeals.

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

Federal Constitution

State v. Dean, 206 Ariz. 158, 76 P.3d 429 (2003)

State v. Hampton, 208 Ariz. 241, 92 P.3d 871 (2004), *cert. denied*, 549 U.S. 1132 (2007)

State v. Brown (McMullen), 209 Ariz. 200, 99 P.3d 15 (2004)

State v. Anderson, 210 Ariz. 327, 111 P.3d 369 (2005), *cert. denied*, 546 U.S. 895 (2005)

Jones v. Sterling/State, 210 Ariz. 308, 110 P.3d 1271 (2005)

Citizen Publishing Co. v. Miller (Elleithee), 210 Ariz. 513, 115 P.3d 107 (2005)

State v. Fell (Sanders), 210 Ariz. 554, 115 P.3d 594 (2005)

State v. Henderson, 210 Ariz. 561, 115 P.3d 601 (2005) (Hurwitz, J., concurring)

State v. Anderson, 211 Ariz. 59, 116 P.3d 1219 (2005), *cert. denied*, 546 U.S. 895 (2005)

State v. Gomez, 211 Ariz. 494, 123 P.3d 1131 (2005)

State v. Brown (McMullen), 212 Ariz. 225, 129 P.3d 947 (2006)

State v. Berger, 212 Ariz. 473, 134 P.3d 378 (2006) (Hurwitz, J., concurring), *cert. denied*, 549 U.S. 1252 (2007)

State v. McGill, 213 Ariz. 147, 140 P.3d 930 (2006) (Hurwitz, J., concurring in part and dissenting in part), *cert. denied*, 549 U.S. 1324 (2007)

State v. Hampton, 213 Ariz. 167, 140 P.3d 950 (2006), *cert. denied*, 549 U.S. 1132 (2007)

State v. Rayes (Reynaga), 214 Ariz. 411, 153 P.3d 1040 (2007)

State v. Price, 217 Ariz. 182, 171 P.3d 1223 (2007) (Hurwitz, J., concurring)

State v. Western Union Fin. Svcs., Inc., 220 Ariz. 567, 208 P.3d 218 (2009)

State v. Speer, 221 Ariz. 449, 212 P.3d 787 (2009), *cert. denied*, 130 S. Ct. 1520 (2010)

State v. Lynch, 225 Ariz. 27, 234 P.3d 595 (2010)

State v. Villalobos, 225 Ariz. 74, 235 P.3d 2177 (2010), *cert. denied*, 131 S. Ct. 901 (2011)

In re MH-2008-00867, 225 Ariz. 178, 236 P.3d 405 (2010)

State v. Gomez, 226 Ariz. 165, 244 P.3d 1163 (2010), *cert. denied*, 131 S. Ct. 2460 (2011)

Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Props., Ltd., 226 Ariz. 262, 246 P.3d 343 (2011)

State v. Delahanty, 226 Ariz. 502, 250 P.3d 1131 (2011), *cert. denied*, Oct. 3, 2011 (10-10453)

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174 (2011), *cert. denied*, Oct. 17, 2011 (No. 11-5816)

State v. Styers, ___ Ariz. ___, ___ P.3d ___, 2011 WL 2582791 (2011) (Hurwitz, J., dissenting), *cert. denied*, Oct. 31, 2011 (No. 11-6674)

Arizona Constitution

Clean Elections v. Brewer, 209 Ariz. 241, 99 P.3d 570 (2004) (Hurwitz, J., concurring)

McKaney v. Foreman ex rel. County of Maricopa, 209 Ariz. 268, 100 P.3d 18 (2004) (Hurwitz, J., dissenting)

Ariz. Together v. Brewer (Protect Marriage Arizona), 214 Ariz. 118, 149 P.3d 742 (2007) (Hurwitz, J., concurring)

Kromko v. Ariz. Bd. of Regents, 216 Ariz. 190, 165 P.3d 168 (2007)

State Farm Ins. Cos. v. Premier Manufactured Sys., Inc., 217 Ariz. 222, 172 P.3d 410 (2007)

Fushek v. State, 218 Ariz. 285, 183 P.3d 536 (2008)

Seisinger v. Siebel, 220 Ariz. 85, 203 P.3d 483 (2009)

Ariz. Minority Coalition for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n, 220 Ariz. 587, 208 P.3d 676 (2009) (Hurwitz, J., concurring)

Turken v. Gordon, 223 Ariz. 342, 224 P.3d 158 (2010)

McLaughlin v. Bennett, 225 Ariz. 351, 238 P.3d 619 (2010) (Hurwitz, J., concurring)

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.

My court does not have an automatic recusal system. I utilize Rule 2.11 of the Arizona Code of Judicial Conduct to determine whether I should recuse myself in any specific case. On occasion, I have consulted with the Chief Justice and other Justices of the Court on recusal issues. On rare occasions, I have consulted with the Director of the Arizona Judicial Conduct Commission for advice.

In the following list of recusals, I have included all cases resulting in opinions from the time I have served on the Court, and all petitions for review (a request that the Supreme Court review a case) from 2006 to the present, as I do not have ready access to orders on petitions for review prior to that date. (If review was granted, the case would have resulted in an opinion, so the listing includes all cases actually decided by the Court from 2003 to the present.)

***Ring* remand cases**

In 2002, I argued *Ring v. Arizona*, 536 U.S. 584 (2002), in which the Supreme Court held that a jury trial was required to establish the aggravating circumstances that make a defendant eligible to receive the death penalty. After *Ring* was remanded to the Arizona Supreme Court for further proceedings, that Court decided to conduct a consolidated proceeding in which it considered issues arising from that decision

common to capital defendants whose cases were still on direct appeal. I was appointed by the Court as lead counsel for those defendants, filed a consolidated brief on their behalf, and argued the case to the Court. (Counsel for individual defendants signed onto the brief and had the opportunity in later Supreme Court proceedings to argue issues specific to their individual cases). The Court issued its opinion in the remand cases in 2003, after I had joined the Court. *State v. Ring*, 204 Ariz. 534, 65 P.3d 915 (2003) (commonly referred to in Arizona as *Ring III*, to distinguish it from the U.S. Supreme Court decision and the original opinion on Ring's direct appeal.) Since joining the Court, I have recused myself in each case involving a defendant involved in *Ring III*. I have done so *sua sponte*. The following is a list of *Ring III* recusals:

State v. Cropper, 206 Ariz. 153, 76 P.3d 424 (2003)
State v. Ring, 206 Ariz. 150, 76 P.3d 421 (2003)
State v. Rutledge, 206 Ariz. 172, 76 P.3d 443 (2003)
State v. Praserthphong, 206 Ariz. 167, 76 P.3d 438 (2003)
State v. Nordstrom, 206 Ariz. 242, 77 P.3d 40 (2003)
State v. Prince, 206 Ariz. 24, 75 P.3d 114 (2003)
State v. Sansing, 206 Ariz. 232, 77 P.3d 30 (2003)
State v. Praserthphong, 210 Ariz. 496, 114 P.3d 828 (2005)
State v. Lehr, ___ Ariz. ___, 54 P.3d 379 (2011)
State v. Prince, 226 Ariz. 516, 250 P.3d 1145 (2011)
State v. Cropper, 223 Ariz. 522, 225 P.3d 579 (2010)
State v. Moore, 222 Ariz. 1, 213 P.3d 150 (2009)
State v. Dann, 220 Ariz. 351, 207 P.3d 604 (2009)
State v. Armstrong, 218 Ariz. 451, 189 P.3d 378 (2008)
State v. Pandeli, 215 Ariz. 514, 161 P.3d 557 (2007)
State v. Tucker, 215 Ariz. 298, 160 P.3d 177 (2007)
State v. Harrod, 218 Ariz. 268, 183 P.3d 519 (2008)
State v. Grell, 212 Ariz. 516, 135 P.3d 696 (2006)
State v. Murdaugh, 209 Ariz. 19, 97 P.3d 844 (2004)
State v. Moody, 208 Ariz. 424, 94 P.3d 1119 (2004)
State v. Armstrong, 208 Ariz. 345, 93 P.3d 1061 (2004)
State v. Davolt, 207 Ariz. 191, 84 P.3d 456 (2004)
State v. Huerstel, 206 Ariz. 93, 75 P.3d 698 (2003)
State v. Dann, 205 Ariz. 557, 74 P.3d 231 (2003)
State v. Lamar, 205 Ariz. 431, 72 P.3d 831 (2003)
State v. Rutledge, 206 Ariz. 172, 76 P.3d 443 (2003)
State ex rel. Thomas v. Hon. Steinle (Hall), CV-10-0248-PR (petition for review)
State v. Davolt, CR-10-0065-PR (petition for review)
State v. Murdaugh, CR-08-0322-PC (execution warrant)
State ex rel. Thomas v. Hon. Duncan/Wayne Prince, CV-08-0126-PR (petition for review)
State ex rel. Thomas v. Hon. Duncan/Wayne Prince, CV-08-0126-PR (petition for review)
State v. Keith Royal Phillips, CR-07-0074-PR (petition for review)

State v. Davolt, CR-07-0321-PR (petition for review)
State v. Charles Franklin Long, CR-07-0368-PR (petition for review)
Scott Douglas Nordstrom v. Hon. Nichols/State, CV-08-0015-PR (petition for review)
Moody v. Munger/State, CV-07-0429-PR (petition for review)
Moody v. Hons. Munger/Kearney/State, CV-08-0041-PR (petition for review)
State ex rel. Thomas v. Hon. Heilman/Cropper, CV-08-0048-PR (petition for review)
State v. Moody, CR-06-0340-PC (petition for review)
Christopher Huerstel v. Hon. Dawley/State, CV-06-0170-PR (petition for review)
Moody v. Munger, CV-09-0355-SA (special action)
Moody v. Munger/State of Arizona, CV-08-0335-SA (special action)
Moody v. Munger/State of Arizona, CV-08-0240-PR (petition for review)

Other recusals

Solimeno v. Yonan, CV-10-0104-PR (petition for review denied). I recused myself *sua sponte* because one of the lawyers, a close personal friend, had described the case to me when he was trying it. I have since told lawyers not to discuss any case they have in state court, even if not currently before our court, with me.

Havasupai Tribe v. Ariz. Bd. of Regents, CV-09-0007-PR (petition for review denied). I recused myself *sua sponte* because the suit involved, *inter alia*, actions allegedly undertaken by Arizona State University while I served as a member of the Board of Regents, the governing body for State Universities.

Northeast Phoenix Holdings v. Mark Winkleman/Jaren, CV-08-0138-PR (petition for review denied). I recused myself *sua sponte* because I had represented one of the parties in a related matter.

Goddard, et al. v. Hon. Fields, CV-07-0096-PR (petition for review granted but case later dismissed after settlement). I recused myself *sua sponte* because a close friend (the wife of the attorney general) was named as a party in her personal capacity.

Valder Law Offices v. Keenan Law Firm, CV-06-0114-PR (petition for review dnied). I recused myself *sua sponte* because I had been co-counsel to the Valder firm in private practice in a related matter).

Kraft v. PGA Tour, Inc., CV-06-0056-PR (petition for review denied) I recused myself *sua sponte* because a party was represented by my former firm and I had done substantial work for the PGA Tour while a lawyer at that firm.

Joffe v. Acacia Mortgage Corp., CV-05-0399-PR (petition for review denied). I recused myself *sua sponte* because a party was represented by my former firm and the case had originated while I was still practicing there.

Mullin v. Brown, CV-05-0281-PR (petition for review denied). I recused myself *sua sponte* because a close personal friend was a party in this legal malpractice action.

Ariz. Fair and Legal Redistricting v. Hon. Fields, CV-06-0073-PR (petition for review). I recused myself *sua sponte* because the Hopi Tribe, which my firm had represented the previous four years and for which I had done substantial work in private practice, was a party.

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

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

Chief of Staff to Governor Bruce Babbitt, January 1980 to October 1983; appointed by Gov. Babbitt.

City of Phoenix, Neighborhood Improvement Committee, Chair, 1986 to 1988; appointed by Mayor Goddard and City Council.

Chief of Staff to Governor Rose Mofford, January 1988 to April 1988; appointed by Gov. Mofford.

Arizona Board of Regents, 1988 to 1996, President (1992 to 1993); appointed by Gov. Mofford.

City of Phoenix, Street Environment Committee, Chair, 1989 to 1990; appointed by Mayor Goddard and City Council.

Co-chair of Transition Committee for Governor Janet Napolitano, November 2002 to January 2003, appointed by Gov. Napolitano.

Member, Advisory Committee on the Federal Rules of Evidence, 2004 to 2010, appointed by Chief Justice Rehnquist and reappointed by Chief Justice Roberts.

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.

Before becoming a judge, I regularly volunteered for various political campaigns, usually providing advice to candidates or raising funds. The campaigns in which I played a significant role are listed below. Except as noted below, I do not recall having any formal title. I may have been called upon from time to time to provide

advice to other candidates, but I have no records or recollection of specific occasions. I have never held an office in a political party.

Bruce Babbitt: 1982 gubernatorial campaign and 1986 presidential campaign (legal advice and fundraising).

Terry Goddard: mayoral campaigns, 1984, 1986, 1988, 1990; gubernatorial campaign, 1990; attorney general campaign, 2002 (legal advice and fundraising).

Eddie Basha: gubernatorial campaign, 1994 (legal advice and fundraising).

Ed Pastor: Honorary Co-Chair of campaign for U.S. Congress, 1990 (fundraising)

Sam Coppersmith: U.S. Congress campaign, 1992 (fundraising); U.S. Senate campaign, 1994. In the Senate campaign, I served as an uncompensated lawyer for the campaign in connection with legal proceedings relating to a recount of the primary election vote and engaged in some fundraising (legal advice and fundraising).

Art Hamilton: Secretary of State campaign, 1998.

Chris Cummiskey: Secretary of State campaign, 2002, Chairman (responsible for strategy and campaign finance reports; also legal advice and fundraising).

Janet Napolitano: Attorney General campaign, 1998 (fundraising); gubernatorial campaign, 2002 (fundraising and advice regarding transition planning).

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 Jon O. Newman, United States District Court for the District of Connecticut, from January 1972 to August 1972.

I served as a law clerk to Judge J. Joseph Smith (deceased), United States Court of Appeals for the Second Circuit, from 1972 to 1973.

I served as a law clerk to Justice Potter Stewart (deceased), Supreme Court of the United States, from 1973 to 1974.

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.

1974 – 1980; 1983 – 2003
Osborn Maledon, PA (and predecessor firms, Meyer Hendricks Victor Osborn & Maledon, PA and Martori Meyer Hendricks & Victor, PA)
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012
Associate (1974 – 1977)
Shareholder (1977 – 1980; 1983 – 2003)

1980 – 1983
Office of Arizona Governor Bruce Babbitt
1700 West Washington Street
Phoenix, Arizona 85007
Chief of Staff

January – April 1988
Office of Arizona Governor Rose Mofford
1700 West Washington Street
Phoenix, Arizona 85007
Chief of Staff (volunteer capacity, while on leave from law firm)

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

Under a local court rule, lawyers practicing in Maricopa County are occasionally appointed to arbitrate civil cases where the amount in controversy is less than a stated amount. As a lawyer, I was appointed in several such cases, but I do not have records concerning these cases, none of which was significant.

b. Describe:

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

I practiced law at the Osborn Maledon firm and its predecessors from 1974 to 2003, with several breaks for public service. The majority of my practice was civil litigation, although I did some criminal trial work and

some notable criminal appellate work. In the late 1970s, I began to do an increasing amount of appellate work, and by the time I left the firm in 2003 to join the bench, a majority of my work was in the appellate area. After leaving state service in 1983, I also began to do a significant amount of state administrative law practice, particularly with respect to state land and procurement issues, and that work continued throughout my tenure at the firm. In the 1980s and 1990s, I did a significant amount of work in the areas of telecommunications and media law. I also developed a sub-specialty in Indian law and in Indian gaming matters. I also did state elections work, particularly with respect to initiatives and referenda.

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

At the outset of my career, I typically represented individuals and small businesses in civil litigation matters. As my career progressed, although I continued to represent individuals and small businesses, I began increasingly to represent larger entities such as AT&T, Lucent Technologies, the American Broadcasting Company, Arizona Public Service Company, and Clorox, to name a few. My representation of these entities included litigation, administrative proceedings, and other advice. I also represented municipal governments and other entities, including the City of Phoenix, the Central Arizona Water Conservation District, and the Arizona State Compensation Fund. These representations often involved election law and constitutional litigation. I developed an Indian law practice, and represented, both in litigation and in connection with a statewide initiative, the Salt River Pima Maricopa Indian Community. I also did state lands work for the Hopi Tribe. A large part of my appellate practice involved referrals from attorneys who had tried cases – in various subject matter areas – and wished to retain independent counsel on appeal.

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

Approximately 90 percent of my practice was in litigation. I appeared in court frequently throughout my time in private practice.

i. Indicate the percentage of your practice in:

1. federal courts: 25%
2. state courts of record: 50%
3. other courts:
4. administrative agencies: 25%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 98%
2. criminal proceedings: 2% (appellate)

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 do not have precise records, but I estimate that I tried more than 40 cases to final decision. I was sole or chief counsel in the great majority (roughly 90 percent) of these cases.

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 argued two cases before the Supreme Court of the United States: *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41 (1986), and *Ring v. Arizona*, 536 U.S. 584 (2002). In *Bowen*, I had submitted, along with Benna Ruth Solomon, then of the State and Local Legal Center, an amicus brief on behalf of the Council of State Governments, the U.S. Conference of Mayors, the International City Management Association, the National Association of Counties, and the National League of Cities. I was then asked by the appellees to do the oral argument. In *Ring*, I submitted a certiorari petition, an opening brief and a reply brief. Copies of the briefs and oral argument transcripts are supplied.

I also submitted briefs in the following cases, copies of which are supplied:

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) (certiorari petition, the opening brief and the reply brief).

Shoen v. Shoen, 176 F.3d 1150 (9th Cir. 1999), *cert. denied*, 528 U.S. 1075 (2000) (opposition to certiorari).

O'Melveny & Myers v. F.D.I.C., 512 U.S. 79 (1994) (amicus brief in support of the petition for certiorari on behalf of my law firm, then known as Meyer, Hendricks, Victor, Osborn & Maledon).

State v. Herrera, 176 Ariz. 9, 859 P.2d 119 (1993), *cert. denied*, 510 U.S. 966 (1993) (certiorari petition).

State of Missouri v. Jenkins, 495 U.S. 33 (1990) (amicus brief on behalf of the National Governors' Association, the National League of Cities, the National Conference of State Legislatures, the National Association of Counties, the Council of State Governments, the United States Conference of Mayors and the International City Management Association).

Georges v. Glick, 856 F.2d 971 (7th Cir. 1988), *cert. denied*, 489 U.S. 1097 (1989) (opposition to certiorari).

Ewing v. State, 155 Ariz. 200, 745 P.2d 947 (1987), *appeal dismissed*, 486 U.S. 1002 (1988) (motion to dismiss).

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. *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41 (1986).

This case arose out of an attempt by California agencies and political subdivisions to withdraw from the Social Security System. Amendments to the Social Security Act in 1950 permitted voluntary participation by states in the System, and also allowed withdrawal upon two years' notice. California entered the system after those amendments, and signed agreements with the federal government allowing withdrawal by participating agencies and political subdivisions on such notice. In 1983, however, the Act was amended to provide that no terminations would thereafter be allowed.

A three-judge district court held the 1983 Amendments unconstitutional. I was asked by the State and Local Legal Center in early 1986 to write an amicus brief on behalf of the Council of State Governments, the U.S. Conference of Mayors, the International City Management Association, the National Association of Counties, and the National League of Cities. The brief was filed in March, 1986.

After the amicus brief was filed, the appellees (the State of California and a number of state agencies/subdivisions) asked me to argue the case to the Court. I did so on April 28, 1986. The Court issued its opinion on June 19, 1986, reversing the judgment of the district court.

My co-counsel was Benna Solomon, then with the State and Local Legal Center, now Deputy Corporation Counsel of the City of Chicago. Her address and telephone number are 30 North LaSalle Street, Chicago, Illinois 60602, 312-744-7150.

Opposing counsel was then-Assistant Attorney General Richard Willard, currently at Steptoe & Johnson, 1330 Connecticut Avenue, NW, Washington DC 20036, 202-429-6263.

2. *State Compensation Fund v. Symington*, 174 Ariz. 188, 848 P.2d 273 (1993).

This case involved an emergency "budget balancing" bill enacted by the Arizona Legislature in 1992. Under the bill, an "alternative minimum tax" was imposed on the income received by the State Compensation Fund, an agency formed to provide worker's compensation insurance to Arizona employers. The Fund contended that the tax violated a provision of the Arizona Constitution forbidding special legislation.

I was hired by the Fund in early 1993, when the tax was to become effective, to challenge its validity. I filed an original action (called a special action under Arizona procedure) in the Arizona Supreme Court, which accepted discretionary jurisdiction because of the importance of the question presented and because the issue was of first impression. The tax would have significantly affected premiums for many state employers. On February 23, 1993, the Court issued an opinion invalidating the tax.

I was lead counsel for the Fund, but was assisted by Mark Fuller, now at Gallagher & Kennedy, 2575 East Camelback Road, Phoenix, Arizona 85016, 602-530-8185.

Opposing counsel was Rebecca White Berch, who was then the Arizona Solicitor General. She is currently Chief Justice of the Arizona Supreme Court. Her address is 1501 West Washington, Phoenix, Arizona 85007, and her telephone number is 602-452-3535.

3. *US West Communications, Inc. v. Arizona Corporation Commission*, 201 Ariz. 242, 34 P.3d 351 (2001).

This case involved the constitutionality of regulations promulgated by the Arizona Corporation Commission concerning deregulation of local telephone services. I represented AT&T, starting with administrative proceedings before the Commission, then in the Superior (trial) Court, the Court of Appeals, and eventually before the Arizona Supreme Court.

The central issue was whether the Arizona Constitution required competitive telephone rates and charges to be set in the traditional method, under which the Commission first determines the fair value of a utility's property and then allows a reasonable rate of return on that value. The Commission's regulations instead relied largely on the market to set rates among competitive carriers. US West, the incumbent monopolist, challenged those regulations and

licenses issued by the Commission to various competitive local exchange carriers ("CLECs"), including AT&T.

Although a number of CLECs were involved in the case, I wrote the brief on behalf of the group and argued the case in the courts. The Superior Court upheld the regulations and licenses, but the Court of Appeals reversed in part. *US West Communications, Inc. v. Arizona Corporation Commission*, 198 Ariz. 208, 8 P.3d 396 (Ct. App. 2000). I wrote a petition for review, which was granted by the Supreme Court; the Court also granted US West's cross-petition. After oral argument, the Court held that although the Arizona Constitution mandated the Commission to determine the fair value of a utility's Arizona property, competitive rates were not required to be determined on the old rate-of-return method.

My co-counsel was Joan Burke, 1650 North First Avenue, Phoenix, Arizona 85003, 602-535-0396. The other CLECs were separately represented, but provided input on the briefing and oral arguments. I collaborated mostly with Thomas H. Campbell, Lewis & Roca, 40 North Central, Phoenix, Arizona 85004, 602-262-5723.

Opposing counsel was Timothy Berg, Fennemore Craig PC, 3003 North Central Avenue, Suite 2600, Phoenix, Arizona 85012, 602-916-5421.

4. *Salt River Pima-Maricopa Indian Community v. Hull*, 190 Ariz. 97, 945 P.2d 818 (1997).

This case involved the efforts of my client, the Salt River Pima-Maricopa Indian Community (SRPMIC), to enter into a gaming compact with the State under the Indian Gaming Regulatory Act. An Arizona statute permitted the State to enter into gaming compacts with Indian tribes, but after signing compacts with sixteen tribes, the Governor refused to sign further compacts. The Arizona voters then adopted an initiative measure in 1996 requiring the Governor to sign a "standard gaming compact" with any tribe upon request. The initiative defined a standard compact. In late 1996, SRPMIC submitted a standard form of compact to Governor Symington and requested that he sign it on behalf of the State. The Governor instead tendered to the tribe a compact containing various non-standard provisions. On behalf of SRPMIC, co-counsel and I filed an original special action in the Arizona Supreme Court, seeking an order that the Governor sign the standard compact. I argued the case to the Supreme Court on behalf of SRPMIC.

The Court held that the Governor was obligated to enter into the standard compact, and rejected his arguments that the 1996 initiative violated separation of powers. The Court also rejected the Governor's arguments that there was no such thing as a standard compact. The Court left open, however, whether the Indian Gaming Regulatory Act permitted the Tribe to engage in all gaming specified in the standard compact.

My co-counsel were Thomas L. Hudson, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9000, and Philip J. Shea, 845 North Third Avenue, Phoenix, Arizona 85003, 602-254-3383.

Opposing counsel were Ian Macpherson, currently at Ryan Rapp & Underwood, 3200 North Central Avenue, Suite 1600, Phoenix, Arizona 85012, 602-280-1000; Lisa T. Hauser, Gammage & Burnham, Two North Central Avenue, 15th Floor, Phoenix, Arizona 85004, 602-256-4462; and Thomas J. Dennis, currently at The Office of Legal Advocate, 3800 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, 602-506-4111.

5. *Sears v. Hull*, 192 Ariz. 65, 961 P.2d 1013 (1998).

This case involved an issue left open in *Salt River Pima-Maricopa Indian Community v. Hull*, 190 Ariz. 97, 945 P.2d 818 (1997) – whether the provisions in the standard Indian gaming compact allowing casino-style gaming were illegal because Arizona did not generally allow such gaming by non-Indians. Shortly before the 1997 decision was entered, several residents of a community near the SRPMIC reservation filed suit in Superior Court, contending that the compacts were illegal for this reason. I represented SRPMIC in the trial proceedings. The trial judge found the compact illegal and enjoined the Governor from entering into the standard compact with SRPMIC.

I filed a notice of appeal on behalf of SRPMIC; the State also appealed. The Supreme Court granted a motion to transfer the appeal directly to that court, bypassing the intermediate Court of Appeals. I briefed and argued the case in the Supreme Court. After hearing oral argument, the Court reversed and vacated the injunction entered by the trial court, holding that the plaintiffs had no standing to challenge the compact. SRPMIC thereafter entered into a compact with the State and has since conducted very substantial gaming operations, the proceeds from which have greatly benefited the Community.

The State was represented by Thomas J. Dennis, currently at The Office of Legal Advocate, 3800 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, 602-506-4111. The Governor was represented by Lisa Daniel Flores, now a Judge of the Superior Court, Maricopa County Superior Court, 201 West Jefferson, Phoenix, Arizona 85003, 602-372-0825.

Opposing counsel was Neil Vincent Wake, now a United States District Judge, who can be reached at United States District Court for the District of Arizona, 401 West Washington, Phoenix, Arizona 85003, 602-322-7640.

6. *Medical Laboratory Management Consultants v. American Broadcasting Cos.*, 981 F. Supp. 1487 (D. Ariz. 1996); 30 F. Supp. 2d 1182 (D. Ariz. 1998), *aff'd*, 306 F.3d 806 (9th Cir. 2002).

This case involved a news report about the pap smear industry broadcast by the American Broadcasting Companies ("ABC") on the national news show "Prime Time Live," hosted by Diane Sawyer. As part of the broadcast, ABC submitted pap smears to various laboratories under fictitious names and then compared the results reached by each laboratory with previous readings of the pap smears. The suit was filed in 1995 in Maricopa County Superior Court by a Phoenix laboratory that was one of the subjects of the show, along with the manager of the laboratory, who was surreptitiously videotaped while in the laboratory's

corporate offices speaking to undercover ABC reporters. The suit made various tort and common law claims against ABC, Ms. Sawyer, and others, including defamation, invasion of privacy, fraud, and intrusion upon seclusion. My firm was retained to represent the defendants and we did so throughout the proceedings. I was lead counsel.

The suit was removed to the United States District Court for the District of Arizona. In 1996, Judge Roslyn O. Silver denied the plaintiffs' motion to remand, and, after the defendants filed a motion to dismiss, dismissed several claims. After two years of intensive discovery, Judge Silver granted our motion for summary judgment on all but one claim; plaintiffs later voluntarily dismissed that claim and appealed.

The Ninth Circuit affirmed in 2002. The opinion held that (1) the visit to the laboratory's administrative offices by ABC's undercover representatives did not intrude upon a reasonably expected seclusion under Arizona law; (2) the secret videotaping of conversation with the laboratory manager by the undercover representatives for future public broadcast did not intrude on an objectively reasonable expectation of privacy; (3) the alleged trespass was not the legal cause of publication damages allegedly suffered by the laboratory; and (4) the news broadcast was substantially true. I argued the case to the Ninth Circuit.

My co-counsel were Diane M. Johnsen, now a Judge of the Arizona Court of Appeals, Division One, 1501 West Washington, Phoenix, Arizona 85007, 602-542-1432, and Jean Zoeller, Vice President Litigation, ABC, 500 South Buena Vista, Suite 108C, Burbank, California 91521, 818-560-8410.

Opposing counsel was Neville L. Johnson, now of Johnson & Johnson, LLP, 439 North Canon Drive, Suite 200, Beverly Hills, California 90210, 310-975-1080.

7. *Ring v. Arizona*, 536 U.S. 584 (2002).

The issue in this case was whether the aggravating circumstances that must be found in order to subject a murder defendant to a potential sentence of death can be found by a judge, rather than a jury. Ring had been convicted of felony murder and sentenced to death after a superior court judge found two statutory aggravating circumstances. The Arizona Supreme Court vacated the finding of one aggravator, but affirmed the death sentence, rejecting Ring's argument that the Sixth and Fourteenth Amendments required that a jury, not a judge, find the existence of the aggravating circumstance. The Arizona court acknowledged that recent Supreme Court decisions, such as *Apprendi v. New Jersey*, 530 U.S. 466 (2000), suggested that Arizona's capital sentencing scheme might be unconstitutional, but felt bound by *Walton v. Arizona*, 497 U.S. 639 (1990), which had upheld the Arizona statute against an identical attack.

In the fall of 2001, I was asked by Ring's counsel to file a certiorari petition on Ring's behalf. We filed the petition in September, 2001 and the petition was granted in January, 2001. The case was argued on April 22, 2002, with a compacted briefing schedule.

I argued the case on behalf of Ring. The Court overruled *Walton*, and held that the Sixth and Fourteenth Amendments required that a jury, not a judge, find the aggravating circumstances that were necessary to subject a defendant to a capital sentence. The case was significant because it affected death penalty proceedings not only in Arizona, but in a number of other states. The Court remanded Ring's case to the Arizona Supreme Court for further proceedings.

My co-counsel were John A. Stookey, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9382, and Daniel L. Kaplan, now a Federal Public Defender, 850 West Adams Street, Suite 201, Phoenix, Arizona 85007, 602-382-2767.

Opposing counsel was Janet Napolitano, then Attorney General of Arizona, and now Secretary of the Department of Homeland Security, Washington, D.C. 20528, 202-282-8000.

8. *State v. Ring*, 204 Ariz. 534, 65 P.3d 915 (2003).

After the Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), which invalidated Arizona's death penalty scheme and required that aggravating circumstances that make a capital defendant eligible for the death penalty must be found by a jury, not a judge, the Supreme Court of Arizona appointed me in the summer of 2002 as lead counsel for all defendants under a death sentence whose cases were still on direct appeal. The court ordered those defendants to brief issues common to their cases raised by the United States Supreme Court's decision. Among those many issues were: (1) whether *Ring* error could be harmless; (2) whether a new sentencing proceeding was required where one aggravating factor had been found by the jury (or involved a prior conviction) but another had not; (3) whether any resentencing was barred by double jeopardy; (4) whether aggravating factors could be found by a jury other than the trial jury; (5) whether the Arizona Constitution provided a broader right to jury trial on aggravating factors than the United States Constitution; and (6) whether certain aggravating circumstances, even if not expressly found by the trial jury, were implicit in the verdict.

I drafted a consolidated brief, which then received comment from counsel representing the 27 other defendants whose cases were on direct appeal. After revising the brief, I argued the case to the Arizona Supreme Court, whose opinion was not issued until after I joined the bench. After the opinion was issued, counsel for individual defendants filed additional briefs in each case. With very few exceptions, the Court concluded (in opinions from which I recused myself) that the individual defendants (including Ring) were entitled to new sentencing proceedings.

My primary co-counsel were John A. Stookey, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9382, and Daniel L. Kaplan, now a Federal Public Defender, 850 West Adams Street, Suite 201, Phoenix, Arizona 85007, 602-382-2767.

Opposing counsel was Kent E. Cattani, Office of the Attorney General, 1275 West Washington, Phoenix, Arizona 85007, 602-542-8589.

9. *PGA Tour, Inc. v. Martin*, 204 F.3d 994 (9th Cir. 2000), *aff'd*, 532 U.S. 661 (2001).

The issue in this case was whether the PGA Tour, a professional golf association, was required by the Americans with Disabilities Act to allow a professional golfer with a malformed right leg to ride a golf cart in its competitive tournaments. My firm, Osborn Maledon, represented the PGA Tour, and my partner William J. Maledon represented the Tour at trial. In January, 1998, the United States District Court for the District of Oregon entered a permanent injunction requiring the Tour to allow use of the golf cart; the Tour appealed. I was asked to be lead counsel on appeal, had the lead role in drafting the briefs, and argued the case to the Ninth Circuit in 1999. That court issued its decision in March, 2001, affirming the judgment of the district court.

The Tour hired H. Bartow Farr III, as lead counsel in preparing a petition for certiorari, and I worked closely with him on the petition for certiorari. After certiorari was granted in the fall of 2000, I continued to work closely with Mr. Farr on the briefs, on which my name appears, and was intensively involved in the oral argument preparation. The case was argued in January 2001, and the Supreme Court issued its opinion in May of that year, affirming the Ninth Circuit.

Co-counsel were William J. Maledon, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9000, and H. Bartow Farr III, Farr & Taranto, 1220 19th Street, N.W., Suite 800, Washington, DC 20036, 202-775-0184.

Opposing counsel was Roy L. Reardon, Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017, 212- 55-2840

10. *Toscano v. Professional Golfers Association*, 258 F.3d 978 (9th Cir. 2001).

This was an antitrust case brought by a professional golfer against the PGA and sponsors of Senior PGA Tournaments. The golfer alleged that by agreeing to abide by PGA Senior Tour rules, which allowed some golfers with historically good tournament records to be eligible for Tour events even if they had not achieved recent tournament success, the sponsors had entered into a combination in restraint of trade with each other and the Tour. (These rules allowed certain very popular golfers, such as Arnold Palmer, automatic entry in Senior Tour events, thus helping to boost attendance.) My partner William J. Maledon represented the sponsors and the Tour in the trial court, which entered a summary judgment in favor of the sponsors in 1999. The golfer appealed in late 1999, and I was asked to be lead counsel for the sponsors on appeal (the claims against the Tour were not summarily adjudicated). I drafted the briefs in coordination with trial counsel and argued the case to the Ninth Circuit in June, 2001.

The Ninth Circuit issued its opinion in August, 2001, holding that the sponsors had not violated the Sherman Act by agreeing to abide by the PGA Tour regulations. The decision was important to the continued success of the Senior Tour, as the presence of the golfers made eligible by the events were among the Tour's most popular participants.

Co-counsel were William J. Maledon and Brett L. Dunkelman, Osborn Maledon, 2929 North Central Avenue, 21st Floor, Phoenix, Arizona 85012, 602-640-9000.

Opposing counsel was Paul R. Smith, Bowman & Stella, 800 West Airport Freeway, Suite 860, Irving, Texas 75062, 214-922-0220.

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.)

    Apart from the litigation activities already detailed, I would rank as most significant my participation as counsel for the Salt River Tribe and the Arizona Indian Gaming Association in a statewide initiative campaign in 2002. That campaign, which was successful, guaranteed the ability of all Arizona tribes to engage in gaming for the foreseeable future, even after then-existing compacts expired. I served as chief legal advisor for the Association during the campaign, had a lead role in the drafting of the complex initiative, and worked closely with the Association's consultants on strategy. The initiative prevailed by a narrow margin in November 2002, and has provided the structure for the continuation of Indian gaming and effective state regulation of such gaming activities.

    After leaving state government service in 1983, I was occasionally called upon by those doing lobbying in my firm or other firms to assist in presentations to state agencies or the state legislature. I assisted a lawyer in another firm in pursuing legislation on behalf of Searle Corporation with respect to regulation of aspartame in the early 1980s. I pursued applications for planning permits, leases and sales in the State Land Department while in private practice during the 1980s and 1990s. While not typically viewed as lobbying, these activities arguably were covered by the Arizona lobbying law, so my firm (as a matter of precaution) typically registered all lawyers as lobbyists, and listed as lobbying clients all clients we represented in state agency non-litigation matters. The 1999 records of the Arizona Secretary of State (the last year available on line) indicate that the firm or I registered as lobbying for Jaren Associates and Ridgeway Oil Corporation, each of which I represented in connection with state land leases or purchases.

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 regularly taught at the Arizona State University College of Law (now the Sandra Day O'Connor College of Law) since arriving in Phoenix in 1974. From 1977 to 1980, I

taught professional responsibility and Supreme Court litigation as an adjunct professor. The former course covered both ethics and professionalism and the latter focused on cases then pending before the Court. I cannot locate syllabi for those courses; the law school did not in those days require syllabi, and I believe that none were prepared.

After two terms in Government service, I returned as an adjunct professor to the College of Law in 1988, teaching a course on the legislative process, which focused both on the legal aspects of legislation and how legislation was pursued in Arizona. I cannot locate syllabi for those courses; the law school did not in those days require syllabi, and I believe that none were prepared.

In 1994 and 1995, as part of my firm's sabbatical program, I spent an academic year in residence at the law school as a visiting professor of law, teaching the first-year civil procedure courses to a small section. These courses covered, among other things, both jurisdiction and rules-based issues. I have not retained syllabi.

In the fall of 2001, again on sabbatical, I served as a Distinguished Visitor from Practice at the law school, again teaching civil procedure. I have not retained a syllabus.

I resumed teaching as an adjunct professor in the fall of 2002, again teaching civil procedure. In 2004, I taught a course on the federal courts, which focused on federal statutory and constitutional jurisdictional issues. From 2005 to 2010, I taught a civil procedure course each fall. I have retained syllabi for the 2004 federal courts course and the 2005-2010 civil procedure courses, and they are supplied. In 2010 and 2011, I also taught an appellate oral advocacy seminar, in which students prepare and then argue an actual case to a panel of lawyers and judges. The course does not have a syllabus.

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

I do not anticipate any such income or benefits.

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

I do not presently have 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.

The most likely area of conflict would be cases in which I had sat on the Arizona Supreme Court, particularly habeas corpus cases. I would recuse myself in any case in which I had a prior judicial involvement. Because I have been out of law practice since 2003, I do not believe there are any other categories of cases that are likely to present conflicts-of-interest. I would of course recuse myself from a case involving any company in which I had shareholdings.

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

[redacted]

relations matters), I devoted substantial time to a number of appellate pro bono ventures. The two most significant were:

1. *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 1 (1986). In *Bowen*, I had submitted, along with Benna Ruth Solomon, then of the State and Local Legal Center, an amicus brief on behalf of the Council of State Governments, the U.S. Conference of Mayors, the International City Management Association, the National Association of Counties, and the National League of Cities. I was then asked by the appellees to do the oral argument. I have no access to my time records, but I estimate that I devoted several months of time to the matter (in the area of 400–500 hours).

2. *Ring v. Arizona*, 536 U.S. 584 (2002). In *Ring*, I was asked by counsel who had handled the appeal in the Arizona Supreme Court on behalf of Mr. Ring to file a certiorari petition. I did so (with help from others in my firm), and after certiorari was granted, filed as counsel of record an opening and reply brief. I also orally argued the case. After the Court held in Ring's favor, I was appointed by the Arizona Supreme Court to brief and argue on remand a consolidated action involving issues arising from the Court's decision common to all death row defendants whose cases were still on direct appeal. *See State v. Ring*, 204 Ariz. 534, 65 P.3d 915 (2003). I devoted the better part of a year to the *Ring* cases, and estimate that I spent about 1500 hours on them.

In addition to my pro bono litigation practice, I have devoted, both as an attorney and as a judge, substantial time to uncompensated teaching at the Sandra Day O'Connor College of Law at Arizona State University. I was in residence as a professor twice (once for a semester and once for an entire academic year) and have taught as an adjunct professor in most years over the past several decades. I am certain that this teaching has involved thousands of hours. I have also lectured at a great number of continuing legal education events, both as an attorney and later as a judge.

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 Arizona to recommend candidates for nomination to the United States Court of Appeals for the Ninth Circuit.

I received a phone call from an attorney with the White House Counsel's Office on July 25, 2011 to discuss my interest in being considered as a candidate for

nomination. Since August 8, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 12, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 2, 2011, the President submitted my nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or questior 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
Hurwitz, Andrew D.	9th Circuit	11/2/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge	☑ Nomination. Date 11/2/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2010 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.**	
1501 West Washington Phoenix, AZ 85007	Reviewing Officer _____ Date _____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1	Trustee	Trust #1
2		
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 16	Name of Person Reporting	Date of Report
	Hurwitz, Andrew D.	11/2/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	State of Arizona; salary	$152,325.59
2.	2010	National Conference of Bar Examiners; stipend	$6,000.00
3.	2011	National Conference of Bar Examiners; stipend	$3,560.00
4.	2010	State of Arizona; salary	$153,043.72
5.	2011	State of Arizona; salary	$125,192.34

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2010	Arizona State University; salary
2.	2011	Arizona State University; salary
3.	2010	Kendall Hunt Publishing; royalties
4.	2011	Kendall Hunt Publishing; royalties

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 16	Name of Person Reporting Hurwitz, Andrew D.	Date of Report 01/2/2011

V. GIFTS. *(Includes those of 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 16

Name of Person Reporting	Date of Report
Hurwitz, Andrew D.	11/2/2011

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

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

A	B		C		D				
Description of Assets (Including trust assets)	Income during reporting period		Gross value at end of reporting period		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)	(3) Type (e.g., buy, sell, redemption)	(4) Date mm/dd/yy	(5) Value Code 2 (J-P)	(6) Gain Code 1 (A-H)	(7) Identity of buyer/seller (if private transaction)
1 U.S. Bank (Checking/Savings)	A	Interest	K	T	Exempt				
2 Interest in Real Estate Limited Partnership (Avondale Acres)	A	Distribution	K	W	Exempt				
3 Trust #1	E	Int./Div.	O	T	Exempt				
4 -Allianz NFJ Small Cap Value Fund P									
5 -Alton/Montage & Caldwell Growth Fund N									
6 -Blackrock Global Allocation Fund A									
7 -Delaware Diversified Income Fund A									
8 -First Trust ISE Global Copper Fund									
9 -Franklin High Yield Tax Free Fund A									
10 Hartford Floating Rate Bond Fund A									
11 Hartford Global Real Estate Asset Fund A									
12 iShare Silver Trust Fund									
13 JNA Incl A Fund									
14 Ivy Asset Strategy Fund A									
15 Loomis Sayles Strategy Income Fund A									
16 Loomis Sayles Bond Retail Fund									
17 Mainstay High Yield Opportunity Fund A									

1 Income Gain Codes
(See Columns B1 and D6)

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 or less
K =$16 - $50
L =$51 - $100
M =$101 - $200
N =$201 - $500
O =$501 - $1,000
P1 =$1,001 - $5,000
P2 =$5,001 - $25,000
P3 =$25,001 - $50,000
P4 =$50,001 - $100,000
P5 =More than $100,000

Q =Appraisal
R =Assessment
S =Book Value
T =Cash Market
U =Estimated
V =Independent Valuation
W =Other

1 =$1,000 or less
2 =$1,001 - $2,500
3 =$2,501 - $5,000
4 =$5,001 - $15,000
5 =$15,001 - $50,000
6 =$50,001 - $100,000
7 =$100,001 - $1,000,000
8 =$1,000,001 - $5,000,000
9 =More than $5,000,000

J =$15,001 - $50,000
K =$50,001 - $100,000
L =$100,001 - $250,000
M =$250,001 - $500,000
N =$500,001 - $1,000,000
O =$1,000,001 - $5,000,000
P1 =$5,000,001 - $25,000,000
P2 =More than $25,000,000

FINANCIAL DISCLOSURE REPORT Page 5 of 16	Name of Person Reporting Hurwitz, Andrew D.	Date of Report 11/2/2011

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

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. -Market Vectors Agribusiness ETF									
19. -Metropolitan WST Total Return Bond Fund M									
20. -Oppenheimer Developing Markets Fund A									
21. -Parnassus Equity Income Fund									
22. -Pimco Emerging Markets Bond Fund A									
23. -Pimco Total Return Fund A									
24. -Pimco Unconstrained Bond Fund A									
25. -Powershares DB Agricultural Fund									
26. -Prudential Jennison Natural Resources Fund Z									
27. -Royce 100 Fund Serv									
28. -SPDR Gold Trust Gold Shares									
29. -T Rowe Price Eqt-Inc Adv Fund									
30. -Templeton Global Bond Fund A									
31. -Third Avenue Focused Credit Investment Fund									
32. -Third Avenue Real Estate Value Inst Fund									
33. -Thornburg Int'l Value Fund I									
34. -Wisdom Tree Emerging Markets Small Cap Fund									

1 - Income Gain Codes
(See Columns B1 and D4)

2 - Value Codes
(See Columns C1 and D3)

3 - Value Method Codes
(See Columns C2)

A - $1,000 or less
F - $2,501 - $5,000
G - $5,001 - $15,000
H - $15,001 - $50,000
I - $50,001 - $100,000
J - $100,001 - $250,000
K - $250,001 - $500,000
L - $500,001 - $1,000,000
M - $1,000,001 - $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 - Over $100,000,000
Q - Appraisal
R - Cost (Real Estate Only)
S - Assessment
T - Cash Market
U - Book Value
V - Other
W - Estimated

C - $2,500 - $5,000
D - $5,001 - $15,000
E - $15,001 - $50,000
F - $50,001 - $100,000
G - $100,001 - $250,000
H1 - $250,001 - $500,000
H2 - $500,001 - $1,000,000
I - $1,000,001 - $5,000,000
J1 - $5,000,001 - $25,000,000
J2 - $25,000,001 - $50,000,000
K - Over $50,000,000
L - Appraisal
M - Assessment
N - Cash Market
O - Book Value
P - Other
Q - Estimated

J1 - $1,001 - $15,000
J2 - More than $15,000
K - $15,001 - $250,000
L1 - $250,001 - $500,000
L2 - $500,001 - $1,000,000
M - $1,000,001 - $5,000,000
N - $5,000,001 - $25,000,000
O - $25,000,001 - $50,000,000
P - Over $50,000,000

T - Cash Market

U - $1,001 - $15,000
V - $15,001 - $50,000
W - $50,001 - $100,000
X - $100,001 - $250,000
Y - $250,001 - $500,000
Z1 - $500,001 - $1,000,000
Z2 - $1,000,001 - $5,000,000
Z3 - $5,000,001 - $25,000,000
Z4 - $25,000,001 - $50,000,000
Z5 - Over $50,000,000

FINANCIAL DISCLOSURE REPORT
Page 6 of 16

Name of Person Reporting	Date of Report
Hurwitz, Andrew D.	11/2/2011

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 11-60 of filing instructions.)*

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

A	B		C		D				
Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		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 -Calvert Income Fund A (Y)									
36 -Columbia Value & Restructuring Fund A (Y)									
37 -First Eagle Global Fund (Y)									
38 -Franklin Mutual Quest Fund A (Y)									
39 -Hartford Inflation Plus Fund A (Y)									
40 -Ivy Limited Term Bond Fund A (Y)									
41 -JP Morgan Research Market Neutral Fund (Y)									
42 -Legg Mason WA Managed Municipal Fund A (Y)									
43 -Northern Tax Exempt Fund (Y)									
44 -Nuveen Tradewinds Value Opportunity Fund A (Y)									
45 -Oppenheimer Int'l Bond Fund (Y)									
46 -Principal Preferred Securities Fund A (Y)									
47 -Powershares DB US $ Ind Bear ETF (Y)									
48 -TCW Total Return Bond Fund N (Y)									
49 -Thornburg Int'l Value Fund I (Y)									
50 -RS Emerging Markets Fund (Y)									
51 -Van Eck Global Hard Assets Fund A (Y)									

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 = $1,000 or less
J = $1,001 - $15,000
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 = More than $5,000,000
P3 = $5,000,001 - $25,000,000
P4 = More than $25,000,000
Q = Appraisal
R = Cost (Real Estate Only)
S = Assessment
T = Cash Market
U = Book Value
V = Other
W = Estimated
X = $15,001 - $50,000
Y = $50,001 - $100,000
Z = $100,001 - $250,000

FINANCIAL DISCLOSURE REPORT
Page 7 of 16

Name of Person Reporting	Date of Report
Barwitz, Andrew B.	11/2/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-36 of filing instructions.)*

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

A. Description of Assets (including trusts/assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. -American AMCAP Fund (Y)									
53. -RS Emerging Markets Fund (Y)									
54. IRA#1	E	Int./Div.	N	T	Exempt				
55. -First Trust ISE Global Copper Fund									
56. -iShare Silver Trust Fund									
57. -Market Vectors Agribusiness Fund									
58. -Powershares DB Agricultural Fund									
59. -SPDR Gold Trust Gold Shares									
60. -Wisdom Tree Emerging Markets Small Cap Fund									
61. -Allianz NFJ Small Cap Value Fund P									
62. -Alger/Montage & Caldwell Growth Fund N									
63. -Blackrock Global Allocation Fund A									
64. -Delaware Diversified Income Fund A									
65. -Hartford Global Real Estate Asset Fund A									
66. -Ivy Asset Strategy Fund A									
67. -Loomis Sayles Strategy Income Fund A									
68. -Mainstay Floating Rate Fund A									

1 - Income Gain Codes (See Columns B1 and D4)
2 - Value Codes (See Columns C1 and D3)
3 - Value Method Codes (See Columns 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 = More than $5,000,000

Q = Appraisal
R = Cost (Real Estate Only)
S = Assessment
T = Cash Market
U = Book Value
V = Other
W = Estimated

S = $15,001 - $50,000
T = $50,001 - $100,000
U = $100,001 - $1,000,000
V = $1,000,001 - $5,000,000
W = $5,000,001 - $25,000,000
X = More than $25,000,000

FINANCIAL DISCLOSURE REPORT Page 8 of 16	Name of Person Reporting Hurwitz, Andrew B.	Date of Report 11/2/2011

VII. INVESTMENTS and TRUSTS — *Income, value, transactions (Includes those of spouse and dependent children, see pp. 34-38 of filing instructions.)*

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

A Description of Assets (excluding 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)
69. -Marsstay High Yield Opportunity Fund A			
70. -Metropolitan WST Total Return Bond Fund M			
71. -Oppenheimer Developing Markets Fund A			
72. -Parnassus Equity Income Fund			
73. -Pimco Emerging Markets Bond Fund A			
74. -Pimco Total Return Fund A			
75. -Prudential Jennison Natural Resources Fund Z			
76. -Royce 100 Fund Serv			
77. -Templeton Global Bond Fund A			
78. -Third Avenue Focused Credit Investment Fund			
79. -Third Avenue Real Estate Value Inst. Fund			
80. -Thornburg Int'l Value Fund I			
81. -Calvert Income Fund A (Y)			
82. -Dryden Short Term Corp Bond Fund A (Y)			
83. -First Eagle Global Fund (Y)			
84. -Hartford Inflation Plus Fund A (Y)			
85. -Ivy Limited Term Bond Fund A (Y)			

1 - Income Amount 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
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

2 - Value Codes (See Columns C1 and D3)
R = Appraisal
S = Book Value
T = Cash Value
U = Estimated
V = Other
W = Assessment
X = Estimated
Y = Assessment
Z = Cash Value

3 - Value Method Codes (See Columns C2)

4 - Type Codes (See Column D1)
S = Sale
P = Purchase
E = Exchange

5 - Gain Codes (See Columns D4)
A = $200 or less
B = $201 - $500
C = $501 - $1,000
D = $1,001 - $2,500
E = $2,501 - $5,000
F = $5,001 - $25,000
G = $25,001 - $100,000
H = $100,001 - $1,000,000
I = $1,000,001 - $5,000,000
J = Over $5,000,000

FINANCIAL DISCLOSURE REPORT Page 9 of 16	Name of Person Reporting	Date of Report
	Hurwitz, Andrew D.	11/2/2011

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

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

	A	B		C		D				
	Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	Income during reporting period		Gross value at end of reporting period		Transactions during reporting period				
		(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
86	-JP Morgan Research Market Neutral Fund (Y)									
87	-Naveen Tradewinds Value Opportunity Fund A (Y)									
88	-Oppenheimer Int'l Bond Fund (Y)									
89	-Principal Preferred Securities Fund A (Y)									
90	-Powershares DB US $ Ind Bear ETF (Y)									
91	-Rydex/SGI Futures Strategic Fund A (Y)									
92	-T Rowe Price Eqy-Inc Adv Fund (Y)									
93	-TCW Total Return Bond Fund N (Y)									
94	-Pimco Unconstrained Bond Fund A (Y)									
95	-Van Eck Global Hard Assets Fund A (Y)									
96	-American AMCAP Fund (Y)									
97	IRA#2	A	Int./Div.	N	F	Exempt				
98	-John Hancock Venture Annuity Fund									
99	-Corporate Property Associates 15 REIT									
100	IRA#3	C	Int./Div.	L	F	Exempt				
101	-Morgan Stanley Bank N.A. (Money Market Account)									
102	-First Trust ISE Global Copper Fund									

1 Income Gain Codes (See Columns B1 and D4)

2 Value Codes (See Columns C1 and D3)

3 Value Method Codes (See Columns C2)

A = $1,000 or less
F = $50,001 - $100,000
J = $15,000 or less
N = $250,001 - $500,000
P2 = $25,000,001 - $50,000,000
Q = Appraisal
U = Book Value

B = $1,001 - $2,500
G = $100,001 - $1,000,000
K = $15,001 - $50,000
O = $500,001 - $1,000,000

R = Other Real Estate Owned
V = Other

C = $2,501 - $5,000
H1 = $1,000,001 - $5,000,000
L = $50,001 - $100,000
P1 = $5,000,001 - $25,000,000
S = Assessed
W = Cost (Real Estate Only)

D = $5,001 - $15,000
H2 = More than $5,000,000
M = $100,001 - $250,000
P2 = $25,000,001 - $50,000,000
T = Cash Market

E = $15,001 - $50,000

FINANCIAL DISCLOSURE REPORT
Page 10 of 16

Name of Person Reporting	Date of Report
Hurwitz, Andrew D.	11/2/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (3) Value Code 2 (J-P)	(4) Value Method Code 3 (Q-W)	D. Transactions during reporting period (5) Type (e.g., buy, sell, redemption)	(6) Date mm/dd/yy	(7) Value Code 2 (J-P)	(8) Gain Code 1 (A-H)	(9) Identity of buyer/seller (if private transaction)
103. -SPDR Gold Trust Gold Shares									
104. -Wisdom Tree Emerging Markets Small Cap Fund									
105. -Allianz NFJ Small Cap Value Fund P									
106. -Allon/Morrnge & Caldwell Growth Fund N									
107. -Blackrock Global Allocation Fund A									
108. -Columbia Value & Restructuring Fund A									
109. -Delaware Diversified Income Fund A									
110. -Hartford Global Real Estate Asset Fund A									
111. -IVA Int'l A Fund									
112. -Ivy Asset Strategy Fund A									
113. -Loomis Sayles Strategy Income Fund A									
114. -Mainstay High Yield Opportunity Fund A									
115. -Metropolitan WST Total Return Bond Fund M									
116. -Oppenheimer Developing Markets Fund A									
117. -Parnassus Equity Income Fund									
118. -Pimco Emerging Markets Bond Fund A									
119. -Pimco Total Return Fund A									

1 Income Gain Codes (See Columns B1 and D4)
2 Value Codes (See Columns C3 and D7)
3 Value Method Codes (See Column C4)

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 = $15,001 - $50,000
J = $50,001 - $100,000
K = $100,001 - $250,000
L = $250,001 - $500,000
M = $500,001 - $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 = More than $50,000,000
Q = Appraisal
R = Cost (Real Estate Only)
S = Assessment
T = Cash Market
U = Book Value
V = Other
W = Estimated
X = $15,000 or less

FINANCIAL DISCLOSURE REPORT
Page 11 of 16

Name of Person Reporting	Date of Report
Hurwitz, Andrew D.	11/2/2011

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)*

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

A	B		C		D				
Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		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)
120. -Pimco Unconstrained Bond Fund A									
121. -Prudential Jennison Natural Resources Fund Z									
122. -Royce 100 Fund Serv									
123. -Templeton Global Bond Fund A									
124. -Third Avenue Focused Credit Investment Fund									
125. -Third Avenue Real Estate Value Inst Fund									
126. -Thornburg Int'l Value Fund I									
127. -Calvert Income Fund A (Y)									
128. -First Eagle Global Fund (Y)									
129. -Ivy Limited Term Bond Fund A (Y)									
130. -JP Morgan Research Market Neutral Fund (Y)									
131. -Market Vectors Agribusiness ETF A (Y)									
132. -Northern Tax Exempt Fund (Y)									
133. -Nuveen Tradewinds Value Opportunity Fund A (Y)									
134. -Oppenheimer Int'l Bond Fund (Y)									
135. -Principal Preferred Securities Fund A (Y)									
136. -TCW Total Return Bond Fund N (Y)									

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
H - $1,000,001 - $5,000,000
I - $5,000,001 - $25,000,000
J - $25,000,001 - $50,000,000
K - $50,000,001 - $100,000,000
L - $100,000,001 - $500,000,000
M - More than $500,000,000

P1 - $1,000,000 - $5,000,000
P2 - $5,000,001 - $25,000,000
P3 - More than $25,000,000

Q - Appraisal
R - Cost (Real Estate Only)
S - Assessment
T - Cash Market
V - Other
W - Estimated

FINANCIAL DISCLOSURE REPORT
Page 12 of 16

Name of Person Reporting	Date of Report
Hurwitz, Andrew D.	11/27/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of spouse and dependent children; see pp. 34-48 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)
137. -RS Emerging Markets Fund (Y)									
138. -Van Eck Global Hard Assets Fund A (Y)									
139. -Rydex SGI Futures Strategic Fund A (Y)									
140. IRA#4	B	Int./Div.	K	T	Exempt				
141. -Morgan Stanley Bank N.A. (Money Market Account)									
142. -Allen/Montage & Caldwell Growth Fund N									
143. -Blackrock Equity Dividend Fund A									
144. -ING Global Real Estate Fund A									
145. -Lazard Emerging Markets Open Fund									
146. -Loomis Sayles Bond Retail Fund									
147. -Metropolitan WST Total Return Bond Fund M									
148. -Nuveen Tradewinds Value Opportunity Fund A									
149. -Pimco Total Return Fund A									
150. -Pioneer Cullen Value Fund A									
151. -Prudential Jennison Natural Resources Fund A									
152. -Royce Value Inv									
153. -T Rowe Price High Yield Adv									

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 = $50,001 - $100,000
L = $100,001 - $250,000
M = $100,001 - $250,000
N = $250,001 - $500,000
O = $500,001 - $1,000,000
P1 = $1,000,001 - $5,000,000
P2 = $5,000,001 - $25,000,000
P3 = $25,000,000 - $50,000,000
P4 = More than $50,000,000

Q = Appraisal
R = Book Value
S = Cost (Real Estate Only)
T = Cash Market
U = Estimated
V = Other
W = Assessed

FINANCIAL DISCLOSURE REPORT
Page 13 of 16

Name of Person Reporting	Date of Report
Hurwitz, Andrew B.	11/2/2013

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	B		C		D				
Description of Assets (including trust assets)	Income during reporting period		Gross value at end of reporting period		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)	(3) 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)
154. -Templeton Global Bond Fund A									
155. -Thornburg Int'l Value Fund A									
156. -Dryden Short Term Corp Bond Fund A (Y)									
157. -Henderson International Global Opportunities Fund A (Y)									
158. -TCW Total Return Bond Fund N (Y)									
159. -Oppenheimer Int'l Bond Fund (Y)									
160. -Principal Preferred Securities Fund A (Y)									
161. IRA#4	A	Int./Div.	J	T	Exempt				
162. -Corporate Property Associates 15 REIT									
163. -Morgan Stanley Bank N.A. (Money Market Account)									
164. IRA#5 (457)	E	Int./Div.	M	T	Exempt				
165. -Fidelity Contrafund 457									
166. -Neuberger Berma High Income Bond Fund									
167. -T Rowe Price Midcap Group Advantage Fund									
168. -PIMCO Total Return Fund									
169. -American Funds Capital World Grow Income Fund									
170. -American Century Equity Income Investments									

1. Income Gain Codes:
(See Columns B1 and D4)

2. Value Codes
(See Columns C1 and D3)

3. Value Method Codes
(See Columns 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 = More than $5,000,000

R = Real Property Value Only

S = Assessment

T = Cash Market

U = Book Value

V = Other

W = Estimated

X = $1,000,001 - $5,000,000
Y = More than $5,000,000
Z = More than $25,000,000

FINANCIAL DISCLOSURE REPORT Page 14 of 16	Name of Person Reporting Hurwitz, Andrew D.	Date of Report 11/2/2011

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

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	(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)
171 -Vanguard Institutional Income Fund (Y)									
172 -Fidelity Equity Income Fund (Y)									

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
(For Column C1)
Q = Appraisal
R = Book Value
S = Cost (Real Estate Only)
T = Other
U = Estimated
V = Assessed
W = Estimated

4 - Type Codes
(See Columns D1)
S = Sale
P = Purchase
E = Exchange

5 - Gain Codes
(See Columns 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 = $5,000 or less
J = $5,001 - $25,000
K = $25,001 - $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
T = Over $1,000

FINANCIAL DISCLOSURE REPORT Page 15 of 16	Name of Person Reporting Hurwitz, Andrew D.	Date of Report 11/2/2011

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

FINANCIAL DISCLOSURE REPORT Page 16 of 16	Name of Person Reporting Hurwitz, Andrew D.	Date of Report 11/2/2011

IX. CERTIFICATION.

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

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

Signature 9-2

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		30	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	441	587	Notes payable to relatives			
Unlisted securities – see schedule		363	001	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		128	000
Real estate owned – see schedule		750	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000	Auto loan/lease		40	000
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		168	000
				Net Worth	2	566	588
Total Assets	2	734	588	Total liabilities and net worth	2	734	588
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		3	600				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Allianz NFJ Small Cap Value Fund	$ 13,213
American Century Equity Income Fund	19,242
American Funds Capital World Growth & Income Fund	34,579
ASTON/Montag & Caldwell Growth Fund	96,624
BlackRock Equity Dividend Fund	1,813
BlackRock Global Allocation Fund	61,896
Columbia Value & Restructuring Fund	1,408
Delaware Diversified Income Fund	48,480
Fidelity Contrafund	20,449
First Trust ISE Global Copper Index Fund	9,335
Franklin High Yield Tax-Free Income Fund	27,163
Hartford Floating Rate Fund	38,589
Hartford Global Real Asset Fund	61,710
ING Global Real Estate Fund	1,484
Invesco Premier Portfolio	72
iShare Silver Trust	19,463
IVA International Fund	59,506
IVY Asset Strategy Fund	49,692
Lazard Emerging Markets Equity Open Fund	1,342
Loomis Sayles Bond Retail Fund	27,344
Loomis Sayles Strategic Income Fund	73,952
MainStay Floating Rate Fund	23,692
MainStay High Yield Opportunities Fund	37,820
Market Vectors Agribusiness (ETF)	12,753
Metropolitan West Total Return Bond Fund	42,105
Neuberger Berman High Income Fund	9,808
Nuveen Tradewinds Value Opportunities Fund	1,945
Oppenheimer Developing Markets Fund	31,603
Parnassus Equity Income Fund	72,839
PIMCO Emerging Markets Bond Fund	37,371
PIMCO Total Return Fund	134,154
PIMCO Unconstrained Tax-Managed Bond Fund	73,056
Pioneer Cullen Value Fund	1,322
PowerShares DB Agriculture Fund	12,959
Prudential Jennison Natural Resource Fund –A	1,733
Prudential Jennison Natural Resource Fund –Z	19,926
Royce 100 Fund	16,368
Royce Value Investment Class	1,531
SPDR Gold Trust (ETF)	28,789
T. Rowe Price Equity Income Fund	17,786
T. Rowe Price High-Yield Fund	2,284

T. Rowe Price Mid Cap Growth Fund	10,878
Templeton Global Bond Fund	66,325
Third Avenue Focused Credit Fund	39,990
Third Avenue Real Estate Value Fund	34,708
Thornburg International Value Fund – A	1,074
Thornburg International Value Fund – I	17,060
WisdomTree Emerging Markets SmallCap ETF	24,352
Total Listed Securities	$ 1,441,587

Unlisted Securities	
Avondale Acres Partnership	$20,000
Association 15	8,528
John Hancock Venture Corporate Property	334,473
Total Unlisted Securities	$ 363,001

Real Estate Owned	
Personal residence	$ 650,000
Family residence	100,000
Total Real Estate Owned	$ 750,000

AFFIDAVIT

I, Andrew David Hurwitz, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/1/11
(DATE)

(NAME)

Marcie Kanefield
(NOTARY)

OFFICIAL SEAL
MARCIE KANEFIELD
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Jan. 29, 2014

Senator DURBIN. Thank you, Justice.

Let me say at the outset, for those who have not attended these hearings before, that if you are waiting for Senator Kyl and I to ask those questions to catch the nominees in some erroneous ruling on a case or something, that is not likely to occur.

Justice HURWITZ. And I have made one error already, Senator. I think I forgot to introduce my friend Bartow Farr, who is back here in the audience also.

Senator DURBIN. What we do during the course of preparing for these nominations is to ask the prospective nominees to go through a series of screening committees, a number of questions, and that is just the beginning. Once they have cleared that hurdle, they are on to the White House where the White House and the Federal Bureau of Investigation go through extensive background checks. A lot of questions are asked preparing them for their next step to come before the Judiciary Committee. And if there is no controversy associated with their nomination, it is rare that these become controversial and contentious hearings. So instead we ask a few questions, but I hope that you understand that most of the questions of substance about character and knowledge and the like have been asked in detail before these witnesses arrive.

Let me turn it over first to my colleague Senator Kyl.

Senator KYL. Thank you, Mr. Chairman, and thank you for making that comment. Back when I used to be able to chair the Committee, I said something similar because I think it was somewhat disappointing for folks who would come all the way back to Washington and then go home and say was that all there was to it. Well, that is just the tip of the iceberg. All of the hard investigation and the like has occurred really behind the scenes.

But sometimes there is a question that you just want to ask to be able to get something out into the open, and I do have—incidentally, I think, Justice Hurwitz, were you playing hooky from—I heard something about how you were not sure you could get to the hearing because you had some hearings in the court, and I think somebody said that would be an adequate excuse.

Justice HURWITZ. In fact, Senator Kyl, we had a calendar yesterday morning, and so I scooted out of town as soon as it was over. So you have not interfered with the business of the Arizona Supreme Court.

Senator KYL. That is a hard-working Justice.

I just wanted to make sure that one of my favorite subjects was covered, and that is, the ability of a person who has been active in life, including political life, as you have been, and working for political figures and a person with strong political convictions can get on the bench and put those personal convictions aside, applying the law as you believe it applies to any given case. It is not always easy for people to do, but I will say, Mr. Chairman, that Justice Hurwitz does not have a reputation as an activist judge and to my way of thinking has been quite successful in that very difficult job of separating political views from the job at hand, namely, deciding cases.

I wanted to read or at least comment on one decision, and that has to do with your personal disagreement with a very long, 200-year prison sentence that the appellant was arguing was unconsti-

tutional. And you said in your concurring opinion that your personal opinion was that it was unduly long, but that you had to uphold the punishment anyway because you believed you were constrained by the power of the legislature and the precedents of the United States Supreme Court.

Now, that is not easy to do. Can you explain to us how you tried to accomplish that result in your jurisprudence?

Justice HURWITZ. Thank you, Senator. I think that for every judge, no matter what his or her background, one of the most difficult parts of the job is deciding the case in front of you on the law and the facts and trying not to let extraneous things interfere. In that regard, I had some interesting mentorship earlier in my career from Justice Stewart, who once said, I think, in an opinion that he regarded a law as "uncommonly silly," but it was nonetheless constitutional. And our job is to decide whether on the law and the facts of the case a particular statute or particular set of facts meets legal muster, not whether we would have done it differently.

And I think that is something my career on the Arizona Supreme Court has demonstrated I can do and will do, if lucky enough to be confirmed to the Ninth Circuit.

Senator KYL. Thank you. Just one other point. It is related. You wrote something or said this in a comment—I think it was written down—that it is better for a court to confront issues when presented, briefed, and argued by the parties with a stake in the outcome, and yet I know at least your reputation is not one as an activist. So can you comment, if you recall what that statement was made in the context of, and what your views on how aggressively judges should approach deciding cases is?

Justice HURWITZ. Senator, I do not remember the particular context in which I made that remark, but I adhere to it. It seems to me that judges in almost every case should decide the issues in front of them as well and as completely as they can and leave for the next case the issues that are not posed by this one, where the parties have the opportunity in front of them to make the arguments, where people have the opportunity to know that the issue is before the court and might get decided. And I think without regard to liberal/conservative sort of political labels, I think that is a judicious conservative approach to decision-making. Decide the issue in front of you. Decide it fairly. Do not duck the issues in front of you, but do not reach out for issues that are not presented in the particular case.

Senator KYL. I appreciate it. Thank you, Mr. Chairman.

Senator DURBIN. Justice Hurwitz, when you were in private practice, you argued a case, *Ring* v. *Arizona*, before the United States Supreme Court, and in that case the Supreme Court held that under the 14th Amendment, a jury, not a judge, is required to find the aggravating circumstances that make a defendant eligible to receive the death penalty. Interestingly enough, your opposing counsel in the case was then-State Attorney General of Arizona, Janet Napolitano, who later appointed you to the Arizona Supreme Court when she was Governor.

Could you tell me a little bit about the facts of that case and your involvement in it, both at the Supreme Court level as well as subsequent litigation on remand in Arizona?

Justice HURWITZ. Thank you, Senator. First, I should say that when I was appointed to the Arizona Supreme Court, then-Governor Napolitano said she did this so she would not have to argue against me ever again.

[Laughter.]

Justice HURWITZ. I took that with a grain of salt.

I got involved in this case because one of my law partners at the time, Larry Hammond, was one of the noted criminal lawyers in the State, and Mr. Ring's lawyers approached him to file a cert. petition, and he said, "That is not the kind of work I do but Andy Hurwitz does, and so maybe he will take this on for you." And I did because it was clear that it was an issue that the Court had to take in light of the *Apprendi* decision, which had talked about juries finding aggravating circumstances.

Our firm took on the argument pro bono, and I was helped by my friend Mr. Farr, who is in the back of the room. And it was a very expedited schedule. We took on the case in December, and the Court heard the argument in April.

I did have the privilege of arguing against an old friend and an excellent appellate lawyer, then-Attorney General Napolitano. And the issue for the Court was really whether or not the *Apprendi* decision would apply to capital cases, and the Court decided 7–2 that it did.

After that, in something that I thought was unprecedented, when we got back to Arizona and I thought I had exhausted the resources of my firm in doing this large pro bono representation, one of the Justices of the Court asked me to represent the 28 people who were still on Death Row on direct appeal in an argument about how the *Ring* case ought to apply to them. And so we had to put together a consolidated brief that covered these 28 cases, to which I argued to the Arizona Supreme Court just before I went on the bench. I learned of the decision after I got on the bench, which I thought was a tribute to my colleagues on the bench, none of whom told me how it was going to come out. And, essentially, the court decided that the *Ring* decision would apply to these people. Some of them go new trials; some of them did not. And as to the remainder of them, the State agreed to reduce their sentences to life.

Senator DURBIN. Let me ask you about one other case that you presided over, the case of *State* v. *Gant* in 2007, involving a compelling Fourth Amendment question, namely, whether it is constitutional under the search incident to the arrest exception to the Fourth Amendment's warrant requirement for police officers to conduct a warrantless search of a person's car when the person has been arrested and placed in handcuffs in the back of a police car and the scene has been secured. You joined with the majority of your court in holding this warrantless search was not constitutional, the view later upheld by the United States Supreme Court.

Can you tell us about the facts of the case and the reasoning that your court adopted?

Justice HURWITZ. Yes, and as you pointed out, Senator Durbin, I was not the author of that opinion. I think now-Chief Justice Berch was the author of that opinion.

The facts of the case, as I recall them, were that the police had a tip that Mr. Gant was coming to a particular place, and they suspected him of being involved in, I think, marijuana trafficking. When he got there, he was taken out of the car and arrested, put into the police car, and then the police thereafter searched the car. And the question, which was an open one under Supreme Court jurisprudence, at least as we viewed it, was whether or not the so-called Shermell exception to warrantless searches—the notion that the police are entitled to protect themselves by searching the scene around them and making sure there is nothing dangerous there—still applied once the defendant had been taken away from the car and effectively immobilized. And our court determined that because the defendant had been put in the back of the police car, there were no other people present, there was no danger to the police officers, there was no obstruction or no inability to get a warrant, that the warrant requirement of the Fourth Amendment applied.

That was a 3–2 decision in our court. It was appealed to the U.S. Supreme Court, and the U.S. Supreme Court took the position of the majority, that under the circumstances of this case, the warrant was required.

Senator DURBIN. The last case I want to ask you about is one that has been the subject of law school debate as well as debate in the Judiciary Committee, and will continue to be, I guess, as long as we try to understand the Bill of Rights in the context of modern America. It was *Citizens Publishing Company* v. *Miller ex rel. Elleithee*, 2005. You authored a unanimous opinion holding that a newspaper was protected by the First Amendment when it ran a letter to the editor that advocated to "execute five of the first Muslims we encounter" in relation to the Iraq war. Your court held that the letter did not constitute an incitement to imminent lawless action, fighting words, or true threat of violence.

Can you tell me your reasoning in that case?

Justice HURWITZ. Yes, Senator. The letter was in a strange context. It said the next time there is an atrocity in Iraq we should find the first five Muslims we see and execute them. So one of the questions in the case was did that mean in Iraq or in the United States. The plaintiffs in the case were Muslim American citizens from Tucson who were suing for intentional infliction of emotional distress, arguing that this letter was actionable. And what we did, I think, was applied classic First Amendment law, which is that, in general, we should not restrain newspapers from saying things; in general, speech is, as Justice Brandeis once said, the great disinfectant, that we enter into the American debate and we have this speech and people say bad things and we respond to them by telling them they are wrong.

In this case we found that, in context, this really was not truly a threat against anybody living in Tucson. It was hyperbole about the atrocities in the war, and that while it was a reprehensible statement and one that ought to be condemned, it ought not be condemned by the courts by removing it from the paper or making the newspaper liable, but condemned by responsible citizens responding to the statement, as they well did in the Tucson citizen letters to the editor section.

Senator DURBIN. Senator Kyl, anything further?

Senator KYL. No. Thank you.

Senator DURBIN. You get the closing argument. Is there anything you would like to say before——

Justice HURWITZ. I have been a lawyer long enough to know not to say anything when it is not needed, and so I have no closing remarks, sir.

[Laughter.]

Senator DURBIN. Justice Hurwitz, thank you for joining us today. We are honored.

Justice HURWITZ. Thank you both.

Senator DURBIN. And we thank all your friends and family for joining you as well.

Senator DURBIN. The second panel that we will have approach the witness table includes previously introduced Kristine Baker of Arkansas, George Russell III of Maryland—because I met George IV—John Lee of Illinois, and Jay Tharp of Illinois.

If you would please raise your right hand. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. Baker. I do.

Mr. Lee. I do.

Mr. Tharp. I do.

Judge Russell. I do.

Senator DURBIN. Let the record reflect that the witnesses have answered in the affirmative, and let me start with Mrs. Baker. Please, if you would like to introduce family and friends who are present and make an opening statement, I invite you.

STATEMENT OF KRISTINE GERHARD BAKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS

Ms. BAKER. Thank you, Senator. I appreciate it. Thank you, Mr. Chairman, and thank you, Ranking Member Kyl, for convening the hearing today. I would like to thank President Obama for the nomination. I would like to thank Senator Pryor for recommending me to the President. And I would like to thank Senator Boozman for his support of my recommendation and also nomination. I would also like to take this time to thank Senator Pryor and Senator Boozman for their kind words today.

If I could briefly introduce family and friends who are in attendance: my husband, John Baker, is here, and as the Senators alluded to, my four children are in attendance as well.

My parents are here, Karl and Edie Gerhard; and my in-laws are here, Charlie and Nancy Baker.

In addition to those family members, I am joined today by several colleagues and friends, and I also have several family members, colleagues, and friends watching from home.

I have no other opening remarks. I appreciate the opportunity. Thank you.

[The biographical information of Ms. Baker follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Kristine Gerhard Baker (maiden name: Kristine Anne Gerhard)

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

   United States District Judge for the Eastern District of Arkansas

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

   111 Center Street, Suite 1900
   Little Rock, Arkansas 72201

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

   1971; Colorado Springs, Colorado

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

   1994 – 1996, University of Arkansas School of Law; J.D., 1996

   1993 – 1994, Washington University School of Law; No degree received

   1989 – 1993, Saint Louis University; B.A. (*summa cum laude*), 1993

   1990, University of Missouri; No degree received

   1988, Southern Illinois University at Edwardsville; No degree received

   1985, Belleville Area College; No degree received

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

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

2000 – present
Quattlebaum, Grooms, Tull & Burrow PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201
Partner (2002 – present)
Associate (2000 – 2002)

1998 – 2000
Williams & Anderson LLP
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
Associate

1996 – 1998
The Honorable Susan Webber Wright, Chief Judge
United States District Court for the Eastern District of Arkansas
500 West Capitol Avenue
Little Rock, Arkansas 72201
Law Clerk

1995 – 1996
Westlaw
West Publishing Corporation
P.O. Box 64779
St. Paul, Minnesota 55164
Student Representative at the University of Arkansas School of Law

Summer 1995
Williams & Anderson LLP
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
Summer Associate

Summer 1995
Friday Eldredge & Clark LLP
400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201
Summer Associate

Summer 1994
Rabbit, Pitzer & Snodgrass, P.C. (firm now known as Pitzer Snodgrass, P.C.)
800 Market Street, Suite 2300
St. Louis, Missouri 63101
Summer Associate

Summer 1994
John V. LaBarge, Jr.
Attorney at Law
1401 South Brentwood Boulevard, Suite 650
St. Louis, Missouri 63144
Summer Associate

1993
Famous-Barr Co.
1155 Saint Louis Galleria
St. Louis, Missouri 63117
Sales Associate

Other Affiliations (uncompensated unless otherwise indicated):

2011 – present
Presbyterian Village, Inc.
510 Brookside Drive
Little Rock, Arkansas 72205
Board Member

2011 – present
Wasserliebend, LLC
3306 Hill Road
Little Rock, Arkansas 72205
Managing Member

2009 – present
Arkansas Bar Foundation
2224 Cottondale Lane
Little Rock, Arkansas 72202
Board Member

2007 – present
Arbor Enterprises, LLC
3306 Hill Road
Little Rock, Arkansas 72205
Managing Member (Dividend and interest income are returned to the LLC, not distributed to members)

2006 – 2010
Dress for Success Little Rock
21 Lakeshore Drive
Little Rock, Arkansas 72204
Board Member (2006 – 2010)
President (2008)

2007 – 2008
Pulaski County Bar Association
1201 McMath Avenue, Room 101
Little Rock, Arkansas 72202
Board Member

1999 – 2001
Our Lady of the Holy Souls Church
1003 North Tyler Street
Little Rock, Arkansas 72205
Parish Council Member

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

I have not served in the military. I was not required to register for selective service.

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

The Best Lawyers in America: Most recently recognized in the areas of Commercial Litigation, First Amendment Law, and Labor and Employment Law (2009 – 2011)
Mid-South Super Lawyers: Rising Star in Business Litigation (2008 – 2010)
Chambers and Partners' America's Leading Lawyers for Business: Most recently recognized in the area of Commercial Litigation (2006, 2007, 2009, 2010, 2011)
Martindale-Hubbell, AV Preeminent (Peer Review Rated) (2006 – present)
American Mock Trial Association Honor, 20th National Intercollegiate Tournament (2004)
High Honors Graduate of the University of Arkansas School of Law (ranked 3rd in class) (1996)
Joe C. Barrett Award for Outstanding Student in Commercial Transactions (1996)
Outstanding Contribution to Scholarship Award at University of Arkansas School of Law (1996)
High Academic Achievement Award at University of Arkansas School of Law (1996)
Member and Articles Editor of the *Arkansas Law Review* (1995 – 1996)

Member of University of Arkansas School of Law's Board of Advocates (1995 – 1996)
Member of University of Arkansas School of Law's First Amendment Moot Court Team (1995 – 1996)
Quarterfinalist in University of Arkansas School of Law's Moot Court Competition (1994 – 1995)
First Place in University of Arkansas School of Law's Negotiations Competition (1994 – 1995)
Mr. and Mrs. Spencer T. Olin Fellow at Washington University School of Law (1993 – 1994)
Phi Beta Kappa (1993)
Alpha Sigma Nu, The Honor Society of Jesuit Institutions of Higher Education (1993)
Presidential Scholar at Saint Louis University (1989 – 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 (1998 – present)
  Forum Committee on Communications Law
Arkansas Association of Women Lawyers (1998 – present, intermittent)
Arkansas Bar Association (1998 – present)
  Civil Litigation Committee
  Labor and Employment Law Committee
  Commission on Diversity (2008 – present)
  Women in the Profession Committee
Arkansas Bar Foundation
  Fellow (2007 – present)
  Board Member (2009 – present)
Arkansas Supreme Court Committee on Model Jury Instructions – Civil (2008 – present)
Association of the Bar of the United States Court of Appeals for the Eighth Circuit (2003 – present)
  Communications Committee, Contributing Member (2003 – 2005)
Defense Research Institute (2007 – present)
Phi Alpha Delta Law Fraternity, Pre-Law Chapter (1990 – 1993)
Pulaski County Bar Association (1998 – present)
  Board Member (2007 – 2008)
Pulaski County Bar Foundation
  Silent Auction Committee (2005)
The Saint Thomas More Society of Arkansas, Inc. (2003 – present)
U.S. District Court for the Eastern District of Arkansas Federal Practice Committee (2001 – 2005)
U.S. District Court for the Eastern District of Arkansas Attorney Discipline Committee (2005 – 2006)
USLAW Network, Inc. (2004 – present)
William R. Overton Inn of Court, Member and currently a Barrister (1999 – 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.

Arkansas, 1996. 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 Sixth Circuit, 2011
United States Court of Appeals for the Eighth Circuit, 1998
United States District Court for the Eastern District of Arkansas, 1998
United States District Court for the Western District of Arkansas, 1998
Arkansas Supreme Court, 1996
Arkansas Court of Appeals, 1996
Arkansas Circuit, District, and County Courts, 1996

There have been no lapses in membership in these courts.

11. **Memberships**:

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

Camp Aldersgate, Inc.
    Aldersgate After Dark Fundraising Event, Co-Chair (2010)
Dress for Success Little Rock (2006 – 2010)
    Board Member (2006 – 2010)
    President (2008)
Fairfield Bay Community Club (2011 – present)
Little Rock Racquet Club (2008 – present)
Local Elementary School Parent Teacher Association (2007 – present)
Local Pre-K School Parent Teacher Association (2008 – 2009; 2010 – 2011)
March of Dimes
    Signature Chefs Fundraising Event, Co-Chair (2010)

Our Lady of the Holy Souls Church
Parish Council Member (1999 – 2001)
Social Concerns Committee (1996 – 2001)
Chair (2001)
Presbyterian Village
Board Member (2011 – present)
Finance and Administration Committees (2011 – present)
Quapaw Quarter Association (1996 – present)
Serra Club of Greater Little Rock (2000 – 2001)
Tree Streets, Inc. (1997 – present)
Volunteer Organization, Center for Arkansas Legal Services (VOCAL) (1998 – present)
Volunteer Coach for Parkview Magnet High School Mock Trial Team (1997)
Women's Foundation of Arkansas (2005, 2007, 2009, 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 the best of my knowledge, none of the organizations listed above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

John E. Tull III and Kristine G. Baker, OPEN GOVERNMENT GUIDE: ARKANSAS CHAPTER (Reporters Committee for Freedom of the Press ed. 2011). Draft form only supplied; not yet published.

Quattlebaum, Grooms, Tull & Burrow PLLC, *Public and Legal Notices Digest: A compilation of Arkansas statutes requiring publication of public and legal notices in newspapers* (Ark. Press Ass'n ed. 2011). Copy supplied.

John E. Tull III, Kristine G. Baker, Charles L. Schlumberger & Brandon B. Cate, *Survey of Arkansas Privacy and Related Claims Against the Media*, in MEDIA

LAW RESOURCE CENTER 50-STATE SURVEY: MEDIA PRIVACY AND RELATED LAW 2009-2010 (Media Law Resource Center, Inc., ed. 2009) (Contributor for editions 2001 – current). Copy of the 2009-2010 edition supplied. The supplied version is substantially similar to prior versions.

Contributing Author, A GUIDE TO ARKANSAS STATUTES OF LIMITATIONS, Young Lawyers Section of the Arkansas Bar Association (5th ed. 2002). Copy supplied.

Allen C. Dobson, Philip S. Anderson, John E. Tull III, Leon Holmes, Jeanne L. Seewald & Kristine G. Baker, *Survey of Arkansas Employment Libel Law*, in LIBEL DEFENSE RESOURCE CENTER'S 50-STATE SURVEY (Libel Defense Resource Center ed. 1999). Copy supplied.

Kristine G. Baker, *BB&B Construction Co. v. F.D.I.C. – Mechanics' and Materialmen's Liens in Arkansas: Priority as a Function of Removability*, 48 Ark. L. Rev. 783 (1995). Copy supplied.

I was an active member of the Communications Committee for the Association of the Bar of the United States Court of Appeals for the Eighth Circuit from 2003 to 2005. In that capacity, I summarized decisions of the Eighth Circuit Court of Appeals and submitted them to the newsletter's editor for review. My name does not appear on the publication. Copies of the newsletters from 2003 to 2005 supplied.

I served as one of two articles editors for the *Arkansas Law Review* from 1995 to 1996.

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

On January 28, 2008, as Chair of the Merit Selection Panel Regarding the Reappointment of Magistrate Judge J. Thomas Ray, I authored a report to the Chief Judge of the United States District Court for the Eastern District of Arkansas on behalf of the committee regarding Magistrate Judge Ray's reappointment. The report is confidential and is not supplied.

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

I have served as a member of the Arkansas Supreme Court Committee on Model Jury Instructions – Civil from 2008 to the present. The committee authors the book *Arkansas Model Jury Instructions (Civil)*, which is published annually. The publication is created through a collaborative committee process. Copies of the minutes of this committee for the years I have served are supplied.

On April 8, 2003, I submitted a letter to the United States Senate in support of the nomination of J. Leon Holmes as a United States District Court Judge for the Eastern District of Arkansas. Copy supplied.

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

The items listed below represent speeches or talks I have identified through searches of my files, internet databases, discussions with others, and my memory. I have attempted as best I can to list all such items. However, there may be other speeches, talks or presentations I have been unable to locate or remember.

July 21, 2011: For the 2011 Arkansas Press Association Convention, I authored but did not present a session titled: "Public and Legal Notices Digest." Copy of presentation slides supplied.

June 21, 2011: For the 2011 Arkansas Bar Association Best of CLE, I presented a session titled: "Creating the Jury: Tips for the Voir Dire." Copy of presentation slides supplied.

June 9, 2011: For the 2011 Arkansas Bar Association Annual Meeting, I presented a session titled: "How to Use an Expert Witness – Toxicology." Copy of presentation slides supplied.

January 28, 2011: For the 2011 Arkansas Bar Association Mid-Year Meeting, I presented a session titled: "Creating the Jury: Tips for the Voir Dire." Copy of written materials supplied and I also used the PowerPoint supplied in response to the June 21, 2011 event.

January 19, 2011: For the 2011 Fundamentals of Employment Law for Sterling Educational Services, Inc., I presented sessions titled: "Employee Privacy in the Workplace" and "Sexual, Racial, and Other Harassment in the Workplace." Copy of written materials supplied.

March 8, 2011: For the 2011 Arkansas Paralegal Alliance, Inc., I presented a session titled: "Litigation and Social Media: IANAL, NTS, TMI, DGT, DURSB." Copy of written materials supplied.

October 19, 2010: For the 2010 William R. Overton Inn of Court Program, I presented and was program chair for a session titled: "Litigation and Social Media: IANAL, NTS, TMI, DGT, DURSB." Copy of written materials supplied.

October 15, 2010: For the 2010 Arkansas Judicial Conference, I presented a session titled: "Can I Have Some Privacy: The bench, bar, and media comment on recent FOIA developments in a panel discussion." Copy of written materials and presentation slides supplied.

October 7-8, 2010: For the 2010 USLaw Client Conference, I presented a session titled: "Caught Looking: Employer Do's and Don'ts for Employee Monitoring." Copy of presentation slides supplied.

March 17, 2010: For the 2010 Paragould Daily Paper's Sunshine Week Talk on FOIA, I gave an informal talk on the Freedom of Information Act. Copy of presentation slides and press coverage supplied; due to technical difficulties, material was not presented but served as notes for the presentation.

November 12, 2009: I was one of several guest lecturers for one day to students in a products liability course taught by adjunct professor Jonann C. Chiles at the William H. Bowen School of Law. I have no notes, transcript, or recording. The address of the William H. Bowen School of Law is1201 McMath Avenue, Little Rock, Arkansas 72202.

June 12, 2009: For the 2009 Arkansas Bar Association Annual Meeting, I presented a session titled: "Can I Have Some Privacy: The bench, bar, and media comment on recent FOIA developments in a panel discussion." Copy of written materials and presentation slides supplied.

March 2009: For the 2009 Northwest Arkansas Human Resources Association, Inc., I presented a session titled: "New FMLA Regulations." Copy of presentation slides supplied.

2008 and 2009: As a Board Member of Dress for Success Little Rock, I gave presentations in 2008 and 2009 regarding Dress for Success and its programs to a group of students at Pulaski Technical College and to members of a club at Pulaski Heights United Methodist Church. I have no notes, transcript, or recording. The address of Pulaski Technical College is 8901 Kanis Road, Suite 103, Little Rock, Arkansas 72205. The address of Pulaski Heights United Methodist Church is 4823 Woodlawn Drive, Little Rock, Arkansas 72205.

July 18, 2008: For the 2008 Continuing Legal Education Seminar for Lorman Education Services, I presented a session titled: "FOIA in the Electronic Age: E-mails, Instant Messages, and Virtual Meetings and Recent Developments in FOIA." Copy of written materials supplied.

March 14, 2008: For the 2008 Arkansas Bar Association Labor & Employment Law Conference, I presented a session titled: "What You Need to Know to Draft Enforceable Severance Agreements." Copy of written materials supplied.

April 10-11, 2008: For the 2008 USLaw Client Conference, I presented a session titled: "Crafting Lawful E-Mail Policies." Copy of written materials supplied.

November 1, 2007: For the 2007 Employment Law Update for Sterling Education Services, Inc., I presented a session titled: "Coping with Leave Laws and Negotiating Separation Agreements in Difficult Termination Situations." Copy of written materials supplied.

2006: For the Arkansas Press Association Convention, I presented sessions titled "Libel, Slander, and Defamation Law Update" and "Employment Law Update." Copy of notes supplied.

2006: For the Employment Law Update for Sterling Education Services, Inc., I presented a session titled: "Protecting At-Will Employment." Copy of written materials supplied.

March 30, 2005: For the 2005 Human Resources Law Update for Sterling Education Services, Inc., I presented a session titled: "Employee Privacy in the Workplace." Copy of written materials supplied.

2004: For a 2004 Speech to Arkansas Human Resources Officers, I spoke on the following topics: "Privacy / Internet Policy and Procedures" and "Minimizing Organizational and Personal Liability Risks Arising from Employment Terminations." Copy of outlines supplied.

February 24, 2001: For the 2001 Arkansas Press Association Convention, I presented a session titled: "Contract Law and First Amendment Law as Applied to Newspaper Advertising." Copy of outline supplied.

2001: For the 2001 Institute for Paralegal Education, I presented a session titled: "Arkansas Advanced Litigation Skills for Paralegals." Copy of written materials supplied.

July 21, 2000: For the 2000 Arkansas Press Association Convention, I presented a session titled: "Frequently Asked Questions about the Freedom of Information Act." Copy of written materials supplied.

2000: For the Arkansas Association of Legal Assistants, I spoke on Advanced Legal Research. Copy of presentation slides supplied.

September 17, 1999: I participated in a panel discussion for *Arkansas Democrat-Gazette* reporters that addressed: "Libel Laws and Topics of Interest Related to Newspaper Work." Copy of outline supplied.

August 18, 1999: For the 1999 Institute for Paralegal Education, I presented a session titled: "Effective Legal Writing for Paralegals in Arkansas." Copy of written materials and outline supplied.

February 7, 1997: For the 1997 Third Annual Bankruptcy Conference, I participated in a panel discussion that addressed: "Tithing as a Potentially Fraudulent Transfer – A Survey of Cases." Copy of written materials supplied.

1992: I participated in taping a recruiting video for Saint Louis University for the Office of Undergraduate Admissions titled "Real Words." A copy of the video is supplied.

I have given informal presentations to print and broadcast journalists on First Amendment and Freedom of Information Act issues throughout my career. I do not recall the specific dates of these presentations. I have no notes, transcript, or recording. Some of the media outlets included KTHV in Little Rock, a Gannett Company, and the Morning News of Northwest Arkansas, a Stephens Media paper. The address of KTHV Television is Post Office Box 269, Little Rock, Arkansas 72203. The address of the Morning News of Northwest Arkansas's Springdale Office is 2560 North Lowell Road, Springdale, Arkansas 72764.

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 on occasion been interviewed by newspapers, magazines, and other written publications. Based on searches for these materials, I am providing copies of the following:

Forty Under 40, Arkansas Business, June 14, 2010. Copy supplied.

To Whom Much Is Given, AY Magazine, June 2010. Copy supplied.

Jennifer Nixon, *After Dark Lets Attendees Sample An Ill Camper's Joy*, Arkansas Democrat-Gazette, Apr. 18, 2010. Copy supplied.

Jennifer Koons, *Journalist Arrested Covering House Fire*, Reporters Committee for Freedom of the Press, Dec. 14, 2007. Copy supplied.

Traci Shurley, *Strike Doctor's Words, Koppers' Lawyer Urges*, Arkansas Democrat-Gazette, Feb. 5, 2002. Copy supplied.

Traci Shurley, *Civil Suit Pits Treatment Facility, Neighbors in North Little Rock*, Arkansas Democrat-Gazette, Jan. 14, 2002. Copy supplied.

Court Should Rule Soon on Media Request, Associated Press, June 23, 2000 (re-printed in multiple outlets). Copy supplied.

Tracie Dungan, *Media Lawyers Wait for Gag-Order Ruling*, Arkansas Democrat-Gazette, June 6, 2000 (re-printed in multiple outlets). Copy supplied.

Tracie Dungan, *More Transcripts Filed in Gag-Order Case*, Arkansas Democrat-Gazette, June 3, 2000 (re-printed in multiple outlets). Copy supplied.

Tracie Dungan, *News Groups File Appeal of Gag Order*, Arkansas Democrat-Gazette, June 1, 2000. Copy supplied.

High Profile Wedding Feature, Arkansas Democrat-Gazette, Jan. 8, 1995.

I was quoted in the story *A Promise Renewed* in Universitas, a St. Louis University publication, in 1993. Although I have been unable to obtain the original article, I have supplied the Summer 2007 edition of Universitas in which my quote was re-printed.

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.

I have not held elected or appointed public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

Since law school, I have served as a fundraising co-host and been listed as a member of the fundraiser host committees for several candidates for public office in Arkansas, including Little Rock City Board candidate Kevin Dedner (2004), Circuit Clerk Pat O'Brien (2004, 2010), State Representative John Edwards (2008), Little Rock District Court Judge candidate Hugh Finkelstein (2008), Associate Supreme Court Justice Courtney Henry (2008, 2009), Governor Mike Beebe (2010), Congressman Vic Snyder (1996, 1998, 2000, 2002, 2004, 2006, and 2008), and Senator Mark Pryor (2007). I have listed all candidates I recall. I may have been listed on other event host committees for candidates, especially judicial candidates, the specifics of which I do not recall and the records for which I no longer possess. Apart from the above, I have never held a paid or unpaid position with or played any role in a political party, political campaign, 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 clerk for the Honorable Susan Webber Wright, then Chief Judge of the United States District Court for the Eastern District of Arkansas, from 1996 to 1998.

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.

1998 – 2000
Williams & Anderson LLP
111 Center Street, Suite 2200
Little Rock, Arkansas 72201
Associate

2000 – present
Quattlebaum, Grooms, Tull & Burrow PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201
Partner (2002 – present)
Associate (2000 – 2002)

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

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

From 1998 to 2000, I was an associate attorney at Williams & Anderson LLP. My practice was devoted to litigation. I handled and assisted in handling primarily commercial litigation cases, representing both plaintiffs and defendants. I participated in the trials of complex commercial litigation cases, including two one-week jury trials. I handled matters involving allegations of deceptive trade practices, breach of contract, breach of fiduciary duty, and fraud. I also handled First Amendment claims, defamation and related privacy-tort claims, and 42 U.S.C. § 1983 claims.

In 2000, I joined Quattlebaum, Grooms, Tull & Burrow PLLC, which was then a newly-formed firm. My practice has been devoted to litigation, and I continue to represent both plaintiffs and defendants. I handle and assist in handling numerous cases, including many complex commercial litigation cases that have culminated in multi-week jury trials in state and federal courts. I have also participated in bench trials. I have worked on class actions and cases involving multiple plaintiffs and multiple defendants. The types of claims I have litigated vary, and include matters involving allegations of deceptive trade practices, breach of contract, breach of fiduciary duty, and fraud. I also handle First Amendment claims, defamation and related privacy-tort claims, and 42 U.S.C. § 1983 claims. In addition, I have handled matters involving employment discrimination, securities violations, unfair competition, tortious interference, products liability, construction disputes, real estate disputes, Fair Housing Act claims, Freedom of Information Act claims, and insurance coverage disputes.

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

Throughout my career, I have represented individuals and business organizations of all forms and sizes, including sole proprietorships, partnerships, limited liability companies, and corporations. Clients that I have represented include individuals, local businesses, regional businesses, Fortune 500 companies, and governmental bodies.

From 1998 to 2000, I worked on a variety of business-related disputes involving contract and tort claims. I represented an insurance company in a suicide exclusion case at trial and assisted in representing a manufacturing company in a case involving a tractor trailer load shift that resulted in the death of the plaintiff driver. I participated in a binding arbitration on behalf of a company challenging the territory for distribution of its products. I also worked on matters involving constitutional claims, including alleged Eighth Amendment violations.

From 1998 to the present, I have handled a variety of First Amendment and Freedom of Information Act issues, including but not limited to motions to quash reporters' subpoenas, challenges to prior restraints, claims of defamation, claims of invasion of privacy, and requests for access to public records and information.

Since 2000, some of the more significant cases I have worked on involved toxic tort claims in which multiple plaintiffs alleged product liability and tort claims and sought recovery for personal injury, nuisance, property damage, medical monitoring, and emotional distress due to alleged

environmental contamination and allegedly defective products. Specifically, since 2005, I have worked on MDL products liability cases involving welding rods and manganese fume. I have participated in trials of these claims in various state courts, including Arkansas and Louisiana, and in the federal MDL court in the Northern District of Ohio.

Since 2004, the number of employment discrimination cases I have handled has increased. I have handled in administrative proceedings and in federal and state court claims for discrimination, harassment, wrongful termination, and retaliation, as well as claims arising under the Family and Medical Leave Act, the Americans with Disabilities Act, wage and hour laws, and the Employee Retirement Income Security Act.

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

Throughout my practice, I have occasionally appeared in court.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 40%
   3. other courts: 0%
   4. administrative agencies: 10%

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

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

I have tried 13 cases to verdict, judgment, or final decision. I was chief counsel in three cases and associate counsel in ten cases.

i. What percentage of these trials were:
   1. jury: 75%
   2. non-jury: 25%

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

I assisted in writing a brief in opposition to certiorari in *Whiteside v. Russellville Newspapers, Inc., et al.*, No. 09-67. 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) *Farm Fresh Producers, LLC, et al. v. Catfish Producers, LLC, et al.*, No. 2004 CV 8775 (Cir. Ct., Pulaski Cnty., Ark. filed Aug. 13, 2004).

I represented two defendants in this securities-fraud case involving 13 plaintiffs and seven defendants. Plaintiffs sought up to $20 million in damages. The allegations centered on a two-tiered securities offering in a catfish processing plant in South Arkansas and business transactions that resulted from that offering. The case spanned several years, involved numerous business entities, and lead up to the involuntary bankruptcy of one entity. Many of the parties had guarantees and reimbursement obligations as a result of the business transactions at issue. I was associate counsel. I deposed numerous witnesses and briefed and argued many legal issues prior to and during trial. At trial, I assisted in jury selection, examined witnesses including several plaintiffs, argued motions *in limine*, argued the directed-verdict motions, and argued jury instructions. Following a six-week jury trial, the defense prevailed. The Honorable Jay Moody, Pulaski County, Arkansas, Circuit Court Judge presided. An appeal was filed with the Supreme Court of the State of Arkansas, but that appeal was later dismissed by all parties as moot as a result of settlement. *United Farms Inc., et al. v. Yocum, et al.*, No. 09-980 (Ark. dismissed Oct. 1, 2009).

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Little Rock, AR 72201
501-372-1406

James F. Dowden
212 Center Street, 10th Floor
Little Rock, AR 72201
501-324-4700

(2) *Cooley, et al. v. Lincoln Electric Co., et al.*, No. 1:05 CV 17734 KMO (N.D. Ohio filed Apr. 5, 2005), reported at *Cooley v. Lincoln Electric. Co.*, 2011 WL 841535 (N.D. Ohio Mar. 7, 2011).

I represented several defendant welding rod manufacturers in this case alleging products liability and failure to warn claims. The case was litigated in the Northern District of Ohio as part of an MDL proceeding. The plaintiff welder is an Iowa resident who spent much of his career in Iowa and alleges exposure there; his claims therefore were decided by reference to Iowa law. As associate counsel, I deposed numerous witnesses and briefed and argued many legal issues prior to and during trial. At trial, I assisted in jury selection, argued motions *in limine*, argued evidentiary motions, designated video testimony of several witnesses to be played during trial, argued the directed-verdict motions, and argued document admissibility issues. Following a three-week trial, the jury found in favor of plaintiffs and awarded damages and punitive damages in the amount of $5,787,500. The Honorable Kathleen M. O'Malley, then-United States District Court Judge for the Northern District of Ohio, presided. The case is now on appeal in the Court of Appeals for the Sixth Circuit.

Plaintiffs' counsel:

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216-781-1111

(3) *Calloway v. Lincoln Electric Co., et al.*, No. 04 CV 0473-6 (Cir. Ct., Union Cnty., Ark. filed Feb. 14, 2005).

I represented several defendant welding rod manufacturers in this case in which plaintiffs alleged products liability and failure to warn claims and sought several million dollars in damages. I was associate counsel at trial, which lasted approximately three weeks. I briefed and argued many issues prior to and during trial. At trial, I prepared motions *in limine*, designated video testimony of several witnesses to be played during trial, prepared directed-verdict motions, and argued jury instructions. The case was tried in 2006 and the jury returned a defense verdict. The Honorable David Guthrie, Union County, Arkansas, Circuit Court Judge presided.

Plaintiffs' counsel:

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501-374-1058

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Richard Barrett
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Co-defense counsel:

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601-948-3101

Stephen Harburg
Jessica D. Miller
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 2005
202-371-7000

Co-defendant's counsel:

Kathryn Bennett Perkins
B.J. Walker
Rose Law Firm, P.A.
120 East Fourth Street
Little Rock, AR 72201
501-375-9131

(4) *Rice v. Protective Life Ins. Co.*, No. P-C-98-0206 (E.D. Ark. filed May 18, 1998).

I represented the defendant in a suit filed by plaintiff seeking payment of benefits under a life-insurance policy. The defendant denied payment based on a suicide-exclusion clause in the policy. I was associate counsel. I prepared the case for trial, deposed witnesses, identified third-party witnesses, and briefed all issues prior to trial. At trial, I assisted in jury selection, examined witnesses, argued motions *in limine*, argued the directed-verdict motions, and argued jury instructions. The case was tried in 1999, and the jury returned a defense verdict. The Honorable James M. Moody, United States District Court Judge for the Eastern District of Arkansas, presided.

Plaintiff's counsel:

Timothy O. Dudley
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501-372-0080

Cecil Duff Nolan, Jr.
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Stuttgart, AR 72160
870-673-3737

Co-defense counsel:

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111 Center Street, Suite 1900
Little Rock, AR 72201
501-379-1700

(5) *Columbian National Title Ins. Co. vs. Global Title Co., Inc.*, No. 2004 CV 011154 (Cir. Ct., Pulaski Cnty., Ark. filed Oct. 15, 2004).

I served as lead trial counsel for a title insurance company in this matter. The case involved a now-defunct real estate title company, whose principals allegedly committed

fraud, breach of contract, and conversion. The claims against the business exceeded $2.9 million. I worked with counsel for claimants, counsel for the principals of the defunct real estate title company, and the court to develop a procedure to resolve efficiently through legal proceedings undisputed title insurance claims. I took the lead in developing and overseeing that procedure, reporting to the court periodically at hearings on the status of undisputed claims. In addition, I was sole counsel at numerous proceedings in the case, including lengthy evidentiary hearings seeking a receivership, seeking to impose constructive trusts, and resolving disputed claims against the title insurance company. The court appointed a receiver and imposed constructive trusts. The title insurance company prevailed on some, but not all, of the disputed claims. Certain of the principals pleaded guilty to related criminal charges in federal court, and others filed for bankruptcy protection. The case has resulted in two insurance coverage disputes; I was directly involved in briefing and handling one of these coverage disputes pending in federal court. I worked with the United States Attorney's Office, the United States Bankruptcy Trustee, and the court-appointed receiver throughout this matter to resolve issues. The Honorable Tim Fox, Pulaski County, Arkansas, Circuit Court Judge has presided.

Opposing counsel:

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501-436-4498

Successor Receiver:

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501-375-1517

(6) *Estate of Hogan v. Potlatch Corp.*, No. 5:98 CV 00156 (E.D. Ark. filed Apr. 16, 1998).

I represented the defendant in this truck rollover case. The estate of plaintiff alleged that the tractor trailer he was driving rolled over, leading to his death, because the load was improperly braced and therefore shifted en route. I was associate counsel. I deposed witnesses, identified third-party witnesses, and briefed all issues prior to trial. At trial, I assisted in jury selection, examined witnesses, argued motions *in limine*, argued the directed-verdict motions, and argued jury instructions. The jury returned a defense verdict. The Honorable George Howard, United States District Court Judge for the Eastern District of Arkansas, presided.

Plaintiff's counsel:

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Deborah Pike Bliss
Pike & Bliss
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North Little Rock, AR 72115
501-372-0446

Claude Wilson Jenkins
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Post Office Box 409
DeWitt, AR 72042
870-946-3586

Co-defense counsel:

John Tull
Quattlebaum, Grooms, Tull & Burrow PLLC
111 Center Street, Suite 1900
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501-379-1700

(7) *Alcoa World Alumina L.L.C., f/k/a Alcoa Alumina & Chemicals, L.L.C. v. Weiss*, No. 2007 CV 13856 (Cir. Ct., Pulaski Cnty., Ark. filed Oct. 16, 2007).

A business client sought a tax refund in excess of $2 million from the State of Arkansas for use taxes paid for purchases of natural gas. Raising an issue of first impression under Arkansas tax law, my client maintained that the natural gas purchased from sellers outside the state was not subject to taxation since it did not "finally come to rest" under Arkansas law before consumption in the business client's manufacturing facility. The State of Arkansas prevailed in a bench trial. I served as associate counsel. I assisted in the work-up of this case for trial and advised as to legal strategy during the 2009 trial. The Honorable Jay Moody, Pulaski County, Arkansas, Circuit Court Judge presided. My client appealed the adverse ruling. I was involved in briefing the appeal, and the Arkansas Supreme Court affirmed the trial court's decision in *Alcoa World Alumina, L.L.C. v. Weiss*, No. 09-688 (Feb. 5, 2010).

Co-plaintiff's counsel:

Doug Sigel
Scott, Douglass & McConnico, LLP
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512-495-6300

Counsel for the State:

William E. Keadle
Ashley Fisher
Joel DiPippa
Arkansas Department of Finance & Administration
Office of Revenue Legal Counsel
P.O. Box 1272, Room 2380
Little Rock, AR 72203
501-682-7030

(8) *Padgett v. Wal-Mart Stores, Inc.*, No. 5:03 CV 0410 (E.D. Ark. filed Oct. 28, 2003).

I represented a defendant retailer against discrimination and wrongful termination claims under Title VII of the Civil Rights Acts of 1964, as amended, and the Americans with Disabilities Act of 1990. I served as associate counsel. I deposed witnesses, identified third-party witnesses, and briefed all issues prior to trial. At the bench trial in 2005, I examined witnesses, argued motions *in limine*, and argued the directed-verdict motion. At the conclusion of the plaintiff's case and the testimony of defendant's first witness, the court entered judgment for defendant pursuant to Federal Rule of Civil Procedure 52(c). The Honorable Billy Roy Wilson, United States District Court Judge for the Eastern District of Arkansas, presided.

Plaintiff's counsel:

Jonathan T. Lane
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Little Rock, AR 72201
501-372-6400

Co-defense counsel:

Steve Quattlebaum
Quattlebaum, Grooms, Tull & Burrow PLLC
111 Center Street, Suite 1900
Little Rock, AR 72201
501-379-1700

(9) *Crews v. Toney and Mercedes-Benz of North America, Inc.*, No. 97 CV 7679 (Cir. Ct., Pulaski Cnty., Ark. Aug. 1998).

I represented the defendant car manufacturer. Plaintiff asserted products liability and negligence claims, alleging that she was injured in an accident as a result of a purportedly defective airbag. A jury trial was conducted in 2001, and the jury returned a defense verdict. I was associate counsel. I briefed many issues prior to and during trial. At trial, I assisted in jury selection, examined witnesses, argued motions *in limine*, argued the directed-verdict motions, and argued jury instructions. The Honorable John Ward, Pulaski County, Arkansas, Circuit Court Judge presided.

Plaintiff's counsel:

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501-375-1135

Co-defense counsel:

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Quattlebaum, Grooms, Tull & Burrow PLLC
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501-379-1700

(10) *Gambrell and Kissel v. Bailey*, No. 2007 CV 13667-1 (Cir. Ct., Pulaski Cnty., Ark. filed Oct. 12, 2007).

I represented plaintiffs, both of whom worked for a media outlet, in this bench trial. I served as associate counsel. This was an Arkansas Freedom of Information Act case in which plaintiffs sought access to computer identification information for certain State of Arkansas computer users. I prepared the case for trial, examined witnesses at trial, and argued motions during trial. Following trial in 2008, the Judge returned a decision in favor of the State. The Honorable Marion Humphrey, Pulaski County, Arkansas, Circuit Court Judge presided.

Co-plaintiff's counsel:

John Tull
Quattlebaum, Grooms, Tull & Burrow PLLC
111 Center Street, Suite 1900
Little Rock, AR 72201
501-379-1700

Counsel for the State:

Joseph Cordi, Jr.
Colin R. Jorgensen
Office of the Attorney General
State of Arkansas
323 Center Street, Suite 200
Little Rock, AR 72201
501-682-1317

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.)

Along with my litigation experience in state and federal courts, I counsel clients regularly on employment law matters. I represent clients in assessing, mediating, and responding to charges of discrimination filed with the Equal Employment Opportunity Commission ("EEOC"). I have participated in over 30 mediations with the EEOC, including EEOC offices in Arkansas, Oklahoma, and Tennessee. I also regularly represent clients in litigating employment discrimination claims in federal and state court, including but not limited to claims of discrimination based on age, race, gender, disability, and pregnancy. In addition, I have handled Family and Medical Leave Act claims, wage and hour claims, Employee Retirement Income Security Act claims, and claims brought pursuant to the Uniformed Services Employment and Reemployment Rights Act. I serve as lead counsel in these matters. I have obtained summary judgment rulings in favor of my clients in many cases I have handled, thereby resolving many of these cases prior to trial.

I have arbitrated seven cases with the American Arbitration Association, private arbitrators, and the National Association of Securities Dealers Dispute Resolution. These cases have included construction disputes, disputes regarding covenants not to compete, and securities violations.

As a partner of my law firm, I share administrative and management duties with the firm's seven other equity partners, and I am primarily responsible for handling all personnel matters at the firm. I am responsible for employment counseling and employee terminations. In the course of my practice, I regularly work with, supervise, and train associate attorneys and litigation support staff.

Since 2008, I have served as a member of the Arkansas Supreme Court Committee on Model Jury Instructions – Civil. I was appointed to this committee by the Justices of the Arkansas Supreme Court in 2008 and reappointed in 2010. The committee authors the

book *Arkansas Model Jury Instructions (Civil)*, which is published annually. The committee is charged with reviewing recently released court decisions, new and revised statutes, and other legal authority to create or revise the model jury instructions and comments to the instructions to reflect accurately the current state of Arkansas law. In addition, I and other members of the firm prepared for the Arkansas Press Association the publication *Public and Legal Notices Digest: A compilation of Arkansas statutes requiring publication of public and legal notices in newspapers* (Ark. Press Ass'n ed. 2011). This publication is available free of charge to the public on the Arkansas Press Association's website.

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.

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 anticipate receiving distributions of non-wage income from two family-owned limited liability companies of which I am a part owner. These companies hold investment and real estate assets, and future non-wage income distributions are not guaranteed and are subject to fluctuation.

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.

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 review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges, including Canon 3 of the Code, as well as all applicable policies and procedures of the United States Courts. I will follow all applicable laws, orders, rules, customs, and practices in addressing conflicts.

If confirmed, I will immediately resign from my affiliation and partnership with Quattlebaum, Grooms, Tull & Burrow PLLC. For a period of time after taking the bench, I will not accept cases brought by the attorneys of the law firm with whom I practiced. I will also recuse myself from any matters that I handled or supervised as an attorney in private practice, as well as any matters substantially related to matters I handled or supervised, although I am not aware of any such conflicts of interest.

My husband is a partner at Mitchell Williams in Little Rock, Arkansas. If confirmed, I will recuse myself from all matters involving him or his firm. My father-in-law is of counsel to the Rose Law Firm in Little Rock, Arkansas. I will follow 28 U.S.C. § 455, the Code of Conduct for United States Judges, including Canon 3 of the Code, and all applicable policies and procedures of the United States Courts in cases in which my father-in-law or his firm appear. Finally, I will recuse from all cases involving companies in which I own stock or with which I have an ongoing business relationship. I will diligently keep apprised of my financial and personal interests so as to address conflicts and potential conflicts proactively.

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 resolve any potential conflict of interest in accordance with the provisions of 28 U.S.C. § 455, the Code of Conduct for United States Judges, including Canon 3 of the Code, and all applicable policies and procedures of the United States Courts. If confirmed, I will carefully review and address any real or potential conflicts or the appearance of conflict at the outset of each case.

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 regularly accept prisoner and other appointment cases from the federal courts. These cases have included suits brought pursuant to 42 U.S.C. § 1983 by a female inmate after a guard allegedly raped her, by inmates regarding allegedly deficient medical and dental treatment, and by elderly and infirm inmates regarding allegedly deficient medical treatment and the procedures required to obtain such treatment. All of these matters have involved representing clients through discovery, in responding to dispositive motions, on appeal at the Eighth Circuit on the issue of qualified immunity, and either through settlement or trial. I also have represented through federal court appointment plaintiffs in employment discrimination suits.

I am a member of the Pulaski County Bar Association's Volunteer Organization Center for Arkansas Legal Services ("VOCALS"). I regularly accept from it cases and assignments to review case files, research potential claims, and advise clients regarding the status of their potential and pending cases.

On average, throughout my legal career, I have devoted approximately 100 to 150 hours per year to pro bono legal matters.

I also have served on the boards of non-profit entities in the community and volunteer for non-profit entities. As a board member, I have reviewed by-laws, assessed director and officer liability policies, advised on employment matters, and participated in each entity's day-to-day projects. For example, as a board member of Dress for Success Little Rock, I regularly staffed the non-profit's clothing boutique and assisted women served by the organization in selecting outfits for job interviews. In addition to board service, I have volunteered with various other community organizations to plant trees, deliver food baskets, and serve meals to members of the 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.

There is no selection commission in Arkansas for vacancies on the federal bench. On November 17, 2008, after two sitting judges took senior status, I wrote to Senator Blanche Lincoln and Senator Mark Pryor, indicating my interest in the position of United States District Judge for the Eastern District of Arkansas. I filled out a questionnaire sent by Senator Lincoln and returned it December 19, 2008. On December 29, 2008, I met with Senator Lincoln in Little Rock. On or about January 2, 2009, I met with Senator Pryor in Little Rock. On July 17, 2011, Senator Pryor informed me that he was recommending me and others to the President for consideration. On July 20, 2011, Senators Pryor and Boozman publicly announced a list of three individuals they were recommending to the President for consideration. On July 26, 2011, I met separately with Senators Pryor and Boozman in Washington, D.C. Since July 29, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 7, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 2, 2011, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2011

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
Baker, Kristine G.	Eastern District of Arkansas	11/2/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Court Judge	☑ Nomination, Date 11/2/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2010 to 10/27/2011
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.**	
111 Center Street, Suite 1900 Little Rock, Arkansas 72201	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Quattlebaum, Grooms, Tull & Burrow PLLC
2.	Member	Arbor Enterprises, LLC
3.	Member	Wassonlieband, LLC
4.	Board Member	Presbyterian Village, Inc.
5.	Board Member	Dress for Success Little Rock

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 Baker, Kristine G.	Date of Report 11/2/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2009	Quattlebaum, Grooms, Tull & Burrow PLLC Ordinary business income	$298,100.00
2.	2010	Quattlebaum, Grooms, Tull & Burrow PLLC Ordinary business income	$569,315.00
3.	2011 (YTD)	Quattlebaum, Grooms, Tull & Burrow PLLC Ordinary business income	$205,000.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2010	Mitchell, Williams, Selig, Gates & Woodyard Ordinary business income
2.	2011 (YTD)	Mitchell, Williams, Selig, Gates & Woodyard Ordinary business income
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 Baker, Kristine G.	Date of Report 11/2/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 9	Name of Person Reporting Baker, Kristine G.	Date of Report 11/2/2011

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

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

A. Description of Assets (excluding 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. 401K Account #1									
2. - Am. Funds International Growth & Income Fund	B	Dividend	K	T	Exempt				
3. - Am. Funds Europacific Fund	A	Dividend	K	T	Exempt				
4. - Am. Funds Growth Fund of Am.	A	Dividend	K	T	Exempt				
5. - Am. Funds New World Fund	B	Dividend	L	T	Exempt				
6. - Am. Funds Smallcap World Fund	A	Dividend	K	T	Exempt				
7. - Am. Funds Washington Mutual Fund	A	Dividend	L	T	Exempt				
8. - Am. Funds Global Balanced Fund		None	K	T	Exempt				
9. 401K Account #2									
10. - Am. Funds International Growth & Income Fund	A	Dividend	J	T	Exempt				
11. - Am. Funds Europacific Fund	A	Dividend	L	T	Exempt				
12. - Am. Funds Growth Fund of Am.	A	Dividend	L	T	Exempt				
13. - Am. Funds Smallcap World Fund	A	Dividend	J	T	Exempt				
14. - Am. Funds Washington Mutual Fund		None	L	T	Exempt				
15. ROTH Account #1									
16. - Fed. Ex. Corporation	A	Dividend	J	T	Exempt				
17. - Am. Funds Fundamental Investors Fund	A	Dividend	K	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
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P1 =$25,000,001 - $50,000,000
Q =Appraisal
U =Book Value

B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
R =Cost (Real Estate Only)
V =Other

C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
S =Assessment
W =Estimated

D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000
T =Cash Market

E =$15,001 - $50,000

FINANCIAL DISCLOSURE REPORT Page 5 of 9	Name of Person Reporting Baker, Kristine G.	Date of Report 11/2/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (If private transaction)
18. - Am. Funds Growth Fund of Am.		None	J	T	Exempt				
19. - Am. Funds International Growth & Income Fund		None	J	T	Exempt				
20. - Invesco Constellation Fund		None	K	T	Exempt				
21. ROTH Account #2									
22. - Am. Funds International Growth Fund	A	Dividend	J	T	Exempt				
23. - Am. Funds Europacific Fund	A	Dividend	J	T	Exempt				
24. - Am. Funds Fundamental Investors Fund		None	J	T	Exempt				
25. - Am. Funds Growth Fund of Am.	A	Dividend	J	T	Exempt				
26. - Am. Funds Global Balanced Fund		None	J	T	Exempt				
27. IRA Account #1									
28. - Am. Funds Global Balanced Fund		None	J	T	Exempt				
29. IRA Account #2									
30. - Am. Funds Global Balanced Fund		None	J	T	Exempt				
31. 529 Account #1									
32. - Vanguard Aggressive Age-Based Growth Portfolio		None	M	T	Exempt				
33. 529 Account #2									
34. - Am. Funds International Growth Fund	A	Dividend	K	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
I =$15,000 or less
J =$15,001 - $50,000
K =$50,001 - $100,000
L =$100,001 - $250,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting Baker, Kristine G.	Date of Report 11/2/2011

VII. INVESTMENTS and TRUSTS — *income, value, transactions (includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)*

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

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 2 (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. - Am. Funds Capital World Fund	A	Dividend	K	T	Exempt				
36. - Am. Funds Europacific Fund	A	Dividend	J	T	Exempt				
37. - Am. Funds Growth Fund	A	Dividend	J	T	Exempt				
38. - Am. Funds New World Fund	A	Dividend	J	T	Exempt				
39. - Am. Funds Smallcap World Fund	A	Dividend	J	T	Exempt				
40. - Am. Funds Washington Mutual Fund	A	Dividend	J	T	Exempt				
41. - Am. Funds Global Balanced Fund		None	J	T	Exempt				
42. 529 Account #3									
43. - Vanguard Aggressive Age-Based Aggressive Growth Pitfolio		None	L	T	Exempt				
44. 529 Account #4									
45. - Am. Funds Capital World Growth & Income	A	Dividend	K	T	Exempt				
46. - Am. Funds Growth Fund of Am.	A	Dividend	K	T	Exempt				
47. - Am. Funds New World Fund	A	Dividend	K	T	Exempt				
48. Centennial Bank (ckg. acct.)	A	Interest	K	T	Exempt				
49. Delta Trust & Bank (ckg. acct.)	A	Interest	L	T	Exempt				
50. Iberia Bank (svgs. acct.)	A	Interest	J	T	Exempt				
51. Interest in Arbor Enterprises, LLC	D	Int./Div.	N	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$15,000 or less
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)
Q =Appraisal
R = Cost (Real Estate Only)
S = Assessment
T =Cash Market
U =Book Value
V =Other
W = Estimated

3. Value Method Codes (See Column C2)

FINANCIAL DISCLOSURE REPORT Page 7 of 9	Name of Person Reporting Baker, Kristine G.	Date of Report 11/2/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of spouse and dependent children; see pp. 34-66 of filing instructions.)*

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. Interest in Wasserliebend, LLC (Purchases in 2011; $116,500)		None	M	U					
53. Membership Interest in Quattlebaum Grooms Tull & Burrow PLLC		None	M	U	Exempt				
54. Membership Interest in Mitchell, Williams		None	L	U	Exempt				
55. New York Life: Whole Life Policy No. 1		None	K	T	Exempt				
56. New York Life: Whole Life Policy No. 2		None	K	T	Exempt				
57. U.S. Bank, NA (svgs. acct.)	A	Interest			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
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H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$1,000,000 or less
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 8 of 9	Name of Person Reporting Baker, Kristine G.	Date of Report 11/2/2011

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

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Baker, Kristine G.	Date of Report 11/2/2011

IX. CERTIFICATION.

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

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

Signature Kristine G. Baker

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		115	420	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	055	307	Notes payable to relatives			
Unlisted securities – see schedule		683	319	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		11	394
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		259	664
Real estate owned – personal residence		750	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		72	000				
Cash value-life insurance		35	570				
Other assets itemize:							
				Total liabilities		271	058
				Net Worth	2	440	558
Total Assets	2	711	616	Total liabilities and net worth	2	711	616
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		74	035	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	
FedEx Corporation stock	$3,273
American Funds Capital World Growth & Income – 529A	31,029
American Funds EuroPacific Growth Fund	114,209
American Funds EuroPacific Growth Fund – 529A	9,432
American Funds Fundamental Investors Fund	49,035
American Funds Global Balanced Fund	66,469
American Funds Global Balanced Fund – 529A	7,865
American Funds Growth Fund of America	108,137
American Funds Growth Fund of America – 529A	29,223
American Funds International Growth & Income Fund	71,380
American Funds International Growth & Income Fund – 529A	18,834
American Funds New World Fund	93,909
American Funds New World Fund – 529A	28,868
American Funds SMALLCAP World Fund	45,561
American Funds SMALLCAL World Fund – 529A	8,974
American Funds Washington Mutual Investors Fund	139,966
American Funds Washington Mutual Investors Fund – 529A	8,728
Invesco Constellation Fund	16,442
Vanguard Age-Based Aggressive Growth Portfolio – 529	203,973
Total Listed Securities	$1,055,307

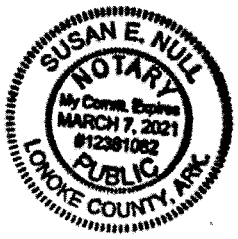
Unlisted Securities	
Arbor Enterprises, LLC	$238,173
Mitchell, Williams, Selig, Gates & Woodyard, PLLC	56,413
Quattlebaum, Grooms, Tull & Burrow, PLLC	236,000
Wasserliebend, LLC	152,733
Total Unlisted Securities	$683,319

AFFIDAVIT

I, Kristine G. Baker, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

(DATE)

Kristine G. Baker
(NAME)



Susan E. Null
(NOTARY)

Senator DURBIN. Thank you.

Mr. John Lee of Chicago, please introduce family and friends with you and make any opening statement you feel appropriate.

STATEMENT OF JOHN Z. LEE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Mr. LEE. Thank you, Senator. First of all, I would like to thank this Committee for your consideration of my nomination. I would like to thank particularly Senator Durbin for chairing this hearing and for recommending me to the President for nomination.

I would also like to thank Senator Leahy and Senator Grassley for this hearing, as well as Senator Kyl for being here today. Thank you very much.

I would also like to thank President Obama for the great privilege and honor of the nomination itself.

I would also like to thank Senator Kirk for his support of my nomination, and I am sure like everyone else here, I wish him a fast and speedy recovery.

If I may, I would like to introduce my friends and family who are here today. First of all, with my family, I would like to introduce Dr. June Lee along with our children: my daughter, Kaitlyn Lee, and our son, Noah. Also with me today are my parents, Sun Koo Lee and Hwa Za Lee, who brought me to this country many, many years ago, over 40 years ago.

I would also like to acknowledge my brothers, who could not be here today: my brother, Daniel, his wife, Carrie, and their sons, Wyatt and Ryder; as well as my brother, David, who is a school teacher in Chicago.

I would also like to acknowledge my grandmother, who passed away this last year. She raised me for much of my young childhood, and much of whom I am today I owe to her kindness, generosity, and love, so I was to acknowledge her.

Last, my friend and colleague, Jeff Cross, who joined me today, and I want to recognize all the friends and colleagues, particularly those at Freeborn & Peters, who are watching on the webcast.

Thank you.

[The biographical information of Mr. Lee follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   John Zihun Lee

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

   United States District Judge for the Northern District of Illinois

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

   Freeborn & Peters LLP
   311 South Wacker Drive
   Suite 3000
   Chicago, Illinois 60606

   Residence: Inverness, Illinois

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

   1968; Aachen, Germany

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

   1989 – 1992, Harvard Law School; J.D. (*cum laude*), 1992

   1985 – 1989, Harvard College; A.B. (*magna cum laude*), 1989

   1988, Yonsei University; International Summer School in Seoul, South Korea

   1987, Stanford University; study abroad program in Rome, Italy

   1986, Northwestern University; Summer Program

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
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Equity Partner (2004 – present)
Income Partner (2001 – 2004)
Associate (1999 – 2001)

Fall 2000
The John Marshall Law School
315 South Plymouth Court
Chicago, Illinois 60604
Adjunct Professor

1996 – 1999
Grippo & Elden LLC
111 South Wacker Drive
Chicago, Illinois 60606
Associate

1994 – 1996
Mayer Brown (formerly, Mayer, Brown & Platt LLP)
71 South Wacker Drive
Chicago, Illinois 60606
Associate

1992 – 1994
United States Department of Justice
Environment & Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Trial Attorney

Summer 1991
Perkins Coie LLP
700 Thirteenth Street, N.W.
Washington, D.C. 20005
Summer Associate

Summer 1991
Wiley Rein LLP (formerly, Wiley, Rein & Fielding LLP)
1776 K Street, N.W.
Washington, D.C. 20006
Summer Associate

Fall 1990, 1991
Harvard University
Massachusetts Hall
Cambridge, Massachusetts 02138
Teaching Fellow

Summer 1990
SNR Denton (formerly, Sonnenschein, Nath & Rosenthal LLP)
233 South Wacker Drive, Suite 7800
Chicago, Illinois 60606
Summer Associate

Summer 1989
Alliance Holiness Church
Asian Community Center
4926 North Kimball Avenue
Chicago, Illinois 60659
Instructor

Other Affiliations (uncompensated):

2010 – Present
Asian American Bar Association of Greater Chicago ("AABA")
P.O. Box A3782
Chicago, Illinois 60690
Board Member

2006 – Present
Asian Human Services of Chicago
4753 North Broadway Avenue, Suite 700
Chicago, Illinois 60640
Board Member (2006 – present)
Board President (2010 – present)

2004 – Present
Coordinated Advice and Referral Program for Legal Services ("CARPLS")
17 North State Street, Suite 1850
Chicago, Illinois 60602
Board Member (2004 – present)
Board President (2009 – 2011)

2001
The John Marshall Law School
315 South Plymouth Court
Chicago, Illinois 60604
Guest Lecturer

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

   I have not served in the U.S. Military. I have 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.

   "Leading Lawyer," *The Leading Lawyers Network*, a division of the Law Bulletin Publishing Company, in Commercial Litigation and Class Action/Mass Tort Defense Law (2008 – 2011)

   "40 Under Forty Illinois Attorneys to Watch," The Law Bulletin Publishing Company, publisher of the *Chicago Daily Law Bulletin* and the *Chicago Lawyer* (2004)

   Appointed representative to the Barrington School District Enrollment Monitoring Committee ("EMC"), Advisory Board to Barrington School District 220 (2007 – 2010)

   Derek Bok Prize in Teaching, Harvard University (1990 – 1991)

   Classics Department Book Prize, Harvard University (1989)

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 American Bar Association of Greater Chicago
   Board Member (2010 – present)

   Coordinated Advice and Referral Program for Legal Services ("CARPLS")
   Board Member (2004 – present)
   Board President (2009 – 2011)
   Golden Gavel Awards Committee (2005 – 2008)

Federal Bar Association

Illinois State Bar Association

National Asian Pacific American Bar Association

10. **Bar and Court Admission**:

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

Illinois, 1992

There has been no lapse in membership.

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

United States Court of Appeals for the Seventh Circuit, 2007
United States Court of Appeals for the Eighth Circuit, 2004
United States Court of Appeals for the Ninth Circuit, 2003
United States District Court for the Northern District of Illinois, 1996
United States District Court for the Eastern District of Michigan, 1998
United States District Court for the Southern District of Illinois, 2002
Illinois Supreme Court, 1992

There has been no lapse in membership.

11. **Memberships**:

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

Asian Human Services of Chicago
Board member (2006 – present)
Board President (2010 – present)
Passages School Committee (2006 – 2007)

Biltmore Country Club (2006 – 2011)

Harvard Club of Chicago (1996 – present)

The Lawyers Club of Chicago (2010 – present)

Porsche Club of America (2006 – 2011)

The Union League Club of Chicago (2005 – 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 presently engages or formerly engaged in discrimination of any kind.

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.

Jeffrey M. Cross and John Z. Lee, *Franchising: Antitrust Considerations*, in Antitrust Counseling and Litigation Techniques (2008). Copy supplied.

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

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

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

I have not issued or provided any testimony, official statements or other communications as described above, nor have others presented any on my behalf.

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 27, 2010: *Golden Gavels Celebration*, Chicago, Illinois. I provided introductory remarks. I have no notes, transcripts or recordings. The event was sponsored by Coordinated Advice and Referral Program for Legal Services ("CARPLS"), 17 North State Street, Suite 1850, Chicago, Illinois 60602.

September 25, 2009: *Social Networking with Your Eyes Wide Open*, Chicago, Illinois. I presented to the National Asian American Association of Professionals. Presentation slides supplied.

June 8, 2009: *Oral Advocacy Training*, Chicago, Illinois. I conducted training of law firm associates related to electronic discovery issues. I have no notes, transcripts or recordings. The event was sponsored by Freeborn & Peters LLP, 311 South Wacker Drive, Suite 3000, Chicago, Illinois 60606.

May 20, 2009: *Golden Gavels Celebration*, Chicago, Illinois. I provided introductory remarks. I have no notes, transcripts or recordings. The event was sponsored by CARPLS, 17 North State Street, Suite 1850, Chicago, Illinois 60602.

January 29, 2009: *Practice Tracks*, Chicago Bar Association, Chicago, Illinois. I presented on antitrust law. I have no notes, transcripts or recordings. The event was sponsored by the Chicago Bar Association, 321 South Plymouth Court, Chicago, Illinois 60604.

August 14, 2007: *Vault Legal Diversity Job Fair Conference*, Chicago, Illinois. I participated in a panel discussion regarding diversity and business development issues. I have no notes, transcripts or recordings. The event was sponsored by Vault.com, Inc., 132 West 31st Street, 15th Floor, New York, New York 10001.

August 24, 2006: *Use of Experts in Federal Court*, Chicago, Illinois. I prepared and presented a seminar for law firm associates regarding expert discovery issues. Presentation slides supplied.

March 4, 2005: *Are Asians Afraid of the Courtroom?*, Chicago, Illinois. I participated in a panel discussion regarding challenges faced by Asian American litigators. I have no notes, transcripts or recordings. The event was sponsored by the Asian Pacific American Law Students Association of Northwestern Law School, 375 East Chicago Avenue, Chicago, Illinois 60611.

Fall 2002: Guest Lecturer, *Antitrust Law*, Chicago, Illinois. I have no notes, transcripts or recordings. The talk was given at the John Marshall Law School, 315 South Plymouth Court, Chicago, Illinois 60604.

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

John Flynn Rooney, "Senators Recommend Five for District Court Vacancies," Chicago Daily Law Bulletin (July 6, 2011). Copy supplied.

"Freeborn & Peters LLP and BLSA Honor Black Leaders Feb. 22," In the Loop (published by John Marshall Law School) (Feb. 18-24, 2007). Copy supplied.

Interview on the role of partners at Freeborn & Peters, Freeborn & Peters LLP, 2006. Video available at http://www.freebornpeters.com/videos/video.aspx?id=12.

Natasha H. Leland, "Law School Group Holds Forum on Suit," The Crimson, Feb. 26, 1992. Copy supplied.

Quoted in Law Actors brochure, 1990s (quote also printed on the group's web site). Copy of the brochure supplied.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

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

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

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

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

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

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

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

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

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

I have not served as a judge.

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

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

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

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

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

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

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

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

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

1992 – 1994
United States Department of Justice
Environment & Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Trial Attorney

1994 – 1996
Mayer Brown (formerly, Mayer, Brown & Platt LLP)
71 South Wacker Drive
Chicago, Illinois 60606
Associate

1996 – 1999
Grippo & Elden LLC
111 South Wacker Drive
Chicago, Illinois 60606
Associate

1999 – Present
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
Equity Partner (2004 – present)
Income Partner (2001 – 2004)
Associate (1999 – 2001)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

Since I started practicing law in 1992, the vast majority of my legal practice has been before the federal courts. As a trial attorney at the United States Department of Justice, my responsibilities included

representing the United States in federal courts in the Third, Seventh and Ninth Circuits. Most of the cases arose under federal environmental statutes, such as the Clean Water Act, the Clean Air Act, RCRA and CERCLA.

Since joining private practice in 1995, I have expanded my legal practice to include the litigation of complex commercial disputes, including cases involving antitrust, intellectual property, employment and business tort issues. Most of these cases have been in federal courts, particularly those in the Seventh and Ninth Circuits. I have also represented clients in a number of criminal investigations in matters involving antitrust and financial regulations.

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

During my tenure at the United States Department of Justice, I represented the United States in environmental matters and worked closely with the Environmental Protection Agency and the Departments of Defense and Interior. Since entering private practice, I have represented public and private companies as well as individual business persons. I have also represented low income clients on a *pro bono* basis.

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 has consisted almost entirely of litigation. During the time that I served as a trial attorney in the Environment & Natural Resources Division of the United States Department of Justice, I appeared in court whenever my matters required it, typically once every several months. Since entering private practice, I have appeared in court on average once a month, often more frequently depending upon the needs of a particular case.

i. Indicate the percentage of your practice in:

1.	federal courts:	85%
2.	state courts of record:	10%
3.	other courts:	0%
4.	administrative agencies:	5%

ii. Indicate the percentage of your practice in:

1.	civil proceedings:	95%
2.	criminal proceedings:	5%

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

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

I have tried to verdict, judgment or final decision an eight-week jury trial as second chair counsel as well as three shorter bench trials as lead counsel. I have also served as co-lead trial counsel in a two-week AAA arbitration and as second chair counsel in a JAMS arbitration.

i. What percentage of these trials were:
   1. jury: 17%
   2. non-jury: 83%

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

Trigen-Oklahoma City Energy Corp. v. Oklahoma Gas and Electric Co., No. 01-178, *cert. denied*, Oct. 29, 2001 (brief in opposition). 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. *In re Sulfuric Acid Antitrust Litig.*, 03-CV-4576 (N.D. Ill.) (Holderman, C.J.) (2003 – present)

In this multi-district class action, plaintiffs have alleged that the defendants conspired to fix prices and reduce output in the sulfuric acid industry in violation of the antitrust laws. I am one of the senior attorneys at our firm representing defendants Noranda, Inc., Falconbridge Limited, and NorFalco LLC, and have participated in all stages of this action, including fact and expert discovery, class certification briefing, dispositive motion practice, and pre-trial preparations. This matter is currently pending. Reported decisions include: *In re Sulfuric Acid Antitrust Litigation*, MDL

No. 1536, 2010 WL 3835869 (N.D. Ill. Sept. 24, 2010); *In re Sulfuric Acid Antitrust Litigation*, MDL No. 1536, 2007 WL 898600 (N.D. Ill. Mar. 21, 2007).

Opposing counsel:	Mary Jane Fait Theodore Bell Wolf Haldenstein Adler Freeman & Herz LLP 55 West Monroe Street, Suite 1111 Chicago, Illinois 60603 (312) 985-0000 Steven A. Asher, Esq. Weinstein Kitchenoff & Asher LLC 1845 Walnut Street, Suite 1100 Philadelphia, Pennsylvania 19103 (215) 545-7200
Counsel for co-defendants:	Stephen Kastenberg Ballard Spahr LLP 1735 Market Street, 51st Floor Philadelphia, Pennsylvania 19103 (215) 665-8500 Todd McLawhorn McLawhorn Law Offices, P.C. 30 North LaSalle Street, Suite 3200 Chicago, Illinois 60602 (312) 419-1941 Daniel Hanselman McDermott Will & Emery LLP 227 West Monroe Street Chicago, Illinois 60606 (312) 984-3610 Michael A. Cox Dykema 400 Renaissance Center Detroit, Michigan 48243 (313) 568-5484

2. *Taylor Bean & Whitaker Mortgage Corp. v. GMAC Mortgage Corp.*, 05-CV-260 (M.D. Fla.) (Jones, J.) (2005 – 2009)

This case involved a dispute over the sale of servicing rights related to certain residential mortgage loans portfolios. I was the lead attorney on the case on behalf of the plaintiff and participated in all stages of this action, including fact and expert

discovery, dispositive motion practice, and pre-trial preparations. The case settled shortly before the commencement of a four-week jury trial. Reported decisions include: *Taylor Bean & Whitaker Mortgage Corp. v. GMAC Mortgage Corp.*, 05-CV-260, 2008 WL 3819752 (M.D. Fla. Aug. 12, 2008); *Taylor Bean & Whitaker Mortgage Corp. v. GMAC Mortgage Corp.*, 05-CV-260, 2008 WL 3305486 (M.D. Fla. Aug. 8, 2008); *Taylor Bean & Whitaker Mortgage Corp. v. GMAC Mortgage Corp.*, 05-CV-260, 2008 WL 3200284 (M.D. Fla. Aug. 6, 2008).

Opposing counsel: Robert Maddox
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
(205) 521-8454

3. *Benford v. Chicago Beverage Systems, Inc.*, 07-CV-06958 (N.D. Ill.) (Coar, J.) (2007 – 2009)

I was appointed as lead trial counsel by the court to represent *pro bono* the plaintiff, Mr. Benford, in a lawsuit alleging age discrimination in violation of Title VII and Illinois common law. Mr. Benford was a fork lift operator seeking damages for wrongful termination. We were able to develop a litigation strategy that resulted in a favorable settlement. *See generally Benford v. Chicago Beverage Systems, LLC*, 2009 WL 1684461 (N.D. Ill. June 15, 2009).

Opposing counsel: J. Kevin Hennessey
Vedder Price LLP
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609-7868

4. *Boumehdi v. Plastag Holdings LLC*, 04-CV-672 (N.D. Ill.) (Shadur, J.) (2004 – 2007)

In this case, the plaintiff, Ms. Boumehdi, filed an action under Title VII and the Equal Pay Act, alleging gender discrimination in the workplace. Representing the defendant as lead counsel, I was successful in obtaining summary judgment on behalf of the defendant in district court. The Court of Appeals for the Seventh Circuit reversed the ruling on several grounds, *see Boumehdi v. Plastag Holdings, LLC*, 489 F.3d 781 (7th Cir. 2007), and the matter eventually settled.

Opposing counsel: Carol Oshana
Oshana Law Firm
20 North Clark Street, Suite 3100
Chicago, Illinois 60602
(312) 404-8390

5. *In re Burlington Northern & Santa Fe Railway Employee Settlement Agreements Litig.*, MDL No. 1418 (W.D. Wash.) (Pechman, J.) (2001 – 2003)

In this multi-district employment class action, plaintiffs were former employees of the Burlington Northern and Santa Fe Railway, who negotiated and executed settlement agreements to resolve claims of work-related hearing loss. Plaintiffs alleged, among other things, that they were fraudulently induced to enter into the agreements. We represented the defendant. After a multi-week trial, the jury rendered a verdict in our client's favor. I participated in all stages of this matter, including fact and expert discovery, class certification briefing, dispositive motion practice, and pre-trial preparations. I also served as second chair counsel during the trial.

Opposing counsel: Simeon Osborn
Osborn Machler LLP
2125 Fifth Avenue
Seattle, Washington 98121
(206) 441-4110

Craig Speigel
Hagens Berman
1918 Eighth Avenue, Suite 3300
Seattle, Washington 98101
(206) 623-7292

Co-counsel: John Berghoff
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600

6. *McDonald's Corp. v. MGA Entertainment, Inc.*, 03-C-1026 (N.D. Ill.) (Gettleman, J.) (2003)

The dispute in this action involved McDonald's right to manufacture and use toys based upon the Bratz-line of dolls manufactured by MGA Entertainment. The parties had entered into a license agreement that provided McDonald's certain rights to use the Bratz trademark, design and copyrights. MGA, however, sent McDonald's a letter prohibiting McDonald's from using the dolls. McDonald's filed suit against MGA, alleging that it had breached its contract with McDonald's. MGA counterclaimed, alleging that McDonald's had breached its trademarks and copyrights, and filed a motion for preliminary injunction. Representing McDonald's, we prevailed after a multi-week preliminary injunction hearing. My partner, Michael Freeborn, and I served as lead counsel for McDonald's in this matter. Reported decisions include: *McDonald's Corp. v. MGA Entertainment, Inc.*, No. 03-C-1026, 2003 WL 25669323 (N.D. Ill. Mar. 6, 2003).

Opposing counsel: Richard O'Brien, Jr.
Paul Veith
Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7283

7. *Taylor Bean & Whitaker Mortgage Corp. v. Cebulak, et al.*, 03-C-7425 (N.D. Ill.) (Mason, J.) (2003 – 2004)

We represented the plaintiff in this action against a number of defendants who were alleged to have been involved in a conspiracy to commit mortgage fraud. The defendants included building construction contractors, real estate brokers, title company agents and real estate appraisers. I was lead counsel for plaintiff in this case. As we were conducting extensive fact discovery, we were also assisting the United States Attorney's Office in Rockford, Illinois, in the government's investigation of the conspiracy. Eventually, the primary defendants were indicted, and the civil case was settled.

Opposing counsel: Elliot Pollock
Elliot Pollock Law Practice
111 West Washington Street, Suite 1301
Chicago, Illinois 60602
(866) 937-7548

Barry E. Morgan
7101 North Cicero Avenue, Suite 100
Lincolnwood, Illinois 60712
(847) 933-9392

George B. Collins
One North LaSalle Street, Suite 300
Chicago, Illinois 60602
(312) 445-9175

8. *Scialabba v. Sierra Blanca No. 1 Condo. Ass'n*, 00-C-5344 (N.D. Ill.) (Conlon, J.) (2000 – 2002)

In this *pro bono* matter, I was asked by the Chicago Lawyers' Committee on Civil Rights Under Law to represent Mr. Scialabba and his parents in a lawsuit against their condominium association for violations of the Fair Housing Act, among other claims. Mr. Scialabba had been seriously injured in an automobile accident and suffered from extensive brain injury. The court's ruling on summary judgment was significant because the court found that, under the Fair Housing Act, housing providers had a duty to make good faith efforts to accommodate disabled residents, even if the

landlord or housing association believed that the resident posed a threat to the property, health or safety of others. *See Scialabba v. Sierra Blanca No. 1 Condo. Ass'n*, No. 00-C-5344, 2001 WL 803676 (N.D. Ill. July 16, 2002). I was the lead attorney in this matter.

Opposing counsel: James Slowikowski
Dickler, Kahn, Slowikowski & Zavell Ltd.
85 West Algonquin Road, Suite 420
Arlington Heights, Illinois 60005
(847) 593-5595

Co-counsel: Sharon Legenza
Housing Action Illinois
11 East Adams Street, Suite 1601
Chicago, Illinois 60603
(312) 939-6074

9. *Aetna Casualty & Surety Co. v. Dow Chemical Co.*, No. 93-73601 (E.D. Mich.) (Edmunds, J.) (1996 – 1999)

This case involved a declaratory judgment action brought by a number of insurance companies to enforce the terms of certain general comprehensive liability insurance policies. At issue were environmental clean-up costs related to hundreds of different manufacturing and waste disposal sites located throughout the country. After a multi-week jury trial, the parties settled during jury deliberations. I represented one of the defendants and participated in all stages of this matter, including fact and expert discovery, dispositive motion practice, and pre-trial preparations. I also served as a member of the trial team. Reported decisions include: *Aetna Cas. & Surety Co. v. Dow Chem. Co.*, 28 F. Supp. 2d 440 (E.D. Mich. 1998); *Aetna Cas. & Surety Co. v. Dow Chem. Co.*, 28 F. Supp. 2d 421 (E.D. Mich. 1998); *Aetna Cas. & Surety Co. v. Dow Chem. Co.*, 10 F. Supp. 2d 800 (E.D. Mich. 1998).

Opposing counsel: Michael Foradas
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
(312) 862-2000

Co-counsel: Joseph Hinkhouse
Hinkhouse Williams Walsh LLP
180 North Stetson Avenue, Suite 3400
Chicago, Illinois 60601
(312) 784-5400

10. *Rospatch Jessco Corp. v. Chrysler Corp.*, 829 F. Supp. 224 (W.D. Mich. 1993) (Bell, J.) (1992 – 1993)

In one of my first cases at the Department of Justice, the government was sued by plaintiff for recovery of clean up costs associated with its manufacturing site. According to plaintiff, the government had used the facility in the early 1950's as a production plant for airplane parts. As lead attorney for the United States, I argued that the government could not be held liable under CERCLA for such actions under the doctrine of sovereign immunity. The district court agreed. *See Rospatch Jessco Corp. v. Chrysler Corp.*, 829 F. Supp. 224 (W.D. Mich. 1993). In so doing, the court clarified the applicability of CERCLA to government activities.

Opposing counsel: Michael Ortega
Ronald Baylor
Miller Canfield
277 South Rose Street, Suite 5000
Kalamazoo, Michigan 49007
(269) 381-7030

Steven Kohl
Warner Norcross & Judd LLP
2000 Town Center, Suite 2700
Southfield, Michigan 48075
(248) 784-5000

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.)

1. Coordinated Advice and Referral Program for Legal Services

I serve on the Board of Directors of the Coordinated Advice and Referral Program for Legal Services ("CARPLS"), and have been a member of the Board since August 2004 and a past President of the Board. CARPLS is the legal services "hotline" for Cook County, serving more than 50,000 low income clients every year. CARPLS also established and provides client services at the Domestic Court Help Desk and the Landlord-Tenant Help Desk, as well as other Help Desks at the Daley Center. This program has received acclaim from the Cook County Circuit Court and the Chicago Bar Association.

2. Willow Creek Legal Aid Clinic

Two of my partners and I founded a legal aid clinic in Hoffman Estates, Illinois, based upon a partnership between Willow Creek Church and CARPLS. The clinic provides free legal services to low income individuals in the Northwest suburbs, an area where legal aid services are scarce. I regularly serve as an attorney at the clinic and advise clients who visit the clinic.

3. Asian Human Services of Chicago

I serve as the President of the Board of Directors of Asian Human Services of Chicago ("AHS"), and have been a member of the Board since approximately August 2006, where I advise the organization on a variety of strategic and legal issues. AHS was established in 1978 to meet the social service needs of the Asian American immigrant communities in Chicago. Its programs include mental health and community health services, employment training and placement services, and literary services. AHS also operates a federally funded community health care clinic as well as Passages Charter School.

4. Asian American Bar Association of Greater Chicago ("AABA")

In addition to focusing my efforts on the delivery of direct services to low-income clients in general, and to Asian American immigrants in particular, I serve as a member of the Board of Directors of the Asian American Bar Association of Greater Chicago. There, I have worked to address various issues affecting Asian Americans in the legal profession. To date, I have concentrated my energies on the professional development of Asian American attorneys, particularly as it relates to client service and client development.

5. Efforts to Increase Diversity in the Profession and Professional Mentoring

I have actively participated in efforts to increase diversity in the legal profession. I currently serve as the Chairman of the firm's Diversity Committee, which is dedicated to the recruitment, mentoring and promotion of women attorneys and attorneys of color. I have also served on the firm's Recruiting Committee and Professional Review Committee. I have also worked with the Minority Corporate Counsel Association and the Chicago Committee on Minorities in Large Law Firms to promote diversity in the legal profession and attorney mentoring.

6. Additional Litigation Matter

I represented a client in a United States Department of Justice investigation regarding the mortgage lending industry. My client cooperated with the FBI in the investigation, pled guilty, and was sentenced. This matter provided me with the opportunity to use my knowledge of the industry and expertise in mortgage lending regulations to assist an individual client with the investigation process. This matter has also provided me with additional experience with a variety of criminal law issues, such as those pertaining to the Federal Sentencing Guidelines.

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.

    Fall 2000: Adjunct Professor at The John Marshall Law School in Chicago, Illinois, where I co-taught a class on antitrust law. I have not retained a syllabus.

    Fall 1991 and Fall 1990: Teaching Fellow at Harvard University, where I taught a class on Greek mythology. I have not retained a syllabus.

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

    I do not anticipate any receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits as described above, except as follows. Upon resignation from Freeborn & Peters LLP, my equity contribution will be returned to me over a period of three years in accordance with the partnership agreement.

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 do not 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.

    Upon resignation from Freeborn & Peters LLP, my equity contribution will be returned to me over a period of three years in accordance with the partnership agreement. If confirmed, I will recuse myself for a period of time from any matter in which my current firm appears. In addition, in the event that any of my prior clients are parties to any matters before me, I will advise all parties to such matters and refer to the Code of Conduct for United States Judges and other relevant Canons and statutory provisions.

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

    In the event that a potential conflict of interest should arise, I would advise the parties to the matter and refer to the Code of Conduct for United States Judges and other relevant Canons and statutory provisions.

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

I serve on the Board of Directors of the Coordinated Advice and Referral Program for Legal Services ("CARPLS"), and have been a member of the Board since August 2004 and a past President of the Board. CARPLS is the legal services "hotline" for Cook County, serving more than 50,000 low income clients every year. My duties as a Board member require approximately 15 to 20 hours annually of my time.

The Willow Creek Legal Aid Clinic in Hoffman Estates, Illinois, is a partnership between Willow Creek Church and CARPLS and provides free legal services to low income individuals in the Northwest suburbs. I regularly serve as an attorney at the clinic and work approximately 40 to 60 hours a year advising clients at the clinic.

I serve as the President of the Board of Directors of Asian Human Services of Chicago ("AHS"), and have been a member of the Board since approximately August 2006. AHS was established in 1978 to meet the social service needs of the Asian American immigrant communities in Chicago. I spend approximately 20 to 30 hours a year on matters related to AHS.

In addition, I have represented low income clients on a *pro bono* basis in a number of matters in federal court, including *Scialabba v. Sierra Blanca No. 1 Condo. Ass'n*, 00-C-5344 (N.D. Ill.) (Fair Housing Act case), and *Benford v. Chicago Beverage Systems, Inc.*, 07-CV-06958 (N.D. Ill.) (age discrimination case).

26. **Selection Process**:

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

In January 2011, Senator Richard Durbin formed a bipartisan screening committee, chaired by Dick Devine, to evaluate applications for the position of United States District Judge for the Northern District of Illinois. I submitted an application to the Committee. In February 2011, Mr. Devine contacted me to schedule an interview with two members of the screening committee. I interviewed with Mr. Devine and Ms. Betty Jang on February 16, 2011. I interviewed with the entire judicial screening committee on February 21, 2011.

In March 2011, I was contacted by Senator Durbin's office to schedule an interview with Senator Durbin. I interviewed with Senator Durbin at his Chicago office on March 28, 2011.

Since July 15, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 25, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. 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
Lee, John Z.	US. District Court, N.D. Ill.	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**
District Judge	☑ Nomination, Date 11/10/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 11/10/2011
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.**	
311 South Wacker Drive Suite 3000 Chicago, Illinois 60606	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	Freeborn & Peters LLP
2.	Director	Coordinated Advice and Referral Program for Legal Services
3.	Director	Asian Human Services of Chicago
4.	Director	Asian American Bar Association of Greater Chicago
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 Lee, John Z.	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	Freeborn & Peters LLP	$301,000.00
2.	2010	Freeborn & Peters LLP	$295,248.00
3.	2009	Freeborn & Peters LLP	$416,934.00
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 Lee, John Z.	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.	Ing Direct	Mortgage on Rental Property #1, Barrington, IL	O
2.	Greentree Financial Services	Mortgage on Rental Property #1, Barrington, IL	M
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Lee, John Z.	Date of Report 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) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Rental Property #1, Barrington, Illinois (2007 $745,000)	E	Rent	O	R	Exempt				
2. 401(k) Retirement Plan	D	Dividend	N	T					
3. - DWS Equity 500 Index									
4. - Jensen Fund									
5. - Oppenheimer Global N									
6. - Putnam International Capital A									
7. - T. Rowe Price New Horizons									
8. Bright Directions College Savings 9-12 A Portfolio		None	K	T					
9. American Fund Capital Income Builder Fund A	A	Dividend	J	T					
10. PowerShares Ultra S&P500	A	Dividend							
11. Schwab One Interest Account	A	Interest	J	T					
12. Northwestern Mutual Whole Life Policy	A	Dividend	J	T					
13. JP Morgan Chase bank Accounts	A	Int./Div.	K	T					
14. Freeborn & Peters equity interest		None	M	U					
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Lee, John Z.	Date of Report 11/10/2011

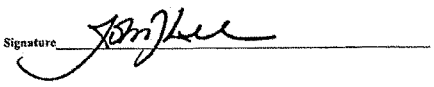
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Lee, John Z.	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		33	908	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		453	831	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 – rental property		738	261
Real estate owned – rental property		745	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000				
Cash value-life insurance		9	653				
Other assets itemize:							
Capital in law firm		145	000				
				Total liabilities		738	261
				Net Worth		699	131
Total Assets	1	437	392	Total liabilities and net worth	1	437	392
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	
DWS Equity 550 Index	77,173
Jensen Fund	79,057
Oppenheimer Global N	74,652
Putnam International Capital A	81,860
T. Rowe Price New Horizons	100,475
Bright Directions College Savings 9-12 A Portfolio	34,182
American Fund Capital Income Builder Fund A	6,433
Total Listed Securities	$453,831

AFFIDAVIT

I, John Z. Lee, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 9,2011
(DATE)

(NAME)

(NOTARY)

OFFICIAL SEAL
CHERYL L EASTON
Notary Public - State of Illinois
My Commission Expires Dec 9, 2013

Senator DURBIN. Thank you.
Mr. John Tharp, same opportunity.

STATEMENT OF JOHN J. THARP, JR., NOMINEE TO BE U.S.DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Mr. THARP. Senator Durbin, thanks very much. As a trial lawyer, I am loath to waive an opening statement, but I will do so today in favor of just making a few thank-yous and introductions.

I would like to start out by thanking you for the kind words in your introduction and joining you in your wish to Senator Kirk for a very, very speedy recovery.

With respect to you and Senator Kirk, Senator Durbin, I also wanted to thank you for the bipartisan leadership that the two of you show through your cooperation and consultation in making judicial recommendations to the President for our State. It is a credit to the State of Illinois, and I think it is a great example for the rest of the country, so I thank you for that.

I would like to thank you and Senator Kyl for chairing and convening this Committee hearing today. I know that Thursdays are not the usual day for these hearings, and I greatly appreciate your work, Senator Leahy and Senator Grassley's work, and the work of the staffs for putting this hearing together.

I would like to make a couple of introductions, if I may. My wife of 28 years, Betsy, is here with me today, and I hope I got that 28 years right.

[Laughter.]

Mr. THARP. My middle daughter, Emily, who is a junior at Villanova University outside of Philadelphia was able to join me today. I am very happy about that.

I have two other children. You mentioned one. My son, Matt, is a lieutenant in the Marine Corps stationed at Camp Lejeune, training right now, and he could not join us. And I have a freshman down at Tulane University in New Orleans who—Mardi Gras is approaching, and I did not think she ought to be missing class just now, so we left her there. But I know they are watching on the webcast.

I also wanted to introduce my nephew, Michael Mulshine, who is a brand-new lawyer in the State of Maryland, just passed the bar, working there now, and he was able to join us.

And two friends, Peter Baugher, who was the chairperson of Senator Kirk's bipartisan recommendation Committee that you adverted to, Senator, and my very, very good friend, the Reverence Henry Brinton, whose friendship goes back to college, and I am just delighted he was here to join me, and I thank you for this opportunity.

[The biographical information of Mr. Tharp follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   John "Jay" Joseph Tharp, Jr.

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

   United States District Judge for the Northern District of Illinois

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

   Mayer Brown LLP
   71 South Wacker Drive
   Chicago, Illinois 60606

   Residence: Oak Park, Illinois

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

   1960; Camp Lejeune, North Carolina

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

   1987 – 1990, Northwestern University School of Law; J.D. (*magna cum laude*), 1990

   1978 – 1982, Duke University; B.A. (*summa cum laude*), 1982

   1980, Oxford University; summer program, no degree received

   1979, Old Dominion University; summer physics course, 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 job description.

1997 – present
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
Partner (1999 – present)
Associate (1997 – 1998)

1992 – 1997
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Assistant United States Attorney

1991 – 1992
Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60601
Associate

1990 – 1991
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604
Law Clerk to the Honorable Joel M. Flaum

Summer 1989
Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60601
Summer Associate

Summer 1988 & 1989
Schiff Hardin & Waite
233 South Wacker Drive
Chicago, Illinois 60606
Summer Associate

1982 – 1987
United States Marine Corps
Combat Cargo Officer, USS Denver (LPD-9) (1985 – 1987)
Assistant Operations Officer, 1st LSB, 1st FSSG (1984 – 1985)
Platoon Commander, Company A, 1st LSB, 1st FSSG (1983 – 1984)
Basic Infantry Officer's School and Logistics Officer Schools (1982 – 1983)

Other Affiliations (uncompensated):

2002 – 2004
Northwestern University School of Law
375 East Chicago Avenue
Chicago, Illinois 60611
Adjunct Professor

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

I served on active duty in the United States Marine Corps for five years. I entered active duty upon graduation from Duke University on May 8, 1982. I served as a Second Lieutenant from May 1982 to May 1984. I was promoted to First Lieutenant in May 1984 and to Captain in February 1987. I was honorably released from active duty on June 18, 1987 with the rank of Captain (O-3). I transferred to the Marine Corps Reserve, on inactive status, and was honorably discharged from the Reserve on May 23, 1988.

I attended college on a Naval ROTC scholarship. During this period I served in the United States Naval Reserve from August 28, 1978 to September 1, 1980, and in the Marine Corps Reserve from September 2, 1980 to May 7, 1982. I was honorably discharged from the Marine Corps Reserve immediately prior to my commissioning as a Second Lieutenant and commencement of active duty in the Marine Corps.

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.

Legal

Nominated by President George W. Bush to serve as United States District Judge for the Northern District of Illinois (2008); received unanimous "Well Qualified" rating by the American Bar Association
Named in *The U.S. Legal 500 2009* – White Collar
Named in *Illinois Superlawyers 2009, 2010, 2011* – Securities Litigation
Martindale Hubbell AV Rating

Law School

Wigmore Scholar, Northwestern University Law School (full scholarship)
Arlyn Miner Book Award for Legal Writing (1988)
Book Review Editor, Northwestern Law Review (1989 – 1990)
Order of the Coif

Military

Secretary of the Navy Distinguished Midshipman Award (1982)
Navy Commendation Medal (1985)
Sea Service Deployment Ribbon (1987)

Undergraduate

Naval ROTC Scholarship (full scholarship)
Chairperson, Major Speakers Committee (1980)
Pi Sigma Alpha Political Science Honor Society (1981)
President, Duke University Student Union (1981)
Duke University President's Leadership Award (1982)
Phi Beta Kappa (1982)

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

American Bar Association
Criminal Justice and Litigation Sections
Chicago Bar Association
Member, Investigations Division, Judicial Evaluation Committee (1999 – 2000)
Vice Chairman, Investigations Division, Judicial Evaluation Committee (2000 – 2001)
Federal Bar Association
Illinois State Bar Association

10. **Bar and Court Admission**:

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

Illinois, 1990

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, 2004
United States Court of Appeals for the Seventh Circuit, 1991
United States District Court for the Northern District of Illinois, 1995
United States District Court for the District of Colorado, 1997

United States District Court for the Southern District of Illinois, 1999
United States District Court for the Central District of Illinois, 2003
Supreme Court of the State of Illinois, 1990

There have been no lapses in membership.

11. **Memberships**:

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

The Metropolitan Club of Chicago (2008 – 2009)

Northwestern University Law Fund Board (2003 – present)
Chair, John Henry Wigmore Club (2010 – present)

Northwestern University Law Reunion Committee
Co-Chair (2005)
Member (2010)

Parking and Traffic Commission, Village of Oak Park (approx. mid-1990s)

Securities Industry and Financial Markets Association, Compliance and Legal Division (2009 – 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 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.

SECURITIES INVESTIGATIONS: INTERNAL, CIVIL AND CRIMINAL (Practising Law Institute, 2d ed. 2010) (Co-Editor). Copy of the Table of Contents and Introduction supplied.

With Justin A. McCarty, *Representing Individuals In Securities Investigations, in* SECURITIES INVESTIGATIONS: INTERNAL, CIVIL AND CRIMINAL (Practising Law Institute, 2d ed. 2010). Copy supplied.

With Joseph De Simone, S. Christopher Provenzano & Domenic C. Cervoni, *Morrison and Dodd-Frank's Extraterritoriality Dilemma*, LAW 360 (Nov. 30, 2010). Copy supplied.

With Joseph De Simone & Marcia G. Madsen, *Federal Program Participants: Beware the Amended False Claims Act*, N.Y.L.J. (Aug. 17, 2009). Copy supplied.

With Caryn Jacobs, Jeffrey M. Strauss & Katherine Agonis, *Pleading Scienter after* Tellabs *in Section 10(b) Cases Generally and in the "Subprime" Context*, J. INVESTMENT COMPLIANCE (2008). Copy supplied.

With Caryn Jacobs, Jeffrey M. Strauss & Katherine Agonis, *Removal of Class Actions Filed in State Court Alleging Federal Securities Law Violations*, J. INVESTMENT COMPLIANCE (2008). Copy supplied.

With Caryn Jacobs, Jeffrey M. Strauss & Katherine Agonis, *Private Litigation—Issues in Securities Law Class Actions, in* CREDIT MARKET AND SUBPRIME DISTRESS: RESPONDING TO LEGAL ISSUES (Practicing Law Institute 2008). Copy supplied.

With Nikki Stitt, *Don't Abandon Hope, All Ye Who Enter Here: Thoughts on the Successful Defense of a Healthcare Fraud Prosecution*, HEALTH L. DIG. (March 2000). Copy supplied.

Raising Rivals' Costs: Of Bottlenecks, Bottled Wine, and Bottled Soda, 84 NW. U.L. REV. 321 (1990). Copy supplied.

Anzio: A Sedentary Affair, MARINE CORPS GAZETTE (September 1984). Copy supplied.

In addition to the foregoing, in my capacity as Co-Chair of Mayer Brown's Securities Litigation and Enforcement practice, I review many of the firm's legal updates for clients that relate to securities law and enforcement issues. With the exception of the Law 360 article listed above, I have not authored or substantively edited these updates.

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

None.

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

None.

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

April 12, 2011: Participant on panel discussing "Investigating Insider Trading" at the White Collar Crime and Corporate Governance Conference sponsored by Law Bulletin Seminars in Chicago, Illinois. This discussion focused on recent developments in insider trading investigations, enforcement proceedings, and prosecutions, and on the elements of effective corporate compliance programs with respect to insider trading prevention and detection. I have no notes, transcript, or recording. The address of Law Bulletin Seminars is 415 North State Street, Chicago, Illinois 60654.

February 24, 2011: "Uncle Sam Wants YOU—To Investigate," Mayer Brown Analysis of Risk & Compliance (ARC) Reports Video Series, Chicago, Illinois. Recording supplied.

November 1, 2010: "Highlights from *Securities Investigations: Internal, Civil and Criminal*." PLI One-Hour Briefing Series, Chicago, Illinois. I have no notes, transcript, or recording. The address of the Practising Law Institute is 810 Seventh Avenue, 21st Floor, New York, New York 10019.

October 26, 2010: "The Dodd-Frank Act's Impact on Securities Litigation and Enforcement," Mayer Brown panel presentation, Chicago Office. Presentation materials supplied.

October 21, 2010: "The Dodd-Frank Act's Impact on Securities Litigation and Enforcement," Mayer Brown panel presentation, New York Office. I used the same materials supplied for the Oct. 26, 2010 event.

July 30, 2009: "Current Financial Crisis and the Litigation Tsunami: Where Are We Now?" Mayer Brown Global Financial Markets Initiative Teleconference Series, Chicago, Illinois. Transcript supplied.

June 23, 2009: "The Current Financial Crisis – Litigation Tsunami (Be Afraid, Be Very Afraid…)," Risk Management Association Retail Risk Conference, Chicago, Illinois. Presentation materials supplied.

June 9, 2009: "Litigation and the Financial Crisis," 21st Annual General Counsel Conference, New York, New York. Presentation materials supplied. Portions of this presentation were repeated on July 1, 2009 at a meeting of restaurant industry clients of a public affairs company, the Berman Company, and I used the same materials.

September 24, 2008: "Global Investigations: The Process – From 'How To's to 'Don't Do's,'" AICPA National Forensic Accounting Conference on Fraud and Litigation Services, Las Vegas, Nevada. Presentation materials supplied.

September 24, 2008: "Global Investigations: Getting Technical – Data, GAAP, GAAS, and Internal Control," AICPA National Forensic Accounting Conference on Fraud and Litigation Services, Las Vegas, Nevada. Presentation materials supplied.

July 2008: "Defending Securities Law Claims—The New Tools of the Trade," PricewaterhouseCoopers General Counsel Forum, Chicago and Rosemont, Illinois. Presentation materials supplied.

April 24, 2008: "Subprime Crisis: Risk Dispersion and Model Risk; Actual and Likely Litigation," Chicago-Kent College of Law, Chicago, Illinois. Presentation materials supplied.

February 29, 2008: "The Foreign Corrupt Practices Act: Recent Enforcement Activity and Compliance Developments," Mayer Brown panel presentation to

client and prospective client personnel. Chicago Office. Presentation materials supplied.

November 16, 2007: "Financial Experts: The Trial Lawyer's Perspective," Deloitte Internal Training Session, Chicago, Illinois. Presentation materials supplied.

October 26, 2007: "Internal Investigations," presentation to personnel of a Mayer Brown client, Chicago Office. Presentation materials supplied.

April 12, 2007: "Conducting International Investigations: Obtaining Evidence: You're Not in Kansas Anymore," joint seminar to client and prospective client personnel, presented by Mayer Brown and Ernst & Young LLP at Ernst & Young's New York Office. Presentation materials supplied.

July 25, 2006: "Backdating to the Future: What the Options Backdating Crisis Means For You," Navigant Corporate Counsel Legal Roundtable Series, Chicago, Illinois. Presentation materials supplied.

June 24, 2003: "Responding to SEC Inquiries: The Basics," Chief Accounting Officer Conference, American Gas Association, Annapolis, Maryland. This presentation was also given at another AGA conference in Colorado Springs, Colorado during the summer of 2002, but I have been unable to obtain or recall additional details. I used the same materials at both events. Presentation materials supplied.

March 3, 1997: "Developments in Intellectual Property Counterfeiting: Criminal Counterfeiting," Chicago Bar Association, Chicago, Illinois. I discussed issues that arose in the investigation and prosecution of a criminal trademark infringement case that I had recently prosecuted. I have no notes, transcript, or recording. The address of the CBA is 321 South Plymouth Court, Chicago, Illinois 60604.

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.

Megan Dooley, *Two Attorneys from Oak Park and River Forest Recommended for Federal Judgeships*, OakPark.com, July 7, 2011. Copy supplied.

Ken Trainor, *Oak Parker Leads Prosecution Team in Conrad Black Case*, OakPark.com, Dec.13, 2005. Copy supplied.

Cary Spivak and Dan Bice, *Blanchard Camp Suddenly Finds Old Debts to Pay*, MILWAUKEE J. SENTINEL, July 28, 2002. Copy supplied.

During my tenure as a prosecutor, I was occasionally required to respond to inquiries from the press regarding cases. On all such occasions, my responses were limited to providing information about the procedural posture of a matter and/or facts that were of public record. Although I did not retain any record of such responses, I have obtained the following articles after performing a search of publicly-available databases. It is likely, however, that I have responded to press inquiries on other occasions that I have been unable to recall or identify.

Ed Bierschenk, *Martial Arts Master Kim Guilty of Tax Fraud*, COPLEY NEWS SERVICE, Dec. 9, 1997. Copy supplied.

Matt O'Connor, *Wheaton Teacher's Aide Arrested in U.S. Child-Pornography Sting*, CHI. TRIB., Jan. 24, 1996. Copy supplied.

Matt O'Connor, *3 Are Arrested in Loop Bank Robbery*, CHI. TRIB., Mar. 9, 1995. Copy supplied.

Agent Pleads Guilty to $7 Million Fraud, CHI. TRIB., Feb. 18, 1995. Copy supplied.

Matt O'Connor, *Top Radio Agent is Charged; Some of City's Leading Personalities Bilked in $7 Million Fraud*, CHI. TRIB., Feb. 15, 1995. Copy supplied.

Matt O'Connor, *Undercover Sting Operation Nets 16 Suspects in Freight Theft Ring*, CHI. TRIB., Dec. 9, 1994. Copy supplied.

Phony FBI Agent Sentenced to Prison, CHI. TRIB., Dec. 9, 1994. Copy supplied.

Matt O'Connor, *Homeless Man Confesses in Robbery*, CHI. TRIB., Feb. 23, 1994. Copy supplied.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

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

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

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

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

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

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

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

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

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

I have not served as a judge.

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

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

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

d. your reason for recusing or decline 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. In July 2008, I was nominated by President George W. Bush to be a U.S. District Judge for the Northern District of Illinois, but no action was taken on my nomination prior to the end of the 110th Congress.

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

None.

16. **Legal Career:** Please answer each part separately.

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

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

I served as a law clerk to Judge Joel M. Flaum, United States Court of Appeals for the Seventh Circuit, from June 1990 to September 1991.

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.

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1997 – present
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Associate (1997 – 1998)
Partner (1999 – present)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From approximately October 1991 to February 1992, I was a litigation associate at Kirkland & Ellis, generally conducting legal research and drafting memoranda and briefs on a variety of commercial litigation matters.

From February1992 to August 1997, I was a federal prosecutor in the United States Attorney's Office in Chicago. I practiced criminal law exclusively, serving at various times in the Criminal Receiving and Appellate Division, the General Crimes Division, and in the Organized Crime Drug Enforcement Task Force (OCDETF). My cases included numerous narcotics and money laundering investigations, financial frauds,

political corruption, tax crimes, bank robberies, and firearms offenses and other violent crimes.

Since leaving the U.S. Attorney's Office in 1997, I have been engaged in a commercial litigation practice at Mayer Brown, a large international law firm. My practice continues to include criminal matters (about one third involve criminal or quasi-criminal/investigative matters), but my practice now consists primarily of civil matters (about two thirds). I have worked on many different types of commercial matters, including tort, contract, intellectual property, environmental, tax, and unfair competition claims. My practice has focused, however, on securities fraud, professional liability (principally accountants and consultants), and associated work relating to the conduct of internal and governmental investigations. My practice is largely concentrated in federal courts, though it has broadened in geographic scope. In addition to numerous cases in the Northern District of Illinois, I have been involved in cases before federal district and bankruptcy courts in the Central and Southern Districts of Illinois, Colorado, Florida, Indiana, Kentucky, Missouri, New York, South Dakota, and Texas.

In addition, a portion of my practice (10 to 15 percent) has involved proceedings in state courts in Illinois, as well as in Alabama, Indiana, New York, Pennsylvania, and Texas, and another 5 to 10 percent of my practice has involved matters in private mediation and/or arbitration. Due to the nature of my current practice (which consists primarily of large, complex commercial litigation in which damage claims often exceed $100 million), the majority of the cases I work on are either resolved by motions before trial or settle. Most of the trials and other forms of contested evidentiary proceedings I have been involved with in private practice have been non-jury proceedings.

In 2009, I was appointed by my firm to serve as co-leader of the Securities Enforcement practice. In 2010, that practice group merged with the Securities Litigation practice group and I continue to serve as co-leader of the combined Mayer Brown Securities Litigation and Enforcement Practice.

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

During my tenure as a federal prosecutor, my client was the United States. While in private practice, my clients have consisted primarily of a wide variety of corporations and partnerships, including financial institutions, investment companies and managers, manufacturers, pharmaceutical companies, mining companies, insurers, telecommunications companies,

and accounting firms. I have also represented numerous individuals, usually in connection with regulatory and/or criminal investigations.

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

My entire legal career has been in litigation and my practice has always consisted of litigation matters exclusively. As an Assistant United States Attorney, I appeared in court on a daily basis. Since joining Mayer Brown in 1997, I have continued to appear in court frequently, though less so than as a prosecutor.

i. Indicate the percentage of your practice in:

1. federal courts	85%
2. state courts of record	10%
3. other courts	5%
4. administrative agencies	<1%

ii. Indicate the percentage of your practice in:

1. civil proceedings	65%
2. criminal proceedings	35%

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

I have tried seventeen cases to verdict or judgment, obtaining verdicts in my clients' favor in each case:

I tried fourteen criminal cases as an Assistant U.S. Attorney, ranging in length from two days to more than three months. Consistent with practice requirements of the U.S. Attorney's Office in Chicago, all of these trials were conducted with two attorneys sharing trial responsibilities equally.

I have tried two criminal cases (one lasting more than three months) while at Mayer Brown; I served as co-lead counsel and shared trial responsibility equally with my partner.

I have tried one immigration case before an INS administrative law judge; I was the supervising partner with two associates.

In addition to the foregoing merits trials, I have tried four matters in which opposing counsel sought preliminary injunctive relief; in each case, the motion for such relief was denied.

I have also tried three cases in private arbitration while at Mayer Brown; in two of these cases, I was co-counsel sharing equal trial responsibility; in the third, I was the sole counsel.

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

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

I am admitted to practice before the Supreme Court of the United States, but have not appeared in any matters before the 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. *United States v. Rosewell et al.*, 97 CR 441, United States District Court for the Northern District of Illinois, Judge Joan Gottschall (1995 – 1997).

Assisted by several other prosecutors and federal agents, I led the investigation and prosecution of Defendant Rosewell, the long-time Treasurer of Cook County, Illinois, on charges relating to a long-running ghost-payrolling scheme involving two state legislators. I was the lead prosecutor during the lengthy investigation of this case, which was indicted in June 1997, charging that Mr. Rosewell and Defendant Fuglsang, his First Assistant, had conspired and schemed with two state legislators to create phantom jobs for the legislators in the Cook County Treasurer's office, resulting in payments of hundreds of thousands of dollars to the legislators, who provided no services in return. Mr. Rosewell, his First Assistant, and a state senator subsequently pleaded guilty to the charges; the fourth defendant, State Representative Santiago, was acquitted following a jury trial (I did not participate in this trial as I had by that time joined Mayer Brown). Mr. Rosewell died before he was sentenced.

Defendant Fuglsang, the First Assistant Treasurer, was sentenced to imprisonment for 24 months. Defendant Farley, the state senator, was sentenced to imprisonment for fifteen months.

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2. *United States v. Kim et al.*, 95 CR 214, United States District Court for the Northern District of Illinois, Judge James Holderman (1996 – 1997).

This case resulted in the convictions of more than a dozen high-ranking members of a martial arts organization, including the organization's founder, Defendant Kim, for tax fraud conspiracy related to the operation of a chain of martial arts schools. The

charges arose from the defendants' practice of requiring, and not reporting, cash payments from the schools' customers – practices that were facilitated by the cult-like reign of defendant Kim over many of the students of the schools. About half of the defendants pled guilty on the eve of trial in an effort to exculpate Kim, their leader. Five, including Kim, were convicted after a three-month trial; the jury hung as to two other defendants, who later pled guilty to misdemeanor tax charges. Defendant Kim was sentenced to imprisonment for five years; the remaining defendants received sentences ranging from one to five years. I served as one of four attorneys involved in the investigation of this case and served as co-lead counsel at trial with one other prosecutor.

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3. *United States v. Bartels et al.*, No. 98-40070-JPG, United States District Court for the Southern District of Illinois, Judge J. Phil Gilbert (1998 – 1999).

In this case, I successfully defended an executive of Blue Cross/Blue Shield of Illinois who was charged with conspiracy, fraud and false statements in connection with administration of the Medicare program by Blue Cross in Illinois. The jury returned a verdict within a few hours of deliberation, acquitting my client after the three-month jury trial. This trial is the subject of the Health Law Digest article referenced in response to Question 12a. In this case I served as co-trial counsel with one of my partners.

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4. *United States v. Cooper et al.*, No. 91-3800, 19 F.3d 1154 (1994), United States Court of Appeals for the Seventh Circuit, Judges Frank H. Easterbrook, Kenneth F. Ripple, and Michael M. Mihm (1993 – 1994).

I wrote the government's brief in this appeal by a drug kingpin and his principal lieutenant, who were convicted of murdering a federal informant in furtherance of a continuing criminal enterprise (CCE) and numerous other drug and weapons offenses. This was the first federal murder case in which the death penalty was sought under the CCE statute (I was not involved in the trial of this case). Although the jury did not unanimously agree to recommend the death penalty, the appeal affirmed the reach of the CCE statute ("the Drug Kingpin" statute) to individuals other than "kingpins" who worked to further the objectives of the drug trafficking enterprise. The appeal also involved *Batson* challenges, fourth amendment issues, and sufficiency of the evidence claims. The court rejected all of these challenges and confirmed the convictions and life sentences received by both the "kingpin" and his lieutenant.

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5. *In re At Home Securities Litigation*, No. 02 Civ 1765 (LLS), 423 F. Supp. 2d 229 (S.D.N.Y. 2006), *aff'd*, 216 Fed. Appx. 14 (2d Cir. 2007), *cert. denied*, 552 U.S. 1097 (2008), United States District Court for the Southern District of New York, Judge Louis L. Stanton (2003 – 2006).

I was one of two principal attorneys representing venture capital firm Kleiner Perkins Caufield & Byers, along with two of its partners, in a series of securities cases involving the collapse of At Home Corporation, the original broadband cable internet service provider, in 2002. The principal cases pending in New York were federal securities fraud class action cases in which the plaintiffs sought hundreds of millions of dollars in damages. We convinced the lead plaintiffs to abandon their claims against our clients without the payment of any settlement monies; prior to the court's approval of that settlement, the defendants' motion to dismiss was granted by the court due to the failure to plead loss causation and the dismissal was affirmed by the Second Circuit.

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6. *In re Comdisco Securities Litigation*, No. 01 C 2110, United States District Court for the Northern District of Illinois, Judge Milton I. Shadur (2001 – 2006).

   In this consolidated securities fraud class action, I represented (with one of my partners) Comdisco Inc., its former Chief Executive Officer, and its former Chief Financial Officer, in a securities fraud class action arising from a failed start-up telecommunications business and in which the plaintiffs claimed $250 million in damages. The case against Comdisco was stayed, and ultimately dismissed, after Comdisco filed for bankruptcy. The claims against the former executives settled.

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7. *United States v. D'Arco*, No. 94 CR 514, United States District Court for the Northern District of Illinois, Judge Ann C. Williams (1993 – 1994).

I was one of two prosecutors handling the investigation and prosecution of extortion and bribery charges against Defendant D'Arco, arising from the period when Mr. D'Arco served as Majority leader in the Illinois Senate. Mr. D'Arco pled nolo contendere to the charges, which involved payment to a state court judge, and was convicted; under the sentencing guidelines, he was sentenced to five months of consecutive prison time in addition to the three-year prison term he was already serving on a prior extortion conviction. With respect to that prior conviction, I briefed the government's response to Mr. D'Arco's appeal. Mr. D'Arco dropped his appeal of that initial conviction after the government's brief was filed.

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8. *United States v. Silva et al.*, 94 CR 760, *aff'd*, 122 F.3d 412 (7th Cir. 1997), United States District Court for the Northern District of Illinois, Judge Elaine Bucklo (1995 – 1997).

   This case was a criminal prosecution of an internationally recognized expert on psittacines (parrots and macaws) and others for illegal smuggling of Hyacinth Macaws, an endangered species, into the United States from Paraguay and other South American countries, and related tax charges. I worked with two other federal prosecutors and several agents from the IRS and the U.S. Fish and Wildlife Service in investigating and indicting the case, in which we conducted a three-week evidentiary sentencing hearing after the defendant pled guilty to the charges. The expert, Defendant Silva, was sentenced to prison for almost seven years; Defendant Daoud, Silva's mother, was sentenced to imprisonment for 27 months for her role in assisting the smuggling operation.

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9. *Kramer v. Lockwood Pension Servs., Inc. et al.*, No. 08-CV-2429, 653 F. Supp. 2d 354 (S.D.N.Y. 2009), United States District Court for the Southern District of New York, Judge Deborah A. Batts; *Kramer v. Phoenix Life Ins. Co. et al.*, No. 09-3903, United States Court of Appeals for the Second Circuit, Judges Ralph K. Winter, John M. Walker, and Rosemary S. Pooler; *Kramer v. Phoenix Life Ins. Co. et al.*, 940 N.E.2d 535 (N.Y. 2010) (2008 – 2011).

This case involved the certification of a question of state insurable interest law of great significance in the multi-billion dollar life settlement industry. Following an adverse ruling in the U.S. District Court for the Southern District of New York, the U.S. Court of Appeals for the Second Circuit granted leave to file an interlocutory appeal and certified the question to the New York Court of Appeals (the highest state court in New York). In a decision that was widely publicized throughout the life settlement industry, the New York high court ruled in my client's favor, effectively reversing the district court's earlier ruling. I served as lead counsel and argued the case before the New York Court of Appeals. Following the ruling by the New York Court of Appeals, the claims involving my client were settled.

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10. *United States v. Budde et al.*, 94 CR 772, United States District Court for the Northern District of Illinois, Judge Wayne R. Andersen (1993 – 1996).

These cases resulted from a large-scale undercover FBI investigation of a theft-ring comprised of Yellow Freight employees and others who were stealing and fencing high-value freight from shipments passing through Yellow Freight's Tinley Park terminal. I was one of the two principal prosecutors supervising the undercover investigation and handled all of the subsequent prosecutions, in which all 15 defendants pleaded guilty to a variety of theft, firearms, and drug charges. The defendants' sentences ranged from probation to imprisonment for 30 months.

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Counsel for Defendant Westcott

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.)

Investigations and Litigation Matters that Did Not Proceed to Trial: Many of the matters on which I have worked at Mayer Brown have been resolved without the filing of a lawsuit or other proceeding, particularly matters in which I have been engaged to conduct internal investigations for clients. As a result, many of these matters are confidential, but I have described three of the most significant below (without identifying the clients involved where the matter is/was confidential).

(1) Representation of a major international investment bank in multiple investigations by federal agencies and state Attorneys General relating to the operation of the tax-exempt municipal bond market and the municipal derivatives markets. As this matter is ongoing, the resolution of the matters involved is not yet known. In addition to the ongoing federal investigations, this matter involves representation of our client in a related investigation by a group of more than 20 state Attorneys General, and in a MDL (multi-district litigation) proceeding involving at least ten putative private class action antitrust suits and more than twenty individual "opt-out" cases. I am the lead attorney for our client in all of these matters.

(2) Represented Corvis Corporation (later, Broadwing Corporation), a publicly traded manufacturer of fiber optic telecommunications equipment, in connection with investigations by the Department of Justice and the Securities and Exchange Commission of transactions and financial reporting of Qwest Communications. At the conclusion of these investigations, no action was taken against my client.

(3) Represented a publicly traded logistics company headquartered in Lombard, Illinois, and its Chief Financial Officer, in an investigation by the Securities and Exchange Commission relating to a large restatement of its financial statements. At the conclusion of this investigation, no action was taken against my clients.

Non-Litigation Legal Matters: The most significant non-litigation legal activity in which I have been involved has been my tenure as a Vice-Chair of the Judicial Evaluation Committee of the Chicago Bar Association. During the year I spent in this position, I was intimately involved in the review and evaluation of hundreds of applications for candidates for judicial positions in Cook County, Illinois, and for issuing the Bar Association's recommendations regarding the qualifications of those candidates. In addition to constituting a valuable service to the legal community and to the general public, this process provided me with insight into, and the opportunity to reflect on, the qualities that make good judges.

Lobbying Activities: I have not performed lobbying activities on behalf of any client.

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

    From 2002 to 2004, I served as an Adjunct Professor of Trial Advocacy at Northwestern University School of Law, assisting with the trial advocacy program run by Professor Steven Lubet through demonstrations and observation and critiques of students performing mock trial exercises. I was not responsible for the development of the materials for this court and do not have a course 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.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

If I am confirmed, stock ownership presents the only significant potential conflict I can presently anticipate. In the event that a company in which I (or an immediate family member) had a financial interest (through stock ownership or otherwise) were a party in litigation before me, I would recuse myself from the matter.

While I would no longer have any financial interest in Mayer Brown LLP upon my resignation from the firm, due to my long financial and professional association with the firm I intend, for a period of at least several years, to recuse myself from matters in which the firm represents any party.

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 employ the court's established processes for identifying potential conflicts, including the review of disclosure statements and other information provided by litigants. I will consult and observe all applicable 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 Assistant United States Attorney, I was not permitted to engage in outside legal activities and, accordingly, was unable to work on any pro bono matters. Before and after my government service, however, I have represented numerous pro bono clients and have also supervised other attorneys handling pro bono matters. Representative examples of the types of pro bono and other volunteer legal services and related work I have performed include:

(1) Review of appellate briefs written by Mayer Brown attorneys as part of the Firm's "Seventh Circuit Project," in which attorneys represent indigent prisoners who seek to appeal their convictions. Assist with "moot courts" to prepare for oral arguments. (Recurring, 2 to 3 times per year; approximately 4-8 hours each).

(2) Member of the Law Fund Board of the Northwestern University School of Law, which oversees fundraising efforts for general use and restricted fund gifts by alumni, including the legal clinic. (Current member; board meets 4-6 times per year; 20-30 hours annually).

(3) Adjunct professor of law at Northwestern University School of Law, teaching trial advocacy. (Two fall semesters, one two-hour class per week and related preparation).

(4) Annual participant in moot court programs at Northwestern University School of Law. (8-12 hours annually).

(5) Worked in Legal Clinic of Northwestern University School of Law during final year of law school. Matters included appeal of denial of habeas petition of defendant convicted of murder in state court. (Substantially in excess of 40 hours total).

(6) Represented the NAACP in connection with federal investigation of embezzlement of funds at an Illinois chapter. (Approximately 10-12 hours total).

(7) Represented asylum petitioner from Zimbabwe; asylum granted. (Approximately 20 hours).

(8) Represented an indigent defendant charged with first-degree murder in Cook County, Illinois. (Approximately 250 hours).

(9) Represented an indigent prisoner in a Section 1983 case asserting claims of cruel and unusual punishment against a local police officer. (Approximately 35 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 March 2011, I applied to a Judicial Advisory Board established by Senator Mark Kirk to identify individuals to recommend to the President for nomination to federal courts in the Northern District of Illinois. I was interviewed by that Board on May 10, 2011 and was one of three individuals recommended by the Board to Senator Kirk. I interviewed with Senator Kirk on May 27, 2011, and was subsequently advised by Senator Kirk that I would be his first recommendation to the President to fill a current vacancy on the Northern District of Illinois bench.

Since July 13, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 23, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. 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, please 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
Thorp, John J.	District Court, Northern District of Illinois	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**
District Judge	☑ 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.**	
Mayer Brown LLP 71 South Wacker Drive Chicago, Illinois 60606	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	Mayer Brown LLP
2.	Co-Trustee	Trust #1
3.	Member	Law Fund Board, Northwestern University School of Law
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 27	Name of Person Reporting Tharp, John J.	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	Mayer Brown LLP, Partnership Income	$447,382.00
2. 2010	Mayer Brown LLP, Partnership Income	$503,840.00
3. 2009	Mayer Brown LLP, Partnership Income	$598,719.00
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	Janus & Associates, salary
2. 2010	Janus & Associates, salary
3	
4	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 27	Name of Person Reporting Tharp, John J.	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.	United Pacific Life	Loan #1	K
2.	United Pacific Life	Loan #2	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
1. American Funds EuroPacific Growth R5 Fund	B	Dividend			Exempt				
2. American Funds EuroPacific Growth R6 Fund		None	M	T					
3. AT&T (common stock)	D	Dividend	L	T					
4. Bright Start 529 Plan Program 1526 (no control)	A	Dividend							
5. Bright Start 529 Plan Portfolio 1527 (no control)	B	Dividend	K	T					
6. CenterPoint Energy (common stock)	B	Dividend	K	T					
7. Coca-Cola (common stock)	A	Dividend	K	T					
8. Cohen & Steers Institutional Realty Shares	D	Dividend	M	T					
9. Columbia Strategic Investor Fund-Z	A	Dividend	J	T					
10. DuPont (common stock)	C	Dividend	L	T					
11. DWS Equity 500 Index Fund	C	Dividend							
12. Fidelity Blue Chip Growth Fund	B	Dividend	K	T					
13. Fidelity Independence Fund		None	M	T					
14. Fidelity Magellan Fund	B	Dividend	M	T					
15. General Electric (common stock)	A	Dividend	J	T					
16. Harley-Davidson (common stock)	A	Dividend	J	T					
17. Hershey Foods (common stock)	C	Dividend	L	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less E =$50,001 - $100,000	D =$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	F =$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 27

Name of Person Reporting	Date of Report
Tharp, John J.	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) 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. Home Depot (common stock)	A	Dividend	J	T					
19. IBM (common stock)	D	Dividend	M	T					
20. Jennison Small Company Z Fund	A	Dividend							
21. JP Morgan Chase Bank Accounts	A	Interest	L	T					
22. Mayer Brown LLP Partnership Capital Account	D	Interest	N	U					
23. Mayer Brown LLP Partnership Retirement Plan (no control)	E	Interest	N	T					
24. Merrill Lynch Bank Deposit Program	A	Interest	J	T					
25. Northwestern Mutual Insurance Policies (Whole Life)	E	Dividend	M	T					
26. Pfizer (common stock)	C	Dividend	L	T					
27. Prudential Jennison Small Company Fund		None	M	T					
28. Reliant Resources (common stock)		None	J	T					
29. United Pacific Life Ins. (Universal Life; no control)	E	Dividend	M	T					
30. U.S. Savings Bonds		None	K	T					
31. Vanguard Dividend Growth Fund	B	Dividend	K	T					
32. Vanguard Energy Fund	B	Dividend	K	T					
33. Vanguard 500 Index Fund	B	Dividend	M	T					
34. Vanguard Information Tech ETF		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 6 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	B (2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Vanguard Institutional Index Fund	B	Dividend	M	T					
36. Vanguard International Value Fund	A	Dividend	K	T					
37. Vanguard Long-Term Tax Exempt Bond Fund	C	Dividend	K	T					
38. Vanguard S&P 500 Index Fund	B	Dividend							
39. Vanguard Target Retirement 2025 Fund	C	Dividend	M	T					
40. Vanguard Total International Stock Index Fund	B	Dividend	L	T					
41. Vanguard Total Stock Market Index Fund	B	Dividend	L	T					
42. Vanguard Total Bond Market Index Fund	B	Dividend	K	T					
43. Walgreen Co. (common stock)	A	Dividend	K	T					
44. Wal-Mart (common stock)	A	Dividend	K	T					
45. Walt Disney (common stock)	A	Dividend	K	T					
46. Trust #1									
47. --The Dreyfus Fund	A	Dividend	K	T					
48. Trust #2	E	Dividend	N	T					
49. --Allstate (common)									
50. --American Electric Power (common)									
51. --Anadarko Petroleum (common)									

1. Income Gain Codes (See Columns B1 and D4)
A =$1,000 or less
F =$50,001 - $100,000
G =$100,001 - $1,000,000
K =$15,000 - $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)
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 27	Name of Person Reporting Tharp, John J.	Date of Report 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) 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)
52. --AT&T (common)									
53. --Bank of America (common)									
54. --Beam, Inc.(common)									
55. --Blackrock Global Allocation C									
56. --BP Amoco (ADR)									
57. --Conoco Phillips (common)									
58. --Dow Chemical (common)									
59. --Duke Energy (common)									
60. --DuPont (common)									
61. --Exelon (common)									
62. --Exxon (common)									
63. --Fortune Brands Home & Security (common)									
64. --Heinz (common)									
65. --Hershey (common)									
66. --Ivy Asset Strategy									
67. --JP Morgan Chase Cash Accounts									
68. --Lincoln National Group (common)									

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 27	Name of Person Reporting Tharp, John J.	Date of Report 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) 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)
69. --Merck (common)									
70. --Monsanto (common)									
71. --Pfizer (common)									
72. --Spectra Energy (common)									
73. --Walgreen's (common)									
74. Trust #3	D	Dividend	M	T					
75. --3-M (common)									
76. --Allstate (common)									
77. --Bank of America (common)									
78. --Dow Chemical (common)									
79. --Exelon (common)									
80. --Exxon (common)									
81. --IBM (common)									
82. --JP Morgan Chase (common)									
83. --JP Morgan Chase Cash Account									
84. --Lincoln National Corp. (common)									
85. --Pfizer (common)									

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

FINANCIAL DISCLOSURE REPORT Page 9 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) 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)
86. --Sherwin Williams (common)									
87. Trust #4	E	Dividend	N	T					
88. --3-M (common)									
89. --Exxon Mobil (common)									
90. --McDonald's (common)									
91. --JP Morgan Chase Cash Account									
92. Trust #5	D	Dividend	M	T					
93. --JP Morgan Chase Cash Account									
94. --25% of Family Partnership (Managed Investment Account)									
95. Trust #6	E	Distribution	M	W					
96. --Farm land									
97. --JP Morgan Chase Cash Account									
98. Trust #7	E	Dividend	O	T					
99. --Abbott Laboratories (common)									
100. --Ace Ltd (common)									
101. --Amazon.Com Inc. (common)									
102. --American Express Co. (common)									

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 10 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) 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)
103. --Anadarko Petroleum Corp. (common)									
104. --Apple Inc. (common)									
105. --Artio International Equity II Fund									
106. --Artisan International Value Fund									
107. --Aston Optimum Mid Cap Fund I									
108. --AT&T Inc. (common)									
109. --Autozone Inc. (common)									
110. --Baidu inc. (ADR)									
111. --Bank of America (common)									
112. --Biogen IDEC Inc. (common)									
113. --Broadcom Corp. (common)									
114. --Cameron International Corp. (common)									
115. --Campbell Soup Co. (common)									
116. --Capital One Financial Corp. (common)									
117. --Cardinal Health Inc. (common)									
118. --Carnival Corp. (common)									
119. --CBS Corp. (common)									

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 P1 =$25,050,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P2 =$1,000,001 - $5,000,000 P3 =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 11 of 27	Name of Person Reporting Tharp, John J.	Date of Report 11/10/2011

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 14-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
120. --Celgene Corp. (common)									
121. --Centerpoint Energy Inc. (common)									
122. --Cisco Systems Inc. (common)									
123. --Citigroup Inc. (common)									
124. --Citrix Systems, Inc. (common)									
125. --Cognizant Tech Solutions Corp. (common)									
126. --Colgate Palmolive Co. (common)									
127. --Comcast Corp. (common)									
128. --ConocoPhillips (common)									
129. --Covidien PLC (common)									
130. --CVS Caremark Corp. (common)									
131. --Darden Restaurants Inc. (common)									
132. --Delaware Emerging Markets Fund									
133. --Dendreon Corp. (common)									
134. --Devon Energy Corp. (commong)									
135. --Dodge & Cox International Stock Fund									
136. --Dominion Resources Inc. (common)									

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

FINANCIAL DISCLOSURE REPORT Page 12 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) 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)
137. --DuPont (common)									
138. --Eaton Vance Global Macro I Fund									
139. --Eaton Vance Flat Rate Cl I Fund									
140. --EMC Corp. (common)									
141. --Emerson Electric (common)									
142. --EOG Resources Inc. (common)									
143. --Exxon Mobil (common)									
144. --Freeport-McMoran Copper & Gold Inc. (common)									
145. --General Electric (common)									
146. --General Mills Inc. (common)									
147. --General Motors Co. (common)									
148. --Global Payments Inc. (common)									
149. --Goldman Sachs Group Inc. (common)									
150. --Highbridge Dynamic Comm Strg Fund-Sel									
151. --Home Depot (common)									
152. --Honeywell International Inc. (common)									
153. --Humana Inc. (common)									

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)	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 13 of 27

Name of Person Reporting	Date of Report
Tharp, John J.	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) 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)
154. --Intercontinental Exchange Inc.(common)									
155. --Invesco Ltd (common)									
156. --Invesco Van Kampen American Franchise Fund Class A									
157. --iShares Russell 2000 Index Fund									
158. --iShares Russell MidCap Index Fund									
159. --iShares MSCI EAFE Index Fund									
160. --John Hancock II-Emerging Markets-I									
161. --Johnson & Johnson (common)									
162. --Johnson Controls Inc. (common)									
163. --JP Morgan Asia Equity Fund									
164. --JP Morgan High Yield Fund - Sel									
165. --JP Morgan Interim Tax Free Bond Fund - Sel									
166. --JP Morgan Market Expansion Index Fund									
167. --JP Morgan Mid Cap Growth Fund									
168. --JP Morgan Research Mkt Neutral Fund									
169. --JP Morgan Str Opp Fund									
170. --JP Morgan Tax Free Reserve Sweep Fund									

1 Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2 Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3 Value Method Codes (See Column C3)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 14 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
171. --JP Morgan Tr I Tax Aware Real Return Fund - Sel									
172. --JP Morgan U.S. Real Estate Fund									
173. --Juniper Networks Inc. (common)									
174. --Kellog Co. (common)									
175. --Kraft Foods Inc. Class A									
176. --Lam Research Corp. (common)									
177. --Lennar Corp. (common)									
178. --Lowes Companies Inc. (common)									
179. --Manning & Napier World Opportunities Series Fund									
180. --Mastercard Inc. Class A									
181. --Merck (common)									
182. --MetLife Inc. (common)									
183. --Microsoft (common)									
184. --Micros Systems Inc. (common)									
185. --Monsanto (common)									
186. --Net App Inc. (common)									
187. --Nike Class B (common)									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$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 N =$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	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	P4 =More than $50,000,000 S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 15 of 27

Name of Person Reporting	Date of Report
Tharp, John J.	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). 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)
188. --Norfolk Southern Corp. (common)									
189. --Novellus Systems Inc. (common)									
190. --Occidental Petroleum (common)									
191. --Oracle (common)									
192. --Paccar Inc. (common)									
193. --Pepsico (common)									
194. --Pfizer (common)									
195. --Pioneer Natrual Resources Co. (common)									
196. --Procter & Gamble Co. (common)									
197. --Prudential Financial Inc. (common)									
198. --Public Service Enterprise Group (common)									
199. --Qualcomm Inc. (common)									
200. --Schlumberger Ltd. (common)									
201. --Sempra Energy (common)									
202. --Southwestern Energy Co. (common)									
203. --Spectra Energy Corp. (common)									
204. --Spider Gold Trust									

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

FINANCIAL DISCLOSURE REPORT Page 16 of 27	Name of Person Reporting Tharp, John J.	Date of Report 11/10/2011

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 31-60 of filing instructions.)*

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	B (2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
205. --St. Jude Medical Inc. (common)									
206. --Target Corp. (common)									
207. --TD Ameritrade Holding Corp. (common)									
208. --TE Connectivity Ltd. (common)									
209. --The Estee Lauder Cos. Inc. (common)									
210. --Time Warner Inc. (common)									
211. --T Rowe Price New Asia Fund									
212. --Tyco International Ltd. (common)									
213. --UnitedHealth Group Inc. (common)									
214. --United Technologies Corp. (common)									
215. --US Bancorp (common)									
216. --ValueLine Premier Growth Fund									
217. --Vanguard MSCI Emerging Markets ETF									
218. --Verizon Communications (common)									
219. --Wells Fargo (common)									
220. --Williams Companies Inc. (common)									
221. --XILINX Corp. (common)									

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 17 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) 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)
222. --Yum Brands (common)									
223. --Condominium Unit (real estate)									
224. Trust #8	B	Dividend	O	T					
225. --Allstate (common)									
226. --American Electric Power (common)									
227. --Anadarko Petroleum (common)									
228. --AT&T (common)									
229. --Bank of America (common)									
230. --Beam, Inc. (common)									
231. --Blackrock Global Allocation C									
232. --BP Amoco (ADR)									
233. --Conoco Phillips (common)									
234. --Dow Chemical (common)									
235. --Duke Energy (common)									
236. --DuPont (common)									
237. --Exelon (common)									
238. --Exxon (common)									

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 18 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) 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)
239. --Fortune Brands Home & Security (common)									
240. --Heinz (common)									
241. --Hershey (common)									
242. --Ivy Asset Strategy									
243. --JP Morgan Chase Cash Accounts									
244. --Lincoln National Group (common)									
245. --Merck (common)									
246. --Monsanto (common)									
247. --Pfizer (common)									
248. --Spectra Energy (common)									
249. --Walgreen's (common)									
250. Trust #9	D	Dividend	M	T					
251. --3-M (common)									
252. --Allstate (common)									
253. --Bank of America (common)									
254. --Dow Chemical (common)									
255. --Exelon (common)									

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)	S =Assessment	T =Cash Market	
		V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 19 of 27	Name of Person Reporting Tharp, John J.	Date of Report 11/10/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 33-60 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
256. --Exxon (common)									
257. --IBM (common)									
258. --JP Morgan Chase (common)									
259. --JP Morgan Chase Cash Account									
260. --Lincoln National Corp. (common)									
261. --Pfizer (common)									
262. --Sherwin Williams (common)									
263. Trust #10	E	Dividend	N	T					
264. --3-M (common)									
265. --Exxon Mobil (common)									
266. --McDonald's (common)									
267. --JP Morgan Chase Cash Account									
268. Trust #11	D	Dividend	M	T					
269. --JP Morgan Chase Cash Account									
270. --25% of Family Partnership (Managed Investment Acct)									
271. Trust #12	D	Dividend	N	T					
272. --DuPont (common)									

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	H =$2,501 - $5,000 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 20 of 27	Name of Person Reporting Tharp, John J.	Date of Report 11/10/2011

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
273. --General Electric (common)									
274. --IBM (common)									
275. --Pfizer (common)									
276. Trust #13	E	Dividend	N	T					
277. --Allstate (common)									
278. --American Electric Power (common)									
279. --Anadarko Petroleum (common)									
280. --AT&T (common)									
281. --Bank of America (common)									
282. --Beam, Inc. (common)									
283. --Blackrock Global Allocation C									
284. --BP Amoco (ADR)									
285. --Conoco Phillips (common)									
286. --Dow Chemical (common)									
287. --Duke Energy (common)									
288. --DuPont (common)									
289. --Exelon (common)									

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 =$250,000 - $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 21 of 27

Name of Person Reporting	Date of Report
Tharp, John J.	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) 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)
290. --Exxon (common)									
291. --Fortune Brands Home & Security (common)									
292. --Hershey (common)									
293. --Ivy Asset Strategy									
294. --JP Morgan Chase Cash Accounts									
295. --Lincoln National Group (common)									
296. --Merck (common)									
297. --Monsanto (common)									
298. --Pfizer (common)									
299. --Spectra Energy (common)									
300. Trust #14	D	Dividend	M	T					
301. --3-M (common)									
302. --Allstate (common)									
303. --Bank of America (common)									
304. --Dow Chemical (common)									
305. --Exelon (common)									
306. --Exxon (common)									

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 22 of 27	Name of Person Reporting Tharp, John J.	Date of Report 11/10/2011

VII. INVESTMENTS and TRUSTS — *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-66 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)
307. --IBM (common)									
308. --JP Morgan Chase (common)									
309. --JP Morgan Chase Cash Account									
310. --Lincoln National Corp. (common)									
311. --Pfizer (common)									
312. --Sherwin Williams (common)									
313. Trust #15	E	Dividend	N	T					
314. --3-M (common)									
315. --Exxon Mobil (common)									
316. --McDonald's (common)									
317. --JP Morgan Chase Cash Account									
318. Trust #16	D	Dividend	M	T					
319. --JP Morgan Chase Cash Account									
320. --25% of Family Partnership (Managed Investment Acct)									
321. Trust #17	E	Dividend	O	T					
322. --Allstate (common)									
323. --American Electric Power (common)									

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 23 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) Place 'EXT' 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)
324. --Anadarko Petroleum (common)									
325. --AT&T (common)									
326. --Bank of America (common)									
327. --Beam, Inc.									
328. --Blackrock Global Allocation C									
329. --BP Amoco (ADR)									
330. --Conoco Phillips (common)									
331. --Dow Chemical (common)									
332. --Duke Energy (common)									
333. --DuPont (common)									
334. --Exelon (common)									
335. --Exxon (common)									
336. --Fortune Brands Home & Security (common)									
337. --Heinz (common)									
338. --Hershey (common)									
339. --Ivy Asset Strategy									
340. --JP Morgan Chase Cash Accounts									

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	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	I =$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 Columns C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 24 of 27	Name of Person Reporting Tharp, John J.	Date of Report 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) 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)
341. --Lincoln National Group (common)									
342. --Merck (common)									
343. --Monsanto (common)									
344. --Pfizer (common)									
345. --Spectra Energy (common)									
346. --Walgreen's (common)									
347. Trust #18	D	Dividend	M	T					
348. --3-M (common)									
349. --Allstate (common)									
350. --Bank of America (common)									
351. --Dow Chemical (common)									
352. --Exelon (common)									
353. --Exxon (common)									
354. --IBM (common)									
355. --JP Morgan Chase (common)									
356. --JP Morgan Chase Cash Account									
357. --Lincoln National Corp. (common)									

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 25 of 27

Name of Person Reporting	Date of Report
Tharp, John J.	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) 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)
358. --Pfizer (common)									
359. --Sherwin Williams (common)									
360. Trust #19	E	Dividend	N	T					
361. --3-M (common)									
362. --Exxon Mobil (common)									
363. --McDonald's (common)									
364. --JP Morgan Chase Cash Account									
365. Trust #20	D	Dividend	M	T					
366. --JP Morgan Chase Cash Account									
367. --25% of Family Partnership (Managed Investment Acct)									

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; 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): J =Appraisal; K =Book Value; L =Cost (Real Estate Only); M =Other; S =Assessment; T =Cash Market; W =Estimated

3. Value Method Codes (See Column C2)

FINANCIAL DISCLOSURE REPORT Page 26 of 27	Name of Person Reporting Tharp, John J.	Date of Report 11/10/2011

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

Additional Information Concerning Part VII.A., Description of Investments and Trusts:
I am the co-trustee of Trust #1. I have no beneficial interest in that trust and receive no fees.
I have no position or interest in any of the other trusts listed (#2 - 20). My spouse is a co-trustee of each of these trusts except for Trust #7. She is the sole beneficiary of Trusts #2-#5. She has a 25% beneficial interest in Trusts #6 and #7. She has no beneficial interest in Trusts #8-20.

Additional Information Concerning Part VII.C., Valuation of Investments and Trusts:
The valuation provided for Trusts #6 and #7 is based on my spouse's 25% interest, not the full value of trust assets.
Trusts #6 and #7 contain assets that required different valuation methods. For Trust #6, the farm land valuation method is "W"; the cash account valuation method is "T." For Trust #7, the condominium valuation method is "W"; the valuation method for all other assets listed is "I."

FINANCIAL DISCLOSURE REPORT Page 27 of 27	Name of Person Reporting Tharp, John J.	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: /s/ John J. Tharp

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		77	651	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds		45	500	Notes payable to banks-unsecured			
Listed securities – see schedule	2	175	160	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		8	659
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		184	465
Real estate owned – personal residence	1	000	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		200	000	Loans on Life Insurance Policies		37	078
Cash value-life insurance		309	435				
Other assets itemize:							
Mayer Brown Capital Account		272	850				
Mayer Brown Partnership Retirement Plan		493	069				
				Total liabilities		230	202
				Net Worth	4	343	463
Total Assets	4	573	665	Total liabilities and net worth	4	573	665
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, co-maker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds EuroPacific Growth R6 Fund	128,621
AT&T	93,915
Bright Start 529 College Savings Plan Blended Age Based 18 Years Portfolio-1527	41,282
CenterPoint Energy	32,538
Coca-Cola	20,257
Cohen & Steers Institutional Realty Shares	201,582
Columbia Strategic Investor Fund-Z	5,407
DuPont	50,771
Fidelity Blue Chip Growth Fund	27,161
Fidelity Independence Fund	151,479
Fidelity Magellan Fund	110,122
General Electric	12,991
Harley-Davidson	12,524
Hershey Foods	75,638
Home Depot	7,708
IBM	228,122
Krispy Kreme	682
Merrill Lynch Bank Deposit Program	6,167
Parametric Technology	215
Pfizer	65,009
Prudential Jennison Small Company Fund	121,013
Reliant Resources	2,377
Vanguard Dividend Growth Fund	34,477
Vanguard Energy Fund	24,980
Vanguard 500 Index Fund	104,669
Vanguard Information Tech ETF	26,337
Vanguard Institutional Index Fund	124,324
Vanguard International Value Fund	66,508
Vanguard Long-Term Tax Exempt Bond Fund	32,052
Vanguard Target Retirement 2025 Fund	132,056
Vanguard Total Intl Stock Index Fund	55,253
Vanguard Total Stock Market Index Fund	70,914
Vanguard Total Bond Market Index Fund	33,683
Walgreen Co.	16,790
Wal-Mart	34,783
Walt Disney	22,753
Total Listed Securities	$2,175,160

AFFIDAVIT

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

Nov 9, 2011
(DATE)

(NAME)

(NOTARY)

OFFICIAL SEAL
TRINA SARLO
Notary Public - State of Illinois
My Commission Expires Dec 01, 20

Senator DURBIN. Thank you very much, Mr. Tharp.
Judge Russell.

STATEMENT OF HON. GEORGE LEVI RUSSELL III, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

Judge RUSSELL. Yes, good afternoon, Senator Kyl, as well as Senator Durbin. I am certainly honored and humbled by the nomination. I do not have any formal introductory remarks, but I do want to express great gratitude and thanks to President Obama for this nomination, Senators Mikulski and Cardin for their kind words and support of my nomination, in addition to both of you taking the time out of your busy schedule to afford me the opportunity for a hearing, as well as the other individual Senators that are on the Committee.

I am accompanied here today and honored and privileged to be accompanied here today by various family members. First and foremost, my mother and father, George and Marion Russell, are here, and I am also accompanied and honored to have my in-laws, Doward and Helen Patterson, who are in the back here.

And certainly, last but not least, my immediate family. My wife and friend, Devy Patterson Russell, has accompanied me here, as well as the two individuals who the sun rises and sets with, my two children: George, who just turned 10, and Madison, who is about to turn 13.

I do not have any other remarks, Senator. Thank you.

[The biographical information of Judge Russell follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   George Levi Russell, III

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.

   Circuit Court of Maryland for Baltimore City
   111 North Calvert Street
   Baltimore, Maryland 21202

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

   1965; Baltimore City, Maryland

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

   1988 – 1991, University of Maryland School of Law; J.D., 1991

   1984 – 1988, Morehouse College; B.A., 1988

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

   2007 – Present
   Circuit Court of Maryland for Baltimore City
   111 North Calvert Street
   Baltimore, Maryland 21202
   Associate Judge

2002 – 2007
United States Attorney's Office for the District of Maryland, Criminal Division
36 South Charles Street, Fourth Floor
Baltimore, Maryland 21201
Assistant United States Attorney

2000 – 2002
The Law Offices of Peter G. Angelos, P.C.
100 North Charles Street, Suite 2200
Baltimore, Maryland 21201
Attorney

1994 – 1999
United States Attorney's Office for the District of Maryland, Civil Division
36 South Charles Street, Fourth Floor
Baltimore, Maryland 21201
Assistant United States Attorney

1994
Whiteford, Taylor and Preston, L.L.P.
7 St. Paul Street
Baltimore, Maryland 21202
Associate Attorney

1992 – 1994
Hazel and Thomas, P.C.
120 East Baltimore Street, Suite 2100
Baltimore, Maryland 21202
Associate Attorney

1991 – 1992
The Honorable Robert M. Bell, Chief Judge for the Court of Appeals of Maryland
634 Courthouse East
111 North Calvert Street
Baltimore, Maryland 21202
Law Clerk

Summer 1990
DLA Piper
6225 Smith Avenue
Baltimore, Maryland 21209
Summer Associate

Summer 1989
Venable, L.L.P.
750 East Pratt Street
Baltimore, Maryland 21202
Summer Associate

Summer 1988
Phillips Seafood Restaurant
301 Light Street
Baltimore, Maryland 21202
Busboy

Other Affiliations (uncompensated):

2007 – Present
The Historical Society of the United States District Court for the District of Maryland
4415 U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201
Trustee

2003 – Present
The Center Club
100 Light Street, 16th Floor
Baltimore, Maryland 21202
Board Member

2002 – Present
Enoch Pratt Free Library
400 Cathedral Street
Baltimore, Maryland 21202
Trustee and Board Member

1998 – 2004
Community Law Center
3355 Keswick Road, Suite 200
Baltimore, Maryland 21211
Board Member

2002 – 2004
Public Justice Center
1 North Charles Street, Suite 200
Baltimore, Maryland 21201
Board Member

2002 – 2004
Big Brothers and Big Sisters
3600 Clipper Mill Road, Suite 250
Baltimore, Maryland 21211
Board Member

1998 – 2000
Beech Tree Community Association
5868 Pimlico Road
Baltimore, Maryland 21209
Board Member

1997 – 1998
Federal Bar Association
1220 North Fillmore Street, Suite 444
Arlington, Virginia 22201
Treasurer

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

   I have not served in the United States Military. I have registered for selective service.

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

   Maryland Bar Foundation Fellow (2007)

   Martindale-Hubbell "AV" Rating (2000)

   Letters and Certificates of Commendation:

   United States Attorney's Office, District of Maryland (2006)
   United States Air Force (1998)
   Smithsonian Institution (1998)
   Department of Health and Human Services (1998)
   Executive Office for United States Attorneys (1996)
   Department of the Navy (1996)
   United States Postal Service (1996)
   United States Office of Personnel Management (1996)

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.

Baltimore City Bar Association
Federal Bar Association
Treasurer (1997 – 1998)
Maryland Bar Association
Monumental City Bar Association

10. **Bar and Court Admission**:

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

Maryland, 1991
District of Columbia, 1993

I stopped paying bar dues in the District of Columbia in 1994 because I was no longer practicing there. Otherwise, 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 Fourth Circuit, 1994
United States District Court for the District of Maryland, 1992
United States District Court for the District of Columbia, 1993
Court of Appeals of Maryland, 1991

My membership in the United States District Court for the District of Columbia lapsed in 1994 because I no longer practiced in that court. 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.

Beech Tree Community Association
Board Member (1998 – 2000)

Big Brothers and Big Sisters
Board Member (2002 – 2004)

The Center Club
Board Member (2003 – Present)

Community Law Center
Board Member (1998 – 2004)

Enoch Pratt Free Library
Board Member and Trustee (2002 – Present)

Gamma Boule' Sigma Pi Phi Fraternity (2003 – Present)

The Historical Society of the United States District Court for the District of Maryland, Inc.
Trustee (2007 – Present)

Public Justice Center
Board Member (2002 – 2004)

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

Gamma Boule' Sigma Pi Phi is a fraternal society comprised of men. Otherwise, to the best of my knowledge, none of the organizations listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

I have not published any books, articles, reports or letters.

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

To my knowledge, I have not generated or caused to be generated any reports, memoranda or policy statements.

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

I have not provided any such testimony, official statements or other communications.

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

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. I often speak to young people about the practice of law. It is my practice to speak without notes.

July 20, 2011 – I spoke to students through the Citizenship Law Related Education Program for the Schools of Maryland about the operation of the judicial system and to encourage them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the Citizenship Law Related Education Program is 520 Fayette Street, Baltimore, Maryland 21201.

May 26, 2011 – I spoke to high school students through the National Academy Foundation about the operation of the judicial system and encouraged them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the National Academy Foundation is 540 North Caroline Street, Baltimore, Maryland 21205.

April 7, 2011 – I spoke to high school students through the National Academy Foundation about the operation of the judicial system and encouraged them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the National Academy Foundation is 540 North Caroline Street, Baltimore, Maryland 21205.

June 17, 2010 – I spoke to college students through the Charles Hamilton Houston Scholars Program about the operation of the judicial system and encouraged them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the Charles Hamilton Houston Scholars Program is 1415 Maryland Avenue, Baltimore, Maryland 21201.

Summer 2010 – I spoke to students through the Citizenship Law Related Education Program for the Schools of Maryland about the operation of the judicial system and to encourage them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the Citizenship Law Related Education Program is 520 Fayette Street, Baltimore, Maryland 21201.

May 5, 2010 – I gave the response of the Circuit of Maryland for Baltimore City to the swearing in of Judge Charles J. Peters at his investiture. My remarks are supplied.

March 5, 2010 – I spoke to students from the Academy of Career and Exploration, at the request of the Office of the State's Attorney for Baltimore City about the operation of the judicial system and encouraged them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the Office of the State's Attorney for Baltimore City is 208 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21211.

January 26, 2010 – I participated in a panel discussion entitled "Jury Trials: From the Judges' Perspective." I have no notes, transcript, or recording. The panel was sponsored by the Bar Association of Baltimore City, which is located at 111 North Calvert Street, Suite 627, Baltimore, Maryland 21202.

October 22, 2009 – I participated in a panel discussion at the University of Baltimore School of Law about clerkships and the practice of law for first and second year law students. I have no notes, transcript, or recording. The address of the School of Law is 1415 Maryland Avenue, Baltimore, Maryland 21201.

August 27, 2009 – I spoke to recovering heroin addicts to encourage them to conquer their addictions. I have no notes, transcript, or recording. The event was sponsored by the Penn North Neighborhood Center, which is located at 2410 Pennsylvania Avenue, Baltimore, Maryland 21217.

Summer 2009 – I spoke to students through the Citizenship Law Related Education Program for the Schools of Maryland about the operation of the

judicial system and to encourage them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the Citizenship Law Related Education Program is 520 Fayette Street, Baltimore, Maryland 21201.

March 10, 2009 – At the request of the Office of the State's Attorney for Baltimore City, I spoke to students from the Regional Institute High School about the operation of the judicial system and encouraged them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the Office of the State's Attorney for Baltimore City is 208 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202.

November 24, 2008 – I spoke to high school students through the Community Law in Action Program about the operation of the judicial system and encouraged them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the Community Law in Action Program is 520 West Fayette Street, Baltimore, Maryland 21201.

February 27, 2008 – At the request of the Office of the State's Attorney for Baltimore City, I spoke to students from Westside Elementary School about the operation of the judicial system and encouraged them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the Office of the State's Attorney for Baltimore City is 208 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202.

May 2, 2007 – At the request of the Office of the State's Attorney for Baltimore City, I spoke to students from Westside Elementary School about the operation of the judicial system and encouraged them to pursue their dreams and goals. I have no notes, transcript, or recording. The address of the Office of the State's Attorney for Baltimore City is 208 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202.

March 9, 2007 – I spoke at my investiture to express my appreciation to my family and friends who assisted me in reaching my goal to become a judge. My remarks are supplied.

2006 – On two occasions in 2006, I lectured at the Baltimore City Police Department's In-Service Training Program and advised police officers how to testify in court and the law related to search and seizure warrants. I have no notes, transcript, or recording. The address of the Baltimore City Police Department is 500 East Baltimore Street, Baltimore, Maryland 21202.

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.

Matthew Dolan, *Towson Doctor Given 7 Years*, Baltimore Sun, July 1, 2005. Copy supplied.

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

In January 2007, I was appointed by Governor Robert L. Ehrlich, Jr., to the position of Associate Judge on the Circuit Court of Maryland for Baltimore City. On February 1, 2007, I was sworn in as a Circuit Court judge. In November 2008, I was elected to a 15 year term. The Circuit Court is a Court of general jurisdiction. I have sat on each of the four dockets: Criminal, Civil, Family and Juvenile.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 300

i. Of these, approximately what percent were:

jury trials:	25%
bench trials:	75%
civil proceedings:	80%
criminal proceedings:	20 %

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

1. Binyatov v. State, Case No. 199144017, Petition No. 9882 (Cir. Ct. Balt. City August 22, 2008).

2. Coward v. State, Case No. 100144021, Petition No. 10430, (Cir. Ct. Balt. City June 15, 2011).

3. Edwards v. State, Case No. 199039035, Petition No. 10169, (Cir. Ct. Balt. City August 16, 2010).

4. Griffin v. State, Case Nos. 196171021,023,025,027, Petition No. 8191, (Cir. Ct. Balt. City June 9, 2011).

5. Henry v. State, Case Nos. 205062018,206083033, Petition No. 10122, (Cir. Ct. Balt. City July 22, 2009).

6. Howard-Bey v. State, Case No. 198240049, Petition No. 10241, (Cir. Ct. Balt. City June 8, 2011).

7. Ray v. State, Case No. 19006405, Petition No. 9672, (Cir. Ct. Balt. City February 17, 2009).

8. Reed v. State, Case No. 107012021, Petition No. 10037, (Cir. Ct. Balt. City March 11, 2010).

9. Shannon v. State, Case No. 195347042, Petition No. 9943, (Cir. Ct. Balt. City April 6, 2011).

10. Woodfolk v. State, Case No. 28735804, Petition No. 7334, (Cir. Ct. Balt. City February 1, 2011).

11. Gordon Contractors, Inc. v. Dupont Realty, L.L.C., Case No. 24-C-07-005103, (Cir. Ct. Balt. City January 4, 2008).

12. Fine v. McClure, Case No. 24-C-06-0100464, (Cir. Ct. Balt. City April 4, 2007).

13. McKee v. State, Case No.10225028, (Cir. Ct. Balt. City October 13, 2010).

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. Mosley, Case Nos. 106229028-31.

The Defendant was charged with rape and related offenses. The case involved testimony of forensic and DNA experts and the exclusion of certain portions of their testimony based upon the contamination of the crime scene. The jury trial began on April 29, 2009 and lasted four days. The Defendant was found guilty of all charges. He was sentenced to life in prison plus 40 years to run consecutively.

Counsel for the State: Jennifer McAllister, 210 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202, (410) 396-5040.

Counsel for Defendant: Maureen L. Rowland of the Office of the Public Defender, 201 Saint Paul Place, Baltimore, Maryland 21202, (410) 333-4900 ext. 347.

2. State v. Swilling and Parker, Case Nos. 108263027-37.

Both Defendants were charged with conspiracy, attempted first degree murder, and related offenses. The case arose out of a dispute among friends and a subsequent shooting. Defendants were not accused of shooting the victim but both were accused of having the victim shot by someone else. Both Defendants, through their counsel, waived their right to a trial by jury, and instead chose to

have a bench trial. The trial began on May 7, 2009 and lasted three days. Mr. Parker was granted a judgment of acquittal after the State's case. The court found Ms. Swilling not guilty of all of the charges after the close of all the evidence.

Counsel for the State: Nicole Lomartire, 210 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202, (410) 361-9820.

Counsel for Defendant Swilling: Bridget Shepherd of the Office of the Public Defender, 201 Saint Paul Place, Baltimore, Maryland 21202, (410) 333-4900 ext. 241.

Counsel for Defendant Parker: Dennis Laye, 38 West 25th Street, Baltimore, Maryland 21218, (410) 235-6868.

3. Edwards v. Reaping, Case No. 24 C 06-002213.

Plaintiff sued the Defendant for false arrest and malicious prosecution after he accused her of firing a BB or pellet gun multiple times at his home. The Defendant filed a counter-claim for trespass and nuisance. The case required rulings on various motions in limine, including a motion to exclude transcripts of a 311 recording and hearsay statements of neighbors. The jury trial began on May 29, 2007 and lasted four days. The jury found in favor of the Plaintiff and awarded one dollar in damages. The jury rejected the Defendant's counter-claim.

Counsel for Plaintiff: Leonard Redmond, 115 West Saratoga Street, Baltimore, Maryland 21201, (410) 752-1555.

Counsel for Defendant: Margaret Meade, 200 East Lexington Street, Suite 1511, Baltimore, Maryland 21202, (410) 727-6400 ext. 104.

4. Barksdale v. Ivy Hall Rehabilitation Center, Case No. 24 C 04-005164.

The Plaintiff, Ms. Barksdale individually, and as personal representative of the Estate of Ada Jordon, sued the Defendants for medical negligence arising from Ms. Jordon's treatment at a nursing facility. Specifically, the Plaintiff alleged that the Defendants failed to treat bed sores which ultimately resulted in the infection and death of Ms. Jordon. The trial began on April 30, 2007 and lasted seven days. The case included a number of pretrial motions seeking to exclude evidence based upon violation of the rules of discovery and post-trial motions to reduce the amount of the judgment based upon liability releases signed by certain Defendants. The jury found in favor of the Estate in the amount of $75,000 and denied the individual claim of damages.

Counsel for Plaintiff: Roger Bennett, 200 East Lexington Street, Suite 200, Baltimore, Maryland 21202, (410) 727-2168.

Counsel for Defendants: James Fields, 111 South Calvert Street, Suite 2700, Baltimore, Maryland 21202, (410) 385-5246.

5. State v. Marshall, Case Nos.108199016-18.

The Defendant was charged with first degree murder, kidnapping, conspiracy, and various firearms offenses. The jury trial began on July 29, 2010 and lasted seven days. The jury found the Defendant guilty of murder and the firearm charges but could not reach a verdict on the kidnapping offenses. In the evening after the trial, defense counsel received information that one juror accused another juror of improperly using her cell phone to research the Defendant's criminal record during deliberations, despite instructions not to do so. Based upon this information the Defendant sought a new trial. After a full briefing and post-trial hearing, which included the testimony of accusing, witnessing and offending jurors, the Defendant's motion for a new trial was granted. The Defendant was recently retried and convicted. He is awaiting sentencing.

Counsel for the State: Tracey Robinson, 210 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202, (410) 209-4990.

Counsel for Defendant: Roland Walker, 200 East Lexington Street, Suite 306, Baltimore, Maryland 21202, (410) 727-3710.

6. State v. Price, Case No. 107053050.

The Defendant was charged with first degree rape and related offenses. The case required a hearing and ruling on the admissibility of a critical sexual assault forensic evidence ("SAFE") exam report related to the victim. The issue to be decided was whether the document was made in for the purpose of medical treatment and/or in anticipation of litigation. The jury trial began on August 10, 2009 and lasted five days. The jury found the Defendant guilty on all counts. The Defendant was sentenced to life on the rape counts and 25 years on an assault count to run consecutively.

Counsel for the State: Katherine D. Smeltzer and Tara A. Barnes, 210 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202, (410) 396-5040.

Counsel for Defendant: Sharon DuBey, 201 Saint Paul Place, Baltimore, Maryland 21202, (410) 333-4900 ext. 217.

7. State v. Freeman, Case No. 509153021.

The Defendant was charged with armed robbery and related offenses. The case required hearing and ruling upon the admissibility of several photo arrays shown to the victim and the witnesses who identified the Defendant as being in the area

at the time of the crime. The jury trial began on March 4, 2010 and lasted four days. The jury found the Defendant not guilty on all charges.

Counsel for the State: Katie O'Hara, 210 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202, (410) 396-7559.

Counsel for Defendant: Catherine Flynn, 200 East Lexington Street, Suite 1511, Baltimore, Maryland 21202, (410) 727-6400.

8. State v. Dudley, Case No. 108196016.

The Defendant was charged with first and second degree murder and firearm charges. The case involved several motions in limine, including a motion seeking to exclude an exculpatory hearsay statement of the Defendant to a police officer. The jury trial began on January 6, 2009 and lasted five days. The jury found the Defendant guilty on all charges. The Defendant received a life sentence.

Counsel for the State: Robyn Sozkoly, 210 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202, (410) 545-6433.

Counsel for Defendant: Amy Stone, 201 Saint Paul Place, Baltimore, Maryland 21202, (410) 333-4900 ext. 312.

9. State v. Kingsborough and Christian, Case Nos. 108177019, 21, 23, 25 and 107269023, 25, 27.

The Defendants were charged with first and second degree murder, conspiracy, and related firearm charges. The trial began with several motions in limine including a motion to sever, suppress photo arrays and suppress the fruits of a search warrant. The jury trial began on April 6, 2010 and lasted four days. The jury found the Defendants not guilty on all charges.

Counsel for the State: Patrick Moran, 210 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202, (443) 263-8100.

Counsel for Defendant Kingsborough: Sharon May, 10 North Calvert Street, Suite 142 Baltimore, Maryland 21202, (410) 347-1560.

Counsel for Defendant Christian: Martin Dorsey, 201 Saint Paul Place, Baltimore, Maryland 21202, (410) 878-8623.

10. State v. Wynn, Case Nos.108035009-11.

The Defendant was charged with first degree murder, assault, and related offenses. The case was entirely circumstantial and required the admission of over 50 pieces of evidence and testimony of forensic and DNA experts. The jury trial

began on May 27, 2009 and lasted six days. The jury found the Defendant guilty on all of the offenses. He was sentenced to life in prison.

Counsel for the State: Kevin Wiggins, 210 Clarence Mitchell Jr. Courthouse, 110 North Calvert Street, Baltimore, Maryland 21202, (410) 396-4156.

Counsel for Defendant: David Walsh-Little, 201 Saint Paul Place, Baltimore, Maryland 21202, (410) 396-4900 ext. 322.

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. Binyatov v. State, Case No. 199144017, Petition No. 9882 (Cir. Ct. Balt. City Aug. 22, 2008). Opinion supplied.

Counsel for the State: Donald Giblin, Office of the State's Attorney, 100 North Calvert Street, Baltimore, Maryland 21202, (410) 396-5380.

Counsel for Petitioner: Initia Lettau, Office of the Public Defender, 300 West Preston Street, Suite 213, Baltimore, Maryland 21201, (410) 412-7143.

2. Coward v. State, Case No. 100144021, Petition No. 10430 (Cir. Ct. Balt. City June 15, 2011). Opinion supplied.

Counsel for the State: Jessica Paugh, Office of the State's Attorney, 111 North Calvert Street, Room 442, Baltimore, Maryland 21201, (410) 361-9820.

Counsel for Petitioner: Melissa McDonald, Office of the Public Defender, 116 West Mulberry Street, Baltimore, Maryland 21201, (410) 767-4998.

3. Edwards v. State, Case No. 199039035, Petition No. 10169 (Cir. Ct. Balt. City Aug. 16, 2010). Opinion supplied.

Counsel for the State: Tonya Lapolla, Office of the State's Attorney, 111 North Calvert Street, Room 442, Baltimore, Maryland 21202, (410) 361-9820.

Counsel for Petitioner: Flynn M. Owens, 200 East Lexington Street, Baltimore, Maryland 21202, (410) 709-3584.

4. Griffin v. State, Case Nos. 196171021,023,025,027, Petition No. 8191 (Cir. Ct. Balt. City June 9, 2011). Opinion supplied.

Counsel for the State: Michelle Martin, Office of the State's Attorney, 100 North Calvert Street, Room 130, Baltimore, Maryland 21202, (410) 396-5156.

Counsel for Petitioner: Norm Handwerger, Office of the Public Defender, 7500 Ritchie Highway, Room 111, Glen Burnie, Maryland 21061, (410) 412-7142.

5. Henry v. State, Case Nos. 205062018, 206083033, Petition No. 10122 (Cir. Ct. Balt. City July 22, 2009). Opinion supplied.

Counsel for the State: Antoine Collins, Office of the State's Attorney, 111 North Calvert Street, Room 454, Baltimore, Maryland 21202, (613) 853-4288.

Counsel for Petitioner: Sharon Dubey, Office of the Public Defender, 201 Saint Paul Place, Baltimore, Maryland 21202, (410) 333-4900 ext. 217.

6. Howard-Bey v. State, Case No. 198240049, Petition No. 10241 (Cir. Ct. Balt. City June 8, 2011). Opinion supplied.

Counsel for the State: Charles Bloomquist, Office of the State's Attorney, 111 North Calvert Street, Room 314, Baltimore, Maryland 21202, (410) 545-6433.

Counsel for Petitioner: David Russell, Office of the Public Defender, 7500 Ritchie Highway, Room 111, Glen Burnie, Maryland 21061, (410) 412-7140.

7. Ray v. State, Case No. 19006405, Petition No. 9672 (Cir. Ct. Balt. City Feb. 17, 2009). Opinion supplied.

Counsel for the State: Robyne Szokoly, Office of the State's Attorney, 100 North Calvert Street, Room 314, Baltimore, Maryland 21202, (410) 545-6433.

Counsel for Petitioner: Jennifer Meade, Office of the Public Defender, 300 West Preston Street, Suite 213, Baltimore, Maryland 21201, (410) 767-1274.

8. Reed v. State, Case No. 107012021, Petition No. 10037 (Cir. Ct. Balt. City Mar. 11, 2010). Opinion supplied.

Counsel for the State: Mark Floersheimer, Office of the State's Attorney, 110 North Calvert Street, Room 419, Baltimore, Maryland 21202, (443) 984-1621.

Counsel for Petitioner: Lisa Marquardt, Office of the Public Defender, 300 West Preston Street, Suite 213, Baltimore, Maryland 21202, (410) 767-4194.

9. Shannon v. State, Case No. 195347042, Petition No. 9943 (Cir. Ct. Balt. City Apr. 6, 2011). Opinion supplied.

Counsel for the State: Rita Wishtoff-Ito, Office of the State's Attorney, 100 North Calvert Street, Room 426, Baltimore, Maryland 21202, (410) 396-1772.

Counsel for Petitioner: Kenneth D. Mann, 200 East Lexington Street, Suite 902, Baltimore, Maryland 21202, (410) 468-0007.

10. Woodfolk v. State, Case No. 28735804, Petition No. 7334 (Cir. Ct. Balt. City Feb. 1, 2011). Opinion supplied.

Counsel for the State: Dana Middleton, Office of the State's Attorney, 111 North Calvert Street, Baltimore, Maryland 21201, (410) 396-7391.

Counsel for Petitioner: Benjamin Sutley, 116 West Mulberry Street, Baltimore, Maryland 21201, (410) 727-2040.

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 or granted 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.

Bruce v. State, rev'd, Case No. 2891 (Md. App. June 9, 2011)

The Defendant appealed his conviction by a jury of second-degree assault. During the cross-examination of the victim, who was also the State's key witness, defense counsel asked the victim whether she felt pressured to testify because of her pending theft and disorderly conduct charges. The State objected and the court advised the jury to disregard the question and answer. At a bench conference, defense counsel informed the court that he was trying to show that the victim may have been pressured into becoming a State's witness in order to gain favor with the State in another case. In an unreported opinion, the Court of Special Appeals reversed Defendant's conviction and held that the court erroneously limited defense counsel's cross-examination of the victim when it prohibited defense counsel from asking the victim about the pending charge to show her possible bias, prejudice, interest in the outcome of the proceeding, or motive to testify falsely. Court of Special Appeals opinion supplied.

Finnell v. State, rev'd, Case No. 600 (Md. App. June 27, 2011)

The Defendant was charged and convicted in two separate indictments with drug offenses. The first indictment charged him with possession of marijuana, possession of marijuana with intent to distribute and distribution of marijuana. The second indictment charged him with possession of marijuana and possession of marijuana with intent to distribute. The court denied Defendant's motion to

dismiss the second indictment on the basis that the charges were duplicative. In an unreported opinion, the Court of Special Appeals held that the court erred in permitting multiple convictions for possession of marijuana and possession of marijuana with intent to distribute because the two indictments arose out of one transaction, at one event on the same day, and in one location. The appellate court therefore vacated Defendant's second indictment. Court of Special Appeals opinion supplied.

Green v. JN Realty Corporation, rev'd, Case No. 1575 (Md. App. Oct. 9, 2009)

The Plaintiff, by his mother, filed a civil suit against the Defendants arising out of Plaintiff's alleged exposure to lead paint at his home which was owned and or managed by Defendants. The Court of Special Appeals, in an unreported opinion, held that the court erred in granting Plaintiffs' motion for summary judgment because, contrary to the court's holding, the record showed the existence of a material dispute of fact regarding the time and duration of Plaintiff's tenancy at the property, which was material to the issue of Defendants' liability. Court of Special Appeals opinion 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.

I have issued 13 unpublished opinions. All of my opinions are unpublished and are stored and filed with the Clerk of the Circuit Court of Maryland for Baltimore City.

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.

To the best of my knowledge, 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.

My wife is a judge on the District Court of Maryland for Baltimore City. As such, she often presides over matters that eventually come before the Circuit Court of Maryland for Baltimore City on appeal. For example, in criminal cases she may set a bail for a defendant after his or her arrest and that defendant may seek a review of the bail in the Circuit Court. She also signs search and seizure warrants that may be the subject of a motion to suppress in the Circuit Court. In the criminal context of bail reviews, I do not know the identity of the District Court judge who initially sets the bail until the case is called by the State's Attorney and the procedural history of the case is recited by pretrial services. When I know the potential conflict at the hearing, which may have happened two or three times, I always disclose my relationship to all parties on the record. I afford either party the right to have the matter set before another judge. I have searched my memory, records and internet databases and can only vaguely remember one instance where a party has asked that I recuse myself from hearing the case, which I did. I did not generate any notes or documents related to the recusal in the few instances that the issue arose. I have searched my records and memory and court records but I cannot identify the cases.

Potential conflicts also arise in civil cases, where a party may be appealing a District Court judge's decision to the Circuit Court. In this instance, I know whether my wife was involved in the decision when the case is assigned and before it is called. If the appeal is from her decision, I automatically recuse myself to prevent the appearance of any impropriety. The case is then reassigned to another judge. I did not generate any notes or documents related to the recusal in the few instances that the issue arose.

I also recuse myself when I find that I am related to witnesses in a case. One recent example occurred on August 8, 2011, in the case of In the Matter of Berry, Petition No. 808014008 (Cir. Ct. Balt. City August 8, 2011). In this Child-In-Need-of-Assistance case, involving an exception from a lower court Master's ruling regarding the Respondent's permanency plan, I discovered during the testimony of the first witness that I was related to another crucial witness in the case (my uncle). In response, I immediately asked the attorneys to approach,

explained the conflict, and advised that I would have to recuse myself from the case. I recused myself and the case was reset before another judge.

To my knowledge, these are the only cases in which my recusal has arisen.

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 offices 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.

I have never held any office in any political party or held a position or played a role in any political campaign.

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

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

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

I served as a law clerk to The Honorable Robert M. Bell, Chief Judge for the Court of Appeals of Maryland, from 1991 to 1992.

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.

1992 – 1994
Hazel and Thomas, P.C.
120 East Baltimore Street, Suite 2100
Baltimore, Maryland 21202
Associate Attorney

1994
Whiteford, Taylor and Preston, L.L.P.
7 St. Paul Street
Baltimore, Maryland 21202
Associate Attorney

1994 – 1999
United States Attorney's Office for the District of Maryland, Civil Division
36 South Charles Street, Fourth Floor
Baltimore, Maryland 21201
Assistant United States Attorney

2000 – 2002
The Law Offices of Peter G. Angelos, P.C.
100 North Charles Street, Suite 2200
Baltimore, Maryland 21201
Attorney

2002 – 2007
United States Attorney's Office for the District of Maryland, Criminal Division
36 South Charles Street, Fourth Floor
Baltimore, Maryland 21201
Assistant United States Attorney

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

I have never served as a mediator or arbitrator in an alternative dispute resolution proceeding.

b. Describe:

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

I have spent my entire career in litigation. Prior to 2002, while employed in government and private practice, I litigated exclusively civil cases.

While in private practice from 1992 to 1994, I litigated plaintiff's personal injury, product liability, and medical malpractice cases as well as defended businesses in commercial litigation. As an Assistant United States Attorney in the Civil Division from 1994 to 1999, I defended various federal government agencies in discrimination, automobile accident, slip and fall, and medical malpractice cases, including appeals to the United States Court of Appeals for the Fourth Circuit. I also represented the United States in the collection of student loans and in farm foreclosure cases. In private practice from 2000 to 2002, I represented plaintiffs in class action and private personal injury cases.

As an Assistant United States Attorney in the Criminal Division from 2002 to 2007, I represented the United States in the criminal prosecution of violent crime and narcotics cases during the investigatory stage, at trial and on appeal. This included the initiation and monitoring of wiretaps to infiltrate and break up violent gangs in Baltimore City.

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

While in private practice from 1992 to 1994, I represented businesses in commercial litigation, and plaintiffs in personal injury, product liability, and medical malpractice cases. From 1994 to 1999, as an Assistant United States Attorney, I represented various federal government agencies in discrimination, automobile accident, slip and fall, and medical malpractice cases. I also represented the United States in the collection of student loans and in farm foreclosure cases. In private practice from 2000 to 2002, I represented plaintiffs is class action and private personal injury cases.

Between 2002 and 2007, I represented the United States exclusively in criminal prosecutions. I specialized in violent crime and narcotics cases.

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 spent my entire career as a litigator and prosecutor. As an associate in a large law firm early in my career, I was typically part of a larger team working on particular matters and appeared in state and federal court only occasionally. As an Assistant United States Attorney, I appeared in federal court several times a week. I handled initial appearances, arraignments, pretrial conferences, guilty pleas, motions hearings on suppression of evidence and for summary judgment, trials and appeals.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 10%
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 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.

I have handled 13 cases that were decided by trial. Approximately six trials were non-jury. I served as chief counsel in all of these cases. Approximately seven trials were jury trials. I served as chief counsel in all but one of these cases.

i. What percentage of these trials were:
   1. jury: 55%
   2. non-jury: 45%

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. Keenan, Criminal No. AMD-04-0484 (D. Md. 2004).

In April 2005, I tried this case before the Honorable Andre M. Davis in the United States District Court for the District of Maryland. The case arose from the execution of a search and seizure warrant on the home of a licensed Maryland physician. During the execution of the warrant, authorities discovered a sealed pipe containing Ecstasy precursor materials baking in the oven. Further searches of the Defendant's office and homes owned by co-conspirators revealed more precursor materials and a manual related to the manufacturing of Ecstasy. The Defendants were charged and convicted of conspiracy to manufacture and attempt to manufacture Ecstasy. The primary defense to the case was that the physician was using the precursor materials for legitimate scientific experiments and research. The trial lasted five days and included testimony of experts on the legitimate and/or illegal uses of the precursor materials. I had primary responsibility for the preparation and presentation of the case.

Opposing counsel: Michael Kaminkow, Schulman, Treem, Kaminkow and Gilden, P.A., The World Trade Center, 401 East Pratt Street, Suite 1800, Baltimore, Maryland 21202, (410) 332-0850.

Co-counsel: Assistant United States Attorney, Phillip S. Jackson, 36 South Charles Street, 4th Floor, Baltimore, Maryland 21202, (410) 209-4800.

2. United States. v. Fisher, Criminal No. RDB-04-0291 (D. Md. 2004).

In December 2004, I tried this case before the Honorable Richard D. Bennett in the United States District Court for the District of Maryland. The case arose from a police officer's covert observations of the Defendant engaged in several hand to hand transitions of narcotics after going in and out of the kitchen of a vacant house. The officer made the observations at night using binoculars, looking through the kitchen window. Upon the Defendant's apprehension, a search of the house revealed loaded firearms and narcotics behind a stove in the kitchen. The Defendant was charged and convicted of possession with intent to distribute cocaine base and possession of firearms in furtherance of a drug trafficking offense. The trial lasted three days. I had primary responsibility for the preparation and presentation of the case.

Opposing counsel: Randolph O. Gregory Sr. (deceased).

Co-counsel: Assistant United States Attorney, Christopher Romano, 36 South Charles Street, 4th Floor, Baltimore, Maryland 21202, (410) 209-4800.

3. United States v. Smith, Criminal No. WDQ 03-0210 (D. Md. 2003).

In December 2003, I tried this case before the Honorable William D. Quarles in the United States District Court for the District of Maryland. The case involved an employee of a licensed Maryland physician who forcibly took phentermine hydrochloride, a diet supplement, from a manufacturer of the drug. The Defendant was charged and convicted

of robbery and possession with intent to distribute phentermine hydrochloride. The primary defense in the case was that the Defendant had a legitimate right to the drugs because of a business dispute and he was an employee of a licensed physician when he possessed them. I had primary responsibility for the preparation and presentation of the case. Additionally, I wrote the appellate brief when the Defendant appealed his conviction. The conviction was affirmed at United States v. Smith, 194 Fed. Appx. 155 (4th Cir. 2006).

Opposing counsel: Thomas Joseph Saunders, 3600 Clipper Mill Road, Baltimore, Maryland 21211, (410) 662-5586.

Co-counsel: Assistant United States Attorney, Phillip Jackson, 36 South Charles Street, 4th Floor, Baltimore, Maryland 21202, (410) 209-4800.

4. United States. v. Moye, Criminal No.MJG 03-528 (D. Md. 2003).

In May 2004, I tried this case before the Honorable Marvin J. Garbis, Sr., in the United States District Court for the District of Maryland. The case involved a burglary of a gun store in which 25 large caliber firearms were taken. The Defendant and his co-conspirators were caught while the burglary was in progress. The co-conspirators plead guilty; the Defendant was charged and convicted after a three-day trial of being a felon in possession of firearms, possession of stolen firearms and aiding and abetting. The Defendant appealed his conviction on the grounds that the trial court erred in giving an aiding and abetting instruction on the felon in possession count, arguing he could not aid and abet himself. A Fourth Circuit panel reversed the Defendant's conviction on that count. The court then decided, sua sponte, to rehear the case en banc, and affirmed the conviction at United States v. Moye, 454 F.3d. 390 (4th Cir. 2006).

I had primary responsibility for the preparation and presentation of the case. Additionally, I wrote the appellate brief and argued the case in the Fourth Circuit. United States Attorney Rod J. Rosenstein argued the re-hearing before the en banc court.

Opposing counsel: William S. Little, 723 South Charles Street, Suite 102, Baltimore, Maryland 21230, (410) 539-3545.

Co-counsel: Assistant United States Attorney, Debra Dwyer, 36 South Charles Street, 4th Floor, Baltimore, Maryland 21202, (410) 209-4800.

5. Essex v. United States, Civil Action No. CCB 95-884 (D. Md. 1995).

In 1997, I litigated this case before the Honorable Catherine C. Blake in the United States District Court for the District of Maryland. The case involved a slip and fall at a postal facility during a rainy day. The Plaintiff suffered a broken hip and had extensive medical bills. The elderly Plaintiff testified in deposition that she could not recall wiping her feet upon entry into the postal facility. At the conclusion of discovery, I moved for summary judgment, arguing that she was negligent as a matter of law and attaching an affidavit

from a postal worker stating that the Plaintiff did not wipe her feet upon entry into the facility. Summary judgment was granted, based upon a finding that the Plaintiff was negligent as a matter of law. The decision was appealed to the United States Court of Appeals for the Fourth Circuit and was affirmed. Essex v. United States, 122 F.3d 1060 (4th Cir. 2006); 1997 U.S. App. LEXIS 2943. I was chief counsel on the case including the appeal.

Opposing counsel: Elizabeth Hamlin, 83 Rail Road Avenue, Lebanon, New Jersey 08833, (973) 509-7500.

6. Nicholl v. Dalton, Civil Action No. PJM 94-3013 (D. Md. 1994).

In 1994, I litigated this case before the Honorable Peter J. Messitte in the United States District Court for the District of Maryland. The case involved multiple allegations of discrimination and retaliation against a federal employee. At the conclusion of months of extensive discovery, I moved for summary judgment on the grounds that Plaintiff could not establish as a matter of law that any of the adverse employment actions taken against her were based on unlawful discrimination and that there were legitimate non-discriminatory reasons for all the action taken. Summary judgment was granted in the government's favor. I was chief counsel on the case.

Opposing counsel: Peter T. Nicholl, Charles Center South, 36 South Charles Street, Baltimore, Maryland 21202, (410) 244-7005.

7. Brennan v. Weiser, Civil Action No. DKC 98-1873 (D. Md. 1998).

In 1998, I litigated this case before the Honorable Deborah K. Chasanow in the United States District Court for the District of Maryland. The case involved allegations of tortious conduct against four Department of Health and Human Services employees, including an attorney. The attorney was accused of misconduct in her handling of an administrative claim of discrimination filed by the same Plaintiff. The discrimination case was also handled by me once it was filed in the United States District Court for the District of Maryland. As a result, her law license was placed in jeopardy of being suspended or revoked. After extensive discovery and a scope-of-employment hearing the court dismissed the complaint. I was chief counsel on the case.

Opposing counsel: Thomas Doran, 17251 Melford Boulevard, Suite 200, Bowie, Maryland 20715, (301) 352-4657.

8. Dachman v. Shalala, Civil Action No. AMD 96-873 (D. Md. 1996).

In 1996, I litigated this case before the Honorable Andre M. Davis in the United States District Court for the District of Maryland. The case involved multiple allegations of religious discrimination and retaliation, including by the Plaintiff's supervisor and colleague pressing criminal charges against her for leaving a death threat phone message. The case required extensive investigation, including a working knowledge of the

Orthodox Jewish religious practices. After almost one year of discovery and hearings, I moved for summary judgment, and the court granted my motion. The Plaintiff appealed to the Fourth Circuit, which affirmed the judgment. I was chief counsel on the District Court case. I did not handle the appeal.

Opposing counsel: Francine K. Weiss, 1901 L Street, NW, Suite 610, Washington, D.C. 20036, (202) 331-9260.

9. Grant v. Widnal, Civil Action No. JFM 95-728 (D. Md. 1994).

In 1994, I litigated this case before the Honorable J. Frederick Motz in the United States District Court for the District of Maryland. The case involved multiple allegations of discrimination and retaliation against federal employees with the United States Air Force. The Plaintiff, an Air Force Reserve Technician, held both military and civilian positions, allowing the government to move to dismiss some claims but not others because her duties sometimes overlapped. She claimed both her military and her civilian supervisors conspired to discriminate against her. After a year of extensive discovery and hearings, including a temporary restraining order hearing in which the Plaintiff sought to enjoin the Air Force from denying her wrist surgery, I moved for summary judgment. The court granted my motion as to the vast majority of the claims. The case then settled for substantially less then what was initially demanded. I was chief counsel on the case.

Opposing counsel: Michelle Estrin Gilman, Professor, University of Baltimore School of Law, 1415 Maryland Avenue, Baltimore, Maryland 21210, (410) 837-5656 and Benjamin D. Wood, 2550 M Street NW, Washington, D.C. 20037, (202) 457-6685. Both attorneys were with the law firm of Arnold and Porter at the time the litigation commenced.

10. United States v. Yasin et al., Criminal Nos. AMD 04-05306 and L-05-0237 (D. Md. 2004 and 2005).

In December 2006, I litigated this case before the Honorable Andre M. Davis and the Honorable Benson E. Legg in the United States District Court for the District of Maryland. The indictment resulted from a several month long wiretap investigation I initiated with the Drug Enforcement Administration to prosecute and break up a heroin distribution organization in Baltimore City, Maryland. The operation was named "Brother Keeper." The multiple-defendant case required initiating and monitoring the wiretap and also the execution of multiple search and arrest warrants in Maryland, New York, Michigan and the Dominican Republic. The Defendants eventually pled guilty and agreed to cooperate with the government in Maryland. The Honorable William D. Quarles in the United States District Court for the District of Maryland approved the wiretap and court orders related thereto. I was chief counsel and had primary responsibility for the preparation of the wiretap investigation and litigation.

Opposing counsel: John H. Chun, 51 Madison Avenue, 22nd floor, New York, New York 10010, (212) 849-7000 and David F. Mister, 30 East Padonia Road, Suite 404, Lutherville, Maryland 21093, (410) 561-3000.

Co-counsel: Assistant United States Attorney Phillip Jackson, 36 South Charles Street, 4th Floor, Baltimore, Maryland 21202, (410) 209-4800.

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

    As an Assistant United States Attorney, I served as the Project Safe Neighborhood Coordinator for the office from 2002 until approximately 2005. I participated in community outreach programs, including attending community meetings on behalf of the office and attending meetings with the Baltimore States Attorney's Office, to reduce violent crime in Baltimore neighborhoods. I also served on the Board of Directors for the Community Law Center which is an organization designed to help neighborhoods organizations improve the quality of life for their residents.

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

    I have not taught any courses.

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

    I will receive payments from the Maryland Judiciary and the Federal Employees Retirement System once I reach retirement age.

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, with or without compensation, 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.

As previously disclosed, my wife is a judge on the District Court of Maryland for Baltimore City. As such, she often signs search and seizure warrants that may be the subject of a motion to suppress. There is a small possibility that a criminal defendant who is the subject of the warrant could be indicted by the United States Attorney's Office for the District of Maryland, and that case could be assigned to me. In the event that occurs, I would recuse myself from hearing the case.

I would also recuse myself from cases involving entities for which I served as a director, trustee or officer; close friends or relatives; and any other instances as directed by the Code of Conduct for United States Judges and any other canon or policy of the United States Courts.

At the present time, I cannot think of any category of litigation which, by its nature, would present a conflict of interest for me.

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

I would resolve all matters involving actual or potential conflicts of interest through careful application of the Code of Conduct for United States Judges, as well as other relevant canons and statutory provisions. I would consult the Code of Conduct Committee of the Judicial Conference as necessary.

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

I am currently serving as a Director and Trustee on the Board of the Enoch Pratt Free Library, which serves the disadvantaged throughout the State of Maryland. I also currently speak to young and disadvantaged youth about the practice of law in my current position as a judge to inspire and motivate them to pursue an education and become productive members of our society. I estimate that I devote approximately 40 hours per year to these activities.

When I practiced law, I served as a board member on several organizations that devoted substantial resources to helping the disadvantaged. These included the Community Law Center, the Public Justice Center, and Big Brothers and Big Sisters of Maryland. During this time, I devoted approximately 40 to 80 hours per year.

26. **Selection Process**:

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

In February 2009, after hearing that the Honorable Andre M. Davis was a candidate for nomination to the United States Court of Appeals for the Fourth Circuit, I sent a letter of interest about filling the District Court position to United States Senators Barbara Mikulski and Benjamin Cardin.

In early June 2009, Senator Mikulski posted a notice for applications on her office website. A deadline for the submission of the applications was set at July 1, 2009. I filed a timely application. On August 10, 2009, I met with several attorneys appointed by Senators Mikulski and Cardin for an interview. In November 2009, I met with Senators Mikulski and Cardin in separate interviews.

On June 7, 2011, I was directed by Senator Mikulski to submit a supplemental application by June 15, 2011, which I did. On July 14, 2011, I met with Senators Mikulski and Cardin again. On August 4, 2011, I received a call from Senator Mikulski in which she advised that she was recommending me for nomination to the United States District Court for the District of Maryland.

Since August 5, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 9, 2011, I interviewed with attorneys 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
Russell, III, George L.	United States District Court for the District of Maryland	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**
United States District Court Judge - active	☑ Nomination, Date 11/10/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/1/2010 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.**	
111 North Calvert Street Baltimore , Maryland 21202	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.	Judge	Circuit Court of Maryland for Baltimore City
2.	Trustee/Director	Enoch Pratt Free Library
3.	Trustee	The Historical Society of the United States District Court for the District of Maryland Inc.
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 Russell, III, George L.	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	Maryland State Court salary	$140,000.00
2. 2010	Maryland Sate Court salary	$140,000.00
3. 2009	Maryland Sate Court salary	$140,000.00
4.		

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

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

DATE	SOURCE AND TYPE
1. 2011	Maryland State Court salary
2. 2010	Maryland State Court salary
3.	
4.	

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Russell, III, George L.	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.	The Park School	Tuition	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Russell, III, George L.	Date of Report 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) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. State of Maryland Retirement System		None	K	W					
2. State of Maryland Retirement-Spouse		None	K	W					
3. American Funds Washington Mutual Investment Funds	D	Interest	J	W					
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$50,001 - $100,000
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 5 of 6	Name of Person Reporting Russell, III, George L.	Date of Report 11/10/2011

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

The Enoch Pratt Free Library and The Historical Society of the United States District Court for the District of Maryland, Inc. are non profit organizations.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Russell, III, George L.	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: s/ George L. Russell, III

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		19	600	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		7	236	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		3	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		550	000
Real estate owned – personal residence		660	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		19	636				
MD Employee Alternate Pension System		17	264				
				Total liabilities		553	000
				Net Worth		226	900
Total Assets		778	736	Total liabilities and net worth		778	736
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 Washington Mutual Investors Fund	$ 7,236
Total Listed Securities	$ 7,236

Maryland State Judge Pension Plan

My wife and I both currently serve as state judges in Maryland. After 15 years of service, we are able to retire. Upon retirement, we would continue to be paid our full salary if we sit three months a year, or two-thirds of our salary if we do not. Should either of us leave the state bench prior to 15 years of service, we would be entitled to receive a pro-rated share of our pension.

AFFIDAVIT

I, George Levi Russell, III, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/10/11 (DATE)

(NAME)

(NOTARY) Charles W. Yackeyk

My Commission Expires 10/1/13

Senator DURBIN. Well, thank you very much. It has been my pleasure to meet some of the members of your families, and I know that they are proud of your achievement in reaching this point.

Repeating briefly what I said earlier, the process to this point for all four nominees has involved extensive investigation, interrogation, a lot of questionnaires, which I am sure they got very tired of filling out, that led them to this moment, followed by more formal investigations at the White House level of all nominees, and coming to this Committee, where staff and members will be looking closely. But each and every one of these nominees would not have reached this point were it not for their success in dealing with questions and issues that have been raised.

The difference, of course—and most everyone in the room knows it—is that these four judges who face the opportunity of serving at the district court level will, for the most part of every day, see real people and not just attorneys. Before them will appear defendants and plaintiffs, jury members, the public at large on a regular basis, unlike judges at a higher level who work a lot of time directly with attorneys and in research with law clerks. So it is a little different style of law that the district court judges face. I spoke to Mr. Lee and Mr. Tharp earlier about my limited experience in that field before coming to Congress.

My first question goes to a point which most every lawyer, if honest, will say is the most important thing. Has this judge with this lifetime appointment becomes so full of himself or herself that they have forgotten what real life is like, that they become imperial in their manner, that they do not have a temperament where they really care who is standing in front of them? That was a nightmare for every trial lawyer, and I think most people who practice trial law have run into judges like that. So here is your chance on the record under oath to say what you think about that subject. Kristine Baker can start.

Ms. BAKER. Thank you, Senator, for the question. I agree that I think, win or lose, most litigants and folks who appear in court remember how they were treated by the bench. As a result of that, I think, if honored to be confirmed to a position as a district court judge, the most important thing is temperament, to treat everyone who appears before the court with an attentive listening ear, to be patient, to treat them with dignity and respect.

Senator DURBIN. Judge Russell.

Judge RUSSELL. I think judicial temperament is an absolutely critical criteria that a judge must possess. In my court, I treat every litigant the way—every litigant, every party, the way I wanted to be treated when I practiced law. But it is not—it does not just stop at the litigants. It stops at the clerks, the deputy sheriff, and all of the people that are associated with my part or my courtroom. So I think it is an absolutely critical criteria and factor that I think every judicial candidate and certainly nominee should have.

Senator DURBIN. Mr. Tharp.

Mr. THARP. Thank you, Senator. If I could say at the outset, despite my best efforts here to name everybody to thank, I think I omitted the most important person in the process, the President for the nomination, and I certainly thank him for the honor of this nomination.

In response to your question, Senator, I think it really goes to what I think one of the most important characteristics of a good judge is, and that is humility. And by that I do not necessarily mean or exclusively mean personal modesty, but humility in the sense that you recognize your role in the process and that you are serving a system and you are serving individual litigants, and that you are really the face of justice. As you so rightly point out, we are the judges—the district court judges are the judges that those litigants see in court, and you have got to respect your role in the system, your limited role, your duty to apply the law, and to be fair and impartial to those litigants, and to recognize that this is what they see and take away from the judicial system. And I think if you keep that in mind, you will go a long way to having the appropriate temperament.

Senator DURBIN. Mr. Lee.

Mr. LEE. Thank you, Senator. I do not know if I can add anything to what my esteemed colleagues here have stated. I do completely agree that judicial temperament is extremely important. I believe a judge must have an abiding and deep respect for the rule of law so that he or she can apply the controlling law to the facts of a particular case without regard for personal belief or background.

I also believe that humility and humbleness is extremely important, realizing that a judge's personal view may not be the controlling view and be open to all sides of an argument in a case before him or her.

Senator DURBIN. A number of lawyers came to see me in Chicago a few years ago after I had been involved in this process for a little while and said to me—they were from the defense bar, and they said, "Why do you keep picking prosecutors? Aren't there any criminal defense lawyers who could be judges? A lot of our people think we kind of go in at a disadvantage if a judge thinks like a prosecutor and cannot put themselves in the shoes of a defense."

Judge Russell, you have been through this. You went from the prosecutor's role to the judge's role. Tell me how you could have that experience and the criminal defendant before you feel like they have a fair shake coming.

Judge RUSSELL. Well, I was very fortunate to have worked with some tremendous colleagues over at the U.S. Attorney's Office, and mentors, both in the Civil Division as well as the Criminal Division. And one of the tenets that I always practiced by, whether I was in criminal prosecution or civil prosecution, was fairness and justice. And I think that is critical—that is a critical characteristic for me as a judge. I must be fair. And as a prosecutor, I strove to be fair. There was not a criminal defense lawyer that would, I dare say, say that I was not fair.

My pursuit was not winning or losing. It was simply justice. And so the transition from a prosecutor to a judge was not as difficult as maybe it would be for others.

Senator DURBIN. Before I ask another question or two, I will turn to my colleague Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. Let me ask a couple of specific questions.

First of all, John Lee, to you. One of the things that we learned about your background was looking at the firm profile at Freeborn & Peters. There the website indicates that during your time at the Department of Justice you served as Special Assistant to the Counsel to Attorney General Janet Reno. I think I have that title correctly. But that was not in the answers to your Senate questionnaire. I wondered, first of all, why that was not the case and what your responsibilities for Attorney General Reno were.

Mr. LEE. Thank you, Senator, for that question. Basically, I was a trial lawyer officially at the Environmental and Natural Resources Division assigned to the Environmental Defense Section. I was asked to take a special assignment to assist Attorney General Reno's office with regard to particular issues regarding the environment, particularly issues with regard to, for example, the scope of CERCLA regulation, the impact of RCRA, and citing issues. And so while I was on special assignment or designation to her office for, I believe, a period of 4 to 5 months, I still remained a trial lawyer at the Environmental Defense Section with all my usual responsibilities.

Senator KYL. So it just did not seem necessary to put on the Senate questionnaire. Is that correct?

Mr. LEE. That is correct, Senator. Perhaps in hindsight, to make it more complete I should have put that on, but because I was a trial attorney at EDS at the time, I thought that that would cover that time period.

Senator KYL. Second, in a case called *Taylor, Bean and Whitaker Mortgage Company* v. *Sevuleck*, the judge dismissed a myriad of civil RICO claims that you had filed on behalf of your client saying that the complaint contained a glaring deficiency and citing the plaintiff's failure to properly plead. Do you recall why you made the allegations that you did and if, as the judge implies, you had no factual basis to back them up?

Mr. LEE. Thank you, Senator. We believed that at the time—certainly the client believed and we believed that we did have a factual basis for a good claim, a good-faith claim under RICO. As the Senator is probably aware, the area of civil RICO has been a developing area over time, and we certainly believed that at the state of the case law at the time that we had a good-faith basis to state a RICO claim, particularly in light of the allegations that we made, which was that there was a cadre or a conspiracy of people involved in mortgage fraud in the Chicago area.

Senator KYL. Kristine Baker, let me ask you a question that relates back to the testimony of Justice Hurwitz from Arizona. You will recall I said he had firm political opinions, but at least has a reputation of being able to distinguish those from his judicial decisions and the way he approaches judging. You, too, have a record of supporting Democratic candidates and causes in your State, and so I wonder if you have given thought to how you will commit to all of us who will be involved in your confirmation that you, too, will approach judging in a way that leaves out your own political beliefs.

Ms. BAKER. I do not believe, Senator, that political beliefs or personal views have any place in the role of a district court judge. I think a district court judge—I was fortunate enough after law

school to serve as a law clerk to a United States district judge in the Eastern District of Arkansas, and I witnessed Judge Susan Webber Wright making decisions that came before her based upon the rule of law. I believe that a district court judge's role is an important one but a limited one. It is to follow the precedent. It is to decide the facts of the case based upon applicable law. And, again, I do not believe political views or personal views play a role in that position or that job.

I believe in my conduct this far as an advocate I have shown that I can be fair to all sides of an issue when reviewing issues, and I think my colleagues have that confidence in me as expressed through the Senators and the recommendations that I have received through this process today.

Senator KYL. And I gather for the other three members of the panel—and, by the way, congratulations to all of you for your nominations—that you share more or less the views that have been expressed by Ms. Baker. If you have a different view, I would like to hear it, but at least to confirm for us that this is the approach that you will take if you agree with the approach expressed.

Mr. Lee.

Mr. LEE. Certainly I am in agreement, Senator.

Senator KYL. Mr. Tharp.

Mr. THARP. Absolutely, Senator.

Senator KYL. Judge Russell.

Judge RUSSELL. I am in agreement as well.

Senator KYL. Thank you. I am within my time, Mr. Chairman.

Senator DURBIN. Thanks a lot, Senator Kyl.

Ms. Baker, in your practice you have handled a number of cases involving First Amendment and Freedom of Information Act issues. Can you talk about your work in this area and how you think it will affect your service on the Federal bench?

Ms. BAKER. Thank you for the question, Senator. I have spent a lot of time looking at those issues to the extent they have come up in my practice. Our firm has served as counsel to the Arkansas Press Association, and I have done work on their behalf, as well as on behalf of other newspapers throughout the State. So I have studied those issues and looked at them in practice.

On the bench, I do not know that that brings very much to bear other than I have looked at constitutional issues in the First Amendment area as a practitioner. I have looked at it from both sides, from folks who have come seeking to bring a claim and also folks who have been sued under First Amendment claims.

So I think I can analyze issues from both sides, but, again, I think the role of a judge is to decide the case on applicable law, on precedent, and on the facts before the court.

Senator DURBIN. Thank you.

Mr. Tharp, I do not know enough about securities litigation to engage in a meaningful conversation, but I note in your background that you have written and spoken several times on the new Dodd-Frank law, questions of extraterritoriality and the like. Could you comment on your observations, at least from your current vantage point, and what impact that might have if an issue involving that law comes before the bench?

Mr. THARP. Certainly, Senator. Dodd-Frank obviously is a very large piece of legislation with a lot of moving parts, many of which are still under study and review, and I would guess under still legislative or agency consideration in terms of further rulemaking or legislation. But, clearly, there are a number of aspects of Dodd-Frank that have impacted my practice that I am quite familiar with in terms of the implementation of new whistleblower provisions, provisions relating to the scienter requirement for securities fraud cases under the securities statutes and things like that.

In terms of how those developments would affect me as a judge, if I am fortunate enough to be confirmed, I will approach those as I do any statutory question in terms of interpreting the statute, applying any precedent that the higher courts have applied, and considering the ongoing legislative and regulatory amendments and changes to that law as they go forward. But my experience with the law, I have got experience with lots of Federal laws. There are plenty of Federal laws that I have never dealt with before, but my approach as a judge to them will be exactly the same.

Senator DURBIN. Thank you.

Mr. Lee, your family and life story is a compelling one. Like many of our families, yours comes from a very humble beginning, and your immigration to the United States is part of the great story of our Nation. At what point did you come to realize you wanted to get into law and that you would aspire to serve on the Federal bench?

Mr. LEE. Thank you, Senator. I decided to go into law really with the realization and I think appreciation as a first-generation immigrant that this country is a country that is governed by the rule of law. That is what drives a lot of immigrants to come here and to seek out a new life in this country.

I saw that in practice as my parents were developing their new life here, as I was coming up through school and given the opportunities that I had. And so as I started to get older and started to realize and really appreciate—have a deep appreciation for the rule of law as one of the central elements of this country. It was that, Senator, that really kind of drove me to a career in law and ultimately in my belief that the judiciary is the embodiment of that principle, the principle of the rule of law, and that is why I am here today.

Senator DURBIN. The last question I will have for each of you, and you can answer this brief, I hope. Could you give us some indication of how you have used your personal or legal skills in a pro bono capacity before you have come to this hearing?

Ms. Baker.

Ms. BAKER. Thank you, Senator. Prior to hearing, in my capacity as an advocate I have worked on behalf of individuals as appointed counsel by Federal courts in Arkansas on behalf of prisoners who have brought 1983 claims. One of them was a female inmate who had been raped by a guard, and others were inmates who made claims in regard to medical care.

In addition to that, I have accepted cases through VOCALS. Both Senator Pryor and Senator Boozman referenced that, and that is a program for indigent clients to seek out representation in a variety of legal matters.

Senator DURBIN. Thanks.

Mr. Lee.

Mr. LEE. Thank you, Senator. I have dedicated a large amount of my time to pro bono practice and to provide access for indigent clients to the court system. Over the years I have been intimately involved in an organization called CARPLS, which is the Cook County legal hotline. It is really what we consider the legal triage of Cook County, and we are proud to say that we serve 50,000 to 60,000 clients a year at an average cost of $25 per client consultation. That is just kind of how we figured it out.

Also, over the last couple of years, a couple of partners at Freeborn & Peters and I recognized that there was a dearth of legal services up in the northwest Chicago suburbs area, and so we created a partnership between CARPLS and Willow Creek Church to start a legal clinic up in the northwest suburbs at Hoffman Estates, and we are open Tuesday mornings and Tuesday afternoons, and it is open to anyone who comes in, whatever their background, whatever their religious affiliation. If they have a legal issue, they can come and speak to one of the lawyers there. And in that capacity, I have had the opportunity to assist a lot of people with their issues as well.

Senator DURBIN. Thanks.

Mr. Tharp.

Mr. THARP. Thank you, Senator. Throughout my legal career, really going back to law school, I have been involved in a number of pro bono representations in various matters, most recently in an immigration asylum case, the defense of a first-degree murder case, among those.

In addition, our firm has a longstanding program where we provide assistance in the Seventh Circuit to criminal defendants appealing their criminal convictions that typically involve an associate and a partner supervising the work of the associate on criminal appeals in the Seventh Circuit, and I have regularly participated in those kinds of appeals.

And then, more broadly, I have certainly made contributions through work through, for example—and you mentioned this in your very generous introduction—the Chicago Bar Association's judicial evaluation process for candidates and retention of judges in Cook County, Illinois.

So those are some of the primary examples, Senator.

Senator DURBIN. Thank you.

Judge Russell.

Judge RUSSELL. Thank you. Thank you very much, Senator. During the course of my employment with the Federal Government in the United States Attorney's Office, I was somewhat limited in my ability to be able to represent individuals in court on a pro bono basis. However, I did serve as the office's Project Safe Neighborhoods coordinator which required me to go outside into the community with community group leaders to discuss with them the problems that they were having with violent crime and narcotics.

In addition to that, I served on the board of directors for the Community Law Center, Big Brothers and Big Sisters, the Enoch Pratt Free Library, all the organizations that serve the underprivileged here in Baltimore City.

Finally, as a judge, I often speak to young people, especially our middle school kids in some of the tougher sections of Baltimore, and I bring them into the court, and especially the ones that want to—aspire to become a judge or a lawyer. I bring them up on the bench, I let them try on my robe, just to try to inspire them that they, too, can be a lawyer or they even can be a judge 1 day.

And so that community outreach is very personal to me, and it is something that is very important to me. So those are examples.

Senator DURBIN. Thank you.

Senator Kyl, do you have any further questions?

Senator KYL. Mr. Chairman, I do not have any other questions. Obviously, there will be some questions for the record for all of the members of the panel, but, again, I congratulate them all on their nominations and wish them all the very best.

Senator DURBIN. Thank you, Senator Kyl.

Without objection, a statement from Chairman Leahy will be included in the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator DURBIN. If there are no further questions, we will conclude this hearing. I want to thank all the nominees and their families and friends who are in attendance today. The record is going to be open for a week for additional letters, statements, and questions from Committee members.

Thank you for being here today, and this Committee will stand adjourned.

[Whereupon, at 3:24 p.m., the Committee was adjourned.]

[Questions and answers ans submissions for the record follows.]

QUESTIONS AND ANSWERS

Responses of Kristine Gerhard Baker
Nominee to be United States District Judge for the Eastern District of Arkansas
to the Written Questions of Senator Chuck Grassley

1. **You indicated in your questionnaire that you have very little experience dealing with criminal matters. If confirmed, how will you prepare yourself to be fully competent to handle the criminal cases that will come before you?**

   Response: Although my experience with criminal matters as a practicing lawyer is limited, I observed criminal proceedings and assisted with them during my two years as a federal law clerk for a district court judge who remains on the bench in the Eastern District of Arkansas. I also have handled civil fraud cases in which I consulted with criminal counsel on behalf of clients, and I have appeared in minor criminal matters as counsel for individuals. Even with that, I recognize my limited experience as a practicing lawyer in dealing with criminal matters. I will utilize all available resources to study this area of the law, including utilizing the resources available through the Administrative Office of the United States Courts, participating in the education programs offered by the Federal Judicial Center, and spending time reading and studying on my own about the issues that will arise. I have confidence in my ability to master an area of the law in which I have limited experience. I have tried a variety of cases in a variety of courts throughout my legal career, educating myself on the complex substantive areas of the law and mastering new procedural rules to be applied by the courts in which I have appeared. If fortunate enough to be confirmed, I believe I will have the opportunity, and will avail myself of the opportunity, to observe criminal matters and trials and to consult with fellow judges in the Eastern District of Arkansas should I have general questions about criminal trial practice and the criminal docket.

2. **At your hearing you stated that political beliefs or personal views have no place in the role of a district court judge. I agree with that sentiment but I have a few follow-up questions based on that statement. To clarify, please respond to the following:**

   a. **You seemed to emphasize that a district court judge should not allow political beliefs or personal views while deciding cases. How about Circuit Court judges?**

      Response: Circuit court judges also should not permit political beliefs or personal views to decide a case. Cases should be decided by judges impartially finding or reviewing facts, as appropriate, and then faithfully applying the law to those facts, with respect for the rule of law and without fear of or favor for a particular party or outcome.

   b. **If confirmed as a federal judge, what steps will you take avoid showing partiality?**

Response: Throughout my legal career, I have endeavored to interpret and advocate the law faithfully and to treat all parties fairly, without regard to their political beliefs, economic condition, or social status. I believe that my experience demonstrates that, if I am confirmed as a district judge, my decisions will be rooted exclusively in the law and I will treat all parties who come before me fairly and courteously. Should I be confirmed, I pledge that each person who appears before me will receive equal access, just treatment, and a decision grounded in precedent and the text of the law.

c. Would you recuse yourself from any case involving a political party dispute or if any party in the case was associated with a political party?

Response: I have never held a paid or unpaid position in a political party, political campaign, or election committee. My participation has been limited to serving as a fundraising co-host for a variety of candidates, including non-partisan state court judicial candidates, as my primary focus has always been on the full-time practice of law. If confirmed and confronted with a case involving a political party dispute or if a party in the case was associated with a political party, I would carefully review and address any real or potential conflict in accordance with the provisions of 28 U.S.C. § 455, the Code of Conduct for United States Judges, including Canon 3 of the Code, as well as all applicable policies and procedures of the United States Courts. I would follow all applicable laws, orders, rules, customs, and practices in addressing any real or potential conflict or the appearance of conflict at the outset of each case.

d. What plans do you have to support future Democratic candidates as a federal judge?

Response: If confirmed, I will not be involved in any political activities or support any future candidates. I will abide by the letter and spirit of the Code of Conduct for United States Judges, including Canon 5 of the Code.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is integrity. A judge must be able to render a fair and impartial decision based on the facts and applicable law that is void of any bias or preconceived ideas. A judge must not be swayed by passion, sympathy, or prejudice but must decide cases on the rule of law. I believe I possess the integrity necessary to be a good 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 an attentive listener and treat all individuals who appear before him or her with dignity, respect, patience, and humility. I believe I meet this standard.

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. The Supreme Court and the Eighth Circuit Court of Appeals sitting en banc each can change its precedent with justification, making clear the reasons for rejecting it or departing from it. However, that is not the role of a district court judge.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed as a district court judge, to resolve a case of first impression involving the interpretation of a statute or a Constitutional provision, I would determine and apply the plain and ordinary meaning of the statute or provision. If the language of the statute or provision is unclear, for persuasive authority, I would look to analogous cases or issues presented in cases first from the Supreme Court and then from the following courts in this order: the Eighth Circuit, other circuits, the district courts in Arkansas, other district courts within the Eighth Circuit, and other district courts in other circuits. I would reach a decision that is narrowed to the facts of the case presented, explaining fully the basis for the decision.

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 own judgment of the merits, or your best judgment of the merits?**

Response: A district court judge is bound by the precedent of the Supreme Court and Court of Appeals. In all matters, I would apply the precedent of the Supreme Court and Eighth Circuit Court of Appeals.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Assuming the litigants presented the case with proper jurisdiction and standing, the federal court must first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided. If that is not possible and only in rare circumstances should a district court judge declare a statute

enacted by Congress unconstitutional. Such circumstances might be if the statute violated the plain and ordinary meaning of the Constitution or if Congress clearly exceeded its constitutional boundaries.

9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will employ a case management schedule that ensures the prompt and efficient resolution of cases. I will set reasonable and timely deadlines in scheduling orders, require adherence to the schedule except in exceptional circumstances for good cause, adhere to the Speedy Trial Act, promptly resolve pending motions, and continually monitor case reports and dockets. I will be available to address and promptly decide discovery issues or other issues that arise in a case.

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 believe a judge should be involved in controlling the pace and conduct of litigation. If confirmed, I will hold attorneys and litigants accountable for moving their cases along to ensure that all parties secure the just, speedy, and inexpensive determination of every action and proceeding. I would decide all matters before the court as quickly as would be consistent with the ends of justice, and I would make full use of all the business hours of the courthouse to conduct the court's business. In addition, if confirmed, I would follow the specific steps outlined in response to Question 9 to control the docket.

11. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on February 2, 2012. I reviewed the questions and prepared my answers over the next several days. I submitted my answers in final form to the Department of Justice on February 5, 2012, for submission to the Committee on February 6, 2012.

12. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Kristine Gerhard Baker
Nominee to be United States District Judge for the Eastern District of Arkansas
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 district court judges must demonstrate a respect for the rule of law and an understanding of the limited, but important, role of judges in our constitutional system. District court judges should decide only cases or controversies that are properly before the court, and those cases should be decided as narrowly as possible based on the law at issue and the decisions of the United States Supreme Court and the Eighth Circuit Court of Appeals. Judges must decide all cases fairly and impartially without regard for the judge's personal views or opinions.

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: Throughout my legal career, I have endeavored to interpret and advocate the law faithfully and to treat all parties fairly, without regard to their political beliefs, economic condition, or social status. I believe that my experience demonstrates that, if confirmed as a district judge, my decisions will be rooted exclusively in the law and I will treat all parties who come before me fairly and courteously. Should I be confirmed, I pledge that each person who appears before me will receive equal access, just treatment, and a decision grounded in precedent and the text of the law rather than any underlying ideology or motivation.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: In my opinion, a commitment to the doctrine of stare decisis should not vary depending on the court. Proper respect for precedent must be the rule at all levels of our judicial system. Judges must respect precedential opinions in order to instill confidence that the result in a given case is based on the rule of law. The Supreme Court and the Eighth Circuit Court of Appeals sitting en banc each can change its precedent with justification, making clear the reasons for rejecting it or departing from it. However, that is not the role of a district court judge.

Responses of Andrew D. Hurwitz
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

   a. **If not, please explain.**

      Response: The principles of the Constitution do not change with the times.

2. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: No.

   a. **If not, please explain.**

      Response: The principles of the Constitution do not change with the times.

3. **Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge's consideration of a case?**

   Response: No.

   a. **If not, please explain.**

      Response: A judge should decide cases based on the law and the facts of the case before him.

   b. **Can you provide an example of a case where you had to set aside your feelings of empathy for the litigant and, instead, pursue a result that was consistent with the law?**

      Response: In a recent decision involving foreclosure of a deed of trust on a residence, I noted that the Court of course understood the difficult personal situation created by the loss of a home, but nonetheless was required to apply the law as written. *In Re Vasquez*, 228 Ariz. 357, ¶ 4, 621 Ariz. Adv. Rep. 22 (Nov. 18, 2011).

4. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: I would of course look to binding Supreme Court precedent first. If there were none, I would then look to precedents within my circuit. Assuming that neither my circuit nor the Supreme Court had addressed the issue, I would then analyze the language of the statute and the Constitution. If the language of the relevant provisions does not solve the issue, I would look to persuasive opinions of other courts for guidance. I would also look at the origin and history of the constitutional provision and would always start from the presumption that if a statute can reasonably be interpreted as constitutional, a court should do so.

5. **The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the *McDonald v. Chicago* decision, do you personally believe the right to bear arms is a fundamental right?**

Response: As a sitting judge, I do not believe I should express a personal opinion as to matters settled by Supreme Court decisions. *McDonald* holds that the right to bear arms is a right protected by the Due Process Clause of the Fourteenth Amendment because it is fundamental to our scheme of ordered liberty, and thus settles this issue as a matter of law. 130 S. Ct. 3020, 3050 (2010). As a judge, I would faithfully apply this Supreme Court precedent.

   a. **Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

      Response: Yes, at least as against infringement by the federal government. As I note below, not every protection in the Bill of Rights has been held by the Supreme Court to be applicable against the states under the Fourteenth Amendment.

   b. **Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.**

      Response: Yes. With some exceptions, the Supreme Court has held that the rights guaranteed by the Bill of Rights are fundamental rights that apply against the States under the Due Process Clause of the Fourteenth Amendment. But the Court has not held that all rights guaranteed by the Bill of Rights are fundamental. For example, the Fifth Amendment's Indictment Clause does not apply to the States, *Hurtado v. People of State of Cal.*, 110 U.S. 516, 534-38 (1884); the Sixth

Amendment's unanimous jury requirement does not apply to the States, *Apodaca v. Oregon*, 406 U.S. 404, 406 (1972) (plurality opinion); and the Seventh Amendment's guarantee of a jury trial in civil cases does not apply to the States, *Minneapolis & St. L.R. Co. v. Bombolis*, 241 U.S. 211, 217-222 (1916).

c. The *Heller* Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.

Response: I have not done independent research on the historical origins of the Second Amendment, but have no reason to disagree with the Supreme Court's statement.

d. What limitations remain on the individual, Second Amendment rights now that the amendment has been incorporated against the States?

Response: The Court identified some limitations in *Heller*, explaining that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 554 U.S. at 626. But because the Supreme Court's decisions in *Heller* and *McDonald* do not fully resolve what limitations may be legally placed on an individual's right to bear arms, I do not believe it appropriate to speculate on how the Court may rule in future cases.

6. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy's analysis?

Response: I do not believe it appropriate for a sitting judge to comment about whether he agrees with the analysis in an opinion of the Supreme Court, which both as a state judge, and, if confirmed, as a circuit judge, I am obligated to follow. Under *Roper*, I am obliged to hold that the death penalty cannot be imposed on a murderer under the age of 18.

a. When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states,[1] in addition to foreign law, and in other cases have looked solely to the laws and traditions

[1] *Roper v. Simmons*, 543 U.S. 551, 564-65.

of foreign countries.[2] Do you believe either standard has merit when interpreting the text of the Constitution?

Response: I believe the laws and traditions of foreign countries do not control the interpretation of our Constitution. Decisions of the Supreme Court, which I am obliged to follow, however, hold that reference to law of the various American states is permissible in determining whether a punishment is "unusual" under the Eighth Amendment.

i. **If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: As noted above, I do not believe that the laws and traditions of foreign countries should control the interpretation of the Eighth Amendment.

7. **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, although as Justice Scalia's recent opinion in *United States v. Jones*, 2012 WL 171117 (2012), demonstrates, the Founders' understanding of English common law traditions may inform constitutional interpretation.

a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Only in the instance noted above.

b. **Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: As stated above, foreign laws should not be relied upon when interpreting our laws.

8. **In 2002, you published an article in the *New York Law School Legal Review* entitled, "Jon O. Newman and the Abortion Decisions: A Remarkable First Year." The article analyzes two opinions (*Abele I, Abele II*) authored by Judge Newman and their influence on the Supreme Court's decision in *Roe v. Wade*. You clerked for Judge Newman at the time he authored these opinions. Further, in footnote 55 of the article, you wrote,**

> **The author received some small inkling of the influence of Abele II on the Court's thinking in the fall of 1972, when interviewing for clerkships at the Supreme Court. Justice Powell devoted over an hour of conversation to a discussion of Judge Newman's analysis, while Justice Stewart (my future**

[2] *Graham v. Florida*, 130 S.Ct. 2011, 2033-34.

boss) jokingly referred to me as 'the clerk who wrote the Newman opinion.' I assume that the latter was based on Judge Newman's generous letter of recommendation, a medium in which some exaggeration is expected.

Did you assist Judge Newman in researching and/or writing the *Abele* opinions?

Response: I assisted in research, but Judge Newman wrote the opinion, as he did all opinions which bore his name during the time I clerked for him.

9. **Your article states *Abele II* had a "crucial influence" on the *Roe* decision and Judge Newman's "careful and meticulous analysis of the competing constitutional issues" in *Abele II* was reflected in "almost perfect lockstep" in *Roe*. Numerous other scholars have credited Judge Newman's opinion as having a decisive effect on the thinking of the *Roe* majority. Do you still believe *Abele II* had a "crucial influence" on *Roe*?**

Response: I think that the historical record, particularly the papers of retired Justices, indicates the influence of the *Abele II* opinion, whether or not one agrees with the Supreme Court's decision.

10. **In *Abele II*, Judge Newman opines: "If the fetus survives the period of gestation, it will be born and then become a person entitled to the legal protections of the Constitution. But its capacity to become such a person does not mean that during gestation it is such a person. The unfertilized ovum also has the capacity to become a living human being, but the Constitution does not endow it with rights ..." Similarly, in your article, you wrote that Judge Newman "candidly conceded that a court could never resolve the philosophical issue of whether a fetus was a human being from the moment of conception, or whether abortion amounted to murder."**

    a. **Do you believe the question of when a fetus becomes a human being is a philosophical question?**

    Response: In the article, I was accurately describing what Judge Newman said in fn. 9 of his *Abele II* opinion, which was that there was a wide range of views on this topic in philosophy and religion. I did not express my personal opinion in the article, and I do not think it appropriate for a sitting judge to express his views on such issues.

    b. **Does science play a role in when a fetus becomes a human being?**

    Response: As explained above, I do not believe that it is appropriate for a sitting judge to express a personal view on this issue or how that determination should be made. If presented with a case implicating these issues, I would apply the law as determined by Supreme Court and Ninth Circuit precedents, without regard to my personal views.

c. What is the difference between being a "human being" and believe alive?

Response: I am unaware of any Supreme Court or Ninth Circuit jurisprudence making a distinction between being a "human being" and "being alive."

i. Please explain.

Response: See above.

d. Do you believe there is a difference between an unfertilized ovum and a fetus?

Response: Yes.

i. Please explain.

Response: Although I am not a scientist, there is an obvious biological difference. The decisions of the Supreme Court also recognize a legal distinction, allowing far greater state regulation of abortion than of contraception.

11. In your article, you state: "in language that once again virtually echoes that of *Abele II*, *Roe* concluded that 'by adopting one theory of life,' Texas may not 'override the rights of the pregnant woman.'" Does it matter to the legal reasoning whether the "theory of life" is based on science or philosophy?

Response: As a sitting judge, I do not believe that it is appropriate for me to criticize the reasoning of a Supreme Court decision. The point of the article was simply to suggest that the Supreme Court seemed to have followed the reasoning of *Abele II*.

a. Should the courts take into consideration these questions about science and technology and how they affect the law or should they rely solely on *stare decisis*?

Response: Trial courts do, and should, hear evidence in appropriate cases about science and technology, and make factual findings based on these matters. In general, appellate courts should rely on trial courts to hear evidence and find the relevant facts, and should not make such factual findings on their own. The principle of *stare decisis* suggests that appellate courts should be reluctant to overturn prior decisions. In the Ninth Circuit, a three-judge panel may not overrule a prior decision of the Court – only the en banc Court may do so.

12. In all 50 States, death is recognized and defined as the irreversible cessation of the brain and heart activity. It seems like common sense and logic that if a lack of brain waves and a heartbeat signifies death, then the presence of brain waves and a

heartbeat signifies life. Do you agree that the irreversible cessation of brain and heart activity constitutes death under the law?

Response: I have not researched the law in other states. In Arizona, a statute, Ariz. Rev. Stat. § 14-1107, requires that "a determination of death must be made in accordance with accepted medical standards." The Arizona Supreme Court has stated that "while the common law definition of death is still sufficient to establish death, the test of the Harvard Medical School or the Commissioners on Uniform State Laws [for brain death], if properly supported by expert medical testimony, is also a valid test for death in Arizona." *State v. Fierro*, 124 Ariz. 182, 185-86, 603 P.2d 74, 77-78 (1979).

a. **Does the presence of brain waves and a heartbeat equate to life under the law? Please explain.**

Response: I am not familiar with the law of other states. Arizona law defines knowingly and recklessly causing the death of an unborn child at any state of its development as manslaughter, but the legislature has determined to exempt a death caused by a lawfully performed abortion. Ariz. Rev. Stat. § 13-1103.

13. **If someone driving a car hits a pregnant woman who has a 28-week-old fetus and the woman survives but the fetus dies, that person can be held prosecuted for murder of the fetus. Thus, society recognizes that fetus as a life, as evidenced by law. However, if a pregnant woman wants to terminate that fetus at 28 weeks, the courts prevent states from protecting that life and recognizing the termination of that life as murder. How do you explain this inconsistency in the law?**

Response: I do not think it appropriate for a sitting judge to opine on issues that may someday come before him, as Chief Justice Roberts recognized when posed similar questions during his confirmation hearing. As noted above, I am not familiar with the law of other states, but Arizona law does allow for prosecution for manslaughter pursuant to Ariz. Rev. Stat. § 13-1103 for causing the death of an unborn child, but expressly exempts from the criminal statute lawfully performed abortions. As the Arizona Supreme Court stated in *State v. Brewer*, "[we] can assume that the legislature, when it drew up this statute in 1983, considered the complex issue of when the murder statute should apply." 170 Ariz. 486, 508, 826 P.2d 783, 805 (1992).

14. **In Abele II, Judge Newman writes: "perhaps in the view of some of the legislators who enacted this statute, abortion is considered the deliberate killing of a human being. ... But under the Constitution, their judgment must remain a personal judgment ... a judgment they may not impose upon others by force of law." Do you believe judges are better equipped to decide the standards of human decency than the people's elected representatives?**

Response: No.

15. Do you agree with Judge Newman that abortion is a "constitutional right of special significance?"

Response: The Supreme Court has held that under certain circumstances, the Constitution prohibits a state from denying access to an abortion. I would refrain from ranking constitutional rights.

Responses of Andrew D. Hurwitz
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Chuck Grassley

1. **You clerked for Judge Newman, then a District Court Judge for the District of Connecticut, when he presided over the two abortion cases, known as *Abele I* and *Abele II*. Over 30 years later, in 2003, you wrote a lengthy law review article entitled "Jon O. Newman and the Abortion Decisions: A Remarkable First Year." Your article chronicled the influence *Abele II* had on the Supreme Court's *Roe v. Wade* decision.**

   In footnote 55 of your article, you wrote that in fall of 1972, just after you finished clerking for Judge Newman, you interviewed for a Supreme Court clerkship. Is it fair to say that this interview occurred after the *Abele II* opinion was issued but before the Supreme Court ruled in *Roe v. Wade*?

   Response: Yes.

2. **In your article, you state that Judge Newman hoped to "side-step" the constitutional confrontation in *Abele I* by holding Connecticut's interest in protecting the life and morals of the mother was not a sufficient state interest to overcome the right to privacy. You then disclosed the following about Judge Newman's rationale:**

   > **"The clear unstated premise of Judge Newman's approach (made express in conversations with his law clerk) was that the Connecticut legislature... would leave well enough alone and not provoke a constitutional attack on a second statute."**

   You seem to be suggesting Judge Newman believed the *Abele I* decision not only struck down a 110 year-old statute outlawing abortion, but at the same time, had effectively precluded the legislature from offering a revised statute.

   Do you believe Judge Newman's approach was the appropriate?

   Response: I do not think it appropriate for a former law clerk to comment on the correctness of an opinion written by a judge during the clerkship term. I did not mean in the article, however, to suggest that Judge Newman's concurring opinion in *Abele I* had precluded the legislature from offering a revised statute (it did not), but rather to document his prediction (which turned out to be incorrect) that such a statute would not be passed.

3. **You note in your article that, contrary to what Judge Newman believed would happen, the Connecticut legislature quickly responded to *Abele I* and passed a new statute. The new statute included all of the same prohibitions as the original, but this time it expressly stated the State's interest was in protecting the life of the unborn child. You wrote:**

> **"[Judge Newman] candidly conceded that a court could never resolve the philosophical issue of whether a fetus was a human being from the moment of conception, or whether abortion amounted to murder."**

Do you agree that Judge Newman should have deferred to the legislature upon recognizing that the court could never resolve these "philosophical" questions?

Response: As noted above, I do not think it appropriate for a former law clerk to comment on the correctness of an opinion written by a judge during the clerkship term. Judgments about policy matters are within the province of the legislature, and courts should not second-guess such judgments. However, a court may be required to determine whether a statute before it is constitutional, notwithstanding the good faith belief of the legislature that the statute rests on sound policy grounds.

4. **You also observed that the development of *Roe*'s much-criticized trimester framework "provides the most direct evidence of Judge Newman's influence on the . . . decision." In your article, you emphasize a portion of Judge Newman's opinion in *Abele II* that suggests viability as an appropriate threshold. You then chronicled how, originally, Justice Blackmun's draft opinion drew the line for legal abortion at the first trimester. But, Judge Newman's opinion influenced the Justices' thinking. You therefore conclude:**

> **This viability dictum, first introduced by Justice Blackmun into the *Roe* drafts only after Justice Powell had urged that he follow Judge Newman's lead, effectively doubled the period of time in which states were barred from absolutely prohibiting abortions.**

Even though Judge Newman expressly stated in *Abele II* that "we need not and should not express any conclusion about statutes advancing more limited interests" such as preserving life after viability, he nonetheless speculated that "the state interest in protecting the life of a fetus capable of living outside the uterus could be shown to be more generally accepted and, therefore, of more weight in the constitutional sense." Judge Newman then took the opportunity to note that there "appears to be a medical consensus that the fetus normally becomes viable approximately 28 weeks after conception." Ultimately, Judge Newman's dictum on viability became the line the Supreme Court chose to draw in *Roe*.

   a. **Do you agree that Judge Newman's discussion of viability was dictum?**

      Response: Yes. He described it as such in *Abele II*.

   b. **Please explain your view on the proper use and role of dictum in judicial opinions.**

Response: I believe that courts should not decide issues not posed by the case before them. As I have said in several opinions, if the issue is important, it will be posed by a subsequent case in which the court will have the benefit of arguments by counsel and, in the case of an appellate court, the benefit of an opinion below. If a judge believes that it is important to flag an issue for future consideration, he can do so simply by noting that the issue was not decided because it was not argued, as I have done in the past. *See, e.g.*, *Gipson v. Kasey*, 214 Ariz. 141, 148 ¶ 41, 150 P.3d 228, 235 (2007) (Hurwitz, J., concurring).

c. In what circumstances do you believe it is appropriate for a judge to opine on matters not essential to the disposition of the case?

Response: As noted above, I do not think it appropriate for judges to decide an issue not before the Court.

5. Do you believe there is a right to privacy in the U.S. Constitution?

Response: Yes, the Supreme Court has so held in a line of cases that includes *Griswold v. Connecticut*, 381 U.S. 479 (1965).

a. Where is it located?

Response: The Supreme Court has indicated that the right to privacy is a liberty interest protected by the due process clauses of the Fifth and Fourteenth Amendments. As a Ninth Circuit judge I would be bound by and would follow those Supreme Court decisions.

b. From what does it derive?

Response: The Court has held that the due process clauses protect certain fundamental rights and that the right to privacy is one of those rights.

c. What is your understanding, in general terms, of the contours of that right?

Response: The Court has described the right to privacy protected by the due process clause as including "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

6. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

Response: The Supreme Court has held that there are certain fundamental rights protected by the Constitution that are not expressly enumerated. I do not think, however, that those rights are identified by "reading between the lines" of the Constitution. The Supreme Court has held that those rights are identified by determining whether they are "deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

Response: No. Although some Justices have so suggested, I do not think that the Supreme Court has adopted such an approach and I believe that the job of a judge interpreting the Constitution is difficult enough without requiring a judge to search for "penumbras" and "emanations."

7. During an ABA-sponsored panel covering capital punishment cases and the affects they have on civil litigation, you said Judges presiding over capital cases often 'take the easy way out' by relying on the harmless error standard of review rather than confronting the "real issues of the case."

a. Please explain what you meant by this comment?

Response: I do not have a transcript or notes from that panel, but my recollection is that I spoke at that panel about a problem peculiar to capital cases, where the jury is not only the finder of fact on guilt but also makes the decision on sentencing. Appellate courts correctly find error at trial harmless when the proof of guilt is overwhelming, as it often is in capital cases. But I was concerned that some courts did not independently determine whether trial error could have affected the jury's sentencing decision, given that *Chapman v. California*, 386 U.S. 18 (1967), requires the state to establish beyond a reasonable doubt that error of a constitutional dimension could not have affected a jury verdict.

I did not suggest that the harmless error doctrine is not applicable in capital cases. I have both written and joined opinions in which harmless error was found and death sentences were affirmed.

b. How are judges shirking their duty by hiding behind the harmless-error standard rather than confronting the real issues of the case?

Response: See above. Because in many cases there is overwhelming evidence of the guilt of a capital defendant, the issue of importance is often whether the penalty phase of the trial has been conducted without prejudicial error, and courts

should separately determine whether harmless error during the guilt phase contributed to a verdict in the penalty phase.

8. Are you personally opposed to the death penalty?

Response: As a sitting judge, I do not believe that is appropriate to express personal opinions as to matters that come before our courts. The Supreme Court has made clear that, except in very limited instances, the death penalty is not cruel and unusual punishment, and I have voted in scores of cases to impose a death penalty.

9. Do you believe capital punishment is a constitutionally valid form of punishment?

Response: Yes. The death penalty is a constitutionally appropriate form of punishment with very limited exceptions (youth, mental retardation) specified by the Supreme Court.

10. While a member of the Arizona Board of Regents, the Board confronted the issue of affirmative action on several occasions. In fact, it undertook two formal studies on minorities in the Arizona university system, one in 1989 and another in 1996. During the 1989 study, you chaired a sub-committee on the task force.

a. What was the name of the sub-committee and its particular function in the study?

Response: I cannot recall, or find any records, as to the nature of the subcommittee I chaired.

b. Please describe your roll in the context of the overall study process.

Response: In 1989, I was one of 31 citizens (and 5 members of the Board of Regents) asked to study the issues of minority recruitment, retention, and graduation in the Arizona University systems as a member of the Ad Hoc Committee on University Access and Retention. The Committee eventually submitted a report, entitled "Our Common Commitment," to the Board of Regents, and I have supplied a copy of that report to the Judiciary Committee. I left the Board in 1996, and did not participate in the study undertaken that year.

11. Beginning in 1995, questions were raised in Arizona about the propriety of the affirmative action policies used by the state's universities. In 1996, the Board of Regent's commissioned a follow-up study to the 1989 study.

Part of the genesis of this debate was California's then-recently passed Proposition 209, which prohibited, in part, the use of "race, sex, or ethnicity" in public school admissions criteria. You cited Proposition 209 in a 1999 article for the Arizona Business Gazette that praised affirmative action and criticized Proposition 209.

Since that time, the U.S. Supreme Court ruled in *Grutter v. Bollinger*, which declared a 25-year sunset on Constitutionally-permissible affirmative action policies.

a. In light of *Grutter*, have your views on affirmative action changed? If so, how?

Response: *Grutter* holds that law schools can have a compelling interest in attaining a diverse student body and can use narrowly tailored admission programs to achieve that goal consistent with the equal protection clause of the Fourteenth Amendment. The *Grutter* opinion endorses Justice Powell's opinion in *Regents of California v. Bakke*, 438 U.S. 265 (1978). My view before *Grutter* was that Justice Powell's opinion effectively was the controlling opinion in *Bakke* -- and thus binding on lower courts -- as it stated the narrowest ground for the Court's disposition of the case. By endorsing Justice Powell's opinion (although finding it not necessary to conclude whether it was formally binding as precedent), *Grutter* was consistent with my previous views.

b. Justice Thomas, in his opinion concurring in part and dissenting in part in *Grutter*, cited more recent Boalt Hall admission statistics. He noted that, despite Prop. 209, Boalt Hall eventually was able to increase the representation of minority students in its entering class to levels higher than when affirmative action policies were in place. In light of this information, do you still believe that affirmative action policies are necessary to avoid a "mediocre" legal profession?

Response: I have no reason to question the statistics cited by Justice Thomas. Nor am I aware of the measures taken by Boalt Hall before *Grutter* to recruit and retain qualified minority applicants. In the article cited, I suggested that law school classes "made up of *only* the majority" would lead to a mediocre profession and suggested that there were appropriate mechanisms available under the Constitution to avoid that result. I believe those statements are consistent with the later opinion of the Court in *Grutter*. Since *Grutter*, all law schools of which I am aware have managed to avoid admitting classes made up of only the majority, while still maintaining high standards of quality.

12. What is the most important attribute of a judge, and do you possess it?

Response: I think that the most important attribute of a judge is fidelity to the law and the ability to decide cases solely on the facts and law before the court. I believe that my record on the Arizona Supreme Court demonstrates that I possess this attribute, and the surveys conducted by the Arizona Judicial Performance Review Commission confirm that those who have appeared before me believe I have this attribute.

13. 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: Above all, a judge must have humility. Humility requires that a judge understand that his role in our system of government, while important, is limited. The role of a judge is not to make policy decisions or second-guess the other branches of government, but rather to apply the law to the facts of the case before him. Humility requires that judges recognize that they are not infallible. Humility also requires that judges interact with all who come before them in a courteous and professional fashion and accord all a fair judgment of their cases. I believe that my record on the Arizona Supreme Court demonstrates that I possess this temperament, and the surveys conducted by the Judicial Performance Review Commission confirm that those who have appeared before me believe I have such a temperament.

14. 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.

15. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If the case of first impression involved statutory or constitutional interpretation, my first resort would always be to the language of the relevant provision. If the language is clear and unambiguous on the point at issue, there is no need to resort to other sources. If not, I would consider the historical context in which the provision was adopted, the intent of the drafters of the provision, and in the case of statutory construction, the provision's relationship with the broader statutory scheme as a whole. I would also review relevant decisions of the Supreme Court and the Ninth Circuit. Even when there is no controlling precedent that conclusively resolves the issue at hand, there is often precedent which gives some guidance. If the issue were one on which neither the Supreme Court nor the Ninth Circuit had spoken, but which other courts (including state courts) had addressed, I would also look to such out-of-circuit authority for guidance.

16. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own best judgment of the merits?

Response: As a circuit judge, I would be obliged to follow a Supreme Court decision even if I believed it in error. As a state court judge, I have the same obligation. A circuit

judge should follow previous decisions of the Circuit unless and until they are reexamined through the en banc procedure or overruled by the Supreme Court.

17. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A statute enacted by Congress is entitled to a strong presumption of constitutionality. Members of Congress take an oath to support and defend the Constitution, and courts should start from the premise that other branches of government have acted in a constitutional fashion. If, however, a court concludes that a statute was not authorized by the powers granted Congress under Article I of the Constitution, or infringes upon rights protected under the Constitution, it has a duty to say so.

18. 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: In general, I think that the principle of stare decisis dictates against an appellate court overturning its own precedent within the circuit. If, however, a panel decision is contrary to Supreme Court precedent, contrary to another decision of the circuit (something that should very rarely be the case), or otherwise manifestly flawed, the en banc procedure provides a mechanism for overturning the decision.

19. Please describe with particularity the process by which these questions were answered.

Response: I personally drafted these responses and reviewed the draft with an official of the Department of Justice before submitting them.

20. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Andrew David Hurwitz
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: I do not find it useful to use labels in describing my judicial philosophy. I think that the central philosophy of all judges should be to decide the individual case before them solely on the basis of the law. The role of the judge in our constitutional system, while important, is limited. Judges should not second-guess legislative or executive policy judgments, but should and must ensure that the other branches of government do not infringe upon individual constitutional rights or exceed the powers granted them under Articles I and II.

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 believe I have acted in this fashion throughout my career on the Arizona Supreme Court, and commit to doing so if confirmed as a circuit judge. Those who have appeared before me have indicated in responses to surveys distributed by the Arizona Judicial Performance Review Commission that they regard me as having acted impartially in cases before me.

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 is important because it provides predictability in the law; the law should not change simply because the composition of a court has changed. The Supreme Court should, however, reserve the right to overrule manifestly incorrect prior decisions, as it did in *Brown v. Board of Education*. Lower courts should be even more firmly committed to stare decisis in the case of their own prior decisions, as appellate review is available to a litigant who believes that a decision is in error.

Responses of Andrew D. Hurwitz
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Jeff Sessions

1. **In 2002, you published an article in the *New York Law School Legal Review* entitled, "Jon O. Newman and the Abortion Decisions: A Remarkable First Year." The article analyzes two opinions (*Abele I, Abele II*) authored by Judge Newman, then on the U.S. District Court of Connecticut, and their influence on the Supreme Court's decision in *Roe v. Wade*. According to your article and your Senate Questionnaire, you clerked for Judge Newman at the time he authored these opinions.**

   a. **In your article, you praised Judge Newman's reasoning in these cases as a "careful and meticulous analysis of the competing constitutional issues" and described his decision in *Abele II* as "striking, even in hindsight." Are these your opinions today?**

   Response: The article was written for a New York Law School Law Review Symposium dedicated to Judge Newman's first thirty years on the bench, and I was invited as one of his former clerks to submit an article. I tried at that time to document the historical record about the effect of Judge Newman's decisions on subsequent Supreme Court jurisprudence without expressing my personal opinions as to the correctness of the Judge's reasoning, something I think it would be improper for a law clerk to do, either then or now. As a sitting judge, I would regard it as inappropriate to express such opinions today (the article was written before I joined the bench, although published thereafter). Whether or not one agrees with his conclusions, I do believe that Judge Newman carefully identified the important competing constitutional interests involved in the *Abele* case, particularly in light of then-existing Supreme Court jurisprudence, and that the Supreme Court's attention to this new district judge's opinion was striking.

   b. **In your article, you wrote that Judge Newman "placed primary reliance on the natural implications of *Griswold*: if the capacity of a fetus to be born made it a person endowed with Fourteenth Amendment rights, the same conclusion would seemingly also apply to the unfertilized ovum, whose potentiality for human life clearly could lawfully be terminated under *Griswold*." Do you believe that there are any significant differences between an unfertilized ovum and a human fetus? Please explain your answer.**

   Response: The quoted language is an accurate description of the starting point of Judge Newman's analysis in *Abele II*. He eventually did conclude, however, that a state has a substantially greater interest in protecting a fetus than an unfertilized ovum. There are obvious biological differences between an unfertilized ovum and a human fetus. Subsequent Supreme Court decisions reflect those distinctions, allowing greater state regulation of abortion than of contraception.

c. In your article, you wrote that Judge Newman "candidly conceded that a court could never resolve the philosophical issue of whether a fetus was a human being from the moment of conception, or whether abortion amounted to murder." Do you believe that the question of when human life begins is a matter of biology or of philosophy? Please explain your answer.

Response: The quoted language is an accurate description of what Judge Newman said in *Abele II*. I recognize a wide variety of sincere views are held by reasonable people as to this issue, but, as a sitting judge, I believe that I should not express personal views on such matters. I can assure the Committee that my personal views on this subject, or any other, would not play a role in my judicial decision making, and never have.

d. Do you believe that the Constitution, properly interpreted, confers a right to abortion?

Response: The Supreme Court has held that, although states may regulate a woman's access to abortion, they may not entirely prohibit the procedure. As a circuit judge, I would be bound to follow all Supreme Court precedent.

e. Do you believe that the Constitution, properly interpreted, compels taxpayer funding of abortion?

Response: No. The Supreme Court held in *Harris v. McRae*, 448 U.S. 297 (1980), that the Constitution does not compel such funding.

f. Do you believe that the Constitution, properly interpreted, prohibits informed consent and parental involvement provisions for abortion?

Response: No. The Supreme Court held in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), that the Constitution does not prohibit informed consent and parental involvement provisions.

g. In your article, you wrote: "In sweeping dictum, Judge Newman then went on to confront the state's argument that its laws were necessary to prevent the abortion of viable fetuses." Do you believe that it is appropriate for judges to engage in "sweeping dictum"? Please explain your answer.

Response: No. I believe that courts should not unnecessarily decide issues not posed by the case before them. As I have said in several opinions, if the issue is truly important, it will be posed by a subsequent case in which the court will have the benefit of arguments of counsel and in the case of an appellate court, the benefit of an opinion below. *See, e.g.*, *Gipson v. Kasey*, 214 Ariz. 141, 148 ¶ 41, 150 P.3d 228, 235 (2007) (Hurwitz, J., concurring).

h. In your article, you cited correspondence between Justices Blackmun, Powell, and Marshall concerning "when the State's legitimate interests might allow restriction of abortion rights" – after the first trimester, following viability, or at some other point. Ultimately, the Justices were influenced by Judge Newman's choice of viability as the point at which a state may place restrictions on a woman's "abortional freedom." The Justices agreed to this cut-off despite the fact that, as you wrote, "Justice Powell recognized that the Court did not have to treat the issue at all." Do you believe that it is appropriate for judges to decide an issue not before the court in order to choose among competing policy considerations? Please explain your answer.

Response: As noted above, I do not think it appropriate for judges to decide an issue not before the Court, and I do not think that choosing among competing policy considerations justifies doing so.

2. You served as *pro bono* as lead counsel in the seminal Supreme Court case of *Ring v. Arizona*, which struck down Arizona's death penalty sentencing scheme as unconstitutional, and also invalidated several other States' statutes as well. You were quoted in an article by the *Arizona Attorney* newsletter as saying that the experience was "the best episode in [your] wonderful career in private practice."

a. Assuming the *Arizona Attorney* accurately quoted you, please explain whether you were referring to the experience of arguing before the Court, or the outcome of the case.

Response: I was referring to the experience of arguing before the Supreme Court.

b. Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.

Response: Yes. The death penalty is a constitutionally appropriate form of punishment with very limited exceptions (youth, mental retardation) specified by the Supreme Court.

c. Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.

Response: No. The Supreme Court has made clear that the death penalty is not cruel and unusual punishment. I have voted in scores of cases to impose a death penalty, and could not have done so consistent with my oath to support and defend the Constitution if the penalty were per se cruel and unusual.

3. In *Roper v. Simmons*, Justice Kennedy relied in part on "evolving standards of decency" in holding that capital punishment for any murderer under the age of 18 was unconstitutional.

a. Do you agree with Justice Kennedy's analysis? Please explain your answer.

Response: As a judge, I am bound to follow Supreme Court precedent, whether or not I would have employed the same analysis as the opinion of the Court in any particular case. I therefore would be required to conclude that capital punishment could not constitutionally be imposed on a murderer under the age of 18.

b. How would you determine what constitutes "evolving standards of decency" and how it determines constitutionality? In your answer, please include what factors you would consider in that analysis.

Response: All legislation begins with a presumption of constitutionality, and it is the job of the political branches of government to determine matters such as standards of decency. Supreme Court decisions since *Trop v. Dulles*, 356 U.S. 86 (1958), have required use of "evolving standards of decency" in evaluating Eighth Amendment claims, and if confronted with such a claim, I would be mandated to first look to Supreme Court precedent, and, if none existed, then to precedent in the court on which I am serving. I do not believe that a judge's personal opinions play any role in determining whether a statute violates the Eighth Amendment.

c. In your view, could a judge conclude that "evolving standards of decency" dictate that the death penalty is unconstitutional in all cases? In your answer, please include what factors you believe are relevant to a judge's analysis.

Response: I do not believe that a judge could so conclude, given that the death penalty is mentioned in the Constitution and has been repeatedly held constitutional by the Supreme Court.

d. Could a judge conclude that a "changing legal landscape" dictates that the death penalty is unconstitutional in all cases? In your answer, please include what factors you believe are relevant to a judge's analysis.

Response: I do not believe that a judge could so conclude, given that the death penalty is mentioned in the Constitution and has been repeatedly held constitutional by the Supreme Court.

e. In your view, is it possible for something to be constitutional one day and unconstitutional the next in light of a "changing legal landscape"?

Response: I do not believe that the Constitution changes from one day to the next, although I recognize that the Supreme Court may effectively produce that result when it overrules a prior decision. That is one reason why the Court should be very cautious in doing so.

4. In a 2007 speech to Planned Parenthood, then-Senator Obama said:

"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."

a. Do you agree with the President's statement?

Response: I would not presume to tell the President by what criteria he should be selecting judges, a task given to his discretion (subject to the advice and consent of the Senate) under the Constitution. Nor can I speak with authority as to what other criteria the President uses in judicial selection, although I can say that I was never asked about empathy during the selection process. I emphasize that I have, and will continue to, base my judicial decisions on the law, not on personal beliefs or other extraneous matters.

b. Do you believe you fit the President's criteria?

Response: I believe that the law must govern a judge's decisions, and that they should not be based on personal characteristics of the judge or his or her personal beliefs. I believe that judges must treat all who come before them with courtesy and humility, and I believe that I possess and have exhibited those traits.

c. Do you believe judges should ever base their decisions on a desired outcome as opposed to the law and facts presented? If so, under what circumstances?

Response: No.

d. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?

Response: No.

Responses of John Z. Lee
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Chuck Grassley

1. **In *Taylor Bean & Whitaker Mortgage Corp. v. Cebulak*, the judge dismissed a myriad of civil RICO claims you filed on behalf of your client, saying the complaint contained a "glaring deficiency" and citing Plaintiff's failure "to properly plead." You were asked about this at your hearing, but your reply did not address my concerns.**

   a. **Your response indicated you and your client believed you had a good-faith basis to state a RICO claim. Why did the judge describe this as a "glaring deficiency"? Do you disagree with the judge's determination and dismissal? Did you appeal that decision?**

      Response: In its opinion, the court held that the facts as alleged in the complaint were insufficient to satisfy the "continuity plus requirement" under civil RICO. More specifically, although it recognized that the Seventh Circuit had not established a per se durational requirement under RICO, the court found that a duration of less than two years between the first and final predicate acts was insufficient to establish the element of continuity under the closed-ended analysis of the "continuity plus requirement."

      If I am fortunate enough to be confirmed, I may be asked to decide a similar question in a future case. Accordingly, I do not believe it would be appropriate for me to state my agreement or disagreement with the court's determination.

      I would like to add, however, that when we filed the complaint on behalf of the client, we believed that it had sufficiently asserted the relevant facts to satisfy the pleading obligations under the Federal Rules of Civil Procedure as applied to civil RICO claims, including the "continuity plus requirement," as discussed in prior rulings of the Court of Appeals of the Seventh Circuit and the District Court of the Northern District of Illinois. Once the court issued its ruling, we did not appeal that aspect of the order because such an order generally does not constitute an appealable final decision and the case was allowed to proceed on other grounds.

   b. **Do you think it is appropriate for attorneys to make all claims theoretically possible in a lawsuit, even if there is no factual basis for them?**

      Response: No. I do not believe that it is appropriate for attorneys to assert claims if there is no factual basis for them.

c. What is the duty of a judge in reviewing pleadings? How much latitude should a judge give a party when pleadings are deficient?

Response: The duty of a judge in reviewing pleadings is to apply the relevant procedural rules and controlling precedents to the case before the court. If a pleading does not comply with the relevant procedural rules and controlling precedents, a judge should reject the pleading and, if appropriate, dispose of the case in its entirety.

2. In a Harvard Crimson article published during your time at law school, you are quoted discussing a civil rights claim filed by the Harvard Civil Rights Coalition. The claim alleged students were harmed by a lack of diversity in the Harvard faculty and sought damages. It was dismissed for a lack of standing. According to the news article, you said: "When they talk about dialogue they talk about us dropping the law suit . . . ."

a. Were you a member of the Harvard Civil Rights Coalition?

Response: The Harvard Civil Rights Coalition was a coalition of various law student organizations, including minority law student organizations and the women's law student organization. The Asian American Law Students Association ("AALSA") was a minority law student organization and a member of the Coalition. During this time period, I was the president of AALSA and served as AALSA's liaison to the Coalition.

b. Were you a party to this suit?

Response: No. I was not a party to the lawsuit.

c. Can you explain the reasoning behind seeking damages due to the alleged lack of diversity in the Harvard faculty?

Response: I believe that the Coalition sought equitable relief from the court as part of its lawsuit. I do not recall whether the Coalition sought monetary damages as part of its claims or, if it did, the basis for that claim.

d. Do you believe that students are harmed by a lack of faculty diversity, and if so, should there be a legal remedy?

Response: I believe that law students benefit from an opportunity to interact with a faculty that includes professors from all types of backgrounds with diverse views and experiences. In the lawsuit filed by the Coalition, the Massachusetts trial court dismissed the action on the basis that law students lacked standing to file claims against their law school under the Massachusetts statutes at issue. The Massachusetts Supreme Court affirmed this determination, and I respect that ruling. As for whether there should be a legal remedy, I believe that any such

determination should be left to the legislative bodies of Congress and/or the state legislatures, and not the courts. The role of a judge is to apply existing law to the facts before the court, not to make new laws. And, if I am confirmed as a district judge, I will adhere to this fundamental principle.

3. **Do you think racial quotas should play a part in university hiring processes or admissions?**

Response: The Supreme Court made clear that the use of racial quotas in public university admissions is unconstitutional. *See Grutter v. Bollinger*, 539 U.S. 306, 334 (2003); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978) (opinion of Powell, J.). If confirmed, I would strictly follow and apply all Supreme Court and Seventh Circuit precedents in this area.

   a. **In public universities, should such quotas be mandatory? What about private universities?**

   Response: As noted above, the Supreme Court made clear that the use of racial quotas in public university admissions is unconstitutional. The same precedents also make clear that the government may not mandate the use of racial quotas by private universities. If confirmed, I would strictly follow and apply all Supreme Court and Seventh Circuit precedents in this area.

4. **Do you think the race or socio-economic status of a defendant in a criminal case should be a determining factor in the outcome or sentencing?**

Response: No. I do not believe that an individual's race or socio-economic status should be a factor in the outcome or sentencing in a criminal case. In making sentencing determinations, if confirmed, I will demonstrate deference to the Federal Sentencing Guidelines and consider all legally relevant factors.

5. **Given that you received a partial "Not Qualified" rating from the ABA's Standing Committee on the Federal Judiciary, I wanted to give you an opportunity to outline your qualifications and experience. I note that you have only one publication and did not begin doing pro bono work until later in your legal career. Would you please explain to the Committee why you believe you are qualified to sit as a United States District Judge?**

Response: I believe that the breadth and nature of my federal litigation experience over the past twenty years have prepared me to be a district judge, if I am fortunate enough to be confirmed. Throughout my career, my legal practice has consisted predominantly of representing clients in complex cases before federal district courts. As a trial attorney at the United States Department of Justice, my responsibilities included representing the United States in federal courts in the Third, Seventh and Ninth Circuits. Most of these cases arose under the federal environmental statutes and involved complex legal issues as well as extensive factual and expert discovery. Since entering private practice, I have

represented clients in complex commercial disputes, including cases involving antitrust, intellectual property and business torts issues. I have represented all types of clients from large multi-national corporations to small businesses and individuals, both as plaintiffs and defendants. Most of these cases have been in federal courts, particularly in the Seventh and Ninth Circuits, and have required months, if not years, of fact and expert discovery, as well as extensive motion practice. I have also participated in a number of contested evidentiary hearings, multi-week jury trials, mediations and arbitrations. Additionally, I have served as an adjunct professor in antitrust law at The John Marshall Law School and trained numerous attorneys in procedural and substantive areas of the law while a partner at my firm. In light of my experience, I am confident that I will be able to perform the duties of a district judge, if confirmed.

6. **Of the current justices sitting on the Supreme Court, which justice's judicial, legal and constitutional philosophy do you agree with most? Why?**

   Response: There is no single Justice sitting on the Supreme Court with whose judicial, legal and constitutional philosophies I most agree. As an attorney, I hold the Supreme Court and all of the current Justices in the highest regard and have the utmost respect for all of their views and opinions. Moreover, as a district judge, if confirmed, I would adhere faithfully to all of the Supreme Court's rulings, as well as those of the Seventh Circuit, regardless of my personal beliefs or views.

7. **In Federalist No. 78, Alexander Hamilton said, "To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them."**

   a. **Do you agree that judges are bound by "strict rules and precedents" when making decisions?**

      Response: Yes. I believe that judges must apply strict rules and precedents in making decisions.

8. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is to have a deep respect for the rule of law and an unwavering commitment to apply the controlling law to the particular facts before the court, without regard to the judge's personal background and beliefs. I am confident that I have this attribute, and as a district judge, if I am confirmed, I will abide faithfully by 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: Above all, a judge must be fair and impartial to all of the parties that appear before the court. A judge must also be respectful of the parties as well as their counsel and all courtroom personnel and demonstrate integrity, patience, courtesy and humility in all matters before the court. Finally, a judge must exercise judicial restraint by narrowly ruling only on the specific issues in controversy before the court. I have demonstrated these characteristics throughout my professional life and will continue to do so, if I am fortunate enough to be confirmed.

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. I am committed to following the precedents of higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents.

11. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In deciding a case of first impression, I would look first and foremost to the language of the relevant statute to decide the issue at hand. In the event that the meaning of the statutory provision could not be ascertained from its plain language, I would also consider the purpose and structure of the statutory scheme as a whole, determine whether identical language appears in other parts of the statute, and employ traditional tools of statutory interpretation. I would also consider any decisions issued by the Supreme Court and the Court of Appeals of the Seventh Circuit, as well as other Circuits, interpreting analogous statutory provisions. Finally, if questions remain regarding the meaning of the provision at issue, I would consider legislative history for additional guidance, being mindful of the limitations of such an inquiry.

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 own judgment of the merits, or your best judgment of the merits?

Response: A district judge must apply the controlling precedents of the Supreme Court and the Court of Appeals, regardless of his or her personal judgment or beliefs. If I am confirmed as a district judge, I will apply controlling precedents without regard to my personal judgment or beliefs.

13. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: All statutes enacted by Congress are presumed to be constitutional. A federal district court must declare a statute unconstitutional only in those instances where Congress has exceeded its constitutional authority and/or enacted legislation that violates the Constitution. In so doing, the district court should consider and apply the binding precedents of the Supreme Court and the relevant Circuit in which the district court sits.

14. 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: District courts face increasingly busy dockets. As a district judge, if I have the honor of being confirmed, I intend to actively manage the cases to which I am assigned by conducting early and regular status conferences in an effort to facilitate the prompt resolution of matters. I would also inform all parties that they are expected to adhere to the local rules and issue clear standing orders governing such items as dispositive motions, discovery motions and pre-trial procedures. Additionally, I would establish firm but reasonable deadlines for discovery and set and enforce trial dates. For criminal matters, in particular, I would conduct proceedings in accordance with the Speedy Trial Act. Finally, I would utilize alternative dispute resolution methods, such as settlement conferences and the services of magistrate judges, to explore expeditious resolution of cases prior to trial.

15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. I believe that district judges have an indispensable role in controlling the pace and conduct of litigation and, if confirmed, I would implement the steps described in response to Question No. 14.

16. Please describe with particularity the process by which these questions were answered.

Response: These responses were prepared personally by me and reviewed by officials at the United States Department of Justice. I have authorized them to be submitted to the Committee.

17. Do these answers reflect your true and personal views?

Response: Yes.

Responses of John Z. Lee
Nominee to be United States District Judge for the Northern District of Illinois
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 that a judge must have a deep and abiding respect for the rule of law and should apply the controlling law to the facts before the court, regardless of his or her personal background or beliefs. A judge should also demonstrate judicial restraint and decide only the contested issues raised by the parties. Such a narrow approach to deciding cases is appropriate because judges are not permitted by our constitutional system to make new laws, but only to apply existing laws to the particular disputes raised by the parties 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 a first generation immigrant to this country, I have developed a deep respect for the rule of law and for the principle that everyone should be treated fairly regardless of their racial or ethnic background, social-economic status or political beliefs. These are the very principles that attracted my parents to this country over 40 years ago and that provided me with the professional opportunities that I have enjoyed throughout my career. I believe that I have adhered to those principles throughout my professional and personal life and am deeply committed to them.

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 judges must strictly apply the controlling precedents of the Supreme Court and the Court of Appeals of the Circuit in which they sit. I do not believe that district judges should refuse to follow controlling precedents under any circumstances.

Responses of George Levi Russell, III
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Chuck Grassley

1. **In your questionnaire, you indicated that you have ruled that at least three criminal defendants have received ineffective assistance of counsel. Can you describe the process of how you decide when a defendant has received ineffective assistance of counsel? If confirmed as a United States District Judge, what standard would you use to review such claims?**

Response: When deciding if a defendant has received ineffective assistance of counsel, I apply the relevant case law precedent. The basic standard for ineffective assistance of counsel was established in the case of Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, counsel is deemed to have provided ineffective assistance of counsel if his performance "fell below an objective standard of reasonableness" and "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 688, 694. If confirmed, I would use the same standard as further interpreted by subsequent precedents of the Supreme Court and the Fourth Circuit.

2. **Please describe your judicial philosophy.**

Response: My judicial philosophy is to allow the lawyers to try their case and to decide the case or controversy before the court based on the facts and the law as determined by the decisions of the United States Supreme Court and Court of Appeals.

3. **In 1996, you were represented the FDA in an employee termination case where the plaintiff claimed that she was fired because of her religion. You successfully argued that she was not discriminated against based on religion. As a federal judge, how would you make decisions when confronted with religious liberty issues?**

Response: At the time of the litigation I was an Assistant United States Attorney representing the government. The case involved allegations of adverse employment action taken against the employee based upon her religion. At the conclusion of the case it was established that there were legitimate non-discriminatory reasons for the action taken against the employee. I have not had the occasion to work on religious liberty issues since that case. If confirmed as a district judge, I would neutrally and faithfully apply the relevant statutes, constitutional provisions, and precedent in all cases involving religious liberties, including employment discrimination cases.

4. **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 had the opportunity to work on establishment and free exercise clause cases during my career as a judge and attorney. If confronted with such cases as a district judge, I would carefully research and apply the Supreme Court and Fourth Circuit case law in these very important areas.

5. **Given that you received a partial "Not Qualified" rating from the ABA's Standing Committee on the Federal Judiciary, I wanted to give you an opportunity to outline your qualifications and experience. Would you please explain to the Committee why you believe you are qualified to sit as a United States District Judge?**

Response: I believe I am qualified to sit as a United States district judge based upon my twenty years experience as a judge and a lawyer. I have served as a judge in the Circuit Court for Baltimore City for the past five years, handling cases in all four dockets: criminal, civil, family, and juvenile. When I practiced law for fourteen years before being a judge, I received diverse legal experience in both civil and criminal litigation, most of which has been in the United States District Court for the District of Maryland. I have also served as a law clerk to a state appellate court judge.

In the area of civil litigation, I have defended businesses in commercial disputes; defended the government, as an Assistant United States Attorney, in medical malpractice, intentional torts, discrimination and personal injury cases; instituted litigation to collect on overdue student loans and rent court actions; represented plaintiffs in class action products liability cases; and represented plaintiffs in lawsuits arising from medical malpractice and personal injury cases. In the area of criminal litigation, as an Assistant United States Attorney I have prosecuted numerous individuals for committing violent crimes and violations of the narcotics and firearm laws. I have also initiated and supervised wiretap investigations in order to prosecute persons supplying the narcotics to low-end dealers in the State of Maryland. Having seen the practice of law through many prisms, I am able to prepare, organize, and resolve issues in cases quickly, but with care.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: I believe that the most important attributes of a judge are fidelity to the law, independence, integrity, fairness, good judgment, an appropriate temperament, and a commitment to treating all those before him with dignity and respect. I believe that I possess these attributes.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that having an appropriate judicial temperament is critical to a judge's ability to administer justice faithfully and to the public's confidence in the judicial system. It is especially important that a judge be consistently fair, respectful,

courteous, patient, humble, open-minded, evenhanded and decisive. I believe that if confirmed as a district court judge, my conduct will meet that standard.

8. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If confirmed and faced with a case of first impression, I would start with the text of the provisions at issue. If the plain language and structure of the text did not yield a clear answer I would look to the precedents of the Supreme Court and the Court of Appeals for the Fourth Circuit interpreting analogous provisions, as well as precedent from other federal courts, for guidance.

10. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: If confirmed, I would faithfully apply any relevant Supreme Court or Fourth Circuit precedent, regardless of my personal judgment or views of the precedent.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional if it violates a provision clearly set out in the U.S. Constitution, or if Congress has exceeded its constitutional authority. In considering a constitutional challenge to a statute, a district judge must apply any applicable precedent of the Supreme Court and the Court of Appeals.

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 set reasonable and timely scheduling orders, adhere to the Speedy Trial Act, promptly resolve pending motions, and continually monitor

case aging reports. I would also utilize alternative dispute resolution tools such as mediation and settlement conferences.

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: I believe judges play a vital role in controlling the pace and conduct of litigation. I would set reasonable and timely scheduling orders in every case. I believe that one of the most important aspects of keeping cases moving is the prompt resolution of pending motions before the court. Litigants often cannot advance the discovery process, settlement negotiations, or trial preparation without rulings from the court on numerous pretrial issues.

14. Please describe with particularity the process by which these questions were answered.

Response: I received the written questions on Thursday, February 3, 2012. I prepared my responses over the following several days and reviewed my responses with representatives of the Department of Justice. I finalized my responses and authorized their transmittal to the Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Responses of George Levi Russell, III
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 to allow the lawyers to try their case and to decide the case or controversy before the court based on the facts and the law as determined by the decisions of the United States Supreme Court and Court of Appeals.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: Throughout my career I have treated all litigants fairly regardless of political or economic status. This record of fairness is the assurance that I will continue to do so.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: The doctrine of stare decisis applies to all courts and if confirmed as a district judge, I would firmly adhere to the doctrine.

Responses of John J. Tharp, Jr.
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Chuck Grassley

1. **Much of your current work as an attorney centers on assisting clients with both government and internal investigations of securities and other types of fraud. Do you think judicial and civil remedies are a more effective way of preventing and dealing with securities fraud than regulatory actions and investigations from executive branch agencies?**

   Response: In my experience, I have not found private civil litigation to be a more effective way of preventing and dealing with securities fraud than regulatory actions and investigations from executive branch agencies.

2. **In some of your writings, you discuss a current "controversial" practice of executive agencies such as the SEC in which they delegate investigatory authority to counsel of corporations potentially facing allegations of securities fraud. You state this allows the executive branch agency to offload some of their work on the private sector and, at the same time, affords the corporation the ability to "control" the investigation and possibly reach an agreement with the government not to prosecute.**

   a. **Do you think this practice is effective or wise?**

      Response: The practice that I have referred to does not involve any delegation of legal authority or responsibility by executive agencies to counsel for corporations. Rather, I have noted the increasing expectation of enforcement attorneys from such agencies that corporations will themselves conduct credible and thorough internal investigations of potential violations of law (whether they come to the attention of the corporation via whistleblower complaints, the corporation's own compliance procedures and internal controls, or other means) and provide to the agencies the factual information developed through those internal investigations. In my experience, this approach has been very effective in helping agencies maximize their resources and identify and resolve securities fraud claims in a fair and efficient manner.

   b. **Do you think this practice is legal?**

      Response: The practice that I have referred to does not involve any delegation of legal authority or responsibility by executive agencies to counsel for corporations. I am not aware of any suggestion or argument that encouraging corporations to affirmatively and pro-actively investigate potential violations of law, and to report them to regulatory agencies, is unlawful.

   c. **If you, as a judge, were presented with a case where a litigant was challenging this authority, how would you approach such a case?**

Response: I would not approach such a case differently than I would approach any other case. I would consider the evidence and legal arguments of the parties and decide the case impartially and in accordance with the applicable law.

3. **You also write that the SEC and other organizations are being more aggressive than ever with securities investigations, presumably in response to the recent financial crisis and undiscovered issues such as the situation at Lehman Brothers.**

   a. **If a case involving a civil or criminal claim relating to securities fraud came before you on the court, do you feel you would be able to be fair and impartial in adjudicating the matter?**

      Response: Yes. In my career, I have both prosecuted and defended securities fraud cases.

   b. **Can you think of any situations relating to securities fraud cases where you would need to recuse yourself?**

      Response: At present, I cannot think of a situation in which I would need to recuse myself from a case solely because it involved allegations of securities fraud (other factors, such as a party being represented by my current firm, could, however, prompt a recusal in a securities fraud case). In all cases, however, I would employ established processes for identifying potential conflicts and consult and follow the Code of Conduct for United States Judges.

4. **You have a distinguished service career in the US Marine Corps. In the current state of the war on terror, a federal judge may have to rule on the legal status of "military detainees" captured or arrested pursuant to the president's authority found in the current Authorization for Use of Military Force (AUMF) or new authority found in Section 1021 of the 2012 National Defense Authorization Act.**

   a. **In his dissent in *Hamdi v. Rumsfeld*, Justice Scalia says: "The very core of liberty secured by our Anglo-Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the Executive." Some legal scholars believe Section 1021 of the recently passed NDAA allows for just that. Do you agree with Justice Scalia?**

      Response: I agree that no person to whom the protections of the United States Constitution apply may be deprived of liberty without due process of law, as stated in the Fifth Amendment. As a District Judge, I would endeavor to follow legal precedent and other applicable law in resolving any matter presenting the question of whether the imprisonment of a military detainee constituted a violation of the Constitution.

b. In *Hamdi*, a Supreme Court plurality ruled that while the executive has the authority to detain enemy combatants, detainees who are US citizens are entitled to due process before a judge, explaining that this review did not have to meet the usual stringent standard applied in ordinary criminal matters. However, this was a plurality opinion and binding precedent is arguably unclear on the issue. Do you feel the government has the ability to detain non-citizen enemy combatants without trial? What about citizen detainees?

Response: Although it was a plurality opinion in the sense that no single view as to all issues in the case commanded a majority of the Supreme Court, in *Hamdi* a majority of the Court agreed that the petitioner was entitled to a meaningful opportunity to contest the factual evidence on which his detention was based. *See* 524 U.S. 507, 533 (plurality of four Justices so holding) and *id.* at 553 (opinion of two Justices concurring that petitioner "should at the least have the benefit" of the opportunity "to offer evidence that he is not an enemy combatant"). As a District Judge, I would apply that precedent, and any other applicable precedent and law, to resolve any question that came before me regarding whether the detention of an enemy combatant, whether a citizen or non-citizen, constituted a violation of the Constitution.

c. In a separate *Hamdi* dissent, Justice Thomas disagrees with both Justice Scalia and the plurality. Justice Thomas argues the executive has vast power in certain circumstances to detain citizen enemy combatants without judicial review, stating: "Because a decision to bomb a particular target might extinguish life interests, the plurality's analysis seems to require notice to potential targets." Do you find this view persuasive?

Response: Justice Thomas' dissent in *Hamdi* did not garner the support of other members of the Court. As a District Judge, I would not apply the rationale of that dissent in resolving a question of whether the detention of an enemy combatant constituted a violation of the Constitution.

5. What is the most important attribute of a judge, and do you possess it?

Response: I would cite integrity as the most important attribute of a judge because it is a quality that encompasses many characteristics that a judge should possess, such as honesty, impartiality, humility and respect for the rule of law. I believe I possess these qualities.

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's temperament should promote confidence in the integrity of the judge and, by extension, of the judicial system. A judge must therefore be respectful, even-tempered and patient with all litigants. 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 dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In the absence of binding precedent, if the issue presented was one of constitutional, statutory or regulatory interpretation, I would look first to the text of the provision in question; if that text was unambiguous, I would apply it as written. If ambiguous, I would consider whether there was precedent from the Supreme Court, the Seventh Circuit, and other Circuit and District courts (in that order) interpreting analogous provisions and whether there was legislative history relevant to the provision at issue. If the issue was not one of textual interpretation, I would look to precedent in the Supreme Court, the Seventh Circuit, and other Circuit and District courts (in that order) relating to analogous issues.

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 own judgment of the merits, or your best judgment of the merits?**

Response: As a District Judge in the Northern District of Illinois, I would apply binding precedent from the Supreme Court and the United States Court of Appeals for the Seventh Circuit, even if I did not agree with it.

10. **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 when (i) a claim cannot be decided on a non-constitutional ground; (ii) the statute at issue violates the Constitution or Congress exceeded its authority in enacting the statute; and (iii) there is no binding authority affirming the constitutionality of the statute.

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 endeavor to ensure that cases move forward expeditiously and efficiently, as overcrowded dockets can diminish the quality of justice available to all. To do so, I would pro-actively manage cases on my docket with frequent status hearings, firm deadlines and flexible procedures tailored to the specific needs and circumstances of different types of cases. I would seek to resolve discovery disputes, dispositive motions, and other motions promptly with rulings and opinions that are narrowly focused on the issues presented by the litigants.

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I do believe that judges play a role in controlling the pace and conduct of litigation. A judge must balance the needs of individual litigants against the needs of the public as a whole; if individual cases do not move through the judicial system in an efficient manner, the availability of that system, and the quality of justice it provides, may be compromised for all litigants. Please see my response to question 11 above as to the specific steps I would take to control my docket if confirmed as a District Judge.

13. Please describe with particularity the process by which these questions were answered.

Response: I reviewed the questions and prepared my responses after receiving these questions on February 2, 2012. My responses were reviewed by representatives of the Department of Justice and I subsequently finalized my responses before submitting them on February 6, 2012.

14. Do these answers reflect your true and personal views?

Response: Yes.

Responses of John J. Tharp, Jr.
Nominee to be United States District Judge for the Northern District of Illinois
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 adhere to, and promote respect for, the rule of law. To do so, the judge must apply the law, not create it, and must do so impartially and efficiently, with integrity, an even temperament, and respect for all who come 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: First, I believe I have developed a reputation of integrity in my legal community, which attests to my honesty and fairness, even in the role of zealous advocate for clients. Second, during my professional career, I have represented a wide spectrum of clients, as both plaintiffs and defendants, in many different types of cases, so I would not come to the bench with only one perspective on justice. And third, I believe I have demonstrated a commitment to public service that reflects my concern with making a contribution to the public good—a goal that is inconsistent with the notion of applying the law with bias and favoritism.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: I believe that all judges should be committed to the doctrine of stare decisis and are obligated to apply binding precedent regardless of whether they personally agree with that precedent. Fidelity to the doctrine of stare decisis is critical to the integrity of the judicial system, so I do not believe that the commitment to stare decisis should vary from court to court.

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VIA EMAIL AND FIRST CLASS MAIL

November 2, 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 Kristine G. Baker, Esq.
To the United States District Court for the Eastern District of Arkansas

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Kristine G. Baker, Esq. who has been nominated for a position on the United States District Court for the Eastern District of Arkansas. As a result of our investigation, a Substantial Majority of the Committee is of the opinion that Ms. Baker is "Well Qualified." A Minority of the Committee is of the opinion that Ms. Baker is "Qualified" for this position.

A copy of this letter has been provided to Ms. Baker.

Sincerely,

Allan J. Joseph
Chair

cc: Kristine G. Baker, 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

November 2, 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 Andrew Hurwitz
To the United States Ninth Circuit Court of Appeals
for the Ninth Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Justice Andrew Hurwitz who has been nominated for a position on the United States Ninth Circuit Court of Appeals for the Ninth Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Justice Hurwitz is "Well Qualified" for the position.

A copy of this letter has been provided to Justice Hurwitz.

Sincerely,

Allan J. Joseph
Chair

cc: Andrew Hurwitz
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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November 10, 2011

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of John Z. Lee
To the United States District Court for the Northern District of Illinois

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of John Z. Lee who has been nominated for a position on the United States District Court for the Northern District of Illinois. As a result of our investigation, a Substantial Majority of the Committee is of the opinion that Mr. Lee is "Qualified." A Minority of the Committee found Mr. Lee "Not Qualified" for this position.

A copy of this letter has been provided to Mr. Lee.

Sincerely,

Allan J. Joseph
Chair

cc: John Z. Lee
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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ELEVENTH CIRCUIT
Ramón A. Abadin
Suite 1208
9155 South Dadeland Boulevard
Miami, FL 33156-2739

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

BOARD OF GOVERNORS
LIAISON
E. Timothy Hopkins
420 Park Avenue
Idaho Falls, ID 83402

STAFF COUNSEL
Denise A. Cardman
202-662-1761
denise.cardman@americanbar.org

AMERICAN BAR ASSOCIATION

Please respond to:
Allan J. Joseph, Esq.
Rogers Joseph O'Donnell
311 California St., 10th Floor
San Francisco, CA 94104
Tel: (415) 365-5333
Fax: (415) 956-6457
Email: ajoseph@rjo.com

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022
Facsimile: (202) 662-1762

November 10, 2011

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of George L. Russell, III
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 George L. Russell, III who has been nominated for a position on the United States District Court for the District of Maryland. As a result of our investigation, a Substantial Majority of the Committee is of the opinion that Judge Russell is "Qualified". A Minority of the Committee is of the opinion that Judge Russell is "Not Qualified" for this position.

A copy of this letter has been provided to Mr. Russell.

Sincerely,

Allan J. Joseph
Chair

cc: George L. Russell, III
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq.(via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

CHAIR
Allan J. Joseph
10th Floor
111 California Street
San Francisco, CA 94104

FIRST CIRCUIT
Lisa G. Arrowood
28 State Street
Boston, MA 02109

SECOND CIRCUIT
Beth L. Kaufman
60 East 42nd Street
New York, NY 10165-0023

THIRD CIRCUIT
Robert C. Heim
Cira Center
2929 Arch Street
Philadelphia, PA 19104-2808

FOURTH CIRCUIT
E. Fitzgerald Parnell, III
Suite 2300
301 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
W. Anthony Jenkins
Suite 4000
500 Woodward Avenue
Detroit, MI 48226

SEVENTH CIRCUIT
Stephan Landsman
25 East Jackson Boulevard
Chicago, IL 60604

EIGHTH CIRCUIT
David L. Brown
6th Floor
Fleming Building
218 Sixth Avenue
Des Moines, IA 50309-4013

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
601 South Grand Avenue
Los Angeles, CA 90071

Sheryl J. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Paul T. Moxley
11th Floor
111 East Broadway
Salt Lake City, UT 84111-5225

ELEVENTH CIRCUIT
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9155 South Dadeland Boulevard
Miami, FL 33156-2739

D.C. CIRCUIT
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10560 Fox Forest Drive
Great Falls, VA 22066

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1701 Pennsylvania Avenue, NW
Washington, DC 20006-5805

BOARD OF Ggovernors
LIAISON
C. Timothy Hopkins
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Idaho Falls, ID 83402

STAFF COUNSEL
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San Francisco, CA 94104
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Fax: (415) 956-6457
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AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022
Facsimile: (202) 662-1762

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 John J. Tharp, Jr.
To the United States District Court for the Northern District of Illinois

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of John J. Tharp, Jr. who has been nominated for a position on the United States District Court for the Northern District of Illinois for the Northern District of Illinois. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Tharp is "Well Qualified" for this position.

A copy of this letter has been provided to Mr. Tharp.

Sincerely,

Allan J. Joseph
Chair

cc: John J. Tharp, 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)

A A B A

ASIAN AMERICAN BAR ASSOCIATION

CHICAGO

VIA Fax: 202.224.9516

January 20, 2012

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Mehpara A. Suleman

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The Honorable Patrick Leahy, Chairman
COMMITTEE ON THE JUDICIARY
United States Senate
224 Senate Dirksen Building
Washington, D.C. 20510

RE: Application of **John Z. Lee** for Judicial Vacancy,
United States District Court, Northern District of Illinois

Dear Senator Leahy:

On behalf of the Asian American Bar Association of Greater Chicago ("AABA"), I am pleased to write this letter in support of John Z. Lee's nomination to the United States District Court for the Northern District of Illinois. If he is confirmed, Mr. Lee would be only the second Asian American to serve as an Article III judge in Illinois, and the first Korean American Article III judge in the Midwest.

AABA is the largest bar organization representing the interests of Asian Pacific American attorneys, judges, law professors and law students in the Midwest. We are deeply committed to supporting the appointment of qualified Asian Pacific Americans ("APAs") to the judiciary, where Asian Pacific Americans are significantly underrepresented. Nowhere is the underrepresentation of AP As more apparent than on the federal bench. Mr. Lee has a distinguished record of professional accomplishments, and a long record of service to the community. It is therefore our distinct pleasure to recommend and support the confirmation of Mr. Lee, as he is exceedingly well-qualified to serve as a United States District Court Judge.

First and foremost, Mr. Lee is a highly skilled lawyer who has years of significant experience in the federal courts. After graduating *magna cum laude* from Harvard University and *cum laude* from Harvard Law School, Mr. Lee served as a trial attorney at the United States Department of Justice's Environment and Natural Resources Division. There, he tried cases arising under federal environmental statutes. Mr. Lee has also practiced with Mayer, Brown & Platt, Grippo & Elden and, since 1999, Freeborn & Peters, where he is

a partner. For most of Mr. Lee's private practice career, he has focused on the litigation of complex commercial disputes involving antitrust, intellectual property, and business tort issues. In this regard, Mr. Lee is well-known as a lawyer with tremendous ability who can meticulously evaluate legal and factual issues while remaining focused on the needs of his client. Mr. Lee also has significant experience in negotiating complex settlements. He is well-known for his practical, common-sense approach to legal issues and disputes.

Other organizations have recognized Mr. Lee during his distinguished legal career, cementing his outstanding reputation in the legal community. For example, in 2004, Mr. Lee was selected by the Chicago Daily Law Bulletin and Chicago Lawyer publications as one of "40 Attorneys Under 40 in Illinois to Watch." He has also been selected as a "Leading Lawyer" in Commercial Litigation and Class Action/Mass Tort Defense Law by the Leading Lawyers Network.

Despite his busy litigation practice, Mr. Lee has given generously of his time to the local community. Indeed, he has gone beyond mere participation by taking on leadership positions within numerous public-interest institutions that assist minority and low-income communities. He is currently president of the Board of Directors for the Coordinated Advice and Referral Program for Legal Services ("CARPLS"), a legal aid service that provides assistance to low-income residents of Cook County through a Legal Aid Hotline and several court-based advice desks. Mr. Lee is also President of the Board of Directors of Asian Human Services, which provides social services to low-income, Asian American immigrant and refugee communities. He has served on its board since 2006. Through Asian Human Services, Mr. Lee has had the privilege of using his Korean language skills to better represent non-English speaking clients.

As a partner and co-chair of the Diversity Committee at Freeborn & Peters, Mr. Lee has encouraged his firm to become a major supporter of the programs of AABA. Through the support of influential attorneys such as Mr. Lee, AABA has been able to expand its programming, including opening a second *pro bono* legal clinic, establishing a law foundation, and creating a mentoring program. In the interest of full disclosure, Mr. Lee currently serves as a director on AABA's Board of Directors. His participation with AABA as a board member underscores his commitment to the APA community, and his involvement informs AABA's direct knowledge of Mr. Lee's accomplishments and qualifications. Mr. Lee is an active member or co-chair of several AABA board committees, including the Business Development and In House Counsel/Partners Committees, which provide networking opportunities and training sessions to help both younger and more experienced Asian American attorneys advance their careers.

AABA proudly and unequivocally supports the nomination of John Z. Lee to serve as a Judge of the United States District Court for the Northern District of Illinois. We respectfully urge his swift confirmation for the benefit of this distinguished Court.

Please do not hesitate to contact me should you have any questions. Thank you for your time and consideration.

Sincerely,

Mehpara A. Suleman

Mehpara A. Suleman
President
Asian American Bar Association
of Greater Chicago

ASIAN AMERICAN INSTITUTE
20TH ANNIVERSARY
MEMBER OF ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE

January 17, 2012

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Senate Dirksen Building
Washington, D.C. 20510

Re: Letter of Support for John Z. Lee

Dear Senator Leahy:

Asian American Institute (AAI) enthusiastically recommends John Z. Lee for a judgeship with the United States District Court for the Northern District of Illinois. As a litigation partner at the law firm of Freeborn & Peters LLP, Mr. Lee has demonstrated his vast legal knowledge and ability. Mr. Lee is a top notch writer and speaker. His professional experience and public service activities demonstrate his fair temperament and commitment to the community.

Mr. Lee has actively contributed to the vitality of the Asian American community and the public at large. As the President of Asian Human Services, he leads a nationally accredited, Medicaid-certified social service agency that serves Chicago's Asian immigrant communities. He is also the President of Coordinated Advice and Referral Program for Legal Services (CARPLS), one of Cook County's primary legal aid providers, which has assisted hundreds of thousands of clients. Mr. Lee also serves on the board of Asian American Bar Association of Chicago and volunteers for various other community organizations. Additionally, through his role on his law firm's Professional Review and Recruiting Committees, Mr. Lee serves as an important link between minority and women attorneys and other attorneys, because he is adept at communicating with all groups.

AAI is a non-profit, non-partisan organization dedicated to empowering the pan-Asian community in Illinois through advocacy, research, education, and coalition-building. AAI is a member of the national Asian American Center for Advancing Justice. AAI diligently works to raise the visibility of the Asian American community and spotlight its concerns so that elected officials, policy makers, and other public servants will be responsive to these issues.

AAI strongly encourages the appointment of qualified individuals to the judiciary who are sensitive to the needs of Asian Americans. Mr. Lee is not only sensitive to the needs of this community, but also to the needs of all people. Mr. Lee has shown a strong responsible mindset throughout his career and has been an example of ethical professionalism and would therefore excel as a judge. Thank you very much for your time and consideration.

Sincerely,

Michael P. Chu
President

Tuyet Le
Executive Director

ASIAN AMERICAN INSTITUTE
Educate, Advocate, Empower
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T (773) 271-0899 F (773) 271-1982
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Member Affiliates: Asian American Justice Center in Washington, D.C., Asian Law Caucus in San Francisco and Asian Pacific American Legal Center in Los Angeles

Hearing before the
Senate Committee on the Judiciary

on

"Nominations"

Thursday, January 26, 2012
Dirksen Senate Office Building, Room 226

List of Awards for Kristine Baker:

- Recognized in Commercial Litigation in *Chambers and Partners' America's Leading Lawyers for Business;*
- Listed with *The Best Lawyers in America*® in the areas of Commercial Litigation, Litigation – First Amendment, Litigation – Labor & Employment, Employment Law – Individuals, Employment Law – Management, and Labor Law – Management
- Named Best Lawyers' 2012 Little Rock Litigation – First Amendment Lawyer of the Year.
- Listed in the *Martindale-Hubbell® Bar Register of Preeminent Women Lawyers*
- Named a Rising Star by *Mid-South Super Lawyers* in the area of Business Litigation for the years 2008 – 2010
- Recognized as an emerging business leader in the *Forty Under 40* list published by *Arkansas Business* in 2010.

OPENING STATEMENT BY SENATOR BENJAMIN L. CARDIN

ON THE NOMINATION OF JUDGE GEORGE LEVI RUSSELL, III

TO BE UNITED STATES DISTRICT JUDGE, DISTRICT OF MARYLAND

SENATE JUDICIARY COMMITTEE HEARING

Thursday, January 26, 2012

I am pleased to join with Senator Mikulski in recommending that the Judiciary Committee favorably report Judge George Levi Russell III of Maryland to be a US District Judge for the District of Maryland.

The Constitution provides for lifetime appointments for federal judges, which is unique in our federal government. I know that both Senator Mikulski and I take this obligation very seriously in terms of the advice and consent role played by the Senate.

When evaluating judicial nominees, I use several criteria. First, I believe judicial nominees must have an appreciation for the Constitution and the protections it provides to each and every American.

I believe each nominee must embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests. I believe a judicial nominee must respect the role and responsibilities of each branch of government, including a healthy respect for the precedents of the court. I look for a strong commitment and passion for the continued forward progress of civil rights protections. And I want judges who have the necessary experience and temperament. I am confident that Judge Russell meets these criteria and standards.

Judge Russell was nominated to fill the vacancy created during the end of President Bush's term of office, when Judge Peter Messitte took senior status in 2008.

Judge Russell brings a wealth of experience to this position in both state and federal courts. Earlier in his career he served as a federal prosecutor and as an attorney in a private law firm. He now sits as a state court trial judge in Maryland.

Judge Russell graduated from Morehouse College with a B.A. in political science in 1988, and a J.D. from Maryland Law School in 1991. He passed the bar examination and was admitted to practice in Maryland in 1991. He then clerked for Chief Judge Robert Bell on the Maryland Court of Appeals, our state's highest court.

He worked as a Litigation Associate for 2 years at Hazel, Thomas, and then briefly at Whiteford, Taylor. He then served as an Assistant US Attorney for the District of Maryland from 1994 to 1999, handling civil cases. In that capacity he represented various federal government agencies in discrimination, accident, and medical malpractice cases.

He then worked as an associate at the Peter Angelos law firm for 2 years.

In 2002 he went back to the US Attorney's office handling criminal cases until 2007. He represented the United States in the criminal prosecution of violent crime and narcotics cases during the investigatory stage, at trial, and on appeal. This included the initiation and monitoring of wiretaps to infiltrate and break up violent gangs in Baltimore City. He also served as the Project Safe Neighborhood Coordinator for the office from 2002 until 2005. He participated in community outreach programs, including attending community meetings on behalf of the office and attending meetings with the Baltimore State's Attorney's Office, to reduce violent crime in Baltimore neighborhood.

In January 2007, Governor Ehrlich appointed him to serve as an Associate Judge of the Baltimore City Circuit Court for a term of 15 years. As a trial judge, Judge Russell has presided over hundreds of trials that have gone to verdict or judgment, and has experience in handling jury trials, bench trails, civil cases, and criminal cases.

Judge Russell has strong roots, legal experience, and community involvement in the state of Maryland. He was born and raised in Baltimore City, and has extended family who live in Baltimore. He serves as a Director and Trustee on the Board of the Enoch Pratt Free Library, which serves the disadvantaged through the State of Maryland. He served on the Board of Directors of the Community Law Center, which is an organization designed to help neighborhood organizations improve the quality of life for their residents.

He has also served as a board member of several organizations that devoted substantial resources to helping the disadvantaged, including Big Brothers and Big Sisters of Maryland. I know that he has often spoken to young people in school about the obligation, duty, and mandate of a judge, and tries to demystify the role of a judge in a black robe. Judge Russell is particularly concerned with addressing the drug violence and mental health problems that plague Baltimore City.

Judge Russell comes from a distinguished legal family in the state of Maryland. Judge Russell's father is George L. Russell, Jr. who was a groundbreaking African-American lawyer in Maryland. He was the first African-American judge on Maryland's Circuit Court in the 1960's, and was later Baltimore's first African-American solicitor. He was also the first African-American president of the Baltimore City Bar Association, and the first African-American to run for mayor of Baltimore in 1971. In later years, Judge Russell was named by the governor to chair the Maryland Museum of African-American History and Culture Commission, and served as chairman of the board of the Maryland African American Museum Corporation. He was also asked to chair Baltimore's Judicial Nominating Commission. He received numerous awards from the Maryland Bar Foundation and the NAACP.

Indeed, Judge Russell's family believes so strongly in public service that even he wife is a judge, sitting on the District Court of Maryland for Baltimore City.

I am absolutely confident that Judge Russell 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.

ELIJAH E. CUMMINGS
7TH DISTRICT, MARYLAND

RANKING MEMBER, COMMITTEE ON
OVERSIGHT AND GOVERNMENT REFORM

COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST
GUARD AND MARITIME TRANSPORTATION
SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

JOINT ECONOMIC COMMITTEE

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

2235 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2007
(202) 225-4741
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8267 MAIN STREET
ROOM 102
ELLICOTT CITY, MD 21043-3933
(410) 465-8265
FAX: (410) 465-8740

www.house.gov/cummings

January 27, 2012

Senator Patrick Leahy
Chairman
US Senate Committee on the Judiciary
224 Dirksen Building
Washington, DC 20515

Senator Chuck Grassley
Ranking Member
US Senate Committee on the Judiciary
152 Dirksen Building
Washington, DC 20515

Dear Chairman Leahy and Ranking Member Grassley:

It is with great enthusiasm that I write to support the appointment of Judge George L. Russell, III, to fill the vacancy on the United States District Court for the District of Maryland Northern Division. I ask that this letter be made part of the permanent record associated with the consideration of his nomination.

I have known George for many years. He presently serves as a Circuit Court Judge for the City of Baltimore. Judge Russell is a brilliant and highly respected jurist who has distinguished himself throughout his service on the bench. He has demonstrated superior legal acumen and the highest integrity. He is compassionate and fair and conducts himself with the greatest level of dignity. He is well-qualified to sit on the United States District Court.

Judge Russell has acquired a wealth of knowledge of the law and its application during his impressive career. He previously worked as a clerk with Chief Judge Robert Bell on the Maryland Court of Appeals, our state's highest court. He has also worked in private practice and with the U.S. Attorney's Office for the District of Maryland.

Of deep concern to me is that we maintain diversity on the federal court. In Judge Russell, you will find a highly competent jurist who, as an African American, is sensitive to the needs of people of color and disadvantaged groups. This characteristic is important not only to my constituency, but to the State of Maryland.

I am certain that George's appointment would be a source of pride for you, the legal community and the public at large. With his experience, commitment to justice and life-long dedication to public service, he would make an exceptional U.S. District Court Judge. It is with the above in mind that I urge you to advance his nomination to the full Senate.

Sincerely,

Elijah E. Cummings
Member of Congress

cc: Senator Barbara Mikulski
Senator Ben Cardin

JAN-18-2012 12:16 From:19TH JUDICIAL

NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY

Lake County, IL

Lake County Courthouse
18 North County Street
Waukegan, IL 60085-4359
TDD: 847.360.2975
Fax: 847.249.8442
Phone: 847.377.3623

FRED FOREMAN
Circuit Judge

The Honorable Patrick Leahy
Chairman
Committee of the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510
Via Fax: (202) 224-9516

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
SD-152 Dirksen Senate Office Building
Washington, DC 20510
Fax: (202) 224-9102

Re: Recommendation of John Z. Lee
Nominee for the United States District Court for the Northern District of Illinois

Dear Senator Leahy and Senator Grassley:

It is with great pleasure that I recommend John Z. Lee for confirmation as a United States District Judge for the Northern District of Illinois.

I have known John for over ten years and have had the pleasure of working with John while I was a partner at Freeborn & Peters LLP. In my current position as the Chief Judge Elect of the Nineteenth Judicial Circuit of the State of Illinois and as the former United States Attorney for the Northern District of Illinois from 1990 to 1993, I have had the opportunity to encounter many talented attorneys over the years. I can state without reservation that John is an excellent attorney and a person of great integrity and character. He would make an excellent United States District Judge.

Thank you for your consideration.

With sincerest regards,

Fred Foreman

01/18/2012 12:30PM

Statement of Senator Chuck Grassley

Before the Committee on the Judiciary

On the Nominations of:

Andrew David Hurwitz, to be United States Circuit Judge for the Ninth Circuit

Kristine Gerhard Baker, to be United States District Judge for the Eastern District of Arkansas

John Z. Lee, to be United States District Judge for the Northern District of Illinois

John J. Tharp, Jr., to be United States District Judge for the Northern District of Illinois

George Levi Russell, III, to be United States District Judge for the District of Maryland

January 26, 2012

Mr. Chairman:

I welcome five nominees to today's hearing: one nominated to the Ninth Circuit and four nominated to district courts.

Andrew David Hurwitz is nominated to be United States Circuit Judge for the Ninth Circuit. Upon graduation from Yale Law School, Justice Hurwitz clerked for Justice Potter

Stewart on the Supreme Court. Following this clerkship, Justice Hurwitz joined the law firm presently known as Osborne Maledon. Justice Hurwitz has also served under two Arizona governors as Chief of Staff: Governors Babbitt and Mofford.

In 2003, then Arizona Governor Janet Napolitano appointed Justice Hurwitz to the Arizona Supreme Court. In 2009, he became Vice Chief Justice.

Kristine Berhard Baker is nominated to be United States District Judge for the Eastern District of Arkansas. She graduated from University of Arkansas School of Law in 1996 and clerked for the Honorable Susan Webber Wright of the US District Court for the Eastern District of Arkansas upon graduation. In 1998, she became an associate at Williams & Anderson. In 2000 she joined the law firm Quattlebaun, Grooms, Tull & Burrow. There, she has focused on complex commercial litigation cases.

John Z Lee is nominated to be United States District Judge for the Northern District of Illinois. He received his JD from Harvard Law School in 1992. Mr. Lee began his legal career as a trial attorney for the US Department of Justice for the Environment and Natural Resources Division. In 1994, he joined the private sector and is currently a partner at Grippo & Elden. He handles cases involving complex commercial disputes and represents clients in criminal investigations of antitrust and financial regulations violations.

George Levi Russell, III, is nominated to be United States District Judge for the District of Maryland. Judge Russell received his JD from University of Maryland School of Law in 1991. He began his legal career as an associate attorney and became an Assistant United States Attorney for the District of Maryland in 1994. He rejoined the private sector in 2000 for two years. Then, in 2007, he was appointed to be an associate judge on the Circuit Court of Maryland. In 2008, he was elected to a 15 year term. Judge Russell has sat on each

of the four dockets of this court: Criminal, Civil, Family, and Juvenile.

John J. Tharp Jr. is nominated to be United States District Judge for the Northern District of Illinois. Prior to law school, Mr. Tharp served in the Marine Corps for 6 years, receiving several military honors. Mr. Tharp received his JD from Northwestern University School of Law in 1990. Upon graduation, Mr. Tharp clerked for Judge Glaum on the Seventh Circuit Court of Appeals. He spent the next year as a litigation associate at Kirkland & Ellis. From there, he became an Assistant United States Attorney for the Northern District of Illinois for five years. Mr. Tharp returned to the private sector in 1997, joining his current law firm Mayer Brown where he handles complex commercial litigation.

Again, I welcome the nominees and their families. I look forward to reviewing the testimony.

HUCKABAY LAW FIRM
A Professional Limited Company
Attorneys at Law
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425 West Capitol Avenue, Suite 1575
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Mike Huckabay

mike@huckabaylawfirm.com

DEC 28 '11 AM 9:41

December 12, 2011

VIA U.S. MAIL

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
437 Russell Senate Building
United States Senate
Washington, DC 20510

Re: Nomination of Kristine Baker
United States District Court for the Eastern District of Arkansas

Dear Senators Leahy:

I was most pleased to learn of President Obama's nomination of Kristine Baker to serve as a judge here in the Eastern District of Arkansas. I was also pleased to read of the bipartisan support you each have extended to her.

Though I am a Republican, I must give the President his due- he could not have made a more solid pick for this important judicial post. I have worked closely with Ms. Baker in complex matters of litigation. She has shown herself to be smart, even-handed, and mature in the practice of law. She will take these same key traits to the bench and serve our federal courts with distinction.

During my many years of practicing law, I have learned that shepherding a federal judgeship nomination through to a floor vote take a steady and adroit hand. I respectfully ask that you both continue in the admirable bipartisan spirit you have shown and help ensure that Ms. Baker received prompt consideration by the Senate. I stand ready to answer for you and the members of the Senate Judiciary Committee any questions about the bases for my unqualified support of Ms. Baker to serve in this important post.

Sincerely,

Mike Huckabay

MH/lmd

Kirk Recommends John Tharp for Federal Judicial Nomination

Tharp, veteran, family man, known corruption fighter to be submitted to President Obama to fill U.S. District Court vacancy in Chicago

Tuesday, Jul 5

CHICAGO - With public integrity at the forefront of Illinois' consciousness, U.S. Sen. Mark Kirk (R-Ill.) today recommended former prosecutor John Tharp of Chicago for appointment to the United States District Court for the Northern District of Illinois.

Under Senate tradition for Illinois, the senator from the party not in control of the White House generally makes nomination recommendations to the White House for one federal district court judgeship for every three of the party in power. Under that tradition, this is the first recommendation by Senator Kirk. Senators Kirk and Durbin have consulted regarding each other's recommendations and will work to secure prompt confirmation of nominees. This arrangement is intended to ensure the orderly filling of federal judge vacancies on the Illinois bench.

Sen. Kirk formed a bipartisan, statewide Judicial Review Advisory Board in February. The Advisory Board was charged with identifying "the strongest applicants from Illinois for consideration by the President and U.S. Senate." Chaired by Peter Baugher of Schopf & Weiss LLP, the 14-member Advisory Board received nearly 50 applications. The Advisory Board spent over 300 man hours and met five times to review judicial candidates and their backgrounds. The Advisory Board's review process included personal interviews as well as calls to colleagues, opposing counsel and judges.

Today's announcement is the result of that process. Advisory Board members were: Peter Baugher, Chair (Schopf & Weiss LLP), Wayne Andersen (former federal judge), Keith Beyler (SIU Law School), Congresswoman Judy Biggert (R-IL), James Buda (Caterpillar Inc.), Roxane Busey (Baker &McKenzie), James Figliulo (Figliulo & Silverman, P.C.), Victor Henderson (Holland & Knight), Larry Kuster (Rammelkamp Bradney P.C.), Lynn Mirabella (Mirabella, Kincaid, Frederick & Mirabella, LLC), James Montana (VedderPrice PC), Jennifer Nijman (Nijman Franzetti LLP), Richard Porter (Kirkland& Ellis LLP), and Ronald Safer (Schiff Hardin LLP).

John Tharp is married to Betsy Tharp and has 3 children, Matthew, Emily and Ellen. Tharp led the U.S. Attorney's 1995 investigation of Edward Rosewell, the former long-time Cook County Treasurer who pled guilty to engaging in a ghost-payrolling scheme. Tharp also handled the investigation and prosecution of extortion charges against former Illinois Senate Majority Leader John D'Arco.

"It's time to put Illinois corruption and Blagojevich-style politics behind us," Senator Kirk said. "As a prosecutor and lawyer, John Tharp is uniquely qualified to both serve as a federal judge and to send a signal that Illinois is not synonymous with corruption." Kirk continued, "John Tharp made a name for himself as an Assistant U.S. Attorney whose cases included political corruption and money laundering. His impressive tenure in that office includes service in the General Crimes Division and the Organized Crime Drug Enforcement Task Force."

Tharp, age 50, attended Duke University on a ROTC scholarship and was commissioned as a Second Lieutenant in the Marine Corps after graduating summa cum laude with a degree in political science. Tharp served in the Marine Corps from 1982 to 1988, achieving the rank of Captain and earning the Navy Achievement Medal and the Navy Distinguished Midshipman Award. He subsequently attended Northwestern University Law School on a full merit John Henry Wigmore Scholarship. While at Northwestern, Tharp served as book review editor of the Northwestern Law Review. He graduated magna cum laude in 1990.

Following graduation, Tharp served a one-year clerkship under Judge Joel Flaum of the Seventh Circuit Court of Appeals from 1990 to 1991. In 1992, Tharp was hired as an Assistant U.S. Attorney in the Northern District of Illinois. It was there that Tharp tried the cases of Rosewell and D'Arco. Since leaving the U.S. Attorney's office in 1997, Tharp has worked at Mayer Brown LLP, where he was made partner in 1999. Tharp is currently co-leader of Mayer Brown's securities litigation and enforcement practice. Tharp was originally nominated for a federal judgeship in 2008 but the Senate failed to process many nominations due to the pending election.

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January 19, 2012

Senator Patrick J. Leahy
Chairman, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
Ranking Member, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Andrew D. Hurwitz for U.S. Circuit Judge, Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

On November 2, 2011, President Obama nominated Vice Chief Justice Andrew D. Hurwitz of the Arizona Supreme Court for a seat on the United States Court of Appeals for the Ninth Circuit. As former law clerks to Justice Hurwitz, we are uniquely qualified to attest to the many outstanding qualities that would make him an excellent addition to the Ninth Circuit bench. We write today to share some of these with the Committee and, in so doing, we urge the Committee to promptly report Justice Hurwitz's nomination to the full Senate for consideration.

First and foremost, Justice Hurwitz has an intellect that is second to none. His mastery of the law and his facility for legal reasoning is evident from the moment he begins considering a case, to his questions during oral argument, and ultimately to the careful and considered opinions he writes. His understanding of the intricacies of the law has made him an outstanding judge and an outstanding teacher, in the classroom at the Arizona State University Sandra Day O'Connor College of Law, in the myriad of public events he attends as a representative of the Arizona Supreme Court, and most especially to those of us who spent a full year working with him at the Court.

Second, Justice Hurwitz is deliberate. His clerks all have had the experience of watching draft opinions go through twenty-five rounds of revisions as he refines his language. This drafting process occurs as part of an ongoing dialogue about a case with his colleagues and frequent meetings with his law clerks to ensure that no stone is left unturned. The inevitable result of his hard work is an opinion which is both well-reasoned and a concise statement of the law, providing clarity for both practitioners and the general public.

Third, Justice Hurwitz is fair. Every person who has appeared before the Arizona Supreme Court during his tenure has received the benefit of his full and unbiased consideration of the issues. Justice Hurwitz understands that the purpose of his work is the proper resolution of the case before him. Because of his hard work and comprehensive examination of every case, the parties are not penalized for the poor advocacy of their attorneys. Justice Hurwitz always cuts through the folderol to reach the issues at the heart of the case, and he studies those issues for as long as necessary to reach the correct result.

Finally, Justice Hurwitz has a magnetic personality that makes him approachable by all. His wit and broad knowledge make a lunchtime conversation with him a true pleasure, whether the topic is politics, sports, history, the arts, or the law. He will bring to the Ninth Circuit a level of collegiality that is crucial to the proper functioning of an appellate court.

A clerkship with Justice Hurwitz has been described by at least one senior attorney in the Phoenix area as "attending the Andy Hurwitz Finishing School." We have all been fortunate enough to have our legal careers molded in part at that "Finishing School," and for that, we are proud and grateful. Justice Hurwitz has served the State of Arizona well for the past eight years, and our State's loss will most certainly be the Ninth Circuit's gain. We respectfully urge the Committee promptly report Justice Hurwitz's nomination to the full Senate.

Sincerely,

D. Andrew Gaona, Esq.
Law Clerk to Andrew D. Hurwitz, 2010-11

Matthew du Mée, Esq.
Law Clerk to Andrew D. Hurwitz, 2010-11

Shane Ham, Esq.
Law Clerk to Andrew D. Hurwitz, 2009-10

William Furnish, Esq.
Law Clerk to Andrew D. Hurwitz, 2009-10

Lena Ryan, Esq.
Law Clerk to Andrew D. Hurwitz, 2008-09

Brunn W. Roysden III, Esq.
Law Clerk to Andrew D. Hurwitz, 2008-09

Kathleen O'Meara, Esq.
Law Clerk to Andrew D. Hurwitz, 2007-08

Alastair J. Gamble, Esq.
Law Clerk to Andrew D. Hurwitz, 2007-08

Lincoln Combs, Esq.
Law Clerk to Andrew D. Hurwitz, 2006-07

Kory Langhofer, Esq.
Law Clerk to Andrew D. Hurwitz, 2006-07

Jaclyn Foutz, Esq.
Law Clerk to Andrew D. Hurwitz, 2005-06

Elizabeth C. Walker, Esq.
Law Clerk to Andrew D. Hurwitz, 2005-06

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Nominations
January 26, 2012

Today, the Judiciary Committee holds its first confirmation hearing of 2012. I thank Senator Durbin for chairing today's important hearing on the nominations of Andrew Hurwitz to fill a judicial emergency vacancy on the Ninth Circuit, Kristine Baker to the Eastern District of Arkansas, George Russell to fill a judicial emergency vacancy in the District of Maryland, and two nominees from his home state, John Lee and John Tharp, both nominated to fill judicial emergency vacancies in the Northern District of Illinois. I know Senator Kirk, the Republican Senator from Illinois, supports these nominees and we will continue to seek to move them forward while he recovers.

I had hoped to proceed with a hearing on these well-qualified nominees last year, but accommodated Senator Grassley's preferred schedule and did not proceed on them as the Republicans had not reviewed their materials. I am pleased that we will consider their nominations today and hope that we can now resume our reasonable schedule of regular confirmation hearings every two weeks. With vacancies on Federal courts across the country remaining extremely high, as they have throughout the term of the Obama administration, we cannot afford to slow down our consideration of nominations. I have not proceeded with hearings in back to back weeks as the Republican Chairman of this Committee did for President Bush's nominees at the beginning of 2004, a presidential election year.

I thank Senator Kyl for working with the President and for his strong support of Justice Hurwitz, and for serving as Ranking Member today. I hope that we can turn a page and provide better treatment to President Obama's well-qualified consensus nominees than the Senate has done during the last three years. President Obama's nominees have been confirmed at a lower percentage rate than the nominees of any president in the last 35 years. The Senate has confirmed just over 70 percent of President Obama's circuit and district nominees, leaving more than one in four not confirmed. In stark contrast, the Senate confirmed nearly 87 percent of President George W. Bush's nominees, nearly nine out of every 10 nominees he sent to the Senate over two terms.

We remain well behind the pace set by the Senate during President Bush's first term. By the end of President Bush's first term, the Senate had confirmed 205 district and circuit nominees. At the beginning of his fourth year in office, the Senate had lowered judicial vacancies to 46 and already confirmed 168 of his judicial nominees. In contrast, the Senate has confirmed only 125 of President Obama's district and circuit nominees, leaving judicial vacancies at 85. The vacancy rate remains nearly double what it had been reduced to by this point in the Bush administration.

Senate Republicans continue to use a strategy of across-the-board delays that has led to a shamefully high number of judicial vacancies. In 2009, the Senate was able to confirm only 12 Federal circuit and district court judges, the lowest total in 50 years. In 2010, the Senate was able to confirm 48 Federal circuit and district judges. That has led to the lowest confirmation

total for the first two years of a new presidency in 35 years. As a result, judicial vacancies rose again over 110 and stayed near 90 for the longest period of historically high vacancies in 35 years.

Right now, nearly one out of every 10 Federal judgeships is vacant. Judicial emergency vacancies in Florida, Utah, California, Nevada and Texas remain unfilled despite nominees that were on the calendar to fill those vacancies at the end of last year, but who are still awaiting a final Senate vote. All but one of the 18 nominees still on the calendar was reported last year with significant bipartisan support, with 16 of them reported unanimously. These nominees should have been confirmed last year.

I am hopeful that the New Year will bring greater cooperation from Republican Senators, and that we can expedite consideration of President Obama's judicial nominees to address the serious vacancies crisis currently in our Federal courts. Today's hearing is a good start. First, we will consider the nomination of Justice Andrew Hurwitz to the U.S. Court of Appeals for the Ninth Circuit. Justice Hurwitz has spent the last nine years as a Justice on the Supreme Court of Arizona. Prior to that, he practiced for over 25 years at a law firm in Phoenix, Arizona, and has also served as Chief of Staff to Arizona Governors Bruce Babbitt and Rose Mofford. Justice Hurwitz has argued two cases before the U.S. Supreme Court, one which led to a groundbreaking decision on an issue relating to a defendant's right to a jury trial. A graduate of Yale Law School, Justice Hurwitz clerked for Justice Potter Stewart on the U.S. Supreme Court. He was rated unanimously well qualified by the ABA Standing Committee, the highest possible rating. He has the support of both his home state Senators – Republicans John McCain and Jon Kyl.

Justice Hurwitz has been nominated to fill one of four judicial emergency vacancies on the Ninth Circuit. The Ninth Circuit serves more than 61 million Americans, and handles double the caseload of the other Federal circuit courts. The Chief Judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, have written to the Senate emphasizing the Ninth Circuit's "desperate need for judges," urging the Senate to "act on judicial nominees without delay," and concluding that they "fear that the public will suffer unless our vacancies are filled very promptly."

The judicial emergency vacancies on the Ninth Circuit are harming litigants by creating unnecessary and costly delays. The Administrative Office of U.S. Courts reports that it takes nearly five months longer for the Ninth Circuit to issue an opinion after an appeal is filed, compared to all other circuits. The Ninth Circuit's backlog of pending cases far exceeds other Federal courts. As of March 2011, the Ninth Circuit had 13,913 cases pending before it. The second closest – the Sixth Circuit – had 5,231 cases pending before the court. Thus, it is critical that the Senate proceed without further delay to vote on the nomination of Judge Jacqueline Nguyen to the Ninth Circuit and that we expedite Committee consideration of the nomination of Paul Watford and that of Justice Hurwitz's nomination to alleviate this crushing burden.

We will also proceed with the four district court nominees – three of whom are nominated to fill judicial emergency vacancies. Kristine Gerhard Baker has been nominated to the Eastern District of Arkansas. Ms. Baker has been a partner at the law firm of Quattlebaum, Grooms, Tull & Burrow in Little Rock, Arkansas since 2002. In her 25-year legal career, Ms. Baker has

worked on a variety of complex, business-related litigation disputes and has tried approximately 13 cases to verdict. She has been named numerous times by Chambers Magazine as one of America's leading lawyers for business. Ms. Baker has the bipartisan support of Senator Pryor, a Democrat, and Senator Boozman, a Republican, from her home state of Arkansas.

John Z. Lee and John "Jay" Tharp have been nominated to the Northern District of Illinois. Mr. Lee is currently a partner at the law firm Freeborn & Peters, where he has been a litigator since 2001. There, Mr. Lee has litigated cases involving a wide-range of issues, including antitrust, intellectual property, labor and employment, and complex commercial disputes. He has been named a "Leading Lawyer" in commercial litigation for the last three years by the Leading Lawyers Network. Mr. Lee also spent three years at the Department of Justice, where he was a trial attorney at the Environment & Natural Resources Division. He received his undergraduate degree, *magna cum laude*, from Harvard University, and his law degree, *cum laude*, from Harvard Law School. If confirmed, Mr. Lee would be only the second Korean-American to serve as a Federal district court judge.

Mr. Tharp, formerly a nominee of President Bush at the end of his second term, is currently a partner at the law firm Mayer Brown, where he specializes in criminal investigations and complex commercial litigation. Prior to joining private practice, Mr. Tharp worked for five years as an Assistant United States Attorney at the Northern District of Illinois. He also clerked for Seventh Circuit Judge Joel Flaum for two years after graduating from Northwestern University Law School, *magna cum laude*. Mr. Tharp has been rated "Unanimously Well Qualified" to serve on the Northern District of Illinois by the ABA Standing Committee on the Federal Courts, its highest possible rating. Both Mr. Lee and Mr. Tharp have the bipartisan support of both their home state Senators, a Democrat and a Republican.

George Levi Russell III has been nominated to fill a judicial emergency vacancy on the District of Maryland. Judge Russell is currently serving as an associate judge in the Circuit Court of Maryland for Baltimore City, where he has been since 2007. Prior to that, Judge Russell served two separate stints at the U.S. Attorney's Office for the District of Maryland – first in the Civil Division from 1994-1999, and then at the Criminal Division from 2002-2007. Judge Russell has also worked in private practice at several law firms. As an attorney, he tried 13 cases to final verdict or judgment. Judge Russell has the support of his distinguished home state Senators.

I look forward to moving forward to consider these nominations without further delay.

#####

Michael R. Lufrano
5707 N. Ravenswood
Chicago, IL 60660-3913
773-404-4036

January 18, 2012

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Senate Dirksen Building
Washington, D.C. 20510
Fax: 202.224.9516

The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
152 Senate Dirksen Building
Washington, D.C. 20510
Fax: 202.224.9102

Re: Recommendation of John Z. Lee, nominee, United States District Court, Northern District of Illinois.

Dear Senators:

I write in enthusiastic support of the nomination of John Z. Lee to the United States District Court for the Northern District of Illinois. I do not offer an unqualified recommendation often, but I am proud to do so in this case. Let me tell you why:

I have known John since 1989, when we were law students together. Upon graduation, we both moved to Washington, D.C., and remained friends as he worked at the Department of Justice and I in the White House. Today, I am general counsel for the Chicago Cubs baseball club and work regularly with attorneys and those at the forefront of the law in Chicago. Based on his intellect, ability and character, I know John Lee will protect the rule of law and enhance the practice of law in Illinois, if his nomination is confirmed.

I do not say this lightly. John is one of the most talented, dedicated people I know and has the ideal temperament to serve the law on the federal bench. In my experience, his integrity, commitment, enthusiasm, hard work, judgment and respect for the law are second to none. He is consistently balanced and even-tempered, thorough, respectful of colleagues and dedicated to his work. He has a superb ability to synthesize and apply the law. He is exceedingly bright and perceptive, has sound judgment and the ability to analyze issues quickly and thoroughly.

Through the years, I have watched and been regularly impressed as John's talent and intellectual ability have earned him the respect of his peers. His acumen has allowed him to approach any task or challenge with complete understanding and his communications skill and outstanding demeanor have earned him the friendship of his colleagues.

On a more personal level, I know John to have a tremendous commitment to family, a dedication to continuing education, a hunger for learning and a devotion to the law. John is committed to using his considerable talent and passion toward the pursuit of just causes and his integrity and sense of fairness are admirable.

As must be obvious by now, I offer my highest and most unqualified support for the nomination of John Z. Lee to the United States District Court for the Northern District of Illinois. There are very few people to whom I would offer such an endorsement, but John is worthy of the highest praise. As an attorney practicing primarily in Illinois, I will be proud to know the law is being guarded by judges like John Lee.

I recommend John to you without qualification and respectfully urge you to confirm his appointment to the United States District Court for the Northern District of Illinois. If you have any questions or need anything else from me, please do not hesitate to call.

Sincerely,

Michael R. Lufrano

KOREAN AMERICAN BAR ASSOCIATION
OF CHICAGO

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January 13, 2012

VIA FACSIMILE AND U.S. MAIL

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510
Fax: (202) 224-9516

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
SD-152 Dirksen Senate Office Building
Washington, DC 20510
Fax: (202) 224-9102

Re: John Lee's Confirmation for Judicial Vacancy, U.S. District Court for the Northern District of Illinois

Dear Senators Leahy and Grassley:

My name is Sam Park, a partner at the law firm of Winston & Strawn and President of the Korean American Bar Association of Chicago ("KABA"). On behalf of more than 250 members of KABA, I write this letter in support of the confirmation of John Lee for the United States District Court for the Northern District of Illinois.

If confirmed, John will be an impressive, balanced, and intelligent judge. He will uphold the values and goals of the Court with integrity, wisdom, and honor. As a first generation immigrant who came to Chicago when he was a boy, John's life story and numerous professional accomplishments truly demonstrate the qualities and possibilities that make this nation great. As another first generation immigrant myself, I find his accomplishments to be even more profound and inspiring. I know that countless other attorneys in the Korean-American and Asian-American communities feel exactly the same way.

I strongly believe that it is time that we elevate more qualified Asian-American attorneys to federal judge positions. If confirmed, John would be the first Korean-American Article III judge in the Seventh Circuit and will join Judge Lucy Koh (N.D. of California) as only the second Korean-American Article III federal court judge in the United States.

In short, I believe that John's educational credentials, stellar legal career, and service to community speak for themselves. If you have any questions about John's qualifications, please feel free to give me a call at 312-558-7931 or email me at spark@winston.com. I will be happy to discuss with you why the Korean American Bar Association and the public as a whole will be lucky to have John as a judge in the United States District Court for the Northern District of Illinois.

Sincerely,

Samuel S. Park
President,
Korean American Bar Association

Korean American Bar Association
c/o Lia Hyunji Kim, Law Offices of Cheng, Cho, & Yee PC, 134 N. LaSalle St., Suite 1618, Chicago, Illinois 60602
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Stacey L. Smiricky
Baker & Daniels LLP

Steven G. Steger
Global IP Law Group, LLC

Hon. Latasha R. Thomas
Alderman, 17th Ward
City of Chicago

Allen C. Schwartz
Executive Director

February 14, 2011

VIA TELECOPIER

The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
152 Senate Dirksen Building
Washington, D.C. 20510
Fax: 202.224.9516

Re: Nomination of John Z. Lee for Judicial Vacancy
United States District Court for the Northern District of Illinois

Dear Senator Grassley:

It is with great pleasure and enthusiasm that I write this letter in support of John Z. Lee's appointment to the United States District Court for the Northern District of Illinois. I have known John since 2004 when he became a member of the CARPLS Board of Directors, on which he currently serves as Board President.

CARPLS Legal Aid is a major Cook County legal aid organization which serves more than 57,000 clients annually. Through our legal aid hotline and court-based help desks, we provide direct access to experienced attorneys who are trained to quickly assess and respond to the wide range of civil legal problems experienced by low income families. CARPLS attorneys resolve over 85% of all cases in-house by providing limited representation legal services, including legal advice, third party negotiations, document review, and drafting of legal documents and pleadings. Clients with more complex needs are referred by CARPLS to a network of specialized legal and social service providers. Our unique "legal triage" system serves as a model for legal aid communities across the country and has increased access to justice by dramatically reducing the cost of legal aid services to the poor.

As the Executive Director of CARPLS, I have had the unique opportunity to interact with John on many different levels: as a superior, a colleague, a volunteer and a friend. While I could fill multiple pages with accounts of John's academic and professional accomplishments, the focus of my remarks will be on those qualities which I have come to rely upon most and which have propelled John to important leadership roles here at CARPLS.

First and foremost, I know John to be a person with a deep and abiding commitment to public service. In addition to his service on the CARPLS Board,

John has held leadership positions on the boards of the Asian American Bar Association and Asian Human Services. John was also the driving force behind the establishment of a new legal aid clinic in Hoffman Estates in 2009. John saw the compelling need for legal aid help in and around his home town in the northwest suburbs and brought together his firm, CARPLS and a local church to establish a part-time legal clinic which assists low-income families in an area which was not served by the legal aid providers in Cook County. John himself is one of the volunteer attorneys who works at the clinic, so he not only sees the big picture of the need for access to justice, but has also rolled up his sleeves to share his own talents and expertise with these needy clients.

John's work on the legal clinic is a good example of his leadership style. John leads by example. During his tenure on the CARPLS Board, John has served in every executive office position, chaired every committee and worked every fundraising event. He is intimately familiar with his fellow board members, most of the CARPLS staff and many of CARPLS' volunteers. He knows CARPLS inside and out because he has taken the time to come to know the people who define CARPLS and the clients we serve.

The energy and passion which John brings to his every pursuit is infectious. It is no coincidence that the six years John has served on CARPLS' Board have been the most successful years in the organization's history. After the release of a state-wide legal needs study in 2005, which documented the inadequacies of the legal aid safety net in Illinois, John was one of the driving forces behind a Board initiative to significantly expand CARPLS' service capacity. That initiative resulted in a four-fold increase in the number of clients served by CARPLS annually.

John has many other fine qualities that I believe are important for serving on the bench. He is a good listener who is always open to the positions and ideas of others. He is skilled arbiter with a keen intellect who is able to follow discussions and lines of arguments and positions well. Yet, when the time comes, he is able to move decisively and with authority. John is honest and upright in all his dealings with and work for CARPLS, and because of all these personal traits, John has the respect of his fellow Board members, and of all the staff at CARPLS.

I offer my strongest recommendation of John Lee for the federal bench. If I can provide any further information or be of any other assistance to you concerning this recommendation, please do not hesitate to contact me at 312-421-4423 (direct).

Respectfully submitted,

Allen C. Schwartz
Executive Director

McDonald's Corporation
Campus Office Building
2915 Jorie Boulevard
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Direct Dial Number
(630) 623-8452
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(630) 623-8154
Email Address
heather.smedstad@us.mcd.com

January 19, 2012

VIA FACSIMILE & REGULAR MAIL

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Senate Dirksen Building
Washington, D.C. 20510
Fax: 202/224-9516

The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
152 Senate Dirksen Building
Washington, D.C. 20510
Fax: 202/224-9102

Re: John Lee Nomination to the Federal District Court for the Northern District of Illinois

Dear Senators Leahy and Grassley:

I write in enthusiastic support of John Lee's nomination to the federal District Court for the Northern District of Illinois. I have known John since 1997, when we practiced together in the Chicago law firm of Grippo & Elden. John was smart, hard-working and even-keeled, earning the respect and admiration of his colleagues.

After I joined McDonald's Corporation in 2000, John represented McDonald's in a number of significant matters. Now a partner at the law firm of Freeborn & Peters, John worked hard to understand our business goals, as well as the legal issues he so clearly enjoys. His respect for the law, intellectual rigor and good humor under pressure made him a valued advisor to my colleagues at McDonald's and me.

Throughout his legal career, John has not only represented corporate clients brilliantly and effectively, but also devoted many hours to representing individuals pro bono. John's commitment to the community and volunteer work is another reason I wholeheartedly support his nomination.

I believe John Lee will be an excellent addition to the prestigious bench for the Northern District of Illinois, and respectfully urge your support for his nomination.

Very truly yours,

Heather Smedstad
Corporate Vice President, U.S. General Counsel

John J. Tharp Jr.
71 South Wacker Drive
Chicago, Illinois 60606-4637

+1 312 701 7146
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January 30, 2012

The Honorable Richard Durbin
United States Senate
711 Hart Senate Building
Washington, D.C. 20510

The Honorable Jon Kyl
United States Senate
730 Hart Senate Building
Washington, D.C. 20510

Re: January 26, 2012 Judicial Confirmation Hearing

Dear Senators Durbin and Kyl:

I write to thank you for the honor and privilege of appearing on January 26, 2012, before the Senate Judiciary Committee for a hearing regarding my nomination (among others) to the United States District Court for the Northern District of Illinois. It was one of the high points of my professional career.

Immediately following the conclusion of the hearing, I realized that during my introductions, I neglected to acknowledge my mother, Shirley Tharp, who was also in attendance at the hearing. My mother has always been a source of unwavering love and support, and I am deeply dismayed that I inadvertently omitted her from the introductions I made during the hearing. I would be grateful if this letter could be included in the hearing record to serve as a belated acknowledgment of, and my gratitude for, my mother's attendance at the hearing.

Thank you again for inviting me to appear at the hearing and for your consideration of this request.

Respectfully,

John J. Tharp Jr.

NOMINATIONS OF PATTY SHWARTZ, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT; JEFFREY J. HELMICK, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO; MARY GEIGER LEWIS, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA; AND, TIMOTHY S. HILLMAN, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS

WEDNESDAY, FEBRUARY 15, 2012

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

The Committee met, pursuant to notice, at 2:34 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Chris Coons presiding.

Present: Senators Grassley, Graham, Coburn, and Lee.

OPENING STATEMENT OF HON. CHRIS COONS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator COONS. (Off microphone) U.S. Senate and congratulate them on being before us today, the nominees.

I would also like to welcome those of my colleagues who are here to introduce the nominees. I think the sheer number of my colleagues speaks to the high regard in which the nominees are held.

The judicial roles we will discuss today carry life tenure and, thus, require the highest levels of character, temperament and judgment. And the participation of Senators here today in offering introductions and commendations speaks to the importance of nominations as an important part of the work of this Committee.

As we approach the summer before a Presidential election, the longstanding Thurmond rule, as it is known, may once again prevent the Senate from confirming any more judges this Congress. Notwithstanding the Thurmond rule, however, the vacancy rate in our Federal judiciary currently stands near 10 percent, a very high rate in the third year of any modern President's administration.

So it is my belief that it is urgent the Committee and the full Senate give today's nominees fair and reasonably expeditious consideration without procedural obstacles.

Due to the large number of home State Senators here to give introductions, I will refrain from offering any longer opening statement.

Senator Grassley, would you like to proceed with a statement at this time?

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Today we are continuing our progress on processing President Obama's judicial nominees. Earlier this afternoon, we confirmed the 127th Article 3 judge nominated by our President.

With today's confirmation, we have confirmed over 62 percent of the President's circuit judge nominees. This is the same confirmation percentage for President Bush's circuit nominees at a comparable time in the first term.

Today marks the 21st nomination hearing held in this Committee during this Congress, and we will have heard from 80 judicial nominees. All in all, nearly 85 percent of President Obama's judicial nominees have received a hearing.

Even as we go forward with a hearing today, there remains an underlying concern about the President's abuse of appointment power. I am not going to elaborate on that again, because you heard me speak about it many times. But I want to note that that does affect the operating environment that we are in. It is the President who has put a cloud over the confirmation process.

I welcome the nominees today. And I will put the balance of my statement in the record.

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

Senator COONS. Thank you, Senator Grassley.

I know my colleagues' schedules are tight. So I would encourage you to feel free to leave after you have concluded your introduction.

Following statements and introductions, each of the nominees will be invited to give an opening statement and to recognize their family, friends and supporters when the panels are called.

We will begin with Timothy Hillman, nominated to be the United States District Court Judge for the District of Massachusetts.

Senator Kerry, please proceed, if you would, with a statement and an introduction.

PRESENTATION OF TIMONTHY S. HILLMAN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS BY HON. JOHN F. KERRY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KERRY. Thank you very much, Chairman Coons, Ranking Member Grassley, Senator Graham. Thank you for the privilege of being here today to introduce Judge Tim Hillman. And I can reaffirm in doing so what Senator Scott Brown and I said when we recommended Judge Hillman jointly to President Obama.

This jurist is the best of the best, and we are convinced that he is going to do a tremendous job. And I say that not only for myself, and, obviously, Scott will also join me here in speaking for him, but a broad segment of the judicial community in Massachusetts was involved in this.

Senator Brown and I have continued a tradition that we have had for some years in Massachusetts. Senator Kennedy and I did it together for some 27 years. And that is to have a nonpartisan group of judicial—of a search committee. And it's a system of nonpartisan judicial search that has served our State very, very well.

The Committee was made up of many of our State's top lawyers, former prosecutors, representatives of the Massachusetts Bar Association, the Worcester Bar, the Hamden Bar, and they undertook an exhaustive screening of candidates. And it surprised no one that Judge Hillman emerged from this process at the top of their list, and the details of his outstanding career were widely known from the State.

He served in private practice as counsel to several municipalities in Massachusetts, and, finally, as a magistrate judge in Worcester.

His reputation has been that of a thoughtful, fair, honest jurist, and I might say that he has shown considerable creativity and thoughtfulness in his approach.

Mr. Chairman, he has worked diligently on the reentry court, the kind of initiative that I think a lot of us really value in a judge.

As a former prosecutor, I was particularly impressed by the work he has done in lowering recidivism and putting people back on track.

The Restart program that he began in 2008 is a national model for reentry courts. He has turned the courtroom into a major community asset. And all you have to do is look at some of the cases he has handled, which include terrorist plot, economic espionage, and I think it is very, very clear that Judge Hillman is not going to face any kind of learning curve serving on the district court.

So I am grateful to the President for nominating him. I am grateful that he and his family—his wife, Kay, is here with him—that he is prepared to serve enthusiastically. And I think that serving on the district court in Worcester, Massachusetts is really a capstone to decades of tireless public service. I know he is going to bring his signature brand of thoughtful deliberation to that bench.

I would defer to my colleague, Senator Brown, if I may, Senator Coons.

Senator COONS. Thank you, Senator Kerry.

Senator Brown.

PRESENTATION OF TIMONTHY S. HILLMAN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS BY HON. SCOTT P. BROWN, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator SCOTT BROWN. Thank you, Mr. Chairman, Ranking Member, and Senator Graham.

I, too, first of all, want to thank Senator Kerry for the process that we went through. It was clearly bipartisan and it was actually quite informative for me personally, being my first go-around in this endeavor, and the fact that we were able to come up with a

nonpartisan Committee to make the recommendations to us, and which we took the time to interview each and every candidate.

So, John, I want to thank you for that opportunity, and I think we have done a great job.

We have in Judge Hillman somebody who is greatly respected in Massachusetts and especially in the Worcester area through his innovation and integrity and dedication to fairness. He is really to be commended, and I want to thank he and his wife for, obviously, putting up with the process. And I am going to do everything in my power to encourage my colleagues to make sure that we get a vote on this right away, because Massachusetts needs a jurist like him right away to do the people's business, and that is so critically important.

John has references a lot of his actions and activities. I will not duplicate them, but just note that the process for me and I think for the judge has been really beyond reproach.

So, John, once again, I want to thank you for that, and I am looking forward to making our next recommendation. And I appreciate you taking me out of order.

Senator COONS. Thank you, Senator.

Next, we welcome Patty Shwartz, who is currently a magistrate judge in the district of New Jersey. She has been nominated to be a Circuit Judge for the United States Court of Appeals for the Third Circuit.

Senator Lautenburg, please proceed.

PRESENTATION OF PATTY SHWARTZ, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT BY HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBURG. Thanks, Mr. Chairman and members of the Judiciary Committee, for the opportunity to introduce Judge Patty Shwartz to the Committee.

Although I came from a business career before the Senate, I have always been deeply conscious of the fact that the backbone of our society is respect for the law. In fact, I am proud to have a Federal courthouse in Newark carry my name, and Judge Patty Shwartz, the nominee you will meet today, works in that courthouse.

I requested that an inscription be placed on the wall, a plaque, at the front of that courthouse that says "The true measure of a democracy is its dispensation of justice."

The sentiment behind that quote is one of the reasons that I am pleased to introduce to this Committee Judge Shwartz, President Obama's nominee to the U.S. Court of Appeals for the Third Circuit.

Judge Shwartz has been an outstanding magistrate judge, with a solid reputation in the New Jersey legal community for dispensing justice fairly and wisely. She will make an excellent addition to the third circuit court of appeals.

John Lacey, past president of the Association of the New Jersey Federal Bar, said Judge Shwartz is, and I quote him here, "thoughtful, intelligent, and has an extraordinarily high level of common sense."

Thomas Curtin, the Chairman of the Lawyers Advisory Committee for the U.S. District Court of New Jersey, said, and I quote him, "Every lawyer in the world will tell you that she is extraordinarily well qualified, a decent person, and an excellent judge."

Since 2003, she has served as the U.S. magistrate judge in the district of New Jersey, where she has handled more than 4,000 civil and criminal cases. Before joining the bench, Judge Shwartz spent almost 14 years as an assistant U.S. attorney for the district of New Jersey. In this role, she supervised hundreds of criminal cases, including cases involving civil rights, violent crimes, drug trafficking, and fraud.

Judge Shwartz graduated from Rutgers with highest honors. She received her law degree from the University of Pennsylvania Law School, where she was an editor of the law review and was named her class' outstanding woman law graduate.

Judge Shwartz's roots in New Jersey run deep. Like me, she is a native of the city of Patterson, where she learned the value of hard work from her parents, who owned and operated a store there for more than 50 years.

Judge Shwartz inherited her parents' strong work ethic, and that is another reason why I believe she is so well qualified to serve on the U.S. Court of Appeals.

When President Obama announced her nomination, he said, I am going to quote, "Judge Shwartz has a long and impressive record of service and a history of handing down fair and judicious decisions. She will be a thoughtful and distinguished addition to the third circuit court."

Like President Obama, I believe Judge Shwartz is well qualified to serve on this court, and I am confident that this Committee will agree.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Lautenburg.

Senator Menendez.

PRESENTATION OF PATTY SHWARTZ, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT BY HON. ROBERT MENENDEZ, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator MENENDEZ. Well, thank you, Mr. Chairman. And let me say how thrilled I am to see your quick ascension to chairing the hearing. So my congratulations to you.

To my dear friend, the Ranking Member, we sit on the Finance Committee, always good to be with you.

And to all the distinguished members of the Committee, I am here today to express my unqualified support for Judge Patty Shwartz for the third circuit court of appeals.

As the nominee's home State Senator, I take my advise and consent role for judicial nominations extremely seriously. These are lifetime appointments to the Federal bench and should not be taken lightly. And when it comes to the circuit court, the last stop before the United States Supreme Court, that responsibility takes on even more weight.

Because of that, I undertake an in-depth and thorough review not only of a nominee's past record, but also of their understanding of the law, their intellect, their analytical thinking and reasoning.

I have had the opportunity on more than one occasion to pursue with Judge Shwartz the important issues that I believe reflect the high standards to which a nominee for the circuit court should be held. And having that full breadth of understanding and the fact that I am here supporting her speaks volumes to the nominee's character and, I believe, suitability for the position.

Aristotle said "Character may be called the most effective means of persuasion," and I can say that in my meetings with Judge Shwartz, I have learned that she is clearly a person of character.

In short, Mr. Chairman, I have been persuaded to be supportive of Judge Shwartz, and I join with Senator Lautenburg in introducing Judge Shwartz to the Committee, urge the Committee to send her name to the full Senate with a unanimous recommendation to be confirmed to the third circuit court of appeals.

I will not replicate all of the judge's achievements, which my distinguished colleague has listed, but certainly they are worthy of the Committee's consideration.

I would also like to mention in closing that during this process, I had the benefit of invaluable advice and counsel from many members of the Federal bar who spoke very highly of Judge Shwartz, and I would like to specifically mention three of them, among others, but three of them who were very helpful—Gerry Krovatin, James Cecchi, and John Vazquez, who came forward to affirm what I subsequently discovered for myself in discussions with Judge Shwartz—that she possesses the intellect, the character, and the integrity to be confirmed to the third circuit court of appeals.

And I look forward, Mr. Chairman, to the swift and favorable consideration of Judge Shwartz. And notwithstanding some of the comments both you and the Ranking Member have made, I hope that the administration of justice ultimately needs judges to ultimately effectuate that process.

So I look forward to—that environment is not a reason not to move qualified judges forward, and I think this Committee has taken that seriously on both sides of the aisle and I am looking forward for this opportunity for it to become a reality on the floor, as well, after the Committee's recommendation.

Senator COONS. Thank you, Senator Menendez. Thank you, Senator Lautenburg.

We next welcome Jeffrey Helmick, who is nominated to the United States District Court for the Northern District of Ohio. And his home State Senator, Sherrod Brown of Ohio, is here for an introduction.

Senator Brown.

PRESENTATION OF JEFFREY J. HELMICK, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO BY HON. SHERROD BROWN, A U.S. SENATOR FROM THE STATE OF OHIO

Senator SHERROD BROWN. Thank you, Chairman Coons, Ranking Member Grassley, and Senators Graham, Lee and Coburn. Thank you for the important work you do on this Committee.

It is my pleasure to introduce Jeffrey Helmick of Ohio, a brilliant and distinguished lawyer, who has been nominated to serve as the next judge for the U.S. District Court for the Northern District of Ohio. I have a northern and a southern district, as most of you know.

Jeff was born in Toledo. He lives there with his wife, Karen, an attorney, as well, and their son, Joel. I will leave it to Jeff to make the introductions of all of his family members, his mother, his in-laws, and his niece.

Joel gets to take a break from school to attend today's hearings. His parents are making him write a journal of his experiences visiting the Capitol, the White House, the monuments, and getting a sense for both the separation of powers and the cooperation of powers in our government. Good luck, as we would like to see his writings and insight after that.

Jeff and Karen met in law school at the Ohio State University. They tell me their lockers were next to each other. Their last names both began with H, and, fortunately, they were not going to business school, because it took him 3 years before he had the courage to ask her out, supposedly, her words—his words—his words, I guess.

One of the great privileges of our job, Mr. Chairman, as you know, is meeting people who make us proud of our States, and Jeff Helmick is exactly that.

In 2007, then Senator Voinovich, a Republican, and I assembled a commission of distinguished Ohio lawyers, roughly half Republican and half Democrat, including a former Republican Congressman. It included leading legal professions from the southern district of Ohio to recommend for this appointment in the northern district, and we did the opposite for potential nominees in the southern district.

In June of 2010, U.S. District Court Judge James Carr took senior status, creating this vacancy. The members of the bipartisan commission spent a substantial amount of time screening, interviewing, and discussing the candidates. I spoke with almost every one of—each put a report together. I spoke with almost every one of the 17 members. Each was impressed by Jeff's thoughtfulness, his temperament, his reputation among his peers, including opposed counsel.

The chair of the commission, Nancy Rogers, former dean of Ohio State's Law School and former attorney general of Ohio and daughter of a Republican cabinet member in, I believe, the Eisenhower Administration, said that Jeff has shown a commitment to integrity and to excellence and a dedication to his community and to the administration of justice.

Based on the bipartisan committee's recommendation and based on my own judgment, I had no hesitation suggesting Jeff Helmick's name to President Obama. I am honored that President Obama nominated him. It is my hope this Committee will act soon to approve his nomination.

This vacancy has been there for some 20 months. The northern district would benefit immensely from his breadth of experience, which includes more than 20 years of legal practice.

He has worked in large law firms and small firms. He has tried complex business and corporate cases. He has counseled small business owners and large corporations. He has argued capital murder and terrorism cases, counseling defendants, while working closely with the United States Department of Justice, U.S. attorneys, and Federal and State authorities.

He has practiced in Federal and State courts. He has tried cases at the trial and the appellate levels. In their totality, his experiences illustrate a skilled lawyer, an outstanding professional of the bar, and an imminently qualified nominee for the bench.

U.S. District Judge Jack Zouhary has been a judge in the northern district since 2006, in fact, 6 years ago today. He is a Bush Administration nominee, testified in front of this Committee during his own confirmation hearing. He is currently the sole active judge of the court in the western division and the northern district. He will work closely with whoever is appointed.

Judge Zouhary wrote to this Committee recommending Jeff Helmick's expedient confirmation. He wrote, "You'll find no better candidate than Jeff. He possesses the intelligence, the passion for our justice system, the necessary temperament and people skills to be an outstanding district court judge."

Ohio State Senator Mark Wagoner, Chairman of the Ohio Senate Judiciary Committee, longtime member of the Toledo bar and a Republican, wrote that "Jeff is someone who stood for principles, litigated honestly, ably defended our constitutional system of government, and Mr. Helmick would make an outstanding Federal judge."

Mr. Chairman, I ask that those statements from Judge Zouhary and State Senator Wagoner be included in the record.

Senator COONS. Without objection.

[The statements appear as a submission for the record.]

Senator SHERROD BROWN. In addition to having a brilliant legal mind, Jeff Helmick understands the needs and challenges facing the northern district and our legal system generally.

He is a courtroom innovator, having worked with the courts to integrate cutting-edge technologies into courtrooms to ensure that the administration of justice is efficient and fair and equal and open to all who seek it.

Outside the courtroom, he is equally devoted to serving the public, a supporter of pro bono service. He volunteers at the Maumee Valley Criminal Defense Lawyers Association, and he is past president of the Timberville Boys Ranch, which helps troubled young men who need a home or a safer environment to reach their potential.

Mr. Chairman, Jeffrey Helmick will make an outstanding judge on the U.S. District Court for our Northern District in Ohio, and I ask for his speedy confirmation.

Senator COONS. Thank you, Senator Brown.

Finally, we welcome Mary Geiger Lewis, who is nominated to the United States District Court for the District of South Carolina.

Senator Graham.

PRESENTATION OF MARY GEIGER LEWIS NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA BY HON. LINDSEY GRAHAM A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator GRAHAM. Mr. Chairman, we have Congressman Clyburn from the House who would like to speak, if that is appropriate, and I will follow him.

Senator COONS. Absolutely. We welcome the distinguished Congressman from South Carolina. It is a pleasure to have you with us.

PRESENTATION OF MARY GEIGER LEWIS NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA BY HON. JAMES E. CLYBURN, A U.S. HOUSE OF REPRESENTATIVE FROM THE STATE OF SOUTH CAROLINA

Congressman CLYBURN. Thank you very much, Mr. Chairman, Mr. Ranking Member, other members of the Committee.

I am pleased to come over to this side of the building today to join with my good friend, Senator Graham, in support of Mary Geiger Lewis. That is the way we pronounce it in South Carolina. I suspect Delaware may have a different pronunciation.

Senator COONS. I stand corrected.

Congressman CLYBURN. But I thought that in view of some of the often thought about and even sometimes expressions about my home State of South Carolina, I thought it was appropriate for me to come over today and to add my voice of support to Ms. Lewis.

I have known her and her husband a long, long time. I consider them to be the kind of people that all us would be proud to be associated with, and I am very pleased to be here today in support of her nomination. And I am hopeful that this Committee and this Senate will approve her forthrightly.

Thank you so much, and I will yield back.

Senator COONS. Thank you, Congressman Clyburn.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. I want to thank Jim for coming over and lending his voice to this nomination.

Mary has been practicing law for 25 years in South Carolina, one of the best known lawyers in our State, working with a very prominent law firm, Lewis, Babcock & Griffin. I think Mr. Babcock is with her today.

She is a graduate from the University of South Carolina, went to law school—excuse me—Clemson University, undergraduate, University of South Carolina School of Law to get her law degree.

She was unanimously rated qualified by the ABA. She has been involved in plaintiff and defense work and very complex litigation. She is a real bright person to have on the bench and well respected by all her colleagues.

Our Supreme Court Chief Justice, Jean Toal, has written a letter and had planned to be here, but she, unfortunately, had a doctor's appointment, but she has nothing but great things to say, says Ms. Lewis is a top-notch lawyer, the best of a new generation of South Carolina lawyers, and I think that is a view widely shared.

Kevin Hall, who is a well known Republican lawyer in South Carolina, has represented our party in many legal conflicts, has

also written a letter that I would like to introduce into the record, saying that "Mary is a woman of sound character, integrity, a fine legal talent, a compassionate soul and extraordinary woman," and I just want to echo that.

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

Senator GRAHAM. So from a South Carolina perspective, this is a nominee that we all can be proud of, a lot of bipartisan support. And the most important thing is that if she is chosen by the Senate, if the Senate approves this request, she will be a great judge for our State and I would not hesitate for 1 second to have any member of my family, someone I cared about, appearing before her, because I know she would be fair and apply the law as it should be applied.

So, Mr. Chairman, I cannot tell you how much support she has throughout our State, and we look forward to voting on you. And Cam, her husband, is a West Point graduate—we won't hold that against you. But it is a good family, two bright kids that are in college.

So thank you very much, Mary, for offering yourself to the Federal judiciary and I look forward to supporting your nomination.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Graham. Thank you, Congressman Clyburn.

Now, I would like to ask Judge Shwartz to come forward and please remain standing.

[Nominee sworn.]

Senator COONS. Thank you. Let the record reflect the nominee has been sworn and has answered in the affirmative.

Judge Shwartz, I welcome you and encourage you to acknowledge your family members and friends you have with you here today, and then to offer a statement.

STATEMENT OF JUDGE PATTY SHWARTZ, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT

Judge SHWARTZ. Thank you, Senator.

First, I don't have an opening statement, but I would like to take the opportunity to say some thank yous and to give some acknowledgments.

First, please let me extend my thanks for your having this hearing today and for the Committee to consider my nomination.

Of course, I'd like to thank the President for the honor of the nomination.

I would like to thank my two home State Senators from New Jersey for their support and their kind words today.

I'd also like to thank the members of the Department of Justice and the White House Counsel's Office who have led me through this and guided me through this process. I'm grateful.

I'd like to also thank and acknowledge three categories of families I have. Without belaboring you with the names of all of them, I have a family of friends that I've had since I was a child, through high school, college, law school, into my professional life, who have been tremendously supportive. Some are present. Some are present by Web, but all are incredibly important to me.

In addition, I have been the member of a second family which we call in New Jersey the Federal family. It's a family of lawyers, agents, agencies, practitioners who all appear before the Federal court.

I became a member of that family when I became a law clerk to the honorable Harold Ackerman, who we have lost, but I remember with fondness today and with great appreciation. And honoring his memory and me are some of the law clerks he had during his more than 50 years as a judge. So I didn't clerk with all the people who are here, but they honor me with their presence.

In addition to that, I have a chambers family. I have a family of law clerks I've worked with in the past, both my own and others. And then there's, of course, the very generous Federal bar that I have been a member and participate in both as a practitioner and as a member of the court, and I give great thanks to all of them, as well as members of the court family that I'm a member of.

Finally, I would like to take a moment just to introduce you to and acknowledge members of my family. I have cousins who are watching, hopefully, by Web from New Jersey to California, and perhaps one even in Israel.

I have with me today members of my immediate family and I would like to be able to at least mention them by name and mention others who are watching by the Web.

With me today I have my brother, Richard; my sister, Nancy; my brother, Jeff; and, my nephew and Godson, Max. Max's brother is watching from the University of Arizona by Web, and they are the son of our late sister, Betty, and she would be incredibly proud of both of them.

Also watching by the Web are my brother Jeff's two greatest accomplishments, my two nieces. They're in elementary school and they're watching with their mom, Linda, also by Web.

My sister's fiancé, John, is watching by Web. Max and Jake's dad is watching by Web, Mitchell Smith.

Notably absent today are my parents, Jean and Harold Shwartz. We've lost them, but I obviously am here because of them, both from a biological standpoint, of course, but also because of all the great support, and they've always given my life adventure.

And, finally, with us today is someone who has been associated with my family for such a long time, he's practically a member of the family, Jim Nobile. And I have others who are here in the audience and I know they'll forgive me if I don't mention them by name.

[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).

   Patty Shwartz
   Formerly Patty Shwartz-Dorsey

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

   United States Circuit Judge for the Third Circuit

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

   Frank R. Lautenberg Post Office and Courthouse
   2 Federal Square
   Newark, New Jersey 07101

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

   1961; 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.

   1983 – 1986, University of Pennsylvania Law School; J.D., 1986

   1979 – 1983, Rutgers College, Rutgers – The State University of New Jersey; B.A. (with highest honors), 1983

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

2003 – Present
United States District Court for the District of New Jersey
Frank R. Lautenberg Post Office and Courthouse
2 Federal Square
Newark, New Jersey 07101
United States Magistrate Judge

2009 – Present
Fordham University School of Law
140 West 62nd Street
New York, New York 10023
Adjunct Professor

1989 – 2003
United States Attorney's Office for the District of New Jersey
970 Broad Street
Newark, New Jersey 07102
Assistant United States Attorney (1989 – 2003)
Deputy Chief, Criminal Division (1995 – 1999)
Chief, Criminal Division (1999 – 2001; 2002 – 2003)
Executive Assistant U.S. Attorney (2001 – 2002)

1987 – 1989
United States District Court for the District of New Jersey
Frank R. Lautenberg Post Office and Courthouse
2 Federal Square
Newark, New Jersey 07101
Law Clerk to Judge Harold A. Ackerman

1986 – 1987
Pepper, Hamilton & Scheetz (now Pepper Hamilton LLP)
3000 Two Logan Square
Philadelphia, Pennsylvania 19103
Associate

Summer 1985
Pitney, Hardin, Kipp & Szuch (now Day Pitney LLP)
One Jefferson Road
Parsippany, New Jersey 07054
Summer Associate

1985 – 1986
University of Pennsylvania Law School
3400 Chestnut Street
Philadelphia, Pennsylvania 19104
Research Assistant to Paul Shechtman (unpaid)

1984 – 1985
National Center for Educational Testing (no longer exists at this address)
1622 Chestnut Street
Philadelphia, Pennsylvania 19103
LSAT Instructor

Summer 1984
Margolis, Edelstein, Scherlis, Sarowitz & Kraemer (now Margolis Edelstein)
The Curtis Center
170 South Independence Mall West
Suite 400 E
Philadelphia, Pennsylvania 19106
Summer Law Clerk

Summer 1983
University of Pennsylvania
Department of Regional Science
3718 Locust Walk
Philadelphia, Pennsylvania 19104
Research Assistant to Steve Weiss Wik

Summer 1983
Temporary employment agency (I believe it was Manpower, but I cannot confirm this)
Temporary employee

1981 – 1983
Rutgers University
School of Communication and Information
4 Huntington Street
New Brunswick, New Jersey 08901
Teaching and Research Assistant to Stella Ting-Toomey, William Gudykunst, Brent Ruben, Katherine Yost, and William Todd-Mancillas (unpaid)

Other affiliations (uncompensated):

2010 – Present
Federal Magistrate Judges Association
P.O. Box 267
Scranton, Pennsylvania 18501
Board of Directors, representing the Third Circuit

2007 – Present
Association of the Federal Bar of New Jersey
P.O. Box 172
West Allenhurst, New Jersey 07711
Advisory Board Member

2000 – Present
Historical Society of the United States District Court for the District of New Jersey
Office of the Clerk
50 Walnut Street
Newark, New Jersey 07102
Board of Advisors (2003 – present)
Board of Directors (approximately 2000 – 2003)

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

   I have not served in the military. I have not registered for selective service.

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

   Professional:

   Sustained Superior Performance Award (2002)

   Special Achievement Awards from the Department of Justice (1991, 1993, 1994 and 1998)

   Special Act Award from the Department of Justice (1997)

   Director's Award for Superior Performance as an Assistant U.S. Attorney (1997)

   Commendations and recognition from federal agencies, including the Federal Bureau of Investigation (1991, 1992, 1996, 1997, 2000, 2001, 2002), Drug Enforcement Administration (1992, 2000), Immigration and Naturalization Service, U.S. Customs Inspection Service (1990, 1995), U.S. Postal Inspection Service (1993), Department of Justice – Office of the Inspector General (1998), Department of the Army (1993), and the Federal Bureau of Prisons (1998).

   At the time of my departure from the United States Attorney's Office in 2003, I also received recognition from several agencies, including the Federal Bureau of Investigation, Drug Enforcement Administration, Internal Revenue Service, United States

Secret Service, United States Postal Inspection Service, United States Pretrial Services, United States Probation Office, United States Customs Inspection Service, and United States Immigration and Naturalization Service.

Academic:

Editor, University of Pennsylvania Law Review

Outstanding Woman Law Graduate of the Class of 1986

Who's Who Among American Law Students

Rutgers College Honors Graduate

Henry Rutgers Scholar

Graduated with Highest Distinction in Major

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

American Bar Association

American Judicature Society

Association of the Federal Bar of New Jersey
Advisory Board Member (2007 – present)

Federal Magistrate Judges Association
Board of Directors, representing the Third Circuit (2010 – present)

Historical Society of the United States District Court for the District of New Jersey
Board of Advisors (2003 – present)
Board of Directors (approximately 2000 – 2003)

John C. Lifland Inn of Court

Judicial Council for the Court of Appeals for the Third Circuit Magistrate Judge Committee

New Jersey Bar Association

Pennsylvania Bar Association

Phi Delta Phi Gibson – Alexander Inn, University of Pennsylvania, Student Inn member

Philadelphia Bar Association

United States District Court for the District of New Jersey
Patent Rules Committee
Criminal Law & Probation Committee
Education Committee

10. **Bar and Court Admission**:

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

New Jersey, 1986
Pennsylvania, 1986 (out-of-state active)

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 Third Circuit, 1987
United States District Court for the District of New Jersey, 1986
United States District Court for the Eastern District of Pennsylvania, 1986

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.

River Renaissance Condominium Association (1994 – present)

Rutgers Alumni Association (1989 – present)

United States Attorney's Office for the District of New Jersey Alumni Association (2003 – present)

University of Pennsylvania Law School Alumni Society (1986 – 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 response to Question 11a 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.

Thoughts from our Magistrate Judges, Nunc Pro Tunc, February 2008. Copy supplied.

The United States Attorney . . . A Brief History, Nunc Pro Tunc, January 2005. Copy supplied.

An Analysis of Perceived Similarity and Perceived Confirmation in the Context of Socially Penetrated Relationships, Henry Rutgers Honors Thesis, December 1982. Copy supplied.

I am credited for research conducted while in law school in the following article: Richard Delgado, Chris Dunn, Pamela Brown, Helena Lee, and David Hubbert, *Fairness and Formality: Minimizing Prejudice in Alternative Dispute Resolution*, 1985 Wis. L. Rev. 1359 (1985).

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

To the best of my recollection, I have not prepared any reports, memoranda, or policy statements on behalf of any bar association, committee, conference or organization of which I was or am a member. As a member of the Board of

Directors of the Federal Magistrate Judges Association, however, I was asked if I concurred in recommendations from our rules committees concerning proposed amendments to the Federal Rules of Criminal Procedure. Along with the other directors, I concurred in the recommendation, which was presented to the Administrative Office of the Courts. A copy of the February 8, 2011 letter embodying the recommendation is supplied.

I am quoted in a May 30, 2011 letter signed by one of my fellow Magistrate Judges submitted in support of the nomination of the Hon. John C. Lifland (retired) for recognition by the American Inn of Courts. A copy of the letter is supplied.

I am also a member of the Patent Rules Committee of the United States District Court for the District of New Jersey. The Committee recommended Local Patent Rules that govern the management of patent cases filed in the District of New Jersey. Copies of the 2008 and 2011 Local Patent Rules are 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 3, 2011: Ceremonial Swearing-In of the Hon. Donna Gallucio, New Jersey Superior Court, Passaic County. Served as Master of Ceremonies. Remarks supplied.

September 22, 2011: Federation of Defense and Corporate Counsel Eighth Annual Corporate Counsel Symposium, Electronic Discovery: Where Are We Now and Where Are We Headed? Notes supplied.

July 26, 2011: NJ LEEP (Law and Education Empowerment Project) high school students visited the United States District Court to discuss the court system and legal careers. I have no notes, transcripts, or recordings. The address for NJ LEEP is Seton Hall Law School, Room 425A, One Newark Center, Newark, New Jersey 07102.

July 15, 2011: Luncheon recognizing George Graves' departure from the Newark Field Division of the Federal Bureau of Investigation. Remarks supplied.

July 11, 2011: Fordham University Law School, William Hughes Mulligan Memorial Moot Court Competition Judge (preliminary round). I have no notes, transcripts, or recordings. The address for Fordham University Law School is 140 West 62nd Street, New York, New York 10023.

June 22 – 23, 2011: ALI-ABA Environmental Litigation Course. Discussed discovery in environmental litigation and in limine motions, and presided over a mock preliminary injunction hearing. DVD supplied.

June 13, 2011: John C. Lifland Inn of Court. Presided over mock oral argument. I have no notes, transcripts or recordings. The Inn does not have a physical address.

June 9, 2011: United States District Court for the District of New Jersey, Bedminster School Fifth Grade Visit. Spoke about the court system and lawyers. I have no notes, transcripts, or recordings. The address for the United States District Court for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

May 20, 2011: Pompton Lakes High School Career Day. Spoke to high school students about my career path and careers in the law. I have no notes, transcripts, or recordings. The address for Pompton Lakes High School is 44 Lakeside Avenue, Pompton Lakes, New Jersey 07442.

May 12, 2011: Association of Criminal Defense Lawyers of New Jersey, Administration of the Oath of Office to its Officers and Board of Trustees. I have no notes, transcripts, or recordings. The address for the Association of Criminal Defense Lawyers is P.O. Box 180, West Allenhurst, New Jersey 07711.

March 24, 2011: Association of the Federal Bar of New Jersey, Everything You Wanted to Know about the Practice of Law in the United States District Court for the District of New Jersey in 2011. Transcript supplied.

February 23, 2011: Dinner recognizing George Leone's Departure from the United States Attorney's Office for the District of New Jersey. Remarks supplied.

January 10, 2011: John C. Lifland Inn of Court. Master Presentation on Pretrial Conference Procedures. Notes supplied.

December 1, 2010: Golda Och Academy, West Orange, New Jersey, Voters of Tomorrow. Spoke to high school students about the courts and government. Notes supplied.

November 17, 2010: Association of the Federal Bar of New Jersey, Practice Tips on Practicing Law in the Federal Courts in New Jersey. Notes supplied.

November 12, 2010: New Jersey Association for Justice, Pretrial Practice in the Federal Courts – Thriving and Surviving. DVD supplied.

November 3, 2010: Rutgers Law School – Newark, Nathan Baker Mock Trial Competition Judge (preliminary round). I have no notes, transcripts, or recordings. The address for Rutgers Law School – Newark is 123 Washington Street, Newark, New Jersey 07102.

October 25, 2010: New York Intellectual Property Law Association Young Lawyer's Committee, IP Litigation: Perspective on the Practice. Outline supplied.

July 22, 2010: Luncheon recognizing Robert Klotz's retirement from the United States Attorney's Office for the District of New Jersey. I have no notes, transcripts, or recordings. The address for the United States Attorney's Office for the District of New Jersey is 970 Broad Street, Newark, New Jersey 07102.

June 21, 2010: John C. Lifland Inn of Court. Presided over mock oral argument. I have no notes, transcripts or recordings. The Inn does not have a physical address.

June 14, 2010: United States District Court for the District of New Jersey in association with the Sedona Conference Institute, Electronic Information in Criminal Actions. Transcript supplied.

April 22, 2010: United States District Court for the District of New Jersey's Office of the Clerk, Attorney Electronic Case Filing Program. Notes supplied.

April 21, 2010: Federal Executive Board of Metropolitan Northern New Jersey, Professional Development Seminar for Support Staff. Notes supplied.

February 18, 2010: Dinner recognizing Charles B. McKenna's departure from the United States Attorney's Office for the District of New Jersey. Remarks supplied.

January 18, 2010: John C. Lifland Inn of Court, Master Presentation on Rule 16 Conferences and Rule 26 Disclosures. I have no notes, transcripts or recordings. The Inn does not have a physical address.

December 11, 2009: New York Intellectual Property Law Association, The District of New Jersey's Local Patent Rules and Their Impact on Pharmaceutical Patent Litigation. Notes supplied.

December 2009: United States District Court's Service Award Ceremony recognizing Amparo Andersonn. I have no notes, transcripts, or recordings. The address for the United States District Court for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

November 11, 2009: Association of the Federal Bar of New Jersey, Principles of Cross Examination in Federal Courts, Testimony From the Masters. Remarks supplied.

June 15, 2009: John C. Lifland Inn of Court. Presided over mock oral argument. I have no notes, transcripts or recordings. The Inn does not have a physical address.

March 9, 2009: New Jersey Intellectual Property Law Association Patent Litigation Seminar, Operating Under the New Local Patent Rules of the New Jersey District Courts. I have no notes, transcripts, or recordings. The address for the New Jersey Intellectual Property Law Association is P.O. Box 693, Westfield, New Jersey 07091.

February 4, 2009: New Jersey State Bar Association – Federal Practice and Procedure Section, Perspectives on Best Practices Before a Magistrate Judge. Notes supplied.

December 2008: United States District Court's Service Award Ceremony recognizing Iris Liriano. I have no notes, transcripts, or recordings. The address for the United States District Court for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

October 6, 2008: John C. Lifland Inn of Court, Master Presentation, Preparing a Pretrial Order. I have no notes, transcripts, or recordings. The Inn does not have a physical address.

June 9, 2008: John C. Lifland Inn of Court. Presided over mock oral argument. I have no notes, transcripts or recordings. The Inn does not have a physical address.

May 6, 2008: United States District Court for the District of New Jersey Arbitrator's Workshop. I have no notes, transcripts, or recordings. The address for the United States District Court for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

April 24, 2008: Bergen County Bar Association Seminar on Federal Practice. Notes supplied.

March 29, 2008: Seton Hall Law School, John J. Gibbons Criminal Procedure Moot Court Competition Judge (final round). I have no notes, transcripts, or recordings. The address for Seton Hall Law School is One Newark Center, Newark, New Jersey 07102.

January 16, 2008: New Jersey Institute of Continuing Legal Education Practice Before U.S. Magistrate Judges. CD supplied.

November 19, 2007: Association of the Federal Bar of New Jersey, Navigating in the Federal Courts in the Age of Technology: From E-Discovery to E-Trial. Notes supplied.

September 28, 2007: United States Pretrial Services 12th Annual Training Conference. Notes supplied.

September 17, 2007: John C. Lifland Inn of Court, Master Presentation on Ethics. Notes supplied.

June 12, 2007: Legal Services of New Jersey, Basic Federal Practice Training. Materials supplied.

June 11, 2007: John C. Lifland Inn of Court. Presided over mock oral argument. I have no notes, transcripts or recordings. The Inn does not have a physical address.

March 30, 2007: United States District Court for the District of New Jersey, Girl Scout Troop 2086 visit. Spoke about the court system and our historic courthouse. I have no notes, transcripts, or recordings. The address for the United States District Court for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

March 21, 2007: Essex County Bar Association, E-Discovery in 2007 and Beyond. Notes supplied.

January 10, 2007: New Jersey Institute for Continuing Legal Education, Practice Before U.S. Magistrate Judges. CD supplied.

December 1, 2006: IQPC Securities Litigation, Perspectives from the Court. Notes supplied.

November 15, 2006: Association of the Federal Bar of New Jersey, Nuts and Bolts of Federal Practice. A view from District Court Judges, Magistrates and Lawyers. Notes supplied.

October 17, 2006: John C. Lifland Inn of Court, Master Presentation: Final Pretrial Conferences. Notes supplied.

September 20, 2006: American Bar Association, Section of Litigation, Regional CLE Workshop: Contamination Examination, Discovery the New Frontier: Discovery Management in the Age of New Science and New Legal Theories. Notes supplied.

September 13, 2006: United States District Court for the District of New Jersey, New Law Clerk Orientation, Newark Vicinage. I have no notes, transcripts, or recordings. The address for the United States District Court for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

June 12, 2006: John C. Lifland Inn of Court. Presided over mock oral argument. I have no notes, transcripts or recordings. The Inn does not have a physical address.

April 27, 2006: Association of Trial Lawyers of America – New Jersey, Women Litigators' Luncheon, The Voice of Women on the Bench, the Judge's Perspective. The organization is now known as the New Jersey Association for Justice. Notes supplied.

March 30, 2006: Drug Enforcement Administration, New Jersey Division, Making a Difference – Women in Leadership. Notes supplied.

March 23, 2006: Association of the Federal Bar of New Jersey, Trying a Civil Case in the District of New Jersey, The Do's and Don'ts of Jury Trials, Bench Trials, Orders to Show Cause Hearings. Transcript supplied.

February 9, 2006: Luncheon recognizing Joyce Ingram's departure from the United States Attorney's Office for the District of New Jersey. Notes supplied.

January 11, 2006: Essex County Bar Foundation, Prosecuting and Defending Federal Public Corruption Cases. Notes supplied.

November 16, 2005: New Jersey Institute for Continuing Legal Education, Practice Before Federal Magistrate Judges. CD supplied.

November 14, 2005: John C. Lifland Inn of Court, Introduction of the Essentials of a Rule 16 Conference. Notes supplied.

November 9, 2005: Rutgers Law School – Newark, Nathan Baker Mock Trial Competition Judge (preliminary round). I have no notes, transcripts, or recordings. The address for Rutgers Law School – Newark is 123 Washington Street, Newark, New Jersey 07102.

October 2005: Administrative Office of the United States Courts. Appeared in a video regarding a program to gather Magistrate Judge workload statistics, entitled "MJStar: It Really Works." DVD supplied.

June 14, 2005: John C. Lifland Inn of Court. Presided over mock oral argument. I have no notes, transcripts or recordings. The Inn does not have a physical address.

May 20, 2005: New Jersey State Bar Association Annual Conference on Federal Practice and Procedure. I have no notes, transcripts, or recordings. The address for the New Jersey State Bar Association is One Constitution Square, New Brunswick, New Jersey 08901.

May 18, 2005: Bergen County Bar Association Seminar on Federal Practice. Notes supplied.

April 2005: United States District Court for the District of New Jersey. Spoke with the children of attorneys from McElroy, Deutsch, Mulvaney, and Carpenter about the court system. I have no notes, transcripts, or recordings. The address for the United States District Court for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

February 28, 2005: Association of the Federal Bar of New Jersey, Welcome to the Federal Court. I have no notes, transcripts, or recordings. The address for the Association of the Federal Bar of New Jersey is P.O. Box 172, West Allenhurst, New Jersey 07711.

February 3, 2005: Association of the Federal Bar of New Jersey, Welcome to the Federal Court, Initial Conference and Discovery. I have no notes, transcripts, or recordings. The address for the Association of the Federal Bar of New Jersey is P.O. Box 172, West Allenhurst, New Jersey 07711.

November 29, 2004: Pompton Lakes High School Class of 1979 25th Class Reunion. Remarks supplied.

November 10, 2004: Association of the Federal Bar of New Jersey, Welcome to the Federal Court Workshop. I have no notes, transcripts, or recordings. The

address for the Association of the Federal Bar of New Jersey is P.O. Box 172, West Allenhurst, New Jersey 07711.

October 14, 2004: Georgetown University Law Center, Continuing Legal Education, Litigating Employment Cases – Views from the Bench, Discovery Strategies & Techniques. Notes supplied.

August 19, 2004: Luncheon recognizing Bradley Orsini's departure from the Newark Field Division of the Federal Bureau of Investigation. I have no notes, transcripts, or recordings. The address for the Federal Bureau of Investigation's Newark Office is Claremont Tower, 11 Centre Place, Newark, New Jersey 07102.

June 14, 2004: John C. Lifland Inn of Court. Presided over mock oral argument. I have no notes, transcripts or recordings. The Inn does not have a physical address.

April 22, 2004: New Jersey Institute for Continuing Legal Education, Practice Before U.S. Magistrate Judges. Notes supplied.

March 24, 2004: St. John's University School of Law, 2004 Judicial Clerkship Panel & Reception. I have no notes, transcripts, or recordings. The address for St. John's University School of Law is 8000 Utopia Parkway, Jamaica, New York 11439.

November 15, 2003: New Jersey Institute for Continuing Legal Education, Introduction to Federal Practice. I have no notes, transcripts, or recordings. The address for the New Jersey Institute for Continuing Legal Education is One Constitution Square, New Brunswick, New Jersey 08901.

November 11, 2003: John C. Lifland Inn of Court, Essentials of the Rule 16 Conference. Notes supplied.

October 27, 2003: Luncheon recognizing Carolyn Murray's departure from the United States Attorney's Office for the District of New Jersey. Remarks supplied.

September 15, 2003: United States District Court for the District of New Jersey, Overview of the American Criminal Justice System for delegation of Russian judges. I have no notes, transcripts or recordings. The address for the United States District Court for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

June 11, 2003: John J. Gibbons American Inn of Court (now known as the John C. Lifland Inn of Court). Presided over mock oral argument. I have no notes, transcripts, or recordings. The Inn of Court does not have a physical address.

April 10, 2003: Ceremonial Swearing-In as a United States Magistrate Judge. DVD supplied.

March 27, 2003: Seton Hall Law School, Eugene Grossman Appellate Moot Court Competition Judge (preliminary round). I have no notes, transcripts, or recordings. The address for Seton Hall Law School is One Newark Center, Newark, New Jersey 07102.

March 25, 2003: Luncheon recognizing Iris Liriano's departure from the United States Attorney's Office for the District of New Jersey. I have no notes, transcripts, or recordings. The address for the United States Attorney's Office for the District of New Jersey is 970 Broad Street, Newark, New Jersey 07102.

February 19, 2003: Remarks at a dinner marking my departure from the U.S. Attorney's Office. Notes supplied.

2001: Luncheon recognizing Jane Myers's departure from the United States Attorney's Office for the District of New Jersey. I have no notes, transcripts, or recordings. The address for the United States Attorney's Office for the District of New Jersey is 970 Broad Street, Newark, New Jersey 07102.

January 22, 2000: New Jersey Institute for Continuing Legal Education, Second Annual Criminal Justice Act Forum. I have no notes, transcripts, or recordings. The address for the New Jersey Institute for Continuing Legal Education is One Constitution Square, New Brunswick, New Jersey 08901.

January 6, 2000: Remarks Celebrating Judge Harold A. Ackerman's Twentieth Year on the Federal Bench. Transcript supplied.

February 20, 1999: New Jersey Institute for Continuing Legal Education, First Annual Criminal Justice Act Forum. I have no notes, transcripts, or recordings. The address for the New Jersey Institute for Continuing Legal Education is One Constitution Square, New Brunswick, New Jersey 08901.

1999: Dinner recognizing Martin Cronin's departure from the United States Attorney's Office for the District of New Jersey. I have no notes, transcripts, or recordings. The address for the United States Attorney's Office for the District of New Jersey is 970 Broad Street, Newark, New Jersey 07102.

February 3, 1998: United States District Court Historical Society Ceremony recognizing the senior judges. I have no notes, transcripts, or recordings. The address for the United States District Court for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

January 10, 1998: Bergen County Bar Association Federal Criminal Practice Seminar. Notes supplied.

December 15, 1997: Bergen County Bar Association, Federal Criminal Practice for Both Novice and Expert. I have no notes, transcripts, or recordings. The address for the Bergen County Bar Association is the George W. Newman Law Building, 15 Bergen Street, Hackensack, NJ 07601.

November 16, 1995: Rutgers University Administration of Justice Program, Law & Criminal Justice Career Forum, Rutgers University. I have no notes, transcripts, or recordings. The address for the Rutgers University Administration of Justice Program is 33 Livingston Avenue, New Brunswick, New Jersey 08901.

May 4, 1993: United States Probation Office for the District of New Jersey, training for new officers. I have no notes, transcripts, or recordings. The address for the United States Probation Office for the District of New Jersey is 50 Walnut Street, Newark, New Jersey 07101.

December 1991: Seton Hall Law School Moot Court Competition. I have no notes, transcripts, or recordings. The address for Seton Hall Law School is One Newark Center, Newark, New Jersey 07102.

May 19, 1986: University of Pennsylvania Law School Commencement. Remarks supplied.

May 1983: National Undergraduate Honors Conference, Memphis, Tennessee. Presented a synopsis of my honors thesis entitled, "An Analysis of Perceived Similarity and Perceived Confirmation in the Context of Socially Penetrated Relationships." Copy of thesis supplied in response to 12a.

April 1983: Eastern Communication Association, Ocean City, Maryland. Presented a synopsis of my honors thesis entitled, "An Analysis of Perceived Similarity and Perceived Confirmation in the Context of Socially Penetrated Relationships." Copy of thesis supplied in response to 12a.

December 1982: Rutgers University, Department of Communication, Colloquium, New Brunswick, New Jersey. Oral presentation of my honors thesis entitled, "An Analysis of Perceived Similarity and Perceived Confirmation in the Context of Socially Penetrated Relationships." Copy of thesis supplied in response to 12a.

On October 3, 2003, March 11, 2008 and November 18, 2009, I met with foreign prosecutors and/or government officials visiting the United States for the purpose of learning about the federal criminal justice system. Their visits were coordinated through the Department of Justice and United States Attorney's Office. The October 2003 event involved visitors from Latvia, and the March 2008 and November 2009 events involved visitors from Russia. I have no notes, transcripts, or recordings. The address for the United States Attorney's Office for the District of New Jersey is 970 Broad Street, Newark, New Jersey 07102.

On March 18, 2008, September 23, 2008, March 10, 2009, October 6, 2009, February 23, 2010, October 19, 2010, March 22, 2011 and September 20, 2011, I was a guest lecturer at Judge Michael Chagares' Advanced Civil Practice Class at Seton Hall Law School. Notes supplied.

Throughout my time as a judge, I also have sworn-in various people for admission to practice law in New Jersey state and federal courts and to serve as United States Pretrial Service and Probation officers or assistants. When I knew the individual personally (such as law clerks or former interns), I made an effort to personalize the occasion. I do not have a comprehensive list of the individuals I administered the oath to or the dates on which I administered it. Based upon a review of calendars and other records, I have identified the following dates on which I administered such oaths: July 14, 2003 (Probation Officer Assistant), December 17, 2003 (former intern from the United States Attorney's Office), January 26, 2006 (law clerk), December 27, 2007 (law clerk), September 25, 2008 (Pretrial Services Officers), November 25, 2008 (former court intern), November 13, 2009 (law clerk to Judge Ackerman and the law clerk's wife), May 27, 2010 (law clerk), and November 19, 2010 (former court intern).

As an Assistant U.S. Attorney, I participated in the annual training for U.S. Pretrial Services and Probation Offices. In addition, I spoke to members of the New Jersey American Correctional Association, the Office of the Chief Medical Examiner of New York County, Federal Bureau of Investigation, Drug Enforcement Administration, Internal Revenue Service, United States Postal Inspection Service, United States Customs Inspection Service, Immigration and Naturalization Service, and the Bureau of Alcohol Tobacco and Firearms. In addition, in about 1999, I was on a panel of professional women discussing advancement in the workplace. I have no notes, transcripts, or recordings of these events and do not have a recollection of the specific date or location of the sessions.

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.

Joe Ryan, *Harold Ackerman, Federal Judge in Newark who Presided over Lucchese Crime Family Trial, Dies at 81*, The Star-Ledger, Dec. 3, 2009. Copy supplied.

Rosemary Feitelberg, *Furrier Harold Shwartz Dead at 87*, Women's Wear Daily, Dec. 26, 2006. Copy supplied.

George Berkin, *Claudia Flynn, 52, Champion of Justice*, The Star-Ledger, Oct. 28, 2006. Copy supplied.

Robert Rudolph, *Justice Dept. Green-Lights Appeal in Faison Case*, The Star-Ledger, Aug. 29, 2001. Copy supplied.

Wayne Parry, *U.S. Attorney to Appeal Overturning of Cops' Convictions*, Associated Press, Aug. 28, 2001. Copy supplied.

Bob Braun, *An Officer's Truth Lies in a Tangled Tale*, The Star-Ledger, Nov. 15, 2000. Copy supplied.

Robert Rudolph, *Mounds of Phony 20s Filling the Tills in Jersey*, The Star-Ledger, Jan. 28, 1999. Copy supplied.

Russell Ben-Ali and Robert Rudolph, *Massive Smuggler Network Smashed*, The Star-Ledger, Nov. 21, 1998. Copy supplied.

Metro News Briefs, *Four Crewmen Charged in Immigrant Smuggling*, New York Times, Sept. 5, 1998. Copy supplied.

Illegal Immigrants Held in Bahamas Return to China, Associated Press, Aug. 4, 1998. Copy supplied.

Adam Geller, *Bahamas Flies Chinese Illegal Immigrants Home; 21 Were Part of Group Bound for a Landing on Jersey Shore*, The Record (Bergen County, N.J.), Aug. 4, 1998. Copy supplied.

Larry Lewis, *3 Prison Workers Plead Guilty to Bribery*, Philadelphia Inquirer, Jan. 31, 1998. Copy supplied.

Associated Press, *Fort Dix Prison Workers Accused of Taking Bribes*, Press of Atlantic City, Dec. 16, 1997. Copy supplied.

Terry Pristin, *New Jersey Daily Briefing; Man Convicted in Carjacking*, New York Times, Dec. 12, 1996. Copy supplied.

Tina Traster, *2 Ex-School Officials Get Prison Time; Judge Turns Down Appeals for Leniency*, The Star-Ledger, June 19, 1996. Copy supplied.

Terry Pristin, *Man Convicted in Carjacking*, New York Times, Dec. 12, 1996. Copy supplied.

Henry Gottleib, *Happy Clients Don't Help an Imposter*, N.J. Law Journal, Feb. 6, 1995. Copy supplied.

Richard Pliskin, *Imposter Lawyer Pleads Guilty to Fraud*, N.J. Law Journal, Aug. 29, 1994. Copy supplied.

Henry Gottleib, *The Not-So-Great Imposter*, N.J. Law Journal, Mar. 14, 1994. Copy supplied.

Joe Tyrrell and Bill Gannon, *Bogus Practice Disbarred Attorney Charged for Using Alias*, The Star-Ledger, Mar. 3, 1994. Copy supplied.

Associated Press, *Ocean County Publisher Indicted in Embezzlement*, Philadelphia Inquirer, Apr. 14, 1993 [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.

I was appointed as a United States Magistrate Judge for the District of New Jersey by the District Judges of the United States District Court for the District of New Jersey in 2003 and continue to serve in that position. As a Magistrate Judge, I am authorized to handle cases pursuant to 28 U.S.C. § 636.

In the District of New Jersey, civil actions (with limited exceptions) are automatically assigned to a United States District Judge, who serves as the presiding judge, and a Magistrate Judge, who serves as the referral judge. The assigned Magistrate Judge is responsible for managing all aspects of the pretrial process. This includes convening scheduling conferences, resolving discovery disputes, ruling on other nondispositive motions, holding settlement conferences, and presiding over final pretrial conferences. In addition, a Magistrate Judge may be asked to prepare Reports and Recommendations on dispositive motions (e.g., motions to dismiss, motions for summary judgment, motions for class certification). I have been designated as the referral judge in more than 4000 civil cases. In addition, parties have consented to my jurisdiction in whole or in part in more than 70 civil cases. In consent cases, I serve as the presiding judge and thus have the authority to render case-dispositive rulings and preside over trials. I have presided over ten civil jury trials and three civil bench trials.

I also handle criminal cases that are presented when I am serving as the criminal duty judge. In addition to presiding over preliminary proceedings in felony cases, I have handled more than 20 misdemeanor cases with the consent of the parties, including one criminal jury trial. In addition, United States District Judges have referred more than 185 felony guilty plea proceedings to me for Reports and Recommendations.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? 14

i. Of these, approximately what percent were:

jury trials:	79%
bench trials:	21%
civil proceedings:	93%
criminal proceedings:	7%

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

The Clerk's Office's electronic filing and case management system reflects that I issued 55 written opinions and 34 Reports and Recommendations. These items are set forth on the attached list. This is not the universe of dispositions memorialized in writing. I issue hundreds of orders each year. Some of these orders embody the opinions explaining the reasons for the ruling. The Clerk's electronic case filing system does not have a tool to distinguish orders containing the opinions from among the hundreds of orders I have issued. In addition, there may be opinions that have been filed but not docketed in a fashion that would cause them to be captured in the electronic filing system's report.

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).

For each case, the addresses listed for counsel reflect their last known business address.

1. *Stillman v. Staples*, Civ. No. 07-849

This was a collective action under the Fair Labor Standards Act filed on behalf of employees who held the position of assistant store sales manager. I presided over the case with the consent of the parties. After a six-week trial, the jury returned a verdict against the defendant and in favor of the more than 300 members of the collective action. After the judgment was entered, the Judicial Panel on Multi-District Litigation ["MDL"] transferred cases from other jurisdictions to a United States District Judge in the District of New Jersey. As part of the MDL case, the parties have sought approval of a settlement that would also resolve the *Stillman* case. As a result, the appeal of the *Stillman* judgment has been dismissed on the joint motion of the parties. The motion for final approval for a settlement class and a class settlement was referred to me and my recommendation concerning the motion was adopted, but final disposition regarding the attorney fee award is pending before the United States District Court Judge. The following are citations of opinions from *Stillman*: *Stillman v. Staples*, Civ. No. 07-849, 2007 WL 7261450 (D.N.J. July 20, 2007); *Stillman v. Staples*, Civ. No. 07-849, 2008

WL 1843998 (D.N.J. Apr. 22, 2008); *Stillman v. Staples*, Civ. No. 07-849, 2009 WL 1437817 (D.N.J. May 15, 2009).

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2. *Araoz v. United States*, Civ. No. 06-2149

This was a medical malpractice action under the Federal Tort Claims Act. I presided over the case with the consent of the parties. I resolved several in limine

applications and presided over a five-day bench trial that included testimony from several witnesses, such as competing expert obstetricians and pediatric neurologists. Based upon the evidence, there was a finding of no cause for action on the part of the plaintiff. *Araoz v. United States*, Civ. No. 06-2149, 2008 U.S. Dist. LEXIS 23495 (Mar. 24, 2008). The verdict was affirmed. *Araoz v. United States*, 337 F. App'x 207 (3d Cir. 2009).

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3. *United States v. Hartman*, Civ. No. 07-3843

In this case, defendant Hartman was alleged to have failed to pay estate taxes and several co-defendants were accused of receiving real estate on which the government placed estate tax liens. Certain defendants filed third-party and fourth-party complaints against real estate and legal professionals involved in the real estate transactions. I presided over the case with the consent of the parties. All parties, except the United States and defendant Hartman, reached resolution without trial, and defendant Hartman proceeded to trial. After a six-day trial, the jury returned a verdict in favor of the plaintiff and against the defendant.

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4. *United States v. Rucci*, Mag. No. 07-3163

This was a criminal tax case against an accountant who failed to file his tax returns despite having earned over $250,000 during a four-year period. I presided over this case with the consent of the parties, made in limine rulings and addressed disputes concerning the jury charge. After a four-day trial, the jury returned a guilty verdict and, thereafter, the defendant was sentenced to a term of incarceration. The conviction and sentence were affirmed. *United States v. Rucci*, Crim. No. 08-665, 2009 U.S. Dist. LEXIS 37981 (D.N.J. May 1, 2009).

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5. *O'Connor v. Great Northern Insurance Co.*, Civ. No. 07-4388

This was a diversity action in which the plaintiff sought payment pursuant to his homeowner's insurance policy for damage due to a fire. The defendant denied coverage, in part, based upon the arson exclusion. I presided over the case with the consent of the parties. During the trial, and with counsel's consent, the jury was permitted to submit written questions of each witness for the Court to ask on the jury's behalf. After a four-day trial, the jury returned a verdict in favor of the defendant and against the plaintiff.

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6. *Mastrolia v. Potter*, Civ. No. 08-5967

This was a Rehabilitation Act case in which the plaintiff alleged discrimination and retaliation for his complaints of discrimination. I presided over the case with the consent of the parties. I resolved the motion for summary judgment, which limited the number of claims for the jury to consider. *Mastrolia v. Potter*, Civ. No. 08-5967, 2010 WL 1752531 (D.N.J. Apr. 27, 2010). After a six-day trial, the jury returned a verdict in favor of the defendant and against the plaintiff.

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7. *Morano v. New Jersey Transit*, Civ. No. 07-2407

This was a claim under the Federal Employee Liability Act in which the plaintiff alleged that his work on the railroad caused tinnitus. I presided over the case with

the consent of the parties, which involved a defense of contributory negligence based upon the plaintiff's alleged failure to avail himself of safety equipment. After a four-day trial, the jury returned a verdict in favor of the plaintiff.

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8. *Harold v. Black & Decker*, Civ. No. 04-2427

This was a diversity case alleging that a rotary hammer was defective and injured the plaintiff's hand. I presided over the case with the consent of the parties and resolved several in limine and post-trial applications. After a ten-day trial, the jury returned a verdict in favor of the plaintiff and against the defendant. The verdict was reversed based upon an evidentiary ruling. *Harold v. Black & Decker*, 295 F. App'x 530 (3d Cir. 2008). The appellate court noted that at the time of trial, the trial court did not have the benefit of an appellate ruling governing the evidentiary issue. After remand, a second jury was empanelled and the case settled.

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9. *Linz v. Great Atlantic & Pacific Tea Co. et al.*, Civ. No. 04-785

This patent case involved a claim that the defendants infringed the plaintiff's patent on an item used to dispense cans of soup. I addressed motion practice, which resulted in allowing the defendants to assert antitrust and common law tortious interference counterclaims. During the discovery period, the plaintiff asserted that he had shared his idea for this dispensing device with representatives of one of the defendants and, as a result, sought and obtained an order that permitted him to inspect items in one of the defendants' archives. I presided over the case with the consent of the parties. The case settled.

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10. *Rosario v. Carson*, Civ. No. 06-1287

This diversity action arose from allegations of sexual abuse of two minors. I presided over the case with the consent of the parties. The defendant was incarcerated for these actions and was amenable to a settlement. Hurdles arose concerning marshalling assets and securing the position of the victims' biological, noncustodial mother regarding the proposed settlement. Following an evidentiary hearing, the settlement was approved.

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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. *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546 (D.N.J. 2010).

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2. *Newman v. Gen. Motors*, slip. op. (D.N.J. Mar. 24, 2005), *aff'd*, slip. op., (D.N.J. Mar. 30, 2006), *aff'd*, 228 F. App'x 245 (3d Cir. 2007). Copy supplied.

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3. *Ngai v. Old Navy*, Civ. No. 07-5653, 2009 WL 2391282 (D.N.J. July 31, 2009).

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4. *Nycomed v. Tolmar*, Civ. No. 10-2635, 2011 WL 1675027 (D.N.J. Apr. 28, 2011).

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5. *Beye v. Horizon Blue Cross & Blue Shield*, Civ. Nos. 06-5337, 06-6219, 2007 WL 7403210 (D.N.J. Oct. 30, 2007), *reconsideration denied as modified*, 2007 WL 7393489 (D.N.J. Dec. 14, 2007).

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6. *Big M, Inc. v. Dryden Advisory Group*, Civ. No. 08-3567, 2009 WL 1905106 (D.N.J. June 30, 2009).

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7. *Solid Waste Servs., Inc. v. Morris County Mun. Utils. Auth.*, Civ. No. 08-327, 2008 WL 5046715 (D.N.J. Nov. 20, 2008).

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8. *In re Neurontin Antitrust Litig.*, MDL Doc. 1479, Civ. No. 02-1390, 2011 WL 253434 (D.N.J. Jan. 25, 2011) (corrected opinion), *aff'd*, 2011 WL 2357793 (D.N.J. June 9, 2011).

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9. *Transweb, LLC v. 3M Innovative Props.*, Civ. No. 10-4413, 2011 WL 2181189 (D.N.J. June 1, 2011).

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10. *Mayer v. Gottheiner*, 382 F. Supp. 2d 635 (D.N.J. 2005).

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

I know of no cases in which certiorari was 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 the cases in which the parties consented to magistrate judge jurisdiction, I was reversed one time. In *Harold v. Black & Decker*, 295 F. App'x 530 (3d Cir. 2008), the Court of Appeals for the Third Circuit reversed an oral ruling that barred the defendant from offering evidence of the absence of any complaints about the allegedly defective product. The Court of Appeals noted, however, that I did not have the benefit of a ruling that it had rendered after the trial. A copy of the order is supplied.

In all other cases, appeals of a Magistrate Judge's decision are filed with the presiding United States District Judge. The Clerk's Office Electronic Filing system has reports of appeals to the extent the appellant properly dockets the appeal. Based upon searches of electronic databases and my recollection, the following are cases in which decisions I made were reversed or a report and recommendation was not adopted:

BCI Comm's, Inc. v. Nat'l Grid Wireless Holdings, Inc., Civ. No. 07-2143, slip op. (D.N.J. Feb. 6, 2008), *declined to adopt*, slip op. (D.N.J. May 20, 2008). The United States District Judge declined to adopt a Report and Recommendation to compel the parties to participate in contractual arbitration. The decision of the District Judge was appealed to the Court of Appeals for the Third Circuit but the case settled before the appeal was decided. Copies of the opinions are supplied.

Beye v. Horizon Blue Cross & Blue Shield, Civ. Nos. 06-5337, 06-6219, slip op. (D.N.J. May 6, 2008), *rev'd in part*, 2008 WL 3064757 (D.N.J. July 29, 2008). This case involved a challenge to an insurance company's decision not to pay health benefits. Certain plaintiffs were covered by ERISA plans and others were covered by non-ERISA plans. I permitted similar discovery to occur without regard to whether a plaintiff's plan was subject to ERISA. A copy of the Order is supplied. The United States District Judge reversed the portion of the discovery

ruling that permitted discovery from individuals who were covered by ERISA plans.

Boyd v. John Doe Doctor, Civ. No. 07-769, slip op. (D.N.J. Nov. 16, 2009), *rev'd*, slip op. (D.N.J. Feb. 3, 2010). I entered an order denying the pro se plaintiff leave to file a Second Amended Complaint to substitute certain individuals for fictitiously named defendants because the plaintiff had not provided a copy of the proposed pleading as required by the Local Rules and because the Final Pretrial Order made no mention of these individuals. After the order was entered, the United States District Judge reopened discovery for defendants named in the First Amended Complaint and vacated the Final Pretrial Order. As a result, the procedural posture of the case changed. In addition, the pro se plaintiff attached a copy of the proposed pleading to his appeal papers. Based on these subsequent events, the District Judge vacated the order and permitted the pro se plaintiff to file the Second Amended Complaint. Copies of the orders are supplied.

Cataldo v. Moses, Civ. No. 02-2588, slip op. (D.N.J. May 11, 2004), *declined to adopt in part*, 361 F. Supp. 2d 420 (D.N.J. Nov. 3, 2004). The United States District Judge adopted all aspects of the recommendation granting summary judgment in favor of the defendants except for a part concerning the New Jersey Tort Claim Act in light of the new rulings from the New Jersey Supreme Court. These decisions were issued after the Report and Recommendation was filed, and dictated a result different from the one recommended. A copy of the Report and Recommendation is supplied.

Chevra Kadisha of Bobov, Inc. v. Washington Cemetery Mgmt. Corp., Civ. 06-5473, slip op. (D.N.J. Jan. 24, 2007), *rev'd*, slip op. (D.N.J. Mar. 28, 2007). I denied a motion for intervention filed by an entity and three individuals. The proposed intervenors appealed. In an oral ruling, the United States District Judge reversed the order denying the entity and certain individuals permission to intervene. The Court's order reflects that, after my order was entered, a third-party complaint was filed against the intervenors, which gave them a separate basis to be parties. Copies of the orders are supplied.

E-Beam Services, Inc. v. AECL Techs., Civ. No. 02-2256, slip op. (D.N.J. July 1, 2003), *vacated*, slip op. (D.N.J. July 10, 2003). I imposed monetary sanctions against a party for knowingly disclosing information in a public filing that had been subject to a mediation confidentiality agreement. The United States District Judge entered an order vacating the sanction in conjunction with a consent order dismissing the case.

Franco v. Connecticut General Life, Civ. No. 07-6039, slip op. (D.N.J. Sept. 20, 2010, *rev'd*, slip op. (D.N.J. Dec. 22, 2010). In an oral ruling, the United States District Judge reversed an order denying an extension of the deadline to raise discovery disputes arising from requests for information from nonparties. Copies of the orders are supplied.

In re Gabapentin Patent Litig., MDL 1384, Civ. No. 00-2931, slip ops. (D.N.J. Oct. 8, 2010), *rev'd in part*, slip op. (D.N.J. Jan. 25, 2011). In an oral ruling, the United States District Judge reversed orders that struck a surreply expert report and limited the testimony of another expert concerning late-disclosed data. The Court concluded that the testimony may aid the jury and disagreed with a finding concerning whether actions of the party demonstrated bad faith sufficient to warrant preclusion of evidence. Copies of the orders are supplied.

Kounelis v. Sherrer, Civ. No. 04-4714, slip op. (D.N.J. Oct. 4, 2007), *rev'd in part*, 529 F. Supp. 2d 503 (D.N.J. 2008). After a hearing, I found that the defendants had failed to preserve a video tape that would have recorded an area where an alleged assault occurred. I imposed certain spoliation sanctions, which included a payment to the pro bono fund, but declined to impose an adverse inference instruction or award the plaintiff's pro bono counsel attorney's fees. A copy of the Order is supplied. The United States District Judge affirmed the decision on sanctions but reversed the instruction, pro bono fund payment, and fee ruling and awarded plaintiff's pro bono counsel attorney's fees, vacated the pro bono fund payment in light of the fee award, and granted the request for an adverse instruction.

Lee v. Krieg, Civ. No. 06-278, slip op. (D.N.J. June 22, 2006), *adopted*, 2006 U.S. Dist. LEXIS 58486 (D.N.J. Aug. 21, 2006), *vacated and remanded*, 227 Fed. App'x 146 (3d Cir. 2007). The United States District Judge adopted the recommendation that the Complaint be dismissed as it involved the same claims as those pending in an earlier case that had been closed. The recommendation did not specify whether the dismissal should be with or without prejudice. The District Judge dismissed the Complaint with prejudice. The Court of Appeals for the Third Circuit vacated the order that dismissed the case with prejudice, stating that the District Court did not consider measures less drastic than dismissal with prejudice, such as dismissal without prejudice to the plaintiff's filing a motion to reopen the earlier case. A copy of the Report and Recommendation is supplied.

Louis v. NCR, Civ. No. 06-422, slip op. (D.N.J. Oct. 20, 2006), *adopted in part, declined to adopt in part*, 2006 WL 3419834 (D.N.J. Nov. 27, 2006). As a result of the plaintiff's failure to provide responses to discovery and failure to appear for a court-ordered settlement conference, I issued an order directing him to show cause in writing by a specific deadline why sanctions should not be imposed. The order to show cause specifically notified him that if he failed to respond, I would recommend to the United States District Judge that the complaint be dismissed. He provided no response and I recommended dismissal. The United States District Judge adopted the recommendation to impose sanctions, but chose to impose monetary sanctions instead of adopting the recommendation to dismiss the complaint based upon explanations provided to the District Judge as to why the plaintiff failed to appear at the settlement conference and the representation that a deposition had occurred after the recommendation had been issued that enabled

the defendant to obtain discovery and thereby ameliorate the prejudice that the defendant suffered from the absence of the written discovery from the plaintiff. A copy of the Report and Recommendation is supplied.

Ngai v. Old Navy, Civ. No. 07-5653 slip op. (D.N.J. May 21, 2009), *partially vacated*, slip op. (D.N.J. May 27, 2009). The United States District Judge vacated a portion of an order directing that a deposition occur on a particular date based upon a representation made to the District Judge that the witness retained counsel. Copies of the orders are supplied.

Patterson v. City of Perth Amboy, Civ. No. 06-4780, slip op. (D.N.J. June 29, 2007), *rev'd in part*, 2007 WL 3054939 (D.N.J. Oct. 11, 2007). I barred plaintiff from serving two expert reports because they were untimely. A copy of the order is supplied. The United States District Judge affirmed the ruling as to one of the experts, but reversed the ruling as to the other expert based upon the Court's view of the significance of the expert's opinion on an issue in the case.

Richards v. Johnson & Johnson, Inc., Civ. No. 05-3663, slip op. (D.N.J. Nov. 21, 2006), slip op. (D.N.J. Dec. 29, 2006), *reconsideration denied*, slip op. (D.N.J. Jan. 4, 2007) *rev'd*, 2007 WL 2123697 (D.N.J. July 20, 2007). In this employment discrimination case, I precluded the plaintiff from obtaining discovery concerning the employee ratings of individuals who held the same positions as plaintiff as well as other positions that he sought but did not obtain and denied the request to reconsider this decision. Copies of the orders are supplied. The United States District Judge found that the discovery might reveal how similarly situated employees were treated under the employee rating system and remanded to enable the defendant to develop a record concerning the burden of producing such information and to enable the plaintiff to make arguments concerning whether a uniform employee evaluation system for all employees existed.

Sery v. Fed. Bus. Ctrs., Civ. No. 06-1026, slip op. (D.N.J. May 7, 2007), *set aside and remanded*, slip op. (D.N.J. July 20, 2007). In this case, I precluded the plaintiff from offering an expert report because it was untimely. The United States District Judge set aside the order and remanded for further findings on whether or not the plaintiff flagrantly disregarded the scheduling order and whether the defendant would be prejudiced by the untimely report. Copies of the orders are supplied.

United States ex rel. Anthony Kite v. Besler Consulting, Civ. No. 05-3066, slip op. (D.N.J. Sept. 2, 2008), *rev'd*, slip op. (D.N.J. Nov. 3, 2008). I administratively terminated a motion to sever a defendant based upon a claim of improper joinder without prejudice to refiling at a later time, explaining that coordinated pretrial proceedings advanced judicial economy and would conserve resources. The United States District Judge vacated the termination order because the Court believed it lacked a full explanation addressing the movant's arguments of

prejudice and efficiency. On remand, I issued an order denying the motion without prejudice to it being renewed as part of the final pretrial process. The movant appealed. The United States District Judge affirmed and agreed with the view I expressed both before and after remand that pretrial case management supported consolidated pretrial proceedings for all defendants. Copies of the orders are supplied.

Wachtel v. Guardian Life Ins. Co., Civ. No. 01-4183, and *McCoy v. Health Net, Inc.*, 03-1801, slip op. (D.N.J. July 28, 2005), *rev'd in part*, 239 F.R.D. 376 (D.N.J. 2006). The United States District Judge affirmed several discovery rulings but reversed one decision that barred plaintiffs from supplementing their expert report. A copy of the order is supplied.

Wachtel v. Guardian Life Ins. Co., Civ. No. 01-4183, and *McCoy v. Health Net, Inc.*, 03-1801, slip op. (D.N.J. Sept. 28, 2005), *rev'd in part*, 2006 WL 2506771 (D.N.J. Aug. 29, 2006). I issued an order barring plaintiff from making in limine motions not listed in the final pretrial order. The United States District Judge reversed the order based on additional evidence disclosed at hearings before the Court. The evidence was not disclosed at the time the final pretrial order was signed. The District Judge also reversed based upon logistical issues that were contemplated to occur during trial. A copy of the order is supplied.

Worthy v. City of Newark, Civ. No. 05-2115, slip op. (D.N.J. Aug. 22, 2007), *rev'd in part*, 2008 WL 413309 (D.N.J. Feb. 13, 2008). The United States District Judge reversed a ruling that partially granted a motion to quash a subpoena served upon the plaintiff's former criminal defense counsel. The decision to quash was based upon the assertion of privilege. A copy of the order is supplied. The District Judge found that the plaintiff had waived the privilege based upon the plaintiff's disclosure of privileged information in a brief filed in a state court proceeding.

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 nondispositive matters that range from discovery disputes, motions to amend pleadings, motions to extend discovery schedules, motions to disqualify, and other motions and applications. I issue hundreds of such orders each year. If the issue is dispositive and the parties have not consented to magistrate judge jurisdiction, then the orders must be done in the form of a Report and Recommendation to the presiding United States District Judge. If the parties consent to the jurisdiction of the magistrate judge, then I issue orders addressing both dispositive and nondispositive motions and applications. Very few of the opinions and orders that I issue are published, although I file all of my orders, written opinions, and written reports and recommendations on the Court's electronic filing system. In addition, to facilitate

the expeditious resolution of disputes, I frequently prepare opinions that I dictate into the record. Although orders memorializing the ruling are electronically filed, these oral opinions are not captured on the Clerk's electronic filings. If a party or the Court orders the transcript of the opinion, then it may be filed as part of the docket but, to my knowledge, there is no electronic filing report that keeps track of these transcripts. Other than the few opinions that I have designated for publication or requested to be transcribed, I have no control over which opinions and orders are published on Westlaw or Lexis Nexis or which dictated opinions are transcribed.

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.

Mayer v. Gottheiner, 382 F. Supp. 2d 635 (D.N.J. 2005)

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

I have not sat by designation on a federal court of appeals.

4. **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 Clerk of the Court has a system that randomly assigns civil cases to pairs of United States District Judges and Magistrate Judges. Before final assignment is made, the Clerk reviews a list of persons or entities whose presence automatically causes a recusal. At present, I own no stock and have no financial interests that

require automatic recusal. When a case is assigned to me, I review the parties, counsel, and facts to ensure there are no conflicts or other grounds for recusal. I have recused from certain cases the Clerk has automatically assigned to me based upon my former duties as an Assistant U.S. Attorney and the current role of my significant other as an Assistant U.S. Attorney, and I have identified such cases on the attached list.

I also receive assignments of criminal cases and matters when I serve as the week's criminal duty judge. The duty assignment rotates approximately every six weeks. When a case or matter is presented, my staff immediately asks if the case or matter was pending in the United States Attorney's Office before March 10, 2003. If the case or matter was pending before that date, I recuse because of the breadth of my former duties at that Office. In addition, I recuse from all cases that are assigned to Assistant U.S. Attorneys in the division that my significant other supervises as well as any cases that he handles or handled. I do not have a list of case or matters that have triggered these immediate recusals.

Listed below are cases from which I recused based upon my relationship with either a lawyer or a party:

Unum Life Ins. Co. v. Estate of Morabito, Civ. No. 09-4320; *Metro. Life Ins. Co. v. Delrusso*, Civ. No. 10-1250: At the initial conference, I notified the parties that I had worked with defense counsel when he was an Assistant U.S. Attorney and met his client during at least one social event. At plaintiff's request, I recused.

Trelease v. Metro. Life Ins. Co., Civ. No. 07-3841: A childhood friend served as defense counsel and, at her request, I recused.

N.Y. Susquehanna v. Campbell, Civ. No. 05-4010: I recused because a party was a relative of my significant other.

Listed below are cases in which a party sought or discussed my recusal:

N.J. Sand Hill Band of Lenape & Cherokee Indians v. New Jersey, Civ. No. 09-683, 2011 U.S. Dist. LEXIS 36874 (D.N.J. Mar. 31, 2011): Plaintiffs sought recusal of both the United States District Judge and me based upon disagreement with certain rulings. The movant also generally asserted that the District Judge and I were biased and prejudiced. The District Judge found that the plaintiffs had presented no facts showing either prejudice or bias. The motion was denied.

Goldberg v. County of Essex, Civ. No. 04-3901: At the early stage of the case, I notified the parties that I once worked with one of the defendants, who was named in her official capacity. The plaintiff initially submitted a letter suggesting recusal may be warranted. The plaintiff was instructed to file a formal motion if he decided to seek recusal. The plaintiff did not pursue the issue.

Abdel-Whab v. Middlesex County Jail, Civ. No. 04-1846: The pro se plaintiff sought recusal based upon his disagreement with an adverse ruling. There were no facts showing bias or partiality. The motion was denied.

Jones v. Green, Civ. No. 02-6029: The pro se plaintiff sought recusal based upon my judicial decisions. There were no facts showing bias or partiality. The motion was denied.

Jones v. Zara, Civ. No. 03-3947: The pro se plaintiff sought recusal based upon a claim that improper telephone conversations had transpired between the Court and defense counsel. The plaintiff was notified that no such conversations occurred and the motion was denied.

5. **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 or elective office or unsuccessful nominations for appointed office.

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

I have not held any 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.

6. **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;

1987 – 1989; I served as a law clerk to Judge Harold A. Ackerman, United States District Court for the District of New Jersey.

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

I have not practiced alone.

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

1986 – 1987
Pepper, Hamilton & Scheetz (now Pepper Hamilton LLP)
3000 Two Logan Square
Philadelphia, Pennsylvania 19103
Associate

1987 – 1989
United States District Court for the District of New Jersey
Frank R. Lautenberg Post Office and Courthouse
2 Federal Square
Newark, New Jersey 07101
Law Clerk to Judge Harold A. Ackerman

1989 – 2003
United States Attorney's Office for the District of New Jersey
970 Broad Street
Newark, New Jersey 07102
Assistant United States Attorney (1989 – 2003)
Deputy Chief, Criminal Division (1995 – 1999)
Chief, Criminal Division (1999 – 2001; 2002 – 2003)
Executive Assistant U.S. Attorney (2001 – 2002)

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 private mediator or an arbitrator.

b. Describe:

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

After law school graduation, I joined the labor department of Pepper, Hamilton & Scheetz (now Pepper Hamilton LLP) and received assignments ranging from responding to discovery to drafting in limine motions and client letters. I also had the opportunity to appear before a state court judge and seek a temporary restraining order. I left the firm to

begin my District Court clerkship. At the conclusion of my clerkship, I joined the United States Attorney's Office and was assigned to the Criminal Division, where I handled violent crime, drug, and white collar cases. After several years in the Criminal Division, I was assigned to the Special Prosecutions Division, which focuses on public corruption cases. After a brief tenure in that division, I was promoted to Deputy Chief of the Criminal Division, where I supervised dozens of Assistant U.S. Attorneys. In February 1999, I was appointed Chief of the Criminal Division. I served in that position until August 2001, when I was appointed Executive Assistant U.S. Attorney. In that role, I supervised the Criminal, Civil and Fraud Divisions. I returned as Criminal Chief in January 2002 and remained in that position supervising an expanded and reorganized division until my appointment as a United States Magistrate Judge in March 2003.

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

While working at Pepper, Hamilton, & Scheetz, I was assigned to the labor department. It represented parties in both traditional labor matters and employment discrimination cases. While working for the United States Attorney's Office, I represented the United States in federal criminal cases.

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

My entire career has involved federal litigation, and I have appeared in court frequently. That frequency, however, decreased as my supervisory duties increased. To the best of my recollection, I appeared before New Jersey state judges less than five times, and I appeared with a client while in private practice before a representative on the National Labor Relations Board one time.

i. Indicate the percentage of your practice in:

1. federal courts:	99.9%
2. state courts of record:	.09%
3. other courts:	0%
4. administrative agencies:	.01%

ii. Indicate the percentage of your practice in:

1. civil proceedings:	.01%
2. criminal proceedings:	99.99%

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

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

I have tried more than 15 cases to verdict in the United States District Court. In each case, I was either sole or chief counsel. I also served in a supervisory capacity at trials with relatively junior Assistant U.S. Attorneys who were handling their first trials.

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

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

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

7. **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.

Listed below are ten cases in which I was sole or chief counsel for the United States before the United States District Court. I was responsible for the case throughout its entire investigation and prosecution. Any appeals were handled by other Assistant U.S. Attorneys assigned to the Office's Appeals Division. Certain defendants may have had post-conviction proceedings after I became a Magistrate Judge and, accordingly, I had no role in those proceedings. The addresses for the attorneys are the most recent business addresses I could locate.

I. *United States v. Smith*, Crim. No. 00-399, before the Hon. John C. Lifland, United States District Court for the District of New Jersey.

The defendants were five police officers who were convicted of violating the civil rights of an individual whom the officers had wrongly suspected of having murdered a fellow police officer. The individual died as a result of the defendants' acts of police brutality. The trial lasted more than two months, and involved dozens of fact witnesses and several medical experts. I delivered the opening statement and rebuttal summation, handled numerous witnesses and motions as well as the charge conference. The jury returned guilty verdicts on all counts. The United States District Judge granted the post-trial motion for acquittal on the conspiracy count. The Court of Appeals of the Third Circuit reinstated the conviction on the conspiracy count. *United States v. Smith*, 294 F.3d 473 (3d Cir. 2002). The defendants were sentenced after I became a Magistrate Judge.

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2. *United States v. Nunes*, Crim. No. 96-231, before the Hon. William H. Walls, United States District Court for the District of New Jersey.

A jury convicted the defendant of carjacking an employee of the Federal Bureau of Investigation. The defendant brutally assaulted her both physically and sexually. There was no fingerprint, DNA or other forensic evidence. Rather, the case rested on eyewitness testimony, corroboration of statements that the defendant made to the victim during their encounter that confirmed his identity as the perpetrator, and other-act evidence admitted under Fed. R. Evid. 404(b). Specifically, the investigation revealed that the defendant had engaged in similar violent conduct against other women. The conviction was affirmed. *United States v. Nunes*, 135 F.3d 767 (3d Cir. 1997) (table).

Counsel for the Defendant:

Paul B. Brickfield
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(201) 258-3984

3. *United States v. Pollard*, Crim. No. 91-210, before the Hon. Garrett E. Brown, Jr., United States District Court for the District of New Jersey.

Two defendants were charged with conspiring to transport, transporting, and kidnapping minor boys for the purpose of engaging in illegal sexual activities with them. The defendants used various lures to convince the boys to travel with them, including telling them that they ran a modeling agency and that they could get the boys jobs as models. Some of the victims reported that they were offered something to drink which caused them to pass out and that upon awakening they were partially disrobed and in pain. One defendant entered a guilty plea. Because of my role from the outset of the investigation, I handled all of the victims who testified and many of the law enforcement witnesses as well as all of the jury addresses, many motions, and the charge conference. Following an approximately one-month trial, involving multiple youthful victims who were asked to recount sensitive details, a jury convicted the remaining defendant. The jury verdict was affirmed. *United States v. Pollard*, 986 F.2d 44 (3d Cir. 1993).

Co-counsel for the United States:

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James Weinberg
deceased

4. *United States v. Santtini*, Crim. No. 91-443, before the Hon. Dickinson R. Debevoise, United States District Court for the District of New Jersey.

The defendants were involved in the manufacture of cocaine at a clandestine cocaine conversion laboratory in New York. The chemical conversion process polluted the property and resulted in its placement on the New York Superfund list of hazardous sites. Another noteworthy portion of the case involved an emergent petition to the Court of Appeals for the Third Circuit seeking review of the trial court's order precluding the execution of a lawfully issued arrest warrant for a fugitive residing outside of the United States. The Third Circuit ruled that the doctrine of separation of powers prevents the court from interfering with the power of the executive branch to arrest fugitives pursuant to a valid warrant. *United States v. Santtini*, 963 F.2d 585 (3d Cir. 1992). Three defendants entered guilty pleas. Following a trial that lasted several weeks, in which I handled multiple witnesses, motions, jury addresses, and the charge conference, a jury convicted the remaining defendant.

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5. *United States v. Vitacco*, Crim. No. 95-132, before the Hon. Harold A. Ackerman, United States District Court for the District of New Jersey.

These defendants were, respectively, the superintendent of schools and the business administrator for the Board of Education in Lincoln Park, New Jersey. Together with my co-counsel, we conducted a grand jury investigation, which resulted in the return of a multiple count indictment charging each defendant with tax evasion and fraud associated with the manipulation of their vacation and sick time. In the midst of trial preparation, the defendants pleaded guilty to felony tax offenses embodied in the indictment filed against them.

Co-counsel for the United States:

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Counsel for the Defendants:

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Michael D'Alessio, Jr.
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6. *United States v. D.T.*, Crim. No. 99-65, before the Hon. Nicholas H. Politan, United States District Court for the District of New Jersey.

The defendant was a juvenile offender charged with bank robbery. Because of his lengthy and increasingly violent juvenile record, the defendant was transferred for prosecution as an adult. Very strict procedural protections are accorded to juveniles and to ensure that these protections were satisfied, the agent and I

closely examined both the offense and the criminal, educational, and social history of the offender to ensure that a request to transfer him to adult status was warranted. He entered a guilty plea to bank robbery.

Counsel for the Defendant:

Michael N. Pedicini
60 Washington Street
Morristown, NJ 07960
(973) 285-1555

7. *United States v. Redmond*, Crim. No. 92-270, before the Hon. H. Lee Sarokin, United States District Court for the District of New Jersey.

The defendant committed a series of bank robberies. Because forensic evidence was not recovered from each bank, other means were used to identify the perpetrator, including a live line-up. Working with law enforcement, we brought together individuals who resembled the defendant and allowed the defense counsel to challenge those he did not believe to sufficiently resemble his client. The defendant was ultimately identified as the robber of more than a dozen banks. After he was charged, the defendant provided law enforcement with information concerning how he selected his targets and this information helped law enforcement educate banks about ways to protect themselves from robberies. He entered a guilty plea to multiple bank robberies.

Counsel for the Defendant:

Donald McCauley
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8. *United States v. Williams*, Crim. No. 01-490, before the Hon. William G. Bassler, United States District Court for the District of New Jersey.

The defendant was under investigation for committing automobile lease fraud. During the investigation, law enforcement approached the defendant while he was driving one of the fraudulently obtained vehicles. Instead of complying with their requests to exit the vehicle, the defendant accelerated and struck two federal agents. Following a jury trial, during which I handled multiple witnesses, jury addresses, and the charge conference, the defendant was convicted of fraud and assault on federal agents. The jury verdict was affirmed. *United States v. Williams*, 157 F. App'x 537 (3d Cir. 2005).

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Counsel for the Defendant:

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9. *United States v. Londono*, Crim. No. 90-241, before the Hon. John C. Lifland, United States District Court for the District of New Jersey.

The defendant was involved in an international drug trafficking organization that distributed multiple kilograms of cocaine. Following a several week trial, which involved multiple witnesses and motions, a jury convicted the defendant for violating the federal drug laws. The conviction was affirmed. *United States v. Londono*, 998 F.2d 1006 (3d Cir. 1993).

Counsel for the Defendant:

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10. *United States v. Barkerswoode*, Crim. No. 93-309, before the Hon. Joseph H. Rodriguez, United States District Court for the District of New Jersey.

The defendants were convicted for their role in a multinational drug trafficking organization following a wiretap investigation. Among the members was a professional soccer player from Ghana. To facilitate resolution of the case, my co-counsel and I made presentations to almost every defendant and his counsel that highlighted the evidence, including readings of portions of wiretapped conversations that implicated the particular defendant in the conspiracy. All defendants entered guilty pleas to drug offenses. One defendant appealed his

sentence. The sentence was affirmed. *United States v. Barkerswoode*, 103 F.3d 114 (3d Cir. 1996) (table).

Co-counsel for the United States:

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1103 Laurel Oak Road, Suite 111
Voorhees, NJ 08043
(856) 782-8600

Ronald C. Hunt
60 Park Place, 16th Floor
Military Park Building
Newark, NJ 07102
(973) 242-4471

Kenneth N. Rubin
Law Offices of Kenneth Rubin
38 Haddon Avenue
Haddonfield, NJ 08033
(856) 428-7000

Noah Lipman
Lipman & Booth LLC
11 Broadway, Suite 967
New York, NY 10004
(212) 363-6969

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.)

Most of my career has been spent in public service and my legal work has been in the federal trial court. More specifically, as an Assistant and Supervisory Assistant U.S. Attorney, my work was almost exclusively focused on federal criminal law. I personally investigated, prosecuted, and supervised hundreds of cases. In addition, I was responsible for several special matters, including coordinating the United States Attorney's Office's investigative support in the aftermath of September 11, 2001.

Outside of court, I have devoted my time to training. As a Supervisory Assistant U.S. Attorney, I developed an in-house training program for new Assistant U.S. Attorneys, lectured Assistant U.S. Attorneys on various topics, including ethics and plea bargaining, and provided training to law enforcement officers on various aspects of federal criminal law and procedure. In my current position, I have participated in continuing legal education through participation on panels and teaching. I also assisted the Administrative Office of the United States Courts with a video regarding a program to gather Magistrate Judge workload statistics. A copy of the DVD is supplied in response to question 12d. In addition, I serve on several court governance committees, including the Patent Rules committee, which recommended Local Patent Rules that govern the management of patent cases filed in the District of New Jersey. A copy of the Rules is supplied as part of my response to Question 12b.

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.

In the Spring of 2009, 2010, and 2011, I taught an evening course entitled "Discovery and the Pretrial Process" at Fordham University Law School. This is a "skills" class focused on pretrial federal civil litigation. A copy of the 2011 syllabus is supplied.

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

    Upon retirement, I am eligible to receive benefits from the Federal Employee Retirement System. Otherwise, I do not expect to receive any deferred income or future benefits.

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

    Subject to the approval of the Chief Judge of the Circuit, I am scheduled to teach one evening class at Fordham Law School in the Spring of 2012. I have no other commitments 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.

        My significant other supervises one division of the United States Attorney's Office and, if confirmed, I would continue to recuse myself from all matters he handles or supervises and would recuse from any cases in which he has a financial

interest. In addition, because of the various supervisory positions I held, I would continue to recuse myself from any matters pending in the United States Attorney's Office before March 10, 2003.

Other than those situations, I am not aware of any conflicts in the categories described, but in any event, I would review each case to determine if any conflict existed, and if it did, I would recuse myself from the case.

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 continue to follow and carefully apply the Code of Conduct for United States Judges as well as other ethical canons and statutory provisions.

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

As a judicial law clerk, Assistant U.S. Attorney, and Magistrate Judge, I have been limited in the type of pro bono work that I can do. While I was an Assistant United States Attorney, the Code of Federal Regulations prevented all Assistant U.S. Attorneys from undertaking the type of pro bono representation required of New Jersey bar members and Assistant United States Attorneys were granted an exemption from the requirement of accepting such pro bono appointments. Consistent with the limitations of my positions, I have attempted to fulfill Canon 2 through teaching and speaking to various groups, including bar associations, law enforcement groups, and students.

In addition, I organized and managed the summer intern programs at both the United States Attorney's Office and the United States District Court, participated in our law clerk orientation program, participated in the "Take Your Child To Work Day" events, and have met with elementary, high school, college, and law students to educate them about careers in the law, our government, and public service. During the academic year 2006 – 2007, I also served as a workplace mentor for a high school senior participating in the Senior Experience Internship from the Bergen Academy, Hackensack, New Jersey.

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, there is no selection commission for appointments to this court. Since July 26, 2011, I have spoken with attorneys at the White House Counsel's Office. On August 4, 2011, I was notified that my name was being forwarded to the Department of Justice for vetting for a potential nomination. Since August 4, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 8, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. I have also interviewed with Senator Frank Lautenberg and Senator Robert Menendez. On October 5, 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
Shwartz, Patty	Third Circuit	10/05/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge	☑ Nomination, Date 10/05/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 09/23/2011
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.**	
Frank R. Lautenberg Post Office & Courthouse Federal Square, P.O. Box 999 Newark, New Jersey 07101	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 Director (representing the Third Circuit)	Federal Magistrate Judges 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 6	Name of Person Reporting Shwartz, Patty	Date of Report 10/05/2011

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	Fordham Univeristy Law School - Teaching	$5,000.00
2.	2010	Fordham University Law School - Teaching	$5,000.00
3.	2011	Fordham University Law School - Teaching	$5,000.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Shwartz, Patty	Date of Report 10/05/2011

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 Shwartz, Patty	Date of Report 10/05/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 31-60 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. Columbia Bank Account & CD	B	Interest	M	T					
2. Hudson City Savings Bank Account & CD	B	Interest	M	T					
3. PNC Bank CD	A	Interest	K	T					
4. Bank of America NA CD	A	Interest	M	T					
5. Investor Savings Bank CDs (now Investors Bank)	B	Interest	M	T					
6. Amalgamated Bank CD	A	Interest	K	T					
7. Wachovia Bank NA Accounts (now Wells Fargo)	A	Interest	N	T					
8. Met Life MAX - 1A (Fixed Annuities)	A	Interest	K	T					
9. U.S. Savings Bonds		None	J	T					
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes.
(See Columns B1 and D4)
2. Value Codes
(See Columns C1 and D3)
3. Value Method Codes
(See Column C2)

A =$1,000 or less
F =$50,001 - $100,000
I =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
Q =Appraisal
U =Book Value

B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
R =Cost (Real Estate Only)
V =Other

C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
S =Assessment
W =Estimated

D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000
T =Cash Market

E =$15,001 - $50,000

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Shwartz, Patty	Date of Report 10/05/2011

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Shwartz, Patty	Date of Report 10/05/2011

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 Patty Shwartz

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		995	210	Notes payable to banks-secured (auto)		7	612
U.S. Government securities-Series EE Bonds		1	300	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			
Real estate owned -- see schedule		479	167	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		35	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		447	301				
MetLife MAX-I A Fixed Annuity		18	692				
				Total liabilities		7	612
				Net Worth	1	969	058
Total Assets	1	976	670	Total liabilities and net worth	1	976	670
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$300,000
Family residence (1/3 ownership)	179,167
Total Real Estate Owned	$479,167

AFFIDAVIT

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

October 4, 2011
(DATE)

Patty Shwartz
(NAME)

(NOTARY)

JOHN KEVIN STONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires ~~June 2, 1994~~
SEPT. 13, 2015

Thank you for allowing me to do that, and I will look forward to answering your questions.

Senator COONS. Absolutely. Thank you, Judge Shwartz, and thank you for participating in the nominating process and for volunteering to continue to serve after your long service with the U.S. attorney's office.

Now, let me start, if I might, an initial round of 5-minute questions.

My first question, Judge Shwartz, if you would, please, just briefly describe your judicial philosophy.

Judge SHWARTZ. My judicial philosophy is to decide only the case in front of me based upon the law and the facts established in the record before the court; to give the opportunity to the parties to be heard; to consider those impartially; and, to render fair and prompt decisions and give reasons for those decisions both for the benefit of the litigants, the public, and, in the event there's a review by a reviewing court, the reviewing court.

Senator COONS. How would the skills you've developed as a magistrate judge translate to your responsibilities as a judge on the third circuit? And if you feel compelled to add, and the experience you had as clerk in the district court, feel free to do so.

Judge SHWARTZ. Thank you. And I understand you clerked, as well, so you know how important that experience is.

Senator COONS. For the third circuit, yes.

Judge SHWARTZ. That's right. It's a formative experience for all.

I'm of good fortune of having a collection of experiences. I was an assistant U.S. attorney for 13 years. I clerked for a Federal district judge for a little more than 2 years, and I've been a magistrate judge for what will be 9 years on March 10.

As an assistant U.S. attorney, of course, I became exposed to a variety of areas of criminal law and the legal process that is involved in the criminal area.

As a magistrate judge, I work in a district where the district judges give the authority to the magistrate judges to the broadest extent possible based upon the Constitution and the Federal Magistrate Judges Act and, as a result, I've had the opportunity to handle civil cases, pretty much the entire pretrial process, with the exception of dispositive motions and trial, unless the parties have consented to my jurisdiction.

And I've had the good fortune of having parties consent to my jurisdiction in civil cases more than 70 times, where I've been able to take the cases through judgment. I've tried 14 cases as a magistrate judge and more than 15 as an assistant U.S. attorney.

And all of those collective experiences have sensitized me to many things, including, obviously, legal research and writing, understanding the development of a record and where to perhaps find something in a record, if I'm fortunate enough to be confirmed for this other position.

I have an understanding of how a record is developed and where to find things. Of course, I'm accustomed to legal research and writing, which is a large part of that position, should I be lucky enough to be confirmed.

So those are just some of the experiences that I have that I hope that would enable me to serve in this other position.

Senator COONS. Some 25 years ago——

Judge SHWARTZ. Yes.

Senator COONS [continuing]. At your law school graduation, you stated, in part, in a much longer address, that lawyers should take a, "active position in the development of the law."

Do you still feel that way today? And tell me how you would respond to those who might be concerned that you would take an active role or how you understand that concept today, should you be confirmed as a judge on the third circuit?

Judge SHWARTZ. Thank you for asking. The remarks I think you're referencing are remarks I made 25 years ago when I was about ready to receive my law school diploma, and I was giving remarks to my classmates who were very talented, blessed group who had a terrific legal education. And so I was speaking to future advocates, not to—not as a judge nor did I think I was speaking to a group of judges.

And I was trying to encourage them to use all their good skills to school themselves on the law and to advocate for their clients, but certainly I wasn't speaking at that time as a judge.

Senator COONS. You are also going to face an interesting situation. As a magistrate judge, a large portion of your work consists of developing recommendations and reports for the review and potential action by district court judges. That's some portion of your work.

The district court is also responsible for decisions about whether to appoint and reappoint magistrates to the bench.

As a circuit judge, you will be called to review and, where appropriate, reverse rulings of those very same judges. How would you guard against being unduly deferential or having your decisions in any way complicated by judges who have supervised you in your current role?

Judge SHWARTZ. I would apply the same approach that I've taken in the job that I have now. I have people who appear in front of me who I've known from walks of life other than the one that I currently lead, and I'm duty-bound to apply the law that's governing to the issue, to the facts that have been established, and reach what I think is an appropriate decision.

Senator COONS. Thank you very much, Judge Shwartz.

Judge SHWARTZ. Thank you.

Senator COONS. Senator Grassley.

Senator GRASSLEY. According to press reports, Senator Menendez initially declined to support your nomination. These accounts centered on the *Citizen United* case. The second interview with him also appeared to focus on this, and I would read that quote. "In my opinion, Judge Shwartz did not adequately demonstrate the breadth of knowledge of constitutional law and pivotal Supreme Court decisions, such as *Citizen United*, that we should expect from a United States circuit court judge."

First question. What did you discuss in these interviews?

Judge SHWARTZ. What I can tell you, during our two interviews, is at no time did the Senator ask nor did I say how I would rule on any case. You heard his remarks, how we did meet twice, and during the course of our collective sessions, we talked generally about my understanding of certain substantive areas of the law.

But, again, at no time did he ask me what my opinion was or what my views were of any of those cases.

Senator GRASSLEY. Well, then, I am going to read a second quote from him. "Judge Shwartz satisfactorily answered questions covering important legal topics, such as current law on rights of corporation under the First Amendment, constitutional limits on executive branch power, and the application of heightened standards of review under the Constitution. She adequately allayed my earlier concerns."

So what changed between the first and second interview?

Judge SHWARTZ. I don't know that I'm in a position to say what the Senator felt about that.

Senator GRASSLEY. Well, you could at least tell us what maybe you said that changed his mind.

Judge SHWARTZ. I can't say what it is that changed his mind.

Senator GRASSLEY. Did you change your answers or give him any assurances on any legal topic or case?

Judge SHWARTZ. I did not give him any assurances nor did he ask. Perhaps we talked in more detail about certain of the subject areas, but——

Senator GRASSLEY. I have further questions along this line. Did you discuss *Citizen United* during the second meeting with Senator Menendez?

Judge SHWARTZ. We discussed the corporate rights in a general sense, and then I—we talked a little bit about the difference between the Constitution's rights.

Senator GRASSLEY. Did your views on these subjects change after your initial meeting with Senator Menendez?

Judge SHWARTZ. At no time did I express any of my views during either of the sessions with the Senator. We discussed legal principles.

Senator GRASSLEY. Did you discuss any topics at the second meeting that you did not discuss at the first one?

Judge SHWARTZ. I can't remember. I'm sorry.

Senator GRASSLEY. In *Citizen United*, the Supreme Court reconsidered the ruling of *Austin*. In a 5–4 decision, the Supreme Court overturned its decision in *Austin* and held that campaign finance restrictions on corporations at issue in the case were unconstitutional.

Many, including the President, have been highly critical of the Supreme Court decision. Do you believe *Citizen United* was correctly decided?

Judge SHWARTZ. It would be improper for me to have a personal opinion on that subject.

Senator GRASSLEY. Are you sure of that answer? I mean the answer you just gave to me.

Judge SHWARTZ. Am I sure that I—it would be——

Senator GRASSLEY. You mean you do not feel that you could tell me whether or not you think *Citizen United* was properly decided.

Judge SHWARTZ. What I can tell you, Senator, is because I'm a sitting judge, I'm duty-bound to apply the law to the facts without regard to my personal views concerning whether a decision is properly decided or not.

It's the United States Supreme Court's precedent that I'm duty-bound to follow.

Senator GRASSLEY. The President has characterized the Supreme Court's decision as reversing, "a century of law." Do you believe that this is a fair and accurate characterization of the Supreme Court's decision?

Judge SHWARTZ. I don't know that I could characterize it. That was the President's characterization, as you've quoted it to me. I know what the opinion said and it had reviewed its precedent in reaching its conclusion.

Senator GRASSLEY. Before I ask another question—going back to what the Chairman asked you about your commencement address, what did you mean when you said, quote, "We must not simply be satisfied with precedent, but rather must embellish upon it to satisfy the needs of both individuals and society?" And I'm going to follow-up with another question.

Do you believe it is ever proper for a judge to embellish or manipulate precedent?

Judge SHWARTZ. Answering your latter question first, if you don't mind, of course not. The judge is duty-bound to apply the precedent to the facts before it.

My remarks 25 years ago were to my law school classmates who were future advocates, and maybe my word choice should have been more along the lines of good faith extensions of the law was an appropriate thing for an advocate to take a position about on behalf of a client. So it was a different context than the context I work in today.

Senator GRASSLEY. At that particular time, what did you mean when you said "use our creativity to manipulate the preexisting doctrine to best accommodate the demands of a greater society?" Then I will stop here and let my colleagues ask questions.

Judge SHWARTZ. What I was trying to do to my future classmates was to energize them and let them know what important roles they're going to have in society in whatever way they choose to use their law degrees, and that's all I was trying to do to a group, as I said, of future advocates.

Senator GRASSLEY. I will conclude with this. Just simply, I think you are trying to tell us—and I do not question your veracity—that none of these views you expressed are with you today as far as being a judge.

Judge SHWARTZ. That's correct.

Senator COONS. Thank you.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

And thank you, Judge Shwartz, for being with us today. You have had an interesting and distinguished career, and this is an exciting step that you have been nominated to take.

If you are confirmed to this position, let us suppose that you discovered perhaps as you are—I do not know—on the Metroliner going from Newark down to Philadelphia the day before argument, while doing your last review of the bench memos and the briefs in a particular case, you discovered circumstances present in the case that you had not noticed before suggesting that perhaps Article 3 standing was lacking in that case the day before oral argument.

How might you proceed in this circumstance, supposing further that the issue of Article 3 standing had not been raised or briefed either before the third circuit or before the district court?

Judge SHWARTZ. Well, of course, Senator, we would know that you have to have standing in order to bring an action. It's one of the core first steps out of the box when you bring a lawsuit.

Having not been in the appellate court, I'm not sure of the procedures that one would follow. But applying that scenario—and not that I've had exactly a standing issue, but where I've had an issue with the parties that have come up after I've reviewed and thought we were ready to rule, I've either issued orders to invite them to brief an issue or to raise things orally with me on the narrow point that would be presented that perhaps hadn't been discussed before, and, certainly, an issue of standing would have to be one of those issues or else the court couldn't rule.

Senator LEE. And you would certainly be willing to raise it sua sponte.

Judge SHWARTZ. I think the court is obligated to do that to be sure that there is standing of the parties and that all the other justiciability doctrines are satisfied.

Senator LEE. Right. So assuming that this does come up again in this scenario or you discover it the day before oral argument, such that there is not time to ask for supplemental briefing prior to argument, how might you proceed at oral argument? What questions might you ask of the advocates?

Judge SHWARTZ. Again, since I've never been in the appellate posture as a judge, I'm sure among the first things I would do is speak to the other panelists to let them know I had found this issue and then confer with them to see the best way to elicit a response on the subject either at oral argument or to give them an opportunity for supplemental briefings.

But, again, I imagine there's some procedural requirements that the internal operating rules of the appellate court or its local rules may guide us in how to handle that situation.

Senator LEE. Sure. But setting aside those procedural rules, those internal operating procedures for a minute, just talk about the substance, what kinds of questions? What kinds of facts would you be looking for?

Judge SHWARTZ. Sure. Well, in terms of the issue of standing, of course, the party has to have a redressable issue that can be addressed by the court in that context; that they had injury, in fact, and that there's redressability. That is, the lawsuit could lead to an address of that alleged injury.

Senator LEE. Do you believe that Congress has powers other than those that are enumerated in the Constitution? Does it have implied powers that are not expressly granted?

Judge SHWARTZ. Well, not my belief, but my understanding of the Constitution is the Tenth Amendment sets forth the enumerated powers, and there are provisions of the Constitution that provide Congress with its authority to act, whether it's the commerce clause, the necessary and proper clause, the taxing and spending authority and the like.

Senator LEE. So outside of that, if you did not have one of those, you would not be inclined to imply a power of Congress.

Judge SHWARTZ. I'd have to look at the precedent to see if there's some interpretation that's been given by the Constitution—of the Constitution—to determine what the authority was for the act.

Senator LEE. In light of the fact that there is sometimes legislation passed by Congress that may come before you from time to time that does not expressly invoke any enumerated power in the Constitution, how might you approach that situation? Would you be willing to invalidate legislation if it did not invoke one or more express authorities granted to Congress?

Judge SHWARTZ. I think if an issue concerning examining a statute came before the court, the analytical process that I would follow is look at the plain meaning of the statute first; if it weren't clear, look at the legislative history, the scheme in which the particular provision falls, and try to glean from that which authority Congress was acting on, assuming that the challenge to that statute was a challenge that Congress was acting outside of its authority as opposed to some other challenge.

Senator LEE. Right. Assuming that the text does not get you there, how could the legislative history provide the necessary link to an enumerated power under the Constitution?

Judge SHWARTZ. It would depend on what the history said, if there was a history. There could be legislative history that would give an indicator of what authority Congress was relying upon in acting in the way it did.

The other area, of course, is if there's been—finding precedent that's already examined the particular provision at hand.

Senator LEE. Certainly. Certainly. I see my time has expired, Mr. Chairman.

Senator COONS. Thank you, Senator Lee.

Senator Coburn.

Senator COBURN. Thank you, Senator Coons.

Welcome.

Judge SHWARTZ. Thank you.

Senator COBURN. You have done a great job so far.

Judge SHWARTZ. Well, thank you.

Senator COBURN. Can you assure this Committee that at no time in the future, should you be appointed to this position and confirmed, that you will rely on foreign law in any way whatsoever to make a decision that is before you?

Judge SHWARTZ. American law dictates the outcomes of cases in the United States courts, and only if the binding precedent for some reason directed consideration of that, but that would be the only circumstance that I would rely on foreign law, unless there was some precedent that required it or some treaty that required it.

Senator COBURN. Well, I am going to go back and ask it again, because I want a yes or no answer. Can you assure this Committee that at no time, should you be confirmed to this position, that you will rely on anything other than the Constitution, the statutes and the precedents before you to make a decision about the outcome of that case?

Judge SHWARTZ. I can assure you of that.

Senator COBURN. Thank you. When you visited with Senator Menendez about the rights of corporation under the Constitution,

what did you say those rights were under the Constitution? What are they? What did you tell him?

Judge SHWARTZ. Based—well, I can tell you what my understanding is.

Senator COBURN. Under the First Amendment. I am just asking the First Amendment.

Judge SHWARTZ. Just under the First Amendment, my understanding from the precedent of the United States Supreme Court is that under the First Amendment, corporations have free exercise to political speech and restrictions on that would be subject to the highest level of scrutiny.

Corporations have other rights under the Constitution, but not every constitutional provision gives a corporation rights. There are differences.

Senator COBURN. So does the *Citizen United* ruling reflect the same rights under the First Amendment, in your mind?

Judge SHWARTZ. Same rights as to an individual's rights?

Senator COBURN. Yes.

Judge SHWARTZ. The Supreme Court precedent says that at least for political speech, it's not judged based upon the speaker. To judge based upon the speaker the Supreme Court found to be improper.

Senator COBURN. Well, that is the law. That is the law. That is the precedent now, correct?

Judge SHWARTZ. That's my understanding of the precedent, yes.

Senator COBURN. So you are bound to follow those precedents.

Judge SHWARTZ. I am.

Senator COBURN. Thank you. One last question for you. When Senator Menendez asked you about the constitutional limits on the executive branch power, was there a specific branch power he was referring to?

Judge SHWARTZ. I don't recall that during the two conversations. We talked generally just what my understanding was of executive power in a very general way.

Senator COBURN. Thank you. I have no other questions.

Senator COONS. Thank you, Senator Coburn.

I will begin a second round, if I might. Judge Shwartz, if you would, just what are your views on the role of the court in interpreting laws written in the past by an elected legislative body? Just to follow-up on some of the questions.

Judge SHWARTZ. Sure. The court is duty-bound to recognize that if legislation comes before it presumed to be constitutional, if there's a challenge made to it, the court would apply the standards that are applicable.

When a court gets a statute in front of it and it's called upon to apply it to a set of facts, of course, it first looks to the plain text of the statute. If there's ambiguity in the text, the court would then turn to the interpretation tools it can use, such as looking at precedent, looking at the provision in the context of the overall statute, looking at legislative history, if that is helpful.

So those are among the tools the court would use.

Senator COONS. And just to return to this topic, in your two sessions visiting with Senator Menendez—in introducing you earlier

in this hearing, Senator Menendez actually specifically quoted Aristotle, if I remember correctly.

Judge SHWARTZ. He did.

Senator COONS. Character is the best persuader, and said that he was persuaded to actively support your nomination because of your character.

To be clear, you answered some questions about your conversations with Senator Menendez. Did you at any time give him any assurances about a future decision or an inclination as to how you might decide any case or controversy that might come before you?

Judge SHWARTZ. I did not nor did he ask me anything like that.

Senator COONS. Thank you, Judge Shwartz.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

I want to get back to this speech for just a minute. I understand this is 25 years ago. It was at your law school graduation. You were probably trying to impress your friends and classmates.

But there are a couple of statements in there that are fairly strong and I just want to make sure I have a good feel for how you approach the law.

Judge SHWARTZ. Sure.

Senator LEE. One of the segments of that quote that I think did not come out during the previous questioning was a suggestion you made that lawyers should, quote, "manipulate preexisting doctrine to best accommodate the demands of a greater society."

Now, from the prior question, I gather that you do not believe judges should manipulate the law.

Judge SHWARTZ. That's correct.

Senator LEE. But do you believe that it is proper for lawyers, as officers of the court, to manipulate the law?

Judge SHWARTZ. My word choice was poor. I wish that what I had said was that lawyers are allowed, under the rules of ethics, to make good faith estimates based upon the existing doctrine, and that—I wish I had used those words. I wish I was as conversant with word choice at that time as I may be today.

Senator LEE. We are not all as sophisticated the day we graduate from law school. We might hope to be later.

So you would say then, Judge, that you would not phrase this the same way today.

Judge SHWARTZ. That would be correct.

Senator LEE. This does not accurately reflect how you would counsel lawyers in your courtroom today.

Judge SHWARTZ. No. Indeed, I expect lawyers, as do all my colleagues in the district of New Jersey, to have the highest ethical actions by those lawyers as good advocates on behalf of all their clients.

Senator LEE. Do you have any particular judicial role models who have served on the U.S. Supreme Court in the last century?

Judge SHWARTZ. My mother taught me something very important. Love all your children the same. And I'm not blessed with children, but I love all my judicial officers the same and I know that you have a particular judicial officer that you have perhaps a strong feeling with, as does Senator Coons, and so I'm hesitant——

Senator LEE. I am a member of the third circuit, in fact.

Judge SHWARTZ. Indeed. So I'm hesitant to say that and it's not—no disrespect to the Supreme Court, but you can't help but be touched by the judge with whom you worked most closely.

Senator LEE. Would you feel more comfortable answering the question if I allowed you to mention only those who have gone on to a better world who are no longer living?

Judge SHWARTZ. I love all my children the same.

Senator LEE. Very well said. I can see that you were an effective advocate in the court before you became a judge.

Thank you, Mr. Chairman. I have got no further questions.

Senator COONS. Thank you, Senator Lee.

Senator Grassley had requested a second round.

Senator GRASSLEY. Yes. According to your Senate questionnaire on December 21, 2010, you spoke to a high school group on the role of the U.S. court system and our government. In your handwritten notes, you discuss current subjects and cases that have been the subject of debate.

You included the decision in *Citizen United*, the issue of civil unions, and whether terrorists should be tried in military tribunals or in Federal courts. In your notes, this discussion comes under the bracketed heading of "court role is politics."

What specifically do you mean when you say "court role is politics?" What is your general view on the role politics plays in the judicial decision-making? And do you believe it is the role of a judge to make rulings based on desired outcomes or policy preferences?

Judge SHWARTZ. Again, to answer your last question first, it is not the court's role to decide things based on policy. That's what the elected officials do. Courts make decisions based upon the law and the facts in front of them following the binding precedent.

If I could give you a little context, first, my handwriting is not terribly legible. The background to that, those notes, is I was invited to speak to a group of high school students called "The Voters of Tomorrow." And my good friend who asked me to do this, young Jack, who was a sophomore at the time, he said, "I want you to come and talk about politics." And I said, "Well, I can't, for a few reasons. One, I'm certainly not well versed in that subject. Second, it's improper. I'm a judge."

"Well, maybe you can talk about some intersection with the court." And so I was trying to think of subjects that would be recognizable to that group of individuals. They were basically freshmen to high school seniors.

And so what I was trying to do was identify cases that subjects that may be of interest to them and familiar to them would come up, and that's how I ended up making some notes to that effect so that I could talk to them about these cases without talking about my views of the cases, just to try to make it a little bit more concrete for them.

Senator GRASSLEY. As an assistant U.S. attorney, did you ever prosecute someone who was death penalty eligible? If so, have you ever sought the death penalty?

Judge SHWARTZ. I was assigned to a case when I first started. I was maybe on the case for about 2 weeks and it was right after I had ended my clerkship.

And I was then taken off that case, because it was assigned to the judge that I had just clerked for. So that was my only contact with a death penalty case.

Senator GRASSLEY. So I think you answered my second part of that. Do you believe that—so then I will ask you a little different approach.

Do you believe that the death penalty is an acceptable form of punishment?

Judge SHWARTZ. The United States Supreme Court, in its precedent, has found that it is acceptable in all but a few circumstances.

Senator GRASSLEY. 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 of the U.S. Constitution?

Judge SHWARTZ. My view is that the American law governs cases brought in the United States courts, and I would follow the American law on that subject.

Senator GRASSLEY. A little more general question along the same line. Do you believe it ever appropriate for a judge to consult foreign law when determining the meaning of the U.S. Constitution?

Judge SHWARTZ. The U.S. Constitution should be governed by U.S. precedent, and that's what should guide interpretations.

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

Senator COONS. Any further questions, Senator Lee?

Judge Shwartz, I noted that Governor Christie, who I believe served with you when he was U.S. attorney, said to us, in support of your nomination, that you have committed your entire professional life to public service and New Jersey is the better for it.

And I want to thank you for appearing before this Committee today and look forward to the steady progress of your nomination. Thank you.

Judge SHWARTZ. Thank you very much for your time.

Senator COONS. Thank you.

I would like to ask the second panel of nominees to come forward and remain standing, please, if you would. And if you would each raise your right hand.

[Nominees sworn.]

Senator COONS. Thank you. Let the record reflect the nominees have answered in the affirmative. Please be seated.

Each of you will now be invited to give an opening statement and to recognize your family and friends who may be present or watching on the Web.

Mr. Helmick, starting with you, I would encourage you to acknowledge family and friends and give an opening statement, if you would.

STATEMENT OF JEFFREY J. HELMICK, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

Mr. HELMICK. Thank you, Senator. I'll be brief, but I appreciate that very much.

First, I'd like to introduce my family and, also, some friends that are here today. Senator Brown got a start on that for me, so I'll move quickly, I assure you.

My wife, of course, Karen Helmick; our son, Joel, who, as the Senator said, is 10 years old. Also, Judy Purpuard, my mother; my sister, Julie Vitale; Gabrielle Vitale, my niece; and, Lee and Marilyn Henry, my in-laws, are all here. And I also have friends and colleagues who have traveled that were able to make it into the hearing room today, I'm pleased to say, Dick and Shelley Walinski, Katherine Hoolihan, Neal McEroy, Spiros Cocoves, and David Douton.

There's a number of people watching on the Webcast and if I might just recognize my dad and step-mom, Jim and Barb Helmick, out in Colorado, who were unable to make the trip, but I hope are watching today; and, my uncle, Robert Kaplan, back in Toledo, as well.

I offer my thanks to you, Mr. Chairman, to the Ranking Member, Senator Grassley, as well, for allowing me to have this hearing, and all other members of the Committee.

Of course, my thanks to Senator Sherrod Brown for that very kind and humbling introduction. To Senator Rob Portman, who has also offered his support in this process. And, also, now retired Senator George Voinovich, as well. I had his support prior to his retirement, as well. And, of course, I thank the President for nominating me.

My thanks to all of you, and I look forward to answering your questions. I'll have nothing by way of a formal opening statement.

Senator COONS. Thank you very much, Mr. Helmick.

We now move to Mary Geiger Lewis.

[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).

   Jeffrey James Helmick

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

   United States District Judge for the Northern District of Ohio

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

   Gamso, Helmick & Hoolahan
   1119 Adams Street, Second Floor
   Toledo, Ohio 43604

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

   1960; Toledo, Ohio

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

   1985 – 1988, Ohio State University Moritz College of Law; J.D., May 1988

   1980 – 1982, 1983, University of Michigan; B.A., December 1983

   1978 – 1980, University of Colorado at Denver; no degree

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

1998 – present
Gamso, Helmick & Hoolahan (formerly Helmick & Hoolahan; Helmick, Prajsner & Hoolahan)
1119 Adams Street, Second Floor
Toledo, Ohio 43604
Attorney

1998 – 2005
Legally Wired
1119 Adams Street, Second Floor
Toledo, Ohio 43604
Attorney/Technology Consultant

1996 – 1998
Helmick, Jacobs & Solomon
622 Adams Street, Second Floor
Toledo, Ohio 43604
Attorney

1989 – 1995
Kaplan, Richardson, Rost & Helmick
830 Spitzer Building
520 Madison Avenue
Toledo, Ohio 43604
Attorney

1993 – 1995
Department of Rehabilitation and Correction
770 West Broad Street
Columbus, Ohio 43222
Special Advisor to the Director

1988 – 1989
Marshall & Melhorn, LLC
Four SeaGate, 8th Floor
Toledo, Ohio 43604
Associate

Summer 1987
Williams & Montgomery (now Williams, Montgomery & John, Ltd.)
Willis Tower
233 South Wacker Drive, Suite 6100
Chicago, Illinois 60606
Summer Associate

1986 – 1987
Night Prosecutor Mediation Program
City of Columbus, Ohio Prosecutor's Office
375 South High Street
Columbus, Ohio 43215
Mediator for criminal cases

Summer 1986
Marshall & Melhorn, LLC
Four SeaGate, 8th Floor
Toledo, Ohio 43604
Summer Associate

1984 – 1985
United States District Court for the Southern District of Texas
United States Courthouse
515 Rusk Avenue
Houston, Texas 77002
Assistant to the Special Master, *Ruiz v. Estelle*, Civ. A. No. H-78-987

1984
United States District Court for the District of New Mexico
The Spitzer Building
520 Madison Avenue
Toledo, Ohio 43604
Assistant to the Special Master, *Duran v. Anaya*, Civ. No. 77-0721-JB

Other affiliations (uncompensated):

2009 – present
Local K-12 School
Toledo, Ohio
Trustee

1999 – 2004
The Toledo Rowing Club
8 Main Street
International Park
Toledo, Ohio 43605
Vice President (1999)
President (2000 – 2004)

1990 – 2000
David's House Compassion, Inc.
510 North Detroit Avenue
Toledo, Ohio 43607
Trustee (1990 – 2000)
President of Board of Trustees (1999 – 2000)

1989 – 1990
Pemberville Boys Ranch
1926 Kahler Road
Pemberville, Ohio 43450
Trustee

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

I have not served in the military. I registered for selective service when I turned 18.

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

Elected Editor-in-Chief, The Ohio State Journal on Dispute Resolution, 1987 – 1988
AV peer rated, Martindale-Hubbell

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.

Associations
American Bar Association
American Inns of Court, Morrison R. Waite Chapter
Maumee Valley Criminal Defense Lawyers Association, Co-Founder (1996 – present)
National Association of Criminal Defense Lawyers
Ohio Association of Criminal Defense Lawyers
Ohio State Bar Association
Toledo Bar Association

Committees
Supreme Court of Ohio
Commission on Continuing Legal Education (1990 – 1996)
Toledo Metropolitan Area Committee on Government, for recommendations regarding improvements to the Criminal Justice System in the Toledo area (2000)
U.S. Attorney's Advisory Council for the Northern District of Ohio (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.

Ohio, 1988

I have had no lapses in membership.

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

Supreme Court of the United States, 2002
United States Court of Appeals for the Sixth Circuit, 2000
United States Court of Appeals for the Third Circuit, 2009
United States District Court for the Northern District of Ohio, 1989

I have had no lapses in membership in any of these courts.

11. **Memberships**:

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

David's House Compassion, Inc.
Trustee (1990 – 2000)
President of Board of Trustees (1999 – 2000)
Laurel Hills Swim and Tennis Club (2008 – present)
Local K-12 School
Trustee (2009 – present)
Chair, Buildings & Ground Committee (2010 – present)
Chair, Technology Task Force (2010 – present)
Pemberville Boys Ranch
Trustee (1989 – 1990)
The Toledo Club (1996 – 2000)
The Toledo Rowing Club (1999 – 2005; 2009 – present)
Vice President (1999)
President (2000 – 2004)

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

At one time, the Toledo Club discriminated on the basis of race, sex, and religion. Prior to my joining the Club in 1996, it had already instituted non-discrimination policies. To the best of my knowledge, none of the other 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.

From 1996 to 2001, I served as co-editor of the Maumee Valley Criminal Defense Lawyers Association newsletter. The newsletters consisted of synopses of cases that might be of interest to members of the local defense bar. 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.

None that I recall or have been able to identify.

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 that I recall or have been able to identify.

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 searched online resources, reviewed old calendars, and consulted with various individuals and groups to produce an answer to this question that is as complete as possible, but I still may have given other presentations that I have been unable to recall or identify.

On October 15, 2009, I participated in a small panel at the University of Toledo College of Law about plea negotiations. I have no notes, transcript, or recording. The address of the College of Law is 2801 West Bancroft, Toledo, Ohio 43606.

On November 7, 2008, I spoke at a conference entitled "A View from the Bench," a CLE program sponsored by the Toledo Bar Association. I was asked to present on the effective use of technology in the courtroom. Presentation slides supplied.

Between 2001 and 2004, I taught rowing courses for the Toledo Rowing Club's Summer Program. I may have prepared instructional materials, but I am unable to locate any copies.

In approximately the mid-1990s, I participated in a Judicial and Attorney Panel in the Toledo area with several local judges and lawyers. Questions were taken from a public audience about the courts and justice system generally. The session was not recorded and I had no prepared remarks, nor do I recall who sponsored the event. Any records I had were lost in an office fire on December 22, 1996.

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

I have searched my files and Internet databases to refresh my memory in an effort to produce as complete a list of interviews as I could, but it is still possible there are some I was not able to locate. I have identified the following newspaper articles that quoted me directly from a brief interview.

Tom Troy, *Toledo Lawyer Nominated to Become Federal Judge*, The Toledo Blade, May 12, 2011. Copy supplied.

Staff, *Helmick Endorsed for Court: Senators Brown, Voinovich Recommend Toledo Lawyer*, The Toledo Blade, Aug. 26, 2010, at B3. Copy supplied.

Erica Blake, *3 Named Finalists in Search for Federal Judge Candidate*, The Toledo Blade, July 27, 2010, at B3. Copy supplied.

Erica Blake, *Lawyers Jockey in Buildup to Trial Over Inmate Death*, The Toledo Blade, Feb. 28, 2010, at A13. Copy supplied.

Erica Blake, *Months After Terror Convictions, Local Trio Still Await Sentencing*, The Toledo Blade, Apr. 13, 2009. Copy supplied.

Erica Blake, *Sex Offender Freed After 3-Plus Years*, The Toledo Blade, Oct. 17, 2008, at B1. Copy supplied.

Erica Blake, *Killer Taken Off Death Row*, The Toledo Blade, Aug. 15, 2008, at B1. Copy supplied.

Erica Blake, *Alford Plea Cuts Prison Time for Child Assaults*, The Toledo Blade, Mar. 18, 2008, at B3. Copy supplied.

Erica Blake, *Fostoria Man Gets Life for '96 Murders; Jurors in Federal Court Split on Death Penalty*, The Toledo Blade, Dec. 15, 2007, at B1. Copy supplied.

Erica Blake, *Attorney Cleared to Defend Toledo Murder Suspect*, The Toledo Blade, Nov. 14, 2007, at B2. Copy supplied.

Erica Blake, *Death-Row Inmate in Court; Dickerson Challenges Sentence in 1985 Slayings*, The Toledo Blade, Apr. 27, 2007, at B1. Copy supplied.

Rick Halperin, *Toledoan Removed from Ohio Death Row—U.S. Panel Upholds Murder Convictions*, Death Penalty News, July 11, 2006. Copy supplied.

Matt Sanctis, *Zenowicz Gets Life*, The News-Messenger [Fremont, Ohio], June 28, 2006, at 1A. Copy supplied.

Jennifer Feehan, *Life Term for Murderer Disappoints Victims' Kin*, The Toledo Blade, June 28, 2006, at B1. Copy supplied.

Staff, *Attorney Seeks Data on Inmate Privacy*, The Toledo Blade, Mar. 18, 2006, at B1. Copy supplied.

Jennifer Feehan, *3-Judge Panel Convicts Man in Double-Murder*, The Toledo Blade, Mar. 4, 2006, at B1. Copy supplied.

Christina Hall, *Scrutiny of Terror Suspects Strict*, The Toledo Blade, Feb. 25, 2006, at A1. Copy supplied.

Chuck Goudie, *Feds: Terrorists Planned to Train in Chicago*, ABC 7 News, Feb. 24, 2006. Copy supplied.

Staff, *Federal Court Goes Digital*, The Toledo Blade, Jan. 22, 2006, at B4. Copy supplied.

Mark Reiter, *Defense to Use iPods to Review Evidence in Federal Drug Case*, The Toledo Blade, Jan. 17, 2006, at A1. Copy supplied.

Mark Reiter, *Harmon to Spend Rest of Life in Prison*, The Toledo Blade, Feb. 8, 2005, at B1. Copy supplied.

Mark Reiter, *Saturday Court Hearing to Determine Killer's Fate*, The Toledo Blade, Feb. 3, 2005, at B3. Copy supplied.

Mark Reiter, *Ex-Gang Boss Sentenced to Life in Prison*, The Toledo Blade, Dec. 21, 2004, at B1. Copy supplied.

Mark Reiter, *Outlaws' Ex-Leader Facing Life in Prison*, The Toledo Blade, Dec. 18, 2004, at B1. Copy supplied.

Dale Emch, *Outlaws Trial Ends with 12 Convicted*, The Toledo Blade, June 2, 2004, at A1. Copy supplied.

Vickie Chachere, *Former Outlaws Motorcycle Gang Leader Gets 16 ½ Years in Prison*, Associated Press, Jan. 30, 2004. Copy supplied.

Shirley Levy, *Boaters Beware of Jet-Powered Craft*, The Toledo Blade, Sept. 4, 2003, at C6. Copy supplied.

John Caniglia, *Officials Break Into Notorious Biker Gang*, Plain Dealer, Apr. 19, 2003, at B1. Copy supplied.

Staff, *Holdup Suspect Changes Mind on Guilty Plea*, The Toledo Blade, Oct. 11, 2002, at B2. Copy supplied.

Dale Emch, *Attorneys Selected by Court May Get Fee Hike – Upping Cap to $60,000 Would be Tops in State*, The Toledo Blade, June 15, 2002, at B1. Copy supplied.

Dale Emch, *Capital Case Fees Might Be Going Up*, The Toledo Blade, Apr. 25, 2002, at B1. Copy supplied.

Shirley Levy, *Boating's Lessons Helpful for a Lifetime*, The Toledo Blade, May 25, 2001, at C8. Copy supplied.

Shirley Levy, *Low Lake Erie Water Levels Won't Stop Recreational Boats*, The Toledo Blade, May 18, 2001, at C8. Copy supplied.

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Mike Sigov, *HIV/AIDS Service Body Gets New Executive Chief*, The Toledo Blade, Nov. 29, 1999, at 12. Copy supplied.

Dale Emch, *Tenace Jury Recommends Death Penalty in '94 Murder*, Oct. 8, 1999, at 13. Copy supplied.

Mike Jones, *Put Bomb in Wife's Car, Lister Confesses*, Oct. 11, 1997, at A1. Copy supplied.

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Gary Pakulski, *Spilled Coffee Becomes Hot Lawsuit Topic*, The Toledo Blade, May 21, 1996, at 21. Copy available at http://news.google.com/newspapers?id=9U8xAAAAIBAJ&sjid=awMEAAAAIBAJ&pg=4064,6327159&dq=jeff+helmick&hl=en.

Tom Troy, *Trio Found Not Guilty for Murder*, The Toledo Blade, July 30, 1994, at 1. Copy available at http://news.google.com/newspapers?id=EzQxAAAAIBAJ&sjid=agMEAAAAIBAJ&pg=3978,8315761&dq=jeff+helmick&hl=en.

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: ___ %

civil proceedings: ___ %
criminal proceedings: ___ %

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

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

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

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

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

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

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

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

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

an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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

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

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

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

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

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

I have never held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

Over the years, I have served on campaign committees for several area judges. Although there may be others, the specific campaigns that I recall were on behalf of: (1) Mary Grace Trimboli, candidate for Toledo Municipal Court Judge, in 1991; (2) Gary Cook, candidate for Lucas County Common Pleas Court Judge, in 2004; (3) William Skow, candidate for Judge in the Sixth District Court of Appeals, in 2004; and (4) William Connelly, Jr., candidate for Toledo Municipal Court Judge, in 2009. My involvement included placing signs in my yard and attending fundraisers, and in one instance providing technology support to the candidate. I did not hold any office in these campaigns and was not compensated.

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

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

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

I did not serve as a clerk to a judge.

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

I have never practiced alone.

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

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Attorney

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

I have not served as a mediator or arbitrator since my work as a mediator in the Columbus Night Prosecutor Mediation Program during law school.

b. Describe:

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

As an associate at Marshall & Melhorn (1988-1989), I was a civil litigator representing small and large businesses in several areas, including contracts, torts and labor law.

Between 1989 and 2001, I had a general practice, including plaintiff's personal injury cases and employment litigation on behalf of both small companies and individuals. During this time, I also began to take on defense of criminal and traffic offenses, eventually including capital cases.

Since 2001, my practice has expanded to include federal habeas corpus cases, post-conviction litigation and defense of more complex federal criminal charges. My civil practice gradually has declined as I have become busier in criminal courts, especially federal court.

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

In my first two years of practice, I represented both small and large companies, including Libbey Owens Ford and Champion Spark Plugs. Since I was a general litigator, I had no specific area of expertise.

Since that time, I have represented civil clients including small businesses, persons injured in accidents, and those asserting claims of employment discrimination. I also have represented a wide variety of criminal defendants, including law enforcement officers, business persons, working-class men and women, and indigent individuals. I have worked as retained counsel and as appointed counsel, particularly as appointed counsel in death penalty cases and in some federal criminal prosecutions.

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.

Overall, litigation has been 100% of my practice. From 1988 to the present, my practice has been:

i. Indicate the percentage of your practice in:

1. federal courts:	25%
2. state courts of record:	75%
3. other courts:	0%
4. administrative agencies:	0%

ii. Indicate the percentage of your practice in:

1. civil proceedings:	30%
2. criminal proceedings:	70%

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

I have tried approximately 40 cases to verdict or judgment. I was sole counsel in 20 of those cases, chief counsel in 16 cases, and associate counsel in four cases.

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.

Eley v. Houk, Case No. 10-6499 (Petition for Writ of Certiorari filed Sept. 17, 2010). 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. Gray*, Case No. 3:09-cr-00182-DAK (Hon. David A. Katz, United States District Court for the Northern District of Ohio; 2009 – 2011).

After an investigation by the Department of Justice, four current or former employees of the Lucas County Sheriff's Department, including the county sheriff, were indicted for various charges surrounding the alleged assault and the death of an inmate held in pretrial detention at the Lucas County Corrections Center in Toledo, Ohio. All four were also charged with covering up those actions. I was appointed by the court to represent defendant Schmeltz, a retired deputy sheriff. The case involved review of voluminous medical records and other discovery, and consultations with and preparation of testimony by medical specialists and other experts. I drafted a questionnaire for use by the court and the parties to expedite the individual sequestered voir dire process used in selecting the jury. I participated in all facets of the case, including preparation and argument of pretrial motions, jury selection, direct and cross-examination of witnesses and closing argument. The jury acquitted two of the defendants of all charges. My client was convicted of one count of submission of a false report, and was acquitted of the other three counts, including assault, giving a false statement to the FBI and another count of submission of a false report. Schmeltz was sentenced to one year plus one day in federal custody. His case is currently on appeal to the U.S. Court of Appeals for the Sixth Circuit.

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2. *United States v. Amawi*, Case No. 3:06-cr-00719-JGC (Hon. James G. Carr, United States District Court for the Northern District of Ohio; 2006 – 2009).

This was the first terrorism-related criminal case that the government brought in the Northern District of Ohio. Three defendants were charged with, among other crimes, conspiring to kill or maim persons outside of the United States and to provide material support to terrorists. I was court-appointed counsel for defendant Mazloum, and was active in every facet of pretrial, trial, and sentencing proceedings. This case was significant and challenging in many respects. Discovery in the case was voluminous and the government contended that some of the material that the defendants sought in discovery was classified information.

One problem was simply finding a way to get discovery to the defendants for their review so they could assist counsel in preparation of their defense. Because of the nature of the charges, all three defendants were held in a detention center 45 minutes away instead of at the local jail. Under normal practices of the Bureau of Prisons, the defendants could only review discovery during visits with counsel, which were restricted to only a few days a week and then only for limited daytime hours. These restrictions afforded the

defendants insufficient time to review the evidence, and it would have been inordinately expensive for appointed counsel to make the daily drive only to sit with the defendants while they reviewed the discovery. I proposed that the court allow the defendants to use the iPod digital media players that had been purchased in *United States v. Martinez* (the sixth case listed in response to this question), with the discovery loaded onto the iPods. This had never been permitted before, but I negotiated an exception to Bureau practice for this case. This arrangement saved the government literally hundreds of thousands of dollars in attorneys' fees and expenses.

The trial lasted for several weeks. In addition to working extensively on the jury selection process, I also cross-examined government witnesses, conducted the examination of several defense witnesses, and argued questions regarding the admissibility of evidence, jury instructions, and other issues. I also gave closing argument for my client. The jury convicted all defendants of all charges. Appeal is currently pending before the U.S. Court of Appeals for the Sixth Circuit.

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3. *United States v. Galan*, 3:06-cr-00730-JGC (Hon. James G. Carr, United States District Court for the Northern District of Ohio; 2006 – 2008).

This was the first federal capital murder case indicted and eventually tried in the Northern District of Ohio. I was court-appointed counsel for defendant Galan, who was charged with involvement in a drug conspiracy and a double murder. The murders, which the government contended Galan committed to extinguish a drug debt, occurred ten years before he was indicted. Discovery consisted of witnesses' statements, ballistics evidence, and involved other scientific evidence, including blood spatter analysis. My court-appointed co-counsel and I filed numerous motions and drafted a jury questionnaire. We later conducted several days of individual, sequestered voir dire.

Trial included several lay witnesses, a deputy coroner, a ballistics expert, a crime-scene investigator, as well as other law enforcement officers. I delivered the closing argument in the case. The jury convicted the defendant of both murders and the drug conspiracy charge. At the time, the federal capital-sentencing law was relatively new. My co-counsel and I persuaded the court to bifurcate the sentencing proceeding: in the first phase, we argued the applicable aggravating factors; in the second phase we presented mitigation evidence. The jury determined that Galan should spend life in prison without possibility of parole.

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4. *Dickerson v. Bagley*, 1:00-cv-02356-DKA (Hon. David A. Katz, United States District Court for the Northern District of Ohio); *Dickerson v. Bagley*, 453 F.3d 690 (6th Cir. 2006) (Circuit Judges Merritt, Martin and Siler); *State of Ohio v. Dickerson*, Case No.

CR85-5931 (Lucas County Common Pleas, Aug. 14, 2008) (Judges Richard W. Knepper, Charles J. Doneghy and George M. Glasser); 2000 – 2008.

In 1985, a three-judge panel convicted defendant Dickerson of a double murder and a related charge of aggravated burglary and sentenced him to death. After exhausting all direct appeal and post-conviction remedies available under Ohio law, Mr. Dickerson was eligible to file a federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Judge David Katz appointed me and my co-counsel to represent Mr. Dickerson. He was the first of seven death-row petitioners I was appointed to represent in federal habeas corpus actions by various judges in the Northern District of Ohio.

The district court permitted discovery regarding the effectiveness of Mr. Dickerson's trial counsel, whom we deposed. Significantly, trial counsel related a conversation that took place between himself and the presiding judge of the panel concerning Mr. Dickerson's choice of a jury versus a three-judge panel. Trial counsel incorrectly believed that the presiding judge strongly implied he was unlikely to vote to sentence Mr. Dickerson to death, and therefore Mr. Dickerson may wish to waive a jury. The district court eventually dismissed the habeas corpus petition and Dickerson appealed. The Sixth Circuit reversed, finding that Mr. Dickerson was denied effective assistance of counsel because his counsel did not adequately investigate and prepare for the sentencing phase of his trial.

My co-counsel and I were appointed to represent Mr. Dickerson at the resentencing hearing in state court, which was conducted before the same three-judge panel that sentenced him to death twenty-three years earlier. Although the aggravating circumstances were the same, we presented mitigation evidence that should have been presented at his first trial. After considering the newly presented evidence, the panel imposed a life sentence.

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5. *Leu v. Telb*, 2007 WL 1884602 (Ohio Ct. App. June 29, 2007) (Judges Singer, Handwork and Pietrykowski, Sixth District Court of Appeals; 2007).

Leu was charged with a misdemeanor count of domestic violence in the Toledo Municipal Court. After the alleged victim failed for the second time to appear on the scheduled date for trial, Mr. Leu's trial counsel moved to dismiss the case for want of prosecution, and the state requested more time. The trial judge denied the defense motion and granted the state more time. The judge also stated that he did not like the way Mr. Leu looked at him, and therefore summarily revoked his bond and ordered him into custody.

At the request of Mr. Leu and his trial counsel, I filed a petition for writ of habeas corpus in the state court of appeals. In a hearing on the petition, I argued that the court's conduct was improper and Mr. Leu's confinement unlawful. A unanimous court held that the trial judge had abused his discretion in revoking Mr. Leu's bond, reinstated the original bond, and ordered Mr. Leu's immediate release. I later challenged the trial judge's insistence on remaining as judge in Mr. Leu's case. The reviewing court ordered reassignment of the case to another judge.

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6. *United States v. Martinez*, 3:05-cr-00781-DAK (Hon. David A. Katz, United States District Court for the Northern District of Ohio; 2005 – 2006).

This was a large conspiracy case charging 21 defendants with conspiracy in trafficking in narcotics. I represented defendant Vargas. As with many of these cases, the government gathered nearly one hundred hours of audio recordings using wire taps and other means.

Due to budget constraints, the government provided all of the defendants with only one set of audio CDs, and the court received an estimate that it would cost $100,000 to reproduce CDs for all counsel and their clients. I suggested a less expensive alternative – I converted the first set of CDs to smaller digital files and transferred them to my iPod. I then demonstrated to the trial judge and magistrate how an iPod works and urged the court to purchase iPods as an alternative to ordering the expensive reproductions.

The court agreed and purchased six iPods, at a total cost of less than $2,000. I then transferred all of the discovery to the new iPods, which the court made available to defendants, including those in custody. The iPods proved easy to use, saved a great deal of money, and assured that the defendants could not tamper with the original digital files. My idea and the resultant cost savings were made the subject of an article and editorial in *The Toledo Blade*, listed in question 12(e), above. The digital players have since been made available for other cases, as well, including *United States v. Amawi*, listed above.

After discovery review and motion practice, my client eventually entered into a negotiated plea with the government and was sentenced accordingly.

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7. *United States v. Wheeler*, 3:03-cr-00739-DAK (Hon. David A. Katz, United States District Court for the Northern District of Ohio; 2003 – 2005).

This was a complex conspiracy case brought against 38 members of the Outlaw Motorcycle Club. In what was likely the largest conspiracy trial of its kind, 14 of the defendants were tried before a single jury. The allegations were varied and included drug conspiracy, firearms conspiracy, RICO violations, and RICO conspiracy charges. I was appointed by the court to represent lead defendant Wheeler, who was the International President of the Outlaw Motorcycle Club. The discovery consisted of nearly 400 audio CDs, plus photographs, thousands of pages of written discovery and numerous items seized from Outlaw club houses in various cities.

The trial lasted approximately three months, one of the lengthiest trials of its kind. The trial court looked to me, as counsel for the lead defendant, to help it preserve an orderly and efficient trial by coordinating the actions of seventeen defense counsel. My client was acquitted of the firearms conspiracy charge but convicted of drug conspiracy, RICO and RICO conspiracy charges. Because my client previously had been tried and convicted elsewhere on very similar federal charges, my co-counsel and I filed a double jeopardy challenge to those three charges. The trial court denied relief. I asked the court to appoint Dayton, Ohio attorney Gary Crim to represent Mr. Wheeler on appeal to the Sixth Circuit. The court of appeals reversed the trial court in part, dismissing both the

RICO and RICO conspiracy charges, but affirmed his conviction on the drug conspiracy charge. *United States v. Wheeler*, 535 F.3d 446 (6th Cir. 2008).

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8. *State of Ohio v. Cook*, CR98-1950; CR98-1336 (Hon. Charles Wittenberg (retired), Lucas County Common Pleas Court; 1998 – 2000).

Two brothers were charged with murder and attempted murder in one of the first cold-case prosecutions in Lucas County, Ohio. I was court-appointed counsel for one of them. Because any possible eyewitness identifications in the case were constitutionally tainted, the case turned primarily on DNA evidence. But because of the questionable reliability of the relatively new DNA testing used, I retained a nationally-known DNA expert to review the prosecution's DNA analysis. Eventually, I negotiated a plea for my client and his brother. Through the plea agreement, the State of Ohio was able to clear nine unsolved, long-cold murder cases which the state could not have likely pursued against the brothers due to lack of physical evidence. My client was already serving a life sentence for an unrelated homicide. He received additional life sentences.

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1119 Adams Street, Second Floor
Toledo, OH 43604
(419) 243-3800

For the state of Ohio:
Julia Bates
Lucas County Prosecutor
700 Adams Street, Suite 250
Toledo, OH 43604
(419) 213-4700

For defendant Cook:
Peter G. Rost
830 Spitzer Building
520 Madison Avenue
Toledo, OH 43604
(419) 241-6168

9. *Martin v. Walmart Stores, Inc.*, 95-CV-766 (Hon. Margaret Weaver (retired), Sandusky County Common Pleas Court; 1996 – 1998).

Plaintiff Martin was the personnel manager at a Walmart store in Fremont, Ohio. Over a period of months, the store manager belittled her and repeatedly made racially offensive remarks in her presence. Plaintiff finally complained to the district manager, who responded by auditing her personnel files and then demoting her. She was reassigned as a cashier, albeit at the same hourly pay rate. Eventually, the manager was fired for his misconduct. Plaintiff filed a civil action in state court, and later asked me to take over the case. I asked another attorney in my office to serve as co-counsel with me, and immediately became active in taking and defending depositions.

After completion of discovery, Walmart moved for summary judgment. The court found, as we urged, that genuine issues of fact required trial. The matter was heard by a jury, which returned a verdict in favor of the plaintiff. Although I was unable to participate in much of the trial itself due to an illness, I afterwards persuaded Walmart not to appeal.

Co-counsel:
Mark Prajsner (deceased)

For Defendant Walmart:
Roy A. Hulme
Reminger & Reminger
1400 Midland Building
101 Prospect Avenue
Cleveland, OH 44115
(216) 687-1311

10. *State of Ohio v. Saunders*, Case No. CR92-6976 (Hon. Ruth Ann Franks, Lucas County Common Pleas Court; 1992 – 1995).

Ms. Saunders was charged with murder in the stabbing death of her boyfriend, a former college and professional football player. Ms. Saunders did not deny stabbing the victim but argued the stabbing was in self defense. She turned herself in after the stabbing but, when police tried to question her, she invoked her right to remain silent and right to counsel. I was chief counsel at trial, having been appointed by the trial judge, and conducted much of the cross-examination and direct examination, as well as closing argument. During closing argument to the jury, the prosecutor twice attempted to impeach her credibility, arguing that she had not told the police her self-defense story

after she turned herself in. The trial court sustained my objections to both attempts, finding that the prosecution's attack was an unconstitutional comment on her post-arrest silence. Nonetheless, the court denied the defendant's motion for a mistrial based on prosecutorial misconduct. Ms. Saunders was acquitted of the murder charge but was convicted of a lesser charge of manslaughter, the jury having found that she was seriously provoked before she stabbed the victim.

On appeal, I wrote the brief and argued the case. The appellate court reversed her conviction, holding that the trial court should have granted the motion for a mistrial. *State v. Saunders*, 98 Ohio App. 3d 355, 648 N.E.2d 587 (1994) (Judges Handwork, Resnick, and Sherck). On retrial, Ms. Saunders was again convicted of manslaughter, and was sentenced to 8 to 25 years.

Co-counsel:
Robert Z. Kaplan
Kaplan, Richardson, Rost & Vicente
830 Spitzer Building
520 Madison Avenue
Toledo, OH 43604
(419) 241-6168

For the state of Ohio:
Joseph Solomon
(Former) Assistant Lucas County Pros.
2 Maritime Plaza
Toledo, OH 43604
(419) 246-2022

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 co-founded the Maumee Valley Criminal Defense Lawyers Association in 1996 for purposes of organizing the criminal defense bar and increasing the level of professionalism in a notoriously fractious bar. This informal organization has persevered, and now has more than 80 members. We assist and support one another through occasional meetings and an email list server. We previously published a case update newsletter for defense lawyers and area judges.

Additionally, in 2002, attorney Jeff Gamso and I led an effort to encourage the Lucas County Commissioners to increase the fees for attorneys appointed to state capital murder cases. At that time, the two attorneys appointed to such cases were each paid only $50

per hour, with a total cap on fees for both lawyers of $25,000. We helped convince the Commissioners to raise fees to $90 out-of-court and $100 in-court, and raise the cap to $60,000. Lucas County went from being one of the lower paying counties in Ohio to one of the higher paying counties.

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 anticipate no receipts from deferred income arrangements, stock, options, uncompleted contracts, or other future benefits.

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

    If I am confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the Court. As appropriate, I hope to serve in bar association and law-related continuing education programs.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

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.

It is possible that conflicts of interest could arise in cases involving my former clients, in particular the criminal defendants I have represented. In such a case, I would follow the federal recusal statutes and 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.

If I were to be confirmed, I would follow the federal recusal statutes and the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would seek advice from the Code of Conduct Committee of the Judicial Conference. In cases of uncertainty, I would err on the side of recusal.

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

I regularly volunteer my time to clients who cannot afford to hire counsel. I also work actively through the Maumee Valley Criminal Defense Lawyers Association to assist other lawyers with challenges in the trial and appellate courts. My volunteer work includes mentoring young lawyers by serving as co-counsel if needed, as well as offering suggestions on motions, briefs and other filings. I also often provide samples of work to other counsel. I would estimate I devote between one hundred and two hundred hours a year to such work.

Recently, I provided pro bono representation to a young man charged in federal court for multiple bank robberies in the Northern and Southern Districts of Ohio. I was able to resolve all of the cases here in the Northern District. Although I was initially appointed under the Criminal Justice Act, I chose not to submit a bill. I devoted approximately 30 to 40 hours to the case.

For twenty years, much of my practice has consisted of accepting appointments by judges in state and federal courts to represent indigent defendants at sub-market rates. For example, the hourly appointed rate for representation of defendants in Lucas County Common Pleas Court has been between $40 and $50 per hour. This was true even for capital murder cases until about 2002, when the rate was raised to $90 to $100 per hour.

I served as a trustee of the Pemberville Boys Ranch, which provided a comfortable environment for troubled young men who needed a home.

In addition, I served as a board member for approximately ten years, and as board president, of David's House Compassion, Inc., a Northwest Ohio organization dedicated to providing housing, medical treatment and social services support to men, women and children living with HIV/AIDS.

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 telephoned Senator Sherrod Brown's Cleveland office in April 2010, to inquire about the selection process for this seat and to express my interest in applying. In early May, I received notification by e-mail of the availability of the application for the position from Senator Brown's web site. I submitted my application to Senator Brown's Cincinnati office on June 4, 2010.

My jurisdiction has a 17-member bipartisan selection commission whose members were selected by Senator Brown and now-retired Senator Voinovich. Nancy Rogers, the chair of the commission, sent me a letter dated June 14, 2010, acknowledging receipt of my application, and another letter, dated June 28, 2010, asking whether I would like to be interviewed by the commission and suggesting a date and time.

On July 22, 2010, I interviewed with all 17 members of the Commission in Columbus, Ohio. On July 26, 2010, I received a telephone call from a staffer in Senator Brown's office informing me I had been selected by the Commission as one of three finalists for the Senators' recommendation and that I would have an interview with Senator Brown. I met with Senator Brown in his Cleveland office on August 17, 2010. The following week, I received a telephone call from Senator Brown informing me that he and Senator Voinovich were recommending me to the President for nomination.

Since late August 2010, I have been in contact with pre-nomination officials at the Department of Justice. On October 29, 2010, I met with attorneys from the White House Counsel's Office and the Department of Justice in Washington. On May 11, 2011, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Helmick, Jeffrey J.	U.S. District Court, OH-N	05/17/2011
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 05/17/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 04/30/2011
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
1119 Adams Street FL2 Toledo, OH 43604	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 Trustees	Maumee Valley Country Day 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 8	Name of Person Reporting Helmick, Jeffrey J.	Date of Report 05/11/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2011	Self-employed attorney - gross income	$47,716.00
2.	2010	Self-employed attorney - gross income	$160,541.00
3.	2009	Self-employed attorney - gross income	$186,471.00
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	Staff attorney, Ohio's Sixth District Court of Appeals - salary
2.	2010	Staff attorney, Ohio's Sixth District Court of Appeals - salary
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Heinlein, Jeffrey J.	Date of Report 05/11/2011

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. American Express	Credit Card	J
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting Helmick, Jeffrey J.	Date of Report 05/11/2011

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

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

A. Description of Assets (Including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Trust #1	F	Int./Div.	O	T	Exempt				
2. - Air Products and Chemicals, Inc.Stock									
3. - Apache Corp. Stock									
4. - Apple Inc. Stock									
5. - Bank of Nova Scotia Stock									
6. - BHP Billiton Ltd. Stock									
7. - Cisco System Inc. Stock									
8. - Colgate Palmolive Co. Stock									
9. - Dodge & Cox Int'l Stock Fund									
10. - Google, Inc. Stock									
11. - Intel Corp.									
12. - Intercontinental Exchange Inc. Stock									
13. - iShares MSCI Emerging Markets Index Fund									
14. - Johnson & Johnson Stock									
15. - Lowes Companies Inc. Stock									
16. - Oracle Corp. Stock									
17. - Parker Hannifin Corp. Stock									

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	P =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$15,000,001 - $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 Helmick, Jeffrey J.	Date of Report 05/11/2011

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-50 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
18. - Pepsico Inc. Stock									
19. - Target Corp. Stock									
20. - Teva Pharmaceuticals Industries Inc. Stock									
21. - United Technologies Corp. Stock									
22. - Vanguard Emerging Markets Fund									
23. - Walgreen Co. Stock									
24. - Wells Fargo Co. Stock									
25. - Cincinnati Ohio School Dist. Municipal Bond									
26. - Marysville Ohio School Dist. Municipal Bond									
27. - KT Short Term Tax-Free Fund									
28. - KT Short Term Deposit Fund									
29. IRA #1	A	Int./Div.	J	T					
30. - Cash/Money Account									
31. - Alcatel Lucent Stock									
32. - AOL Inc. Stock									
33. - LSI Corp. Stock									
34. - Time Warner Inc. Stock									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less P =$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)	I =$15,000 or less N =$250,001 - $500,000	K =$15,001 - $30,000 O =$500,001 - $1,000,000	L =$30,001 - $100,000 P1 =$1,000,001 - $5,000,000	M =$100,001 - $250,000 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 U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Helmick, Jeffrey J.	05/11/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
35. - Time Warner Cable Inc. Stock									
36. Deferred Compensation #1	D	Int./Div.	L	T					
37. - Ohio DC Stable Value Option									
38. - Dodge & Cox Stock Fund									
39. - Fidelity Contrafund									
40. - FPA Capital Stock Fund									
41. - PIMCO Total Return Fund									
42. - Vanguard Capital Opportunity Stock Fund									
43. Securities Account #1									
44. - AT&T Inc. Com Stock	A	Int./Div.							
45. MetLife Whole Life	A	Dividend							
46. S/3 Bank Business Checking Account	A	Interest	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less P =$50,001 - $100,000	B =$1,001 - $2,500 O =$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 Helmick, Jeffrey J.	Date of Report 05/11/2011

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

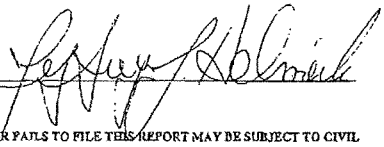
Regarding "Trust #1", the first listing in Part VII, my wife is the sole beneficiary of the trust.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Helmick, Jeffrey J.	Date of Report 05/11/2011

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		15	297	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured		42	896
Listed securities – see schedule		894	454	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		44	100	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		115	719
Real estate owned – personal residence		230	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		158	615
				Net Worth	1	025	236
Total Assets	1	183	851	Total liabilities and net worth	1	183	851
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	
Trust Account:	
Air Products and Chemicals Inc.	$ 18,948
Apache Corp.	25,590
Apple Inc.	34,945
Bank of Nova Scotia	12,074
BHP Billiton Ltd	19,458
Cisco System Inc.	8,895
Colgate Palmolive Co.	17,092
Dodge & Cox International Stock Fund	34,964
Google, Inc.	13,566
Intel Corp.	11,515
IntercontinentalExchange Inc.	12,025
iShares MSCI Emerging Markets Index Fund	19,564
Johnson & Johnson	13,152
Lowes Companies Inc.	10,484
Oracle Corp.	21,372
Parker Hannifin Corp.	18,054
Pepsico Inc.	14,006
Target Corp.	10,094
Teva Pharmaceutical Industries, Ltd.	9,428
United Technologies Corp.	35,924
Vanguard Emerging Markets Fund	34,503
Walgreen Co.	17,400
Wells Fargo Co.	17,118
Cincinnati Ohio School Dist. Municipal Bond	51,310
Marysville Ohio School Dist. Municipal Bond	51,123
KT Short Term Tax-Free Fund	268,547
KT Short Term Deposit Fund	12,909
Retirement Account:	
Cash/Money Accounts	$ 444
Alcatel Lucent	99
AOL Inc.	39
LSI Corp.	27
Time Warner Inc.	821
Time Warner Cable Inc.	357
Ohio Deferred Compensation Program:	
Ohio DC Stable Value Option	$ 23,466
Dodge & Cox Stock Fund	9,588
Fidelity Contrafund	32,086
FPA Capital Stock Fund	6,204
PIMCO Total Return Fund	1,911
Vanguard Capital Opportunity Stock Fund	5,352
Total Listed Securities	$ 894,454

AFFIDAVIT

I, **JEFFREY JAMES HELMICK**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 9, 2011 Jeffrey James Helmick
(DATE) (NAME)

Samantha M. Silver
(NOTARY)
Samantha M. Silver
My commission expires 5/31/15

STATEMENT OF MARY GEIGER LEWIS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA

Ms. LEWIS. I'd like to thank you, Mr. Chairman and Ranking Member Grassley, for allowing me to appear here today.

I'd like, also, to thank President Obama for the great honor of my nomination, and to Congressman Clyburn for his words today and his recommendation of me to the President.

I would also like to thank, of course, Senator Graham for his very kind and generous words of introduction.

I have no opening statement, but I would like to introduce the friends and family that I have with me here today.

I have my husband, Cam. I have my law partner, Keith Babcock; my dear friend from Upstate New York, Cricket Scullin. And I'm sorry that Jean Toal, our chief justice, was not able to be here.

I'd also like to acknowledge our children, our son, Will, and our daughter, Wallis, who are watching, I hope, via Webcast; our daughter, Amy, and her family; my mother, Wallis, I know she's also watching.

Thank you again for this opportunity, and I look forward to answering your questions.

Senator COONS. Thank you, Ms. Lewis.

And last, we turn to Judge Hillman.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Mary Geiger Lewis (formerly Mary Geiger Foster; Mary Wallis Geiger)

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

   United States District Judge for the District of South Carolina

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.

   Lewis & Babcock, L.L.P.
   1513 Hampton Street
   Columbia, South Carolina 29201

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

   1958; Columbia, South Carolina

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

   1981 – 1984, University of South Carolina School of Law; J.D., 1984

   1977 – 1980, Clemson University; B.A., *cum laude*, 1980

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

1985 – Present
Lewis & Babcock, L.L.P.
1513 Hampton Street
Columbia, South Carolina 29201
Associate (1985 – 1987)
Partner (1987 – Present)

1984 – 1985
South Carolina Judicial Department
1015 Sumter Street
Columbia, South Carolina 29201
Law Clerk to The Honorable Owens Taylor Cobb, Jr.

1982 – 1984
South Carolina Legislature
Senate Judiciary Committee
101 Gressette Building
1101 Pendleton Street
Columbia, South Carolina 29201
Law Clerk

Summer 1982
University of South Carolina School of Law
701 Main Street
Columbia, South Carolina 29208
Research Assistant to Professor Randall M. Chastain

1981
Richland County Solicitor's Office
1701 Main Street
Columbia, South Carolina 29201
Law Clerk

Other affiliations (uncompensated):

2004 – 2005
Columbia Garden Club Foundation
Columbia Garden Club
P.O. Box 5925
Columbia, South Carolina 29250
Chairman

2003 – 2004
Columbia Garden Club
P.O. Box 5925
Columbia, South Carolina 29250
President

2000 – 2004
Heathwood Hall Episcopal School
3000 South Beltline Boulevard
Columbia, South Carolina 29201
Member, Board of Trustees

2001 – 2003
South Carolina Educational Television Commission
1101 George Rogers Boulevard
Columbia, South Carolina 29201
Commissioner

2001 – 2002
Capital City Club
1201 Main Street, Suite 2500
Columbia, South Carolina 29201
Board member

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

   I have not served in the military. I was not required to register for Selective Service.

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

   Order of the Coif, University of South Carolina School of Law (1984)

   American Jurisprudence Award for Domestic Relations, University of South Carolina School of Law (1983)

   American Jurisprudence Award for Contracts, University of South Carolina School of Law (1982)

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

American Association for Justice (1997 – Present)

American Bar Association (1985 – Present)

Federal Bar Association (2010 – Present)

Richland County Bar Association (1986 – Present)

South Carolina Association for Justice (1988 – Present)

South Carolina Bar Association (1984 – Present)

South Carolina Trial Lawyers/South Carolina Association for Justice (1997 – Present)

South Carolina Women Lawyers Association (2001 – 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.

South Carolina, 1984.

There has been no lapse in membership.

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

Supreme Court of the United States, 1990
United States Court of Appeals for the Second Circuit, 1995
United States Court of Appeals for the Fourth Circuit, 1993
United States Court of Appeals for the Eleventh Circuit, 1997
United States District Court for the District of South Carolina, 1987
South Carolina, 1984

There have been no lapses in any 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.

Capital City Club (1987 – Present)
Board member (2001 – 2002)

Columbia Garden Club (1996 – Present)
President (2003 – 2004)

Columbia Garden Club Foundation
Chairman (2004 – 2005)

Daughters of the American Revolution (2009 – Present)

Heathwood Hall Episcopal School
Board of Trustees (2000 – 2004)

Humanities Advancement Board, College of Architecture, Arts and Humanities, Clemson University (2003 – Present)

South Carolina Educational Television Commission
Commissioner (2001 – 2003)

South Carolina Film Industry Task Force (2000 – 2001)

Spring Valley Country Club (2002 – Present)
Membership Subcommittee (2006)

Transition Team for South Carolina Governor-Elect James Hodges
Subcommittee on Law Enforcement (1998)

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 became a member of Spring Valley Country Club in 2002. At the time of its founding, it did practice racial and religious exclusion. However, these discriminatory practices were ended prior to my becoming a member. Otherwise, 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.

Letter to the Editor published in The State newspaper on April 23, 2006. Copy supplied.

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

Report of Subcommittee of Transition Team for South Carolina Governor-Elect James Hodges on Law Enforcement, December 4, 1998. 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 that I can recall or have been able to identify.

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.

None that I can recall or have been able to 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.

James Rosen, *S.C. Attorney Tapped for Federal Bench*, The State, Mar. 17, 2011. Copy supplied.

Condon Asks Budget and Control Board to Reconsider Settlement, Associated Press State & Local Wire, May 18, 2001. Copy supplied.

Condon Calls for Sales Tax Review, The State, May 16, 2001, at B3. Copy supplied.

Attorney General Says Hodges Funneling Money to Democratic Party Chairman, Associated Press State & Local Wire, May 15, 2001. Copy supplied.

Danny C. Flanders, *Law and Order Attorneys' Design Home Fit for Hectic Lifestyles*, The State, Jan. 21, 1996. Copy supplied.

Clifford Glickman, *Plumber's License Revoked; Tega Cay Decides against Joe Newton*, York Observer, Dec. 6, 1988. Copy supplied.

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

I have not 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 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.

In November of 1998, I was appointed by South Carolina Governor-Elect James H. Hodges to serve as a member of his transition team. I worked on the team's Subcommittee on Law Enforcement and participated in the preparation of its report to the Governor-Elect, which is provided in response to Question 12b.

South Carolina Film Industry Task Force; Member (2000 – 2001); appointed by Governor James H. Hodges.

South Carolina Educational Television; Commissioner (2001 – 2003); appointed by Governor James H. Hodges.

I have never held any elective office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have never held any position in nor have I ever been a member or officer of any election committee or political campaign. I was, however, a member of Young Democrats while I attended Clemson University from 1977 to 1980. My membership in that organization entailed completing errands and providing minor logistical support for events held in the area.

In November of 1998, I was appointed by South Carolina Governor-Elect James H. Hodges to serve as a member of his transition team. I worked on the team's Subcommittee on Law Enforcement and participated in the preparation of its report to the Governor-Elect, which is provided in response to Question 12b.

In addition, in October of 2007, my husband and I hosted a fundraiser for then-presidential candidate Joe Biden.

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 1984 to 1985, I served as law clerk to The Honorable Owens Taylor Cobb, Jr., South Carolina State Court.

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.

1985 – Present
Lewis & Babcock, L.L.P.
1513 Hampton Street
Columbia, South Carolina 29201
Associate (1985 – 1987)
Partner (1987 – present)

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

I have never served as a mediator or an arbitrator.

b. Describe:

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

After completing my judicial clerkship in 1985, I joined my current firm (which at that time was known as Lewis, Babcock, Gregory & Pleicones) as an associate and became a partner in 1987.

I have actively practiced law with Lewis & Babcock, L.L.P., as it is now known, for more than 25 years. The small size of our firm required me, even as a new associate, to become quickly involved in all aspects of the civil litigation process. As a young attorney, I drafted pleadings, deposed witnesses, prepared and responded to discovery requests, drafted motions and supporting memoranda, prepared cases for trial, tried cases, wrote appellate briefs, and presented oral arguments to appellate courts. One of the first matters I ever worked on went to the Supreme Court of the United States.

As I continued to gain knowledge and experience in litigation, I assumed responsibility for increasingly complex matters, such as product liability cases, class action cases, and healthcare litigation.

My experience is not only varied in the types of cases I have litigated, but also the clients I have represented. I represent plaintiffs and defendants. I have represented individuals in suits against large corporations and have defended multi-national corporations against such suits. In addition, although civil litigation is our focus, my firm is also frequently called upon to provide guidance to other lawyers and judges in a host of other matters, including attorney and judicial grievance procedures.

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

My typical client includes individuals, victims of professional negligence, lawyers and others in need of defense against negligence claims, building owners, landowners, businesses with contractual disputes, *qui tam* defendants, class action plaintiffs, class action defendants, lawyers, and members of our state judiciary.

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 matters I have handled during my nearly 25 years of practice have been almost entirely litigation related, and virtually all required me to appear in court. Some matters required me to appear occasionally and others required me to appear frequently. Many of the matters I have handled included numerous motions, which required my appearance at their hearings. Also, the cases that have gone to trial have required my appearance for several days or weeks. Last year, my cases required me to appear in court approximately 30 days, which is fairly typical.

i. Indicate the percentage of your practice in:
   1. federal courts: 40%
   2. state courts of record: 50%
   3. other courts: 10%
   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 estimate the number of cases I have tried to verdict, judgment or final decision to be 15. I believe in most I was either sole counsel or associate counsel.

i. What percentage of these trials were:
   1. jury: 70%
   2. non-jury: 30%

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

My firm has handled three matters before the Supreme Court of the United States in which I had varying degrees of involvement. I did not present the oral argument in any of these appeals, but I was a member of the appellate team and did contribute to the briefs and preparations for oral argument.

1. City of Columbia v. Omni Outdoor Advertising, Inc., 499 U.S. 365 (1991). I contributed to the Opposition to the City's Petition for Certiorari, the Appellee's brief on the merits, and the preparations for the oral argument. Copies of the briefs supplied.

2. Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). I contributed to the Petition for Certiorari and the Petitioner's Brief and Reply Brief on the merits, and prepared my senior partner for the oral argument. Copies of the briefs supplied.

3. Hammond v. Butler, Means, Evins & Brown, 300 S.C. 458, 388 S.E.2d 796 (1990), *cert. denied*, 498 U.S. 952 (1990). I was the principal author of the brief opposing the Petition for Writ of Certiorari. I have been unable to locate a copy of this brief.

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. Florida Evergreen Foliage v. E.I. duPont de Nemours & Co., 165 F. Supp. 2d 1345 (S.D. Fla. 2001).

This case was one of a group of cases litigated in federal courts in Florida and Hawaii in which I participated as a member of the litigation team on behalf of the plaintiffs. These cases centered on claims against DuPont alleging that it fraudulently withheld scientific data and information in discovery in order to induce the plaintiffs to sign settlement agreements. Certified questions to both the Delaware Supreme Court and the Hawaii Supreme Court were involved. E.I. du Pont de Nemours & Co. v. Florida Evergreen Foliage, 744 A.2d 457 (Del. 1999); Matsuura v. E.I. du Pont de Nemours & Co., 73 P.3d 687 (Haw. 2003). Both State Supreme Courts allowed a cause of action for fraudulent concealment to proceed in spite of the existence of releases.

The Hawaii cases were allowed to proceed to a jury. Living Designs, Inc. v. E.I. du Pont de Nemours & Co., 431 F.3d 353 (9th Cir. 2005); Matsuura v. Alston & Bird, 166 F.3d 1006 (9th Cir. 1999); Matsuura v. E.I. du Pont de Nemours & Co., 330 F. Supp. 2d 1101 (D. Haw. 2004). These cases were settled satisfactorily on the eve of trial. The Florida cases were dismissed upon the pleadings based, *inter alia*, on a very broad grant of immunity in civil damage suits for the conduct of the parties, witnesses, and lawyers. Green Leaf Nursery v. E.I. du Pont de Nemours & Co., 341 F.3d 1292 (11th Cir. 2003).

I participated in every facet of discovery, discovery motions, pretrial motions, and dispositive motions. Among other things, I addressed conflict of laws and was involved with the application of countless rules of federal procedure.

a. My representation began in 2001 and ended in 2007.

b. Florida Evergreen Foliage v. E.I. DuPont de Nemours & Co., 165 F. Supp. 2d 1345 (S.D. Fla. 2001); District Court Judge Alan S. Gold

E.I. du Pont de Nemours & Co. v. Florida Evergreen Foliage, 744 A.2d 457 (Del. 1999); Delaware Supreme Court Justices Randy J. Holland, Joseph T. Walsh, and Carolyn Berger

Matsuura v. E.I. du Pont de Nemours & Co., 73 P.3d 687 (Haw. 2003); Hawaii Supreme Court Justices Ronald T. Moon, Steven H. Levinson, Paula A .Nakayama, Mario R. Ramil, and Siemon R. Acoba, Jr.

Matsuura v. Alston & Bird, 166 F.3d 1006 (9th Cir. 1999); Circuit Judges James R. Browning, Alfred Goodwin, and Mary M. Schroeder

Matsuura v. E.I. du Pont de Nemours & Co., 330 F. Supp. 2d 1101 (D. Haw. 2004); District Judge Manuel L. Real

Living Designs, Inc. v. E.I. du Pont de Nemours & Co., 431 F.3d 353 (9th Cir. 2005); Circuit Circuit Judges Sidney Runyan Thomas, Barry G. Silverman, and Richard R. Clifton

Green Leaf Nursery v. E.I. du Pont de Nemours & Co., 341 F.3d 1292 (11th Cir. 2003); Circuit Judges Stanley F. Birch, Joel F. Dubina, and Phyllis A. Kravitch

c. Co-counsel:

Stephen Cox, Esq.
Cox & Moyer
1000 Marina Village Parkway, Suite 120
Alameda, CA 94501
(510) 978-4426

Primary Opposing Counsel:

A. Stephens Clay, Esq.
Kilpatrick Stockton, LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309
(404) 815-6514

2. Hammond v. Butler, Means, Evins & Brown, 300 S.C. 458, 388 S.E.2d 796 (1990), *cert. denied*, Kramer v. Hammond, 498 U.S. 952 (1990).

Our firm brought this malpractice action on behalf of the plaintiff, a urologist, against his former South Carolina law firm and a New York attorney (Kramer). The plaintiff controlled over 70% of the stock in a company he formed that owned the patent rights to a medical device known as a lithotripter. The Complaint essentially alleged that plaintiff's interest was diminished to less than 10% as a result of the improper actions of the defendant lawyers. It contained several causes of action, including fraud, negligence, conspiracy, and breach of fiduciary duty. Defendant Kramer moved to dismiss the Complaint for lack of personal jurisdiction. The trial judge denied the motion, holding there was jurisdiction over Kramer under the South Carolina long-arm statute. Kramer appealed, and the South Carolina Supreme Court affirmed. His Petition to the Supreme Court of the United States for a Writ of Certiorari was denied. I was the principal author of the brief opposing the Petition for Writ of Certiorari.

I personally handled the vast majority of the discovery involved in this case. Through the depositions of several of the defendant lawyers and the use of requests for documents and interrogatories, I developed the facts that ultimately allowed for a very satisfactory resolution of the case.

a. My representation of the plaintiff began in 1986 and ended in approximately 1992.

b. The case was brought in South Carolina State Court in the Spartanburg County Court of Common Pleas. The Honorable William H. Ballenger denied the Motion to Dismiss for lack of personal jurisdiction. The Honorable Thomas L. Hughston also heard motions in the case.

c. Opposing Counsel:

O. Doyle Martin, Esq.
213 Whitseth Street
Greenville, SC 29601
(864) 235-9090

Ellis M. Johnston, Esq.
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602
(864) 240-3217

3. University of South Carolina v. U.S. Gypsum, Richland County, Court of Common Pleas, Civil Action No. 85-CP-40-3789.

My firm served as co-counsel in this product liability action commenced by the University of South Carolina against several manufacturers of asbestos-containing construction materials. Recovery was sought for the cost of removing those materials from over 100 buildings on the University's campus. As formulas were available that allowed for the specific identification of the manufacturer and approximate date of application of the construction material, liability was not the focus of the discovery. Rather, the focus was on the amount of asbestos material that would be removed and the cost of its removal, as well as the primary defense raised by the manufacturers – the statute of limitations. I focused on the facts and law relating to this defense and personally handled the discovery, including the control and production of over two million documents, and the numerous depositions that developed the facts that allowed us to defeat the defendants' Motion for Summary Judgment and ultimately allowed for an extremely satisfactory settlement of the litigation.

a. Our representation of the Plaintiff began in 1985 and ended in 1990.

b. This action was filed in South Carolina State Court in the Richland County Court of Common Pleas. The Honorable John Hamilton Smith, Sr. (now retired) presided over the litigation.

c. Co-counsel:

Joseph B. Cox, Jr., Esq.
100 Midland Road
Pinehurst, NC 28374
(910) 215-0151

Terry E. Richardson, Jr., Esq.
Richardson, Patrick, Westbrook & Brickman, LLC
Post Office Box 1368
Barnwell, SC 29812
(803) 541-7850

Opposing Counsel:

The Honorable P. Michael Duffy
Post Office Box 835
Charleston, SC 29402
(843) 579-1460

Steven W. Ouzts, Esq.
Turner Padget Graham & Laney, P.A.
1901 Main Street, 17th Floor
Columbia, SC 29201
(803) 227-4255

William S. Davies, Jr., Esq.
1641 Tanglewood Road
Columbia, SC 29204
(803) 606-6334

Donald A. Cockrill, Esq.
Gray L. Geddie, Esq.
Phillip A. Kilgore, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
300 North Main Street
Greenville, SC 29601
(864) 271-1300

4. Kingdom of Lesotho v. Planning Research Corp., United States District Court for the District of Columbia, Case No. 1:86-cv-00839-TFH.

My firm was hired by the African Kingdom of Lesotho to bring a claim for cost overruns against Planning Research Corporation (an American engineering firm) and the construction firm involved in the construction of a road through the country's mountainous terrain. Before construction of the road, it was impossible

to cross from one side of Lesotho to the other without entering South Africa. The road was finally completed, but because of the engineering firm's reliance on faulty topographical data, the cost overruns were enormous. As venue was appropriate in the United States District Court for the District of Columbia, we associated local counsel in Washington, D.C. to assist us. I handled much of the discovery, pretrial matters, and trial preparation the case involved. The case was settled shortly before jury selection.

a. My representation of the plaintiff began in 1985 and ended in 1988.

b. This action was brought in United States District Court for the District of Columbia and assigned to The Honorable Thomas F. Hogan.

c. Co-counsel:
Mitchell R. Berger, Esq.
Patton Boggs, LLP
2550 M Street, N.W.
Washington, DC 20037
(202) 456-5601

Opposing Counsel:

Wesley G. Howell, Esq.
Gibson, Dunn & Crutcher
200 Park Avenue
New York, NY 10166
(212) 351-4000

5. Johnson v. Collins Entm't, Inc., United States District Court for the District of South Carolina, Civil Action Nos. 98-2225, 99-1601, 99-1709; 204 F.3d 573 (4th Cir. 2000).

In this multi-party suit, plaintiffs sought certification of a plaintiff class on one side, comprising every person who had played video poker in South Carolina, and a defendant class on the other, comprising every person who had owned and operated video poker machines in the state. Plaintiffs' complaint, as amended, asserted civil RICO claims and claims for declaratory and injunctive relief, among others. My law firm and Nelson Mullins Riley & Scarborough, LLP, were co-counsel to a group of approximately 30 corporate and individual defendants named in the action. I worked on all aspects of this complex case, including discovery, legal strategy, and motions during the approximately five years in which our clients were involved in the litigation. Discovery was expansive and complex, including many parties' and experts' depositions as well as written and document discovery. Marked by a very active motions practice, the case produced over 150 orders and one reported decision from the federal district court, an appeal to the Fourth Circuit (including a petition for rehearing *en banc*),

and two instances in which the district court certified questions to the South Carolina Supreme Court. Reported decisions in the case include: Johnson v. Collins Entm't Co., Inc., 88 F. Supp. 2d 499 (D.S.C. 1999) (granting partial summary judgment to plaintiffs on their claims for declaratory and injunctive relief); Johnson v. Collins Entm't Co., Inc., 199 F.3d 710 (4th Cir. 1999) (reversing district court order granting partial summary judgment to plaintiffs); Johnson v. Collins Entm't Co., Inc., 204 F.3d 573 (4th Cir. 2000) (denying petition for rehearing *en banc*); Johnson v. Collins Entm't Co., Inc., 333 S.C. 96, 508 S.E.2d 575 (1998) (answering in the negative certified questions related to whether video gaming machines fell within the definition of a lottery under state law); Johnson v. Collins Entm't Co., Inc., 349 S.C. 613, 564 S.E.2d 653 (2002) (answering seven certified questions of state law).

a. Our representation of the Defendants began in 1997 and ended in 2002.

b. The case was litigated in the United States District Court for the District of South Carolina before The Honorable Joseph F. Anderson and was appealed to the United States Court of Appeals for the Fourth Circuit.

c. Co-Counsel:

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Opposing Counsel:

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6. United States ex rel. Drakeford v. Tuomey Healthcare Sys., Inc., United States District Court for the District of South Carolina, Civil Action No. 3:05-cv-2858-MJP.

This *qui tam* action, in which the United States intervened, is significant in a number of respects. It is the first case where the Government proceeded against a hospital under the False Claims Act ("FCA") based solely on the theory that employment contracts between the hospital's subsidiaries and physicians on its medical staff violated the Ethics in Patient referrals law, 42 U.S.C. § 1395nn, also known as the "Stark Law." It is also one of the few FCA cases against a hospital – and the only one based on the Stark Law – that was fully tried before a jury. After a nearly four-week trial, the jury reached a verdict that our client, Tuomey, did not violate the FCA, but the trial judge subsequently entered judgment in favor of the Government on its equitable claims. That judgment is currently on appeal to the Fourth Circuit Court of Appeals, and presents a number of interesting procedural issues, such as the scope of the Stark Law and the extent to which the Government can pursue equitable claims when it has an adequate remedy at law under the FCA. My co-counsel and I were responsible for defending countless depositions; drafting numerous discovery requests and responses, dispositive and pretrial motions, responses and supporting memoranda; preparing for and arguing motions; participating in every strategy decision; and significantly participating in an elaborate, albeit unsuccessful, mediation process. I was also a member of the trial team that presented the witnesses and evidence in a nearly month-long trial that resulted in a defense verdict by the jury.

a. My representation of Tuomey Healthcare Systems, Inc., began in 2007 and continues today.

b. The case was brought in the United States District Court for the District of South Carolina. The Honorable Matthew J. Perry, Jr. presided over the litigation.

c. Co-Counsel:

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Opposing Counsel:

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7. Norwest Fin. Res., Inc., v. Policy Fin. Co., Richland County Court of Common Pleas, Civil Action No. 97-CP-40-4111.

I was lead counsel for two of the defendants in this case, Policy Finance Company and Seibels Bruce & Company. The suit included claims for breach of an asset purchase agreement, rescission, restitution, and unjust enrichment. In addition to standard denials, my answer contained a counterclaim for breach of contract and a cross-claim for indemnification against the other defendants.

My clients had been in the insurance business in South Carolina for over a hundred years. The company has operated through various structures and through several wholly-owned subsidiaries, one being Premium Service Corporation (PSC), which offered premium financing for certain commercial policies and operated successfully for several years. PSC entered into an agreement to sell virtually all of its assets, including its accounts receivables, to the Plaintiff Norwest Financial Resources, Inc. (Norwest). Approximately three years after the purchase, Norwest employees discovered that an agent for Defendant Security of Hartford (with whom PSC had conducted business before the sale and with whom Norwest continued to conduct business for several years after the sale) had engaged in a fraudulent scheme in which he applied for and obtained premium financing from PSC/Norwest on behalf of insureds that either did not exist or who existed but had not been issued policies.

I personally handled the ensuing litigation for more than three years. The case involved numerous depositions and several motions over discovery issues. The parties agreed to mediate, and they reached a fair settlement of the case.

a. My representation of Seibels Bruce & Company and Policy Finance Company in this matter began in 1997 and ended in 2000.

b. The action was brought in the South Carolina State Court in the Richland County Court of Common Pleas. It was given complex case designation and assigned to The Honorable Alison R. Lee.

c. Opposing Counsel:

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Motley Rice, LLC
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(860) 882-1676

Co-Defense Counsel:

S. Keith Hutto, Esq.
Kevin A. Hall, Esq.
Nelson Mullins Riley & Scarborough, L.L.P.
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8. Constant v. Spartanburg Steel Prods., Inc., 316 S.C. 86, 447 S.E.2d 194 (1994).

I was asked by trial counsel for the plaintiff to handle the defendant's appeal of the plaintiff's jury verdict for defamation. My client was an employee of Spartanburg Steel who was accused of theft by his employer. He sued his employer for defamation after learning that a machine that he was accused of stealing was not missing. The jury awarded the plaintiff $400,000 in actual damages and $100,000 in punitive damages. The defendant appealed, raising the excessiveness of the verdict as well as several evidentiary errors, including the admission of statements it asserted were protected by a qualified privilege. I was the primary author of the respondent's brief. The verdict was affirmed by the South Carolina Supreme Court.

a. My representation of the plaintiff/respondent began in 1993 and ended in 1994.

b. The appeal was filed in the South Carolina Supreme Court. The Justices that heard the appeal were Chief Justice David Harwell, Justice Lee Chandler, Justice Ernest Finney, Justice Jean Toal, and Justice James Moore.

c. Co-Counsel:

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Opposing Counsel:

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9. Southern Bell Telephone & Telegraph Co. v. W.R. Grace & Co.-Conn., United States District Court for the District of South Carolina, Civil Action No. 3:91-1285-21.

I was principal counsel for the plaintiff, Southern Bell, in this product liability action. The case was brought against W. R. Grace & Co.-Conn., the manufacturer of the asbestos-containing fireproofing material that was used in the construction of the Southern Bell's headquarters in Columbia, South Carolina. The action sought recovery for the removal of this material.

It involved years of very extensive and aggressive discovery, which I personally handled. The case required control and production of an enormous amount of documents and included a long list of witnesses, virtually all of whom were deposed. At the close of discovery, the defendant moved for summary judgment. After the motion was denied, the case was settled.

a. My representation of Southern Bell in this matter began in approximately 1990 and ended in 1992.

b. The action was litigated in the United States District Court for the District of South Carolina before The Honorable William B. Traxler, Jr.

c. Co-counsel:

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Law Offices of Fred A. Walters, LLC
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Columbia, SC 29211
(803) 206-0402

Opposing Counsel:

Donald A. Cockrell, Esq.
L. Gray Geddie, Jr.
Ogletree, Deakins, Nash, Smoak and Stewart, P.C.
300 North Main Street
Greenville, SC 29601
(864) 271-1300

10. Collins Entertainment Corp. v. Drews Distributing, Inc., United States District Court for the District of South Carolina, Civil Action No. 6:96-3398-13.

I represented the defendant Drews Distributing, Inc., a distributor of video poker machines, in a breach of contract action against Collins Entertainment. The damages claimed were substantial, and there was an aggressive prosecution of claims for breach of contract and tortious interference with contract. Discovery was extensive, and it included the production of documents and deposition of witnesses, both lay and expert. I personally handled all of the discovery and tried the case with my senior partner. The court directed a verdict in favor of our client. That verdict was appealed to the Fourth Circuit Court of Appeals, and we handled the appeal. The Fourth Circuit affirmed in an unpublished decision at 173 F.3d 849 (4th Cir. 1999).

We also tried a related case, Drews Distributing, Inc. v. Leisure Time Technologies, Inc., Civil Action No. 7:96-3307-13 (D.S.C. 1997), in which our client received an award of damages in excess of $3,000,000. We handled the appeal of that award, and I was the primary author of the appellee's brief. The Fourth Circuit affirmed the award. Drews Distrib., Inc. v. Leisure Time Techs., Inc., 175 F.3d 1014 (4th Cir. 1999) (unpublished).

a. My representation of the Drews Distributing, Inc. began in approximately 1997 and ended in 1999.

b. The case was litigated in the United States District Court for the District of South Carolina. The Honorable G. Ross Anderson, Jr., presided over all matters.

c. Opposing counsel:

Eric S. Bland, Esq.
Bland Richter, LLP
Post Office Box 72
Columbia, SC 29202
(803) 256-9664

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 legal activities have been litigation related; however, most cases do not progress to actual trial. Some of the more significant matters that I have pursued that fall into this category include class actions on behalf of consumers and taxpayers, insurance coverage litigation, medical negligence litigation, legal and accounting negligence litigation, construction litigation, and commercial contract litigation. A considerable amount of my time is spent counseling clients about solutions to the problems they face and whether the facts and laws applicable to their situations make litigation appropriate. Often the decision is to forego litigation altogether. These decisions require the ability to identify the real matters at issue, provide solutions to those issues, and conduct the cost/benefit analysis associated with this process. For a period of several years I served as the initial evaluator of potential lawsuits that our firm was asked to consider handling. I reviewed the facts and performed a legal analysis upon which the firm's decision to accept or reject a case was based.

When the decision is made to proceed with litigation, or when defending a client in litigation, my objective evaluation of the merits of each side in a case more often than not allows the parties to reach a reasonable settlement of the case. Often with the assistance of a professional mediator, I have been able to resolve many very complex multi-party cases before trial.

I have also served as a commissioner of South Carolina Educational Television, as a member of the South Carolina Film Industry Task Force, and as a member of the Transition Team for newly-elected South Carolina Governor, James H. Hodges, where I served on the Subcommittee on Law Enforcement.

I have not participated 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 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 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.

        The only potential conflict of interest that I anticipate at this point would be any matter involving one or more of my law partners. I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions. Whenever necessary to ensure

impartiality or to avoid the appearance of partiality, I would disclose ties to litigants and recuse myself as appropriate.

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

I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions. Whenever necessary to ensure impartiality or to avoid the appearance of partiality, I would disclose ties to litigants and recuse myself as 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.

Throughout my more than 25 years of legal practice, I have devoted significant time and effort providing legal advice and representation to individuals who were unable to pay for my services.

Over the years, I have been appointed numerous times by our State Courts to represent parents, children, guardians ad litem, and others in actions brought by our State Department of Social Services. These actions included those for termination of parental rights, child support and custody. With only one exception, I have never sought compensation for my services and have willingly devoted countless hours counseling these clients, preparing for and making court appearances on their behalf.

26. **Selection Process**:

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

There is no selection commission in my jurisdiction. In December of 2008, I traveled to Washington, D.C. and met briefly with Congressmen James E. Clyburn and John M. Spratt, Jr. At the time there were several vacancies on our federal district court bench. I expressed my interest in the vacancies to each of them in separate meetings.

I received a letter dated June 8, 2009, from Representatives Clyburn and Spratt informing me that they had provided my name, along with others, to the White House for consideration.

Since November 8, 2010, I have been in contact with pre-nomination officials at the Department of Justice. On December 22, 2010, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On March 16, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Lewis, Mary G.	U.S. District Court, South Carolina	03/16/2011
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**
United States District Judge	☑ Nomination, Date 03/16/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 02/28/2011
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.**	
1513 Hampton Street Columbia, SC 29201	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Trustee	Trust #1
2.	Partner	Lewis & Babcock, LLP
3.	Partner	Quincunx, LLC
4.	Trustee	Trust #2
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 19	Name of Person Reporting Lewis, Mary G.	Date of Report 03/16/2011

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. 2009	Lewis & Babcock, LLP - Partnership - Self Employment Earnings from K-1	$89,816.00
2. 2010	Lewis & Babcock, LLP - Partnership - Self Employment Earnings from K-1	$193,347.00
3. 2011	Lewis & Babcock, LLP - Partnership Draws	$0.00
4.		

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

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

DATE	SOURCE AND TYPE
1. 2010	Self Employed Attorney - Lewis & Babcock, LLP
2. 2011	Self Employed Attorney - Lewis & Babcock, 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 19	Name of Person Reporting Lewis, Mary G.	Date of Report 03/16/2011

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.	Merrill Lynch Loan Management Account	Line of Credit	M
2.	American Express	Credit Card	J
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 19

Name of Person Reporting	Date of Report
Lewis, Mary G.	03/16/2011

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)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Geiger Partnership	A	Distribution	M	W	Exempt				
2. Lewis & Babcock, LLP	A	Distribution	O	W					
3. Quincunx, LLC	A	Distribution	L	W					
4. Congaree Hunt Club	A	Distribution	M	W					
5. BB&T Common Stock	A	Dividend	J	T					
6. Investment Rental Property, Columbia, SC	D	Rent	L	W					
7. Investment Property, Georgetwon, SC		None	O	W					
8. Investment Property, Georgetown, SC		None	O	W					
9. Investment Rental Property, Columbia, SC	E	Rent	O	W					
10. Investment Rental Property, Columbia, SC	E	Rent	M	W					
11. Investment Rental Property, Columbia, SC	D	Rent	M	W					
12. SPDR Gold Trust	A	Dividend	J	T					
13. Cash in Bank - SCB&T	A	Interest	J	T					
14. FIA Card Services NA Rasp Cash Account	A	Interest	J	T					
15. Merril Lynch Bank Deposit Program	A	Interest	J	T					
16. Abbott Labs	A	Dividend	J	T					
17. Altria Group, Inc	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 19	Name of Person Reporting Lewis, Mary G.	Date of Report 03/16/2011

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)
18. AT&T, Inc	A	Dividend	J	T					
19. BCE Inc	A	Int./Div.	J	T					
20. Chevron Corp	A	Dividend	J	T					
21. Chubb Corp	A	Dividend	J	T					
22. CMS Energy	A	Dividend	J	T					
23. Coca Cola COM	A	Dividend	J	T					
24. Consolidated Edison	A	Dividend	J	T					
25. Emerson Electric	A	Dividend	J	T					
26. Enbridge Inc	A	Dividend	J	T					
27. Genuine Parts Co.	A	Dividend	J	T					
28. Home Depot	A	Dividend	J	T					
29. Kellogg Co	A	Dividend	J	T					
30. Kimberly Clark	A	Dividend	J	T					
31. KRAFT Foods Inc VA CL A	A	Dividend	J	T					
32. Microsoft Corp	A	Dividend	J	T					
33. Novartis	A	Dividend	J	T					
34. Paychex	A	Dividend	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 6 of 19	Name of Person Reporting Lewis, Mary G.	Date of Report 03/16/2011

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)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
35. PG&E Corp	A	Dividend	J	T					
36. Phillip Morris Intl Inc	A	Distribution	J	T					
37. Raytheon CO Delaware New	A	Dividend	J	T					
38. Royal Dutch Shel PLC SPns ADR B	A	Dividend	J	T					
39. RPM International Inc	A	Dividend	J	T					
40. Toronto Dominion Bank	A	Dividend	J	T					
41. Travelers Cos Inc	A	Dividend	J	T					
42. Ventas Inc REIT	A	Dividend	J	T					
43. Verizon Communications	A	Dividend	J	T					
44. Waste Management Inc New	A	Dividend	J	T					
45. XCEL Energy	A	Dividend	J	T					
46. ASG Diversifying Strategies FD CL I	A	Dividend	J	T					
47. Blackrock Global	A	Dividend	L	T					
48. Davis NY Venure FD B	A	Dividend	J	T					
49. Fairholme Fund	A	Dividend	K	T					
50. First Eagle Global Class I	A	Dividend	J	T					
51. Gabelli Enterprises MRGRS	A	Dividend	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 19

Name of Person Reporting	Date of Report
Lewis, Mary G.	03/16/2011

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)	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)
52. Future Scholars - Income Portfolio INV CX	A	Dividend	M	T					
53. IVY Asset Strategy FUND CL I	A	Int./Div.	J	T					
54. Janus Forty Fund CL I	A	Int./Div.	K	T					
55. Loomis Sayles Strategic INC FD CL Y	A	Int./Div.	J	T					
56. Market Vectors Gloabl ALT	A	Int./Div.	J	T					
57. Marketfield Fund	A	Int./Div.	J	T					
58. Matthews Asia Dividend Fund	A	Int./Div.	J	T					
59. PIMCO Low Duration FD CL P	A	Int./Div.	J	T					
60. Principal Investors Preferred Securities A	A	Int./Div.	J	T					
61. Prudential Jennison	A	Int./Div.	J	T					
62. RS Floating Rate Fund CL Y	A	Dividend	J	T					
63. Sector SPDR Energy	A	Int./Div.	J	T					
64. The Oakmark International Fund	A	Int./Div.	J	T					
65. Thornburg Invstmnt Income Builders Fund CL I	A	Dividend	J	T					
66. Vanguard Small Cap	A	Int./Div.	J	T					
67. Trust #1	E	Int./Div.	P1	T					
68. - BAC CLIRN Crude Oil									

1. Income Gain Codes: (See Columns D1 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 19

Name of Person Reporting	Date of Report
Lewis, Mary G.	03/16/2011

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)	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)
69. - Carroll County MS Cons Bond									
70. - Georgetown CNTY SCH DIST Bond									
71. - Jasper CNTY SC SCH DIST Bond									
72. - Lexington CNTY SC SCH DIST No 1 Bond									
73. - Lexington County SC SCH Dist No 3 Bond									
74. - Mount Pleasant SC WTR & SWR Bond									
75. - New York ST Bond									
76. - Philadelphia PA SCH DIST Bond									
77. - S Carolina Transn Bond									
78. - Seattle Wash Bond									
79. - South Carolina SC ST Bond									
80. - South Carolina St State Institution Bond									
81. - York CNTY SC SCH DIST 1 Bond									
82. - Wells Fargo Bank Deposit Sweep									
83. - Merrill Lynch Cash									
84. - Merrill Lynch Bank Deposit Program									
85. - Energy Select Sector SODR XLE									

1. Income Gain Codes: (See Columns D1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	I =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
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FINANCIAL DISCLOSURE REPORT
Page 9 of 19

Name of Person Reporting	Date of Report
Lewis, Mary G.	03/16/2011

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)	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)
86. - Financial Select Sector SPDR XLI									
87. - Industrial Select Sector SPDR									
88. - ISHARES Barclays 1-3 Yr Credit Bond Fund									
89. - ISHARES Barclays 1-3 Yr Treasury Bond Fund									
90. - ISHARES Barclays 7-10 Yr Treasury Bond Fund									
91. - ISHARES Barclays Intermediate Credit Bond Fund									
92. - ISHARES Barclays MBS Bond Fund MBB									
93. - ISHARES IBOXX INV Grade Corp bond Fund LQD									
94. - ISHARES MSCI Chile Investable Market Index FD ECH									
95. - ISHARES MSCI EAFE index Fund EFA									
96. - ISHARES MSCI Japan ETF Index Fund EWJ									
97. - ISHARES MSCI Malaysia Index FD WEBS Index EWM									
98. - ISHARES MSCI Singapore Index Fund EWS									
99. - ISHARES TR - Russell 2000 Index FD IJH									
100. - ISHARES TR S&P Midcap 400 Index FD									
101. - ISHARES TR S&P Smallcap 600 Index FD									
102. - KBW Insurance ETF KIE									

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	
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FINANCIAL DISCLOSURE REPORT
Page 10 of 19

Name of Person Reporting	Date of Report
Lewis, Mary G.	03/16/2011

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)	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)
103. - Powershares DB Commodity Index Tracking Fund DBC									
104. - Powershares Dynamic MKT Networking Portfolio PXQ									
105. - Rydex S&P Equal Weight Healthcare RYH									
106. - Rydex S&P Equal Weight Technology RYT									
107. - Select Sector SPDR FD Consumer Discretionary XLY									
108. - Select Sector SPDR FD Materials XLB									
109. - Select Sector SPDR S&P Semiconductor									
110. - Select Sector SPDR TR Consumer Staples									
111. - Select Sector SPDR TR Utilities Select Sector XLU									
112. - SPDR Barclays CAP High Yield Bond ETF JNK									
113. - SPDR Pharmaceuticals XPH									
114. - SPDR S&P 500 Trust SPY									
115. - Vanguard Europe Pacific VEA									
116. - Vanguard Information Technology ETF VGT									
117. - Vanguard REIT ETF VNQ									
118. - Vanguard Telecommunications Services ETF VOX									
119. - Vanguard Emerging Markets ETF VWO									

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
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FINANCIAL DISCLOSURE REPORT
Page 11 of 19

Name of Person Reporting	Date of Report
Lewis, Mary G.	03/16/2011

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)	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)
120. - ISHARES S&P US Preferred Stock PFF									
121. - Abbott Labs									
122. - Altria Group, Inc									
123. - AT&T, Inc									
124. - BAC Setup CL RNG ACRU S&P 500 Index									
125. - BB&T Corp									
126. - BCE Inc									
127. - Chevron Corp									
128. - Chubb Corp									
129. - CMS Energy									
130. - Coca Cola COM									
131. - Consolidated Edison									
132. - Emerson Electric									
133. - Enbridge Inc									
134. - Exxon Mobil CORP COM									
135. - Genuine Parts Co.									
136. - Home Depot									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
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FINANCIAL DISCLOSURE REPORT
Page 12 of 19

Name of Person Reporting	Date of Report
Lewis, Mary G.	03/16/2011

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

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137. - Intl Business Machines Corp									
138. - Kellogg Co									
139. - Kimberly Clark									
140. - KRAFT Foods Inc VA CL A									
141. - Microsoft Corp									
142. - Novartis									
143. - Paychex									
144. - PG&E Corp									
145. - Phillip Morris Intl inc									
146. - Raytheon CO Delaware New									
147. - Royal Dutch Shel PLC SPns ADR B									
148. - RPM International Inc									
149. - Toronto Dominion Bank									
150. - Travelers Cos Inc									
151. - Ventas Inc REIT									
152. - Verizon Communications									
153. - Waste Management Inc New									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
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FINANCIAL DISCLOSURE REPORT Page 13 of 19	Name of Person Reporting Lewis, Mary G.	Date of Report 03/16/2011

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

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A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. Transactions during reporting period (2) Date mm/dd/yy	D. Transactions during reporting period (3) Value Code 2 (J-P)	D. Transactions during reporting period (4) Gain Code 1 (A-H)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
154. - XCEL Energy									
155. - Artio Global INV Funds INTL EQYUITY FD CL I									
156. - Blackrock Global									
157. - Brandywine Blue FD INC									
158. - First Eagle Global Class I									
159. - Franklin Value Ins TR Small CAP Value FD									
160. - Gabelli Equity SER FD Ins Small Cap Growth FD									
161. - Goldman Sachs TR Finl Square Money Market FD Instl Class									
162. - Harbor Fund Cap Appreciation Fd Instl CL									
163. - Harris Assoc INVT TR Oakmark Intl Fund CL I									
164. - IVY Asset Strategy Fund CL I									
165. - Ivy Global Natural Resources FD CL I									
166. - Janus INVT FD Flexible BD FD Class I									
167. - Lazard FDS INC Emerging Mkts Port Instl									
168. - Legg Mason Value TR INC Navigator Value TR									
169. - Marketfield Fund									
170. - MFS SER TR I Value Fund Class W									

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 O3 =$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 14 of 19	Name of Person Reporting Lewis, Mary G.	Date of Report 03/16/2011

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

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A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date 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)
171. - Neuberger Berman EQTY FDS- Small Cap Growth FD									
172. - Oppenheimer Intl Gorwth FD CL Y SHS									
173. - PIMCO FDS PAC INVT MGMT Commodity Real Return									
174. - PIMCO FDS PAC INVT MGMT SER Total Return									
175. - Principal Investors Preferred Securities A									
176. - ROWE T PRICE MID-CAP Growth Fund INC									
177. - RS INVT TR Value FD CL Y									
178. - T Rowe Price Real Est Fund Inc									
179. - TCW FDS INC Relative Value LRG CAP FD CL I									
180. - Thornburg Invstmt Income Builders Fund CL I									
181. - William Blair FDS Small Cap FGrowth FD CL I									
182. Trust #2	B	Int./Div.	L	T					
183. - Merrill Lynch Cash									
184. - Merrill Lynch Bank Deposit Program									
185. - Abbott Labs									
186. - Altria Group, Inc									
187. - AT&T, Inc									

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

FINANCIAL DISCLOSURE REPORT
Page 15 of 19

Name of Person Reporting	Date of Report
Lewis, Mary G.	03/16/2011

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)	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)
188. - BCE Inc									
189. - Chevron Corp									
190. - Chubb Corp									
191. - CMS Energy									
192. - Coca Cola COM									
193. - Consolidated Edison									
194. - Emerson Electric									
195. - Enbridge Inc									
196. - Genuine Parts Co.									
197. - Home Depot									
198. - Kellogg Co									
199. -Kimberly Clark									
200. - KRAFT Foods Inc VA CL A									
201. - Microsoft Corp									
202. - Novartis									
203. - Paychex									
204. - PG&E Corp									

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 16 of 19

Name of Person Reporting	Date of Report
Lewis, Mary G.	03/16/2011

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)	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)
205. - Phillip Morris Intl inc									
206. - Raytheon CO Delaware New									
207. - Royal Dutch Shel PLC SPns ADR B									
208. - RPM International Inc									
209. - Toronto Dominion Bank									
210. - Travelers Cos Inc									
211. - Ventas Inc REIT									
212. - Verizon Communications									
213. - Waste Management Inc New									
214. - XCEL Energy									
215. - ASG diversifying Strategies FD CL Y									
216. - Blackrock Global									
217. - Fairholme Fund									
218. - Fidelity Advisors Short Inter Muni Income FD CL I									
219. - First Eagle Global Class I									
220. - Gabelli Enterprises MRGRS									
221. - IVY Asset Strategy FUND CL I									

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 =Estimate		

FINANCIAL DISCLOSURE REPORT Page 17 of 19	Name of Person Reporting Lewis, Mary G.	Date of Report 03/16/2011

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		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
222. - Janus FORTY FUND CL I									
223. - Loomis Sayles Strategic INC FD CL I									
224. - Market Vectors Global ALT									
225. - Marketfield Fund									
226. - Matthews Asia Dividend Fund									
227. - Principal Investors Preferred Securities A									
228. - Prudential Jennison									
229. - RS Floating Rate Fund CL Y									
230. - Sector SPDR Energy									
231. - The Oakmark INTL Fund									
232. - Thornburg Invstmt Income Builders Fund CL I									
233. - Vanguard Small Cap Value									
234. - SPDR Gold Trust									
235.									

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 18 of 19	Name of Person Reporting Lewis, Mary G.	Date of Report 03/16/2011

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

FINANCIAL DISCLOSURE REPORT Page 19 of 19	Name of Person Reporting Lewis, Mary G.	Date of Report 03/16/2011

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 Mary G. Lewis

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		52	221	Notes payable to banks-secured		249	298
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	2	576	372	Notes payable to relatives			
Unlisted securities – see schedule	1	239	430	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		15	000
Due from relatives and friends		12	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		580	413
Real estate owned – see schedule	5	310	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		400	000				
Cash value-life insurance		251	055				
Other assets itemize:							
- Municipal bonds		300	082				
				Total liabilities		844	711
				Net Worth	9	296	449
Total Assets	10	141	160	Total liabilities and net worth	10	141	160
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts		936	036	Are any assets pledged? (Add schedule)	NO		
Legal Claims				Are you defendant in any suits or legal actions?	NO		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	NO		
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Energy Select Sector SPDR XLE	$3,063
Financial Select Sector SPDR XLI	2,780
Industrial Select Sector SDPR	2,369
ISHARES Barclays 1-3 YR Credit Bond Fund ETF	1,468
ISHARES Barclays 1-3 YR Treasury Bond Fund	755
ISHARES Barclays 7-10 YR Treasury Bond Fund	1,774
ISHARES Barclays Intermediate Credit Bond Fund	1,907
ISHARES Barclays MBS Bond Fund MBB	421
ISHARES IBOXX INV Grade Corp Bond Fund LQD	2,075
ISHARES MSCI Chile Investable Market Index FD ECH	908
ISHARES MSCI EAFE Index Fund EFA	6,278
ISHARES MSCI Japan ETF Index Fund EWJ	1,015
ISHARES MSCI Malaysia Index FD WEBS INDEX EWM	1,688
ISHARES MSCI Singapore Index Fund EWS	666
ISHARES S&P US Preferred Stock PFF	1,146
ISHARES TR -Russell 2000 Index FD	823
ISHARES TR S&P Midcap 400 Index FD IJH	15,446
ISHARES TR -S&P Smallcap 600 Index FD	14,461
KBW Insurance ETF KIE	729
Powershares DB Commodity Index Tracking Fund DBC	2,734
Powershares Dynamic MKT Netwroking Protfolio PXQ	603
Rydex S&P Equal Weight Healthcare RYH	664
Rydex S&P Equal Weight Technology RYT	2,281
Select Sector SPDR FD Consumer Discretionary XLY	2,838
Select Sector SPDR FD Materials XLB	829
Select Sector SPDR S&P Semiconductor	487
Select Sector SPDR TR Consumer Staples XLP	2,348
Select Sector SPDR TR Utilities Select Sector XLU	771
SPDR Barclays CAP High Yeild Bond ETF JNK	2,080
SPDR Pharmaceuticals XPH	1,517
SPDR S&P 500 Trust SPY	2,530
Vanguard Europe Pacific VEA	6,278
Vanguard Information Technology ETF VGT	1,507
Vanguard REIT ETF VNQ	1,975
Vanguard Telecommunications Services ETF VOX	1,124
Vangurad Emerging Markets ETF VWO	8,493
Abbott Labs	10,005
Altria Group Inc	5,201
AT&T Inc	7,492
BAC Setup CL RNG ACRU S&P 500 INDEX	9,280
BB&T Corporation	29,312
BCE Inc	7,832
Chevron Corp	11,516
Chubb CORP	5,279
CMS Energy	7,685
Coca Cola COM	174,182

Coca Cola Com	384
Consolidated Edison	7,647
Emerson Elec Co	10,441
Enbridge Inc	10,902
Exxon Mobil CORP COM	109,821
Genuine Parts Co	10,169
Home Depot Inc	5,433
Intl Business Machines Corp IBM	116,554
Kellog Co	5,195
Kimberly Clark	10,544
KRAFT Foods Inc VA CL A	7,610
Microsoft Corp	9,383
Novartis ADR	7,484
Paychex Inc	10,560
PG&E Corp	7,416
Phillip Morris Intl Inc	5,587
Raytheon CO Delaware New	10,344
Royal Dutch Shel PLC Spons ADR B	10,674
RPM International Inc	9,900
Toronto Dominion Bank	8,455
Travelers Cos Inc	8,330
Ventas Inc REIT	10,641
Verizon Communications	10,264
Waste Management Inc New	10,266
XCEL Energy Inc	7,637
Artio Global INV Funds INTL EQUITY FD CL I	36,455
ASG Diversifying Strategies FD CL Y	10,673
Blackrock Global	163,688
Brandywine Blue FD INC	65,604
Davis NY Venure FD B	2,026
Fairholme Fund	25,904
Fidelity Advisor Short Inter Muni Income FD CL I	5,587
First Eagle Global Class I	138,375
Franklin Value Ins TR Small CAP VALUE FD	32,770
Gabelli Enterproses MRGRS	5,106
Gabelli Equity SER FD Ins Small Cap Growth FD	23,562
Goldman Sachs Tr Finl Square Money Market FD Instl	4,272
Harbor Fund Cap Appreciation Fd Instl CL	59,102
Harris Assoc INVT TR OAKMARK INTL FUND CL I	53,962
Income Portfolio - INV CX	117,802
IVY Asset Strategy FUND CL I	102,992
IVY Global Natural Resources FD CL I	61,595
Janus FORTY FUND CL I	26,612
Janus INVT FD Flexible BD FD Class I	54,981
Lazard FDS INC Emerging Mkts Port INSTL	46,359
Legg Mason Value TR INC Navigator Value TR	31,095
Loomis Sayles Strategic INC FD CL Y	20,291
Market Vectors Global ALT	2,590
Marketfield Fund	102,457
Matthews Asia Dividend Fund	12,250
MFS SER TR I Value Fund Class W	58,490

Neuberger Berman EQTY FDS-Small Cap Growth FD	33,071
Oppenheimer Intl Growth FD CL Y SHS	52,825
PIMCO FDS PAC INVT MGMT Commodity Real Return	23,597
PIMCO FDS PAC INVT MGMT SER Total Return FD	27,213
PIMCO Low Duration FD CL P	11,874
Principal Investors Preferred Securities A	67,921
Prudential Jennison	7,901
ROWE T PRICE MID-CAP Growth Fund INC	24,935
RS Floating Rate Fund CL Y	7,514
RS INVT TR Value FD CL Y	31,495
Sector SPDR Energy	5,812
T Rowe Price Real Est Fund Inc	15,655
TCW FDS INC Relative Value LRG CAP FD CL I	66,139
The Oakmark INTL Fund	13,333
Thornburg Invsmt Income Builders Fund CL I	105,344
Vanguard Small Cap Value	5,211
William Blair FDS Small Cap Growth Fund CL I	23,676
Total Listed Securities	$2,576,372

Unlisted Securities	
SPDR Gold Trust	$5,231
BAC CLIRN Crude Oil	9,890
Lewis & Babcock LLP	765,000
Quincunx, LLC	59,700
Congaree Hunt Club	250,000
Geiger Partnership	149,609
Total Unlisted Securities	$ 1,239,430

Real Estate Owned	
Personal residence	$2,500,000
Investment property #1	60,000
Investment property #2	600,000
Investment property #3	1,000,000
Investment property #4	750,000
Investment property #5	200,000
Investment property #6	200,000
Total Real Estate Owned	$5,310,000

AFFIDAVIT

I, Mary G Lewis, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3-14-11
(DATE)

Mary G. Lewis
(NAME)

Melanie B. Blease
(NOTARY)
Notary Public for South Carolina
My Commission Expires 8/1/16

STATEMENT OF JUDGE TIMOTHY HILLMAN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS

Judge HILLMAN. Thank you, Mr. Chairman, and thank you, Ranking Member Grassley, for the opportunity to appear before this Committee.

I, too, would like to thank President Obama and Senators Kerry and Brown for recommending and nominating me.

I am proud to be able to introduce my wife, Kay, who is attending with me. Kay is a high school Spanish teacher who has taken valuable time away from her students to be with me today, which I very much appreciate.

I would like to thank and say hello to my three adult children who I believe are watching on the Web, my son, Zack, our daughter, Molly, and our son, Patrick.

Also, I just want to give a special shout out to my dad, Buzz. He's a 90-year-old World War II Naval veteran of the Pacific theater, and he is, I think, either watching on the Web or cursing whoever invented computers.

[Laughter.]

Senator COONS. Did you have an opening statement?

Judge HILLMAN. I do not. Thank you, Senator.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Timothy Spafard Hillman

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

   United States District Judge for the District of Massachusetts

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.

   Donohue Federal Building
   595 Main Street, Suite 404
   Worcester, Massachusetts 01608

   Residence: Fitchburg, Massachusetts

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

   1948; Chicago, Illinois

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

   1970 – 1973, Suffolk Law School; J.D., 1973

   1966 – 1970, Coe College; B.A., 1970

6. **Employment Record:** List in reverse chronological order all government 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 services. Include the name and address of the employer and job title or description.

2006 – present
United States District Court
Donohue Federal Building
595 Main Street
Worcester, Massachusetts 01608
United States Magistrate Judge

2002 – 2005
Clark University
950 Main Street
Worcester, Massachusetts 01610
Faculty member

1998 – 2006
Commonwealth of Massachusetts
Trial Court Department
225 Main Street
Worcester, Massachusetts 01608
Superior Court Justice

1999 – 2005
Massachusetts School of Law
500 Federal Street
Andover, Massachusetts 01810
Faculty member

2002
Mount Wachusett Community College
444 Green Street
Gardner, Massachusetts 01440
Part-time Instructor

1997 – 1998
Commonwealth of Massachusetts
Trial Court Department
Worcester District Court
225 Main Street
Worcester, Massachusetts 01608
Presiding Justice

1991 – 1997
Commonwealth of Massachusetts
Trial Court Department
Gardner District Court
108 Matthews Road
Gardner, Massachusetts 01440
Presiding Justice (1995 – 1997)
Associate Justice (1991 – 1995)

1989 – 1990
City of Gardner
City Hall
95 Pleasant Street
Gardner, Massachusetts 01440
City Solicitor

1988 – 1990
Town of Petersham
Town Hall
Main Street
Petersham, Massachusetts 01366
Town Counsel

1988 – 1990
Town of Athol
Town Hall
584 Main Street
Athol, Massachusetts 01331
Town Counsel

1988 – 1990
Hillman & Haley, Attorneys at Law
341 Main Street
Fitchburg, Massachusetts 01420
Attorney

1981 – 1990
Town of Lunenburg
Town Hall
17 Main Street
Lunenburg, Massachusetts 01462
Town Counsel

1978 – 1990
City of Fitchburg
City Hall
718 Main Street
Fitchburg, Massachusetts 01420
City Solicitor

1975 – 1988
Timothy S. Hillman, Attorney & Counselor at Law
341 Main Street
Fitchburg, Massachusetts 01420
Attorney

1975 – 1978
Worcester County District Attorney's Office
1 Main Street
Worcester, Massachusetts 01608
Assistant District Attorney

1974 – 1975
Murphy and Pusateri
410 Main Street
Fitchburg, Massachusetts 01420
Staff Attorney

1971 – 1975
Cappy's Restaurant (now Sean Patrick's Restaurant)
494 Electric Avenue
Lunenburg, Massachusetts 01462
Bartender

Other affiliations (uncompensated):

1980 – 1985
Fitchburg Little League
Address unknown
Board of Directors (1980 – 1985)
President (1985)

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 1966.

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.

   Worcester County Bar Association President's Award (2004)

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

   Ad Hoc Committee of the Massachusetts District Court Committee on Mental Health and Retardation (1997)
   Ad Hoc Committee on the Worcester Courthouse (1998)
   American Bar Association (2010 – present)
      Litigation Section, Judicial Officer Section (2010 – present)
   Case Management/Electronic Case Filing (CM/ECF) National Co-Chair (2009 – present)
   Federal Bar Association (2006 – present)
   Federal Magistrate Judges Association (2006 – present)
   Massachusetts Bar Association (2006 – present)
   Northern Worcester County Bar Association (1973 – present)
      Executive Committee (1990)
   U.S. District Court of Massachusetts
      Judicial-Probation Task Force on Probation Violation Proceedings (1999)
      Planning Committee for Judicial Conference (2007)
      State Courts Committee (2006 – present)
   Worcester County Bar Association (1973 – present)
      Executive Committee (1988 – 1990)

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.

       Massachusetts, 1974

       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 First Circuit, 1985
       United States District Court for the District of Massachusetts, 1978
       United States District Court for the District of Vermont, 1984

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.

Advisory Council of Mayor Charles J. Manca (1996, regarding how to apply for and spend federal grant money for Gardner)
Commonwealth of Massachusetts Information Technology Commission (2002 – 2003)
Fitchburg Little League
Board of Directors (1980 – 1985)
President (1985)
Gardner Advisory Council on Police Department Federal Grant (1996)

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.

Contributing author, *The U.S. District Court Speaks*, MCLE, 2008. Copy supplied.

Honorable Timothy S. Hillman, *The Future of Peremptory Challenges in Massachusetts*, The Massachusetts School of Law Reformer (Winter 2006). Copy supplied.

Hon. Peter M. Lauriat & Wayne E. Hartwell, Massachusetts Jury Trial Benchbook (2d ed. 2004) (contributing author). Copy supplied.

Timothy S. Hillman, Esq. *Defending an Eminent Domain Case*, MCLE/NELI (1988). No copy available.

Timothy S. Hillman, Esq., *Municipal Government and the Open Meeting Law*, MCLE/NELI (1986). No copy available.

Timothy S. Hillman, *The Scope of Planning Board Authority under the Subdivision Control Law*, MCLE/NELI (1984). No copy available.

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

Signatory to the Sedona Conference Cooperation Proclamation, 2008. Copy supplied.

I was on the Commonwealth of Massachusetts Information Technology Commission and gave input about the MassCourts e-filing and case management system for the Enterprise IT Strategy Final Report issued in February 2003. Copy supplied.

I participated in a project to increase juror involvement during trials. In 1999, state judges tried different techniques and drafted a report summarizing the results and recommendations in April 2000. The final report is entitled Jury Trial Innovations in Massachusetts and is authored by Judge Peter Lauriat. Copy supplied.

In 1999, I served on the Judicial-Probation Task Force on Probation Violation Proceedings, which recommended new District Court Rules for Probation Violation Proceedings. The rules were adopted by the Supreme Judicial Court and a copy is supplied.

In 1998, I served on a committee recommending to the state legislature the building of a new Worcester County Courthouse. I have been unable to obtain copies of any materials created by the committee.

October 21, 1997: Ad Hoc committee report on revising section 12, which was a statute providing for emergency commitment of the mentally ill. 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.

December 1990: Letter to Hubbardston Town Planning Board on behalf of the regional school district about the Center School renovation project. I have been unable to obtain a copy of the letter, but press coverage is supplied.

Between 1981 and 1990, I served as Town Counsel for Lunenburg and made remarks during Board of Selectmen meetings. I have been unable to obtain notes, transcripts or recordings of these meetings, but press coverage of two meetings is supplied.

Between 1979 and 1990, I served as City Solicitor for Fitchburg and made remarks during City Council meetings on multiple occasions. I have been unable to obtain notes, transcripts or recordings of these meetings, but press coverage of one meeting session is supplied.

On March 27, 1989, I appeared before a closed session of the Winchendon Town Board of Selectmen on behalf of a client, Thomas Boyd. Notes are not available to the public, but press coverage is supplied.

I also served as Town Counsel for Lunenburg (1981 – 1990), Petersham (1988 – 1990) and Athol (1988 – 1990) as well as City Solicitor for Fitchburg (1979 – 1990) and Gardner (1989 – 1990). In each of these positions, I gave legal advice and made multiple comments and presentations to the boards of selectmen and city councils, but I have been unable to obtain notes, transcript or recordings of these meetings.

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 24, 2011: Panelist for a discussion on Key E-Discovery Mistakes to Avoid, E-Discovery for Pharma, Biotech & Medical Device Industries

conference. I have no notes, transcript or recording. The address of the sponsor, International Quality & Productivity Center, is 535 Fifth Avenue, New York, NY 10017.

Summer 2011: "Know Your Courtroom" video for MCLE's 150th Anniversary of the Massachusetts Superior Court Series of Featured Practice Tips from the Superior Court Bench. A video recording is available at http://tinyurl.com/knowyourcourtroom.

June 7, 2011: Speech on the topics of litigation hold policies and the negligent spoliation of evidence at the New Hampshire E-Discovery Summit in Manchester, New Hampshire. I have no notes, transcript, or recording. The address of the sponsoring organization is c/o Attorney James Berriman, Evidox Corporation, 129 South Street, Boston, MA 02111.

May 4, 2011: Job Interviewing Skills Workshop for participants of CARE and RESTART programs, Federal Bar Association, Massachusetts Chapter. I helped organize the event and gave brief introductory remarks. I have no notes, transcript or recording. The address of the FBA is c/o Mary Jo Harris, 200 State Street, Boston, MA 02109.

April 6, 2011: Presentation on the U.S. federal court system and electronic case filings and case management to visiting delegates from the Republic of Georgia, Open World Leadership Center. I have no notes, transcript or recording. The address of the Open World Leadership Center is 101 Independence Avenue SE, John Adams Building, Room 144, Washington, DC 20540.

February 9, 2011: Panelist for "Meet the U.S. District Court Magistrate Judges" event discussing courtroom practices, Boston Bar Association. I have no notes, transcript or recording. The address of the Boston Bar Association is 16 Beacon Street, Boston, MA 02108.

January 19, 2011: Remarks on the *Pro Se* Mediation Initiative, Orientation and Training for *Pro Se* Mediation Panel, U.S. District Court of Massachusetts. I have no notes, transcript or recording. The address of the District Court is 1 Courthouse Way, Boston, MA 02210.

January 13, 2011: Speech on the topic of "The Art of Storytelling: Practical Advice on Opening Statements and Closing Arguments in Federal Court" at Federal Bar Association training in Boston, Massachusetts. I spoke about the "do's" and "don'ts" for opening statements and closing arguments. I have no notes, transcript, or recording. The address of the sponsoring organization is 1620 I Street NW, Suite 900, Washington, DC 20006.

December 16, 2010: Speaker on the topic of "Recent Trends in Electronic Discovery" at the Boston E-Discovery Summit: Controlling the Cost of E-

Discovery in Boston, Massachusetts. I have no notes, transcript, or recording. The address of the sponsoring organization is c/o Phelan PR, 473 Chicopee Row, Groton, MA 01450.

December 9, 2010: Speaker on the topic of "preservation and litigation hold practices" at the Eighth Annual In-House Counsel Conference, Doing Business in the Electronic Age, sponsored by the Massachusetts Bar Association in Boston, Massachusetts. A video recording is available at http://tinyurl.com/inhousecounsel.

November 16, 2010: Remarks at Civil Litigation Section Council of the Massachusetts Bar Association meeting, discussion on courtroom practices. I have no notes, transcript, or recording, but MBA coverage is supplied. The address of the sponsoring organization is 20 West Street, Boston, MA 02111.

November 8, 2010: Speaker to Court Assisted Recovery Effort (CARE) and RESTART program graduates, U.S. District Court for the District of Massachusetts. I have no notes, transcript, or recording. The address of the Courthouse is 1 Courthouse Way, Boston, MA 02210.

November 4, 2010: Panelist on the topic of "E-Discovery Best Practices" at West Publishing training in Chicago, Illinois. I was on a panel of judges who were asked to comment after presentations. I have no notes, transcript, or recording. The address of the sponsoring organization is 1 New York Plaza, 34th Floor, New York, NY 10004.

June 20, 2010: Lecturer on the topic of "Federal Mediation" to Russian Judges in Rostov, Russia, Russian American Rule of Law Consortium (RAROLC). I have no notes, transcript, or recording. The address of the sponsoring organization is 85 Prim Road, Suite 202, Colchester, VT 05446.

June 8, 2010: Remarks during Bench Bar Meeting on the Relationship between Lawyers, Prosecutors and Judges, United States Agency for International Development. I spoke on court-involved mediation. Rostov-on-Don, Russia. I have no notes, transcript, or recording, but Russian media video coverage is available at http://www.dontr.ru/Environ/WebObjects/dontr.woa/wa/Main?textid=40498.

May 24, 2010: Presenter for Using Electronic Evidence Strategically in Deposition, Motions & Trials, MCLE Seminar. Video recording available at http://mcle.na5.acrobat.com/p12212141/.

May 19, 2010: Tour of courthouse and discussion of e-filing and case management system with Rostov delegation, Russian American Rule of Law Consortium. I have no notes, transcript, or recording. The address of the sponsoring organization is 85 Prim Road, Suite 202, Colchester, VT 05446.

May 6, 2010: Panelist for a discussion of prisoner re-entry programs and strategies, Re-Entry Summit, Boston Bar Association. I have no notes, transcript, or recording. The address of the Boston Bar Association is 16 Beacon Street, Boston, MA 02108.

February 5, 2010: Presenter during E-Discovery for In-House Counsel, MCLE Seminar. Video recording available at http://mcle.na5.acrobat.com/p51665093/.

December 2, 2009: Presenter on the topic of the "Massachusetts Federal Reentry Court" at the Federal Judicial Center at Duke University in Durham, North Carolina. I have no notes, transcript, or recording. The address of the sponsoring organization is Administrative Office of the United States Courts, Washington, DC 20544.

October 20, 2009: Lecturer on the topic of "Judicial Mediation" during a one-week course for Chinese Judges in Bejing and Xi'an, China. I have no notes, transcript, or recording. The address of the sponsoring organization is: U.S. State Department, Bureau of Education and Cultural Affairs, Grants Division. ECA-IIP/EX/G, U.S Department of State, SA-5, 2200 C Street NW, Floor 2, Washington, DC 20522.

September 15, 2009: Remarks during 21st Century Civil and Criminal Motion Practice CLE, Massachusetts Bar Association. I have no notes, transcript, or recording. The address of the sponsoring organization is 20 West Street, Boston, MA 02111.

June 16, 2009: Served as Master of Ceremonies for the rededication ceremony of the Fitchburg District Courthouse. I have no notes, transcript, or recording. The address of the courthouse is 100 Elm Street, Fitchburg, MA 01420.

May 5, 2009: Panelist for "Meet the Magistrate Judges" event discussing courtroom practices, Boston Bar Association. I have no notes, transcript, or recording. The address of the Boston Bar Association is 16 Beacon Street, Boston, MA 02108.

May 2009: Presided over Worcester's first mock trial, sponsored by U.S. District Court of Massachusetts and Citizen Schools. I have no notes, transcript, or recording. The address of the U.S. District Court is Donohue Federal Building, 595 Main Street, Worcester, MA 01608. The address of Citizen Schools is 308 Congress Street, 5th Floor, Boston, MA 02210.

March 23, 2009: Panelist on the topic of "Recent Trends in E-Discovery" at a Massachusetts Continuing Legal Education training in Boston, Massachusetts. I was part of a panel that responded to questions. I have no notes, transcript, or

recording. The address of the sponsoring organization is 10 Winter Place, Boston, MA 02111.

February 5, 2009: Presenter for E-Discovery for In-House Counsel, MCLE Seminar. I have no notes, transcript, or recording. The address of MCLE is 10 Winter Place, Boston, MA 02108.

November and May 2008: Co-hosted seminars on "Preparing a Case for Trial" and "Preparing a Case for Trial II," sponsored by the Worcester County Bar Association. I have no notes, transcript, or recording. The address of the WCBA is 370 Main Street, Suite 975, Worcester, MA 01608.

October 21, 2008: Panelist on the topic of "Hot Topics in E-Discovery" at the Association of Corporate Counsel training in Seattle, Washington. I have no notes, transcript, or recording. The address of the sponsoring organization is 1025 Connecticut Avenue NW, Suite 200, Washington, DC 20036.

September 25, 2008: Speaker on the topic of document preservation and litigation hold policies at the ARMA E-Discovery training in Boston, Massachusetts. I distributed my Order for Reconsideration from the *Aubuchon v. Benefirst* case. Handout supplied.

September 18, 2008: Speaker on the topic of document preservation obligations at the BNA Business & Legal Edge – E-Discovery training in Washington, D.C. I have no notes, transcript, or recording. The address of the sponsoring organization is 3 Bethesda Metro Center, Suite 250, Bethesda, MD 20814.

June 19, 2008: Panelist for "Litigating Civil Cases before the Magistrate Judges: From Discovery to Jury Trial." Federal Bar Association. I have no notes, transcript, or recording, but FBA coverage is supplied. The address of the FBA is c/o Mary Jo Harris, 200 State Street, Boston, MA 02109.

May 29, 2008: Panelist on the topic of "Obtaining or Defending Summary Judgment in Employment Cases" at the Massachusetts Continuing Legal Education training in Boston, Massachusetts. I responded to questions. I have no notes, transcript, or recording. The address of the sponsoring organization is 10 Winter Place, Boston, MA 02111.

April 11, 2008: Speech on the topic of "Deposition Practice" at the Massachusetts Continuing Legal Education training in Worcester, Massachusetts. I spoke about using depositions at trial. I have no notes, transcript, or recording. The address of the sponsoring organization is 10 Winter Place, Boston, MA 02111.

March 31, 2008: Speech on the topic of "Electronic Discovery Motions" at the Massachusetts Continuing Legal Education training on the topic of "Civil Motions Practice" in Boston, Massachusetts. I have no notes, transcript, or

recording. The address of the sponsoring organization is 10 Winter Place, Boston, MA 02111.

February 2008: Remarks at a seminar entitled "Discovery Strategy in Federal Litigation," sponsored by the Worcester County Bar Association. I have no notes, transcript, or recording. The address of the WCBA is 370 Main Street, Suite 975, Worcester, MA 01608.

December 4, 2007: Panelist for Magistrate Judges of the U.S. District Court Bench Bar Forum, Boston Bar Association. I have no notes, transcript, or recording. The address of the Boston Bar Association is 16 Beacon Street, Boston, MA 02108.

November 2, 2007: Panelist on topic of "Advanced Issues in E-Discovery" at the Suffolk School of Law in Boston, Massachusetts. I was part of a panel that responded to questions. I have no notes, transcript, or recording. The address of the sponsoring organization is 120 Tremont Street, Boston, MA 02108.

May 2007: Co-hosted a seminar on "Effective Arguments on Dispositive Motions in both Civil and Criminal Cases," Worcester County Bar Association. I have no notes, transcript, or recording. The address of the WCBA is 370 Main Street, Suite 975, Worcester, MA 01608.

January 30, 2007: Remarks for the "Effective Trial Advocacy in Federal District Court" seminar, Worcester County Bar Association. I have no notes, transcript, or recording. The address of the WCBA is 370 Main Street, Suite 975, Worcester, MA 01608.

December 12, 2006: Panelist for a "View from the Benches: An Insider Look at the Amendments to the Federal Rules of Civil Procedure," Suffolk University Law School, Macaronis Institute for Trial & Appellate Advocacy, Federal Bar Association and Federal Circuit Bar Association. I have no notes, transcript, or recording. The address of Suffolk Law School is 120 Tremont Street, Boston, MA 02108.

June 20, 2006: Remarks thanking friends and family at the formal Swearing-In Ceremony of United States Magistrate Judge Timothy S. Hillman. Transcript supplied.

May 2, 2006: Remarks on judicial independence at the Worcester County Bar Law Day Breakfast in Worcester, Massachusetts. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is 370 Main Street, Worcester, MA 01608.

February 13, 2006: Remarks during a brief Swearing-In Ceremony of United States Magistrate Judge Timothy S. Hillman. I have no notes, transcript, or

recording, but press coverage is supplied. The address of the U.S. District Courthouse is Donohue Federal Building, 595 Main Street, Worcester, MA 01608.

2006: Presenter during Worcester County Bar Day, Worcester County Bar Association. I have no notes, transcript, or recording. The address of the sponsoring organization is 370 Main Street, Worcester, MA 01608.

April 11, 2005: Remarks on a "View from the Bench" at the Worcester County Bar Day in Worcester, Massachusetts. I have no notes, transcript, or recording. The address of the sponsoring organization is 370 Main Street, Worcester, MA 01608.

May 23, 2004: Remarks at a ceremony for fallen police officers, Fitchburg Police Department. I have no notes, transcript, or recording, but press coverage is supplied. The address of the police department is 20 Elm Street, Fitchburg, MA 01420.

April 30, 2003: Remarks at the Fitchburg Rotary annual awards dinner. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Rotary Club is c/o Mark Williams, 320 West Street, Lunenburg, MA 01462.

March 11, 2003: Remarks during demonstration of the MassCourts case management system to visitors from South America and the Caribbean, Suffolk Superior Court. I have no notes, transcript, or recording. The address of the Court is 3 Pemberton Square, Boston, MA 02108.

January 29, 2003: Remarks during the unveiling of the new automated court case management system, Massachusetts State House. I have no notes, transcript, or recording. The address of the State House is 24 Beacon Street, Boston, MA 02108.

January 23-26, 2003: Remarks during the Massachusetts Bar Association Annual Conference about the MassCourts project. I have no notes, transcript or recording, but press coverage is supplied. The address of the MBA is 20 West Street, Boston, MA 02111.

2002-2003: On behalf of the Massachusetts Court System, I traveled to various state courts in Massachusetts to discuss the implementation of MassCourts, a new case management system. I have no notes, transcripts or recordings.

June 13, 2002: Panelist on the topic of "Technology in the Courtroom" for the Massachusetts Bar Association in Boston, Massachusetts. I was part of a panel that responded to questions. I have no notes, transcript, or recording. The address of the sponsoring organization is 20 West Street, Boston, MA 02111.

June 7, 2002: Brief remarks during a retirement party for Peter Lincoln at Lunenburg High School. I have no notes, transcript, or recording, but press coverage is supplied. The address of Lunenburg High School is 1079 Massachusetts Avenue, Lunenburg, MA 01462.

May 23, 2002: Speech on "Introducing Evidence at Trial (Expert Witnesses and Junk Science)" for Massachusetts Continuing Legal Education, in Boston, Massachusetts. I spoke about *Daubert* hearings. I have no notes, transcript, or recording. The address of the sponsoring organization is 10 Winter Place, Boston, MA 02111.

May 9, 2002: Remarks during "Winning Trials with Expert Witnesses," Federal District Court Committee of the Worcester County Bar Association. I have no notes, transcript, or recording. The address of the sponsoring organization is 370 Main Street, Worcester, MA 01608.

Spring 2002: *Using Court Appointed Experts*, Symposium; Translating Science into Law: Lessons from Doctors, Judges, and Lawyers about the Use of Medical Evidence in the Courtroom. New England School of Law, Boston, MA. Copy supplied.

March 20, 2002: Moderated a panel of judges that discussed the Abuse Prevention Act and how it was interpreted in state courts. Battered Women's Resources, Inc. and Massachusetts Office for Victim Assistance SAFEPLAN. I have no notes, transcript, or recording, but press coverage is supplied. The address of Battered Women's Resources is P.O. Box 1209, Leominster, MA 01453. The address of MOVA is 1 Ashburton Place, Suite 1101, Boston, MA 02108.

January 2002: Speaker on the topic of the status of the state court's IT project at the Massachusetts Bar Association Annual Meeting of the Board of Directors in Boston, Massachusetts. I have no notes, transcript, or recording. The address of the sponsoring organization is 20 West Street, Boston, MA 02111.

December 11, 2001: Panelist on the topic "Discovery Abuse" at the Superior Court Judicial Forum, Massachusetts Continuing Legal Education in Boston, Massachusetts. I was part of a panel that responded to questions. I have no notes, transcript, or recording. The address of the sponsoring organization is 10 Winter Place, Boston, MA 02111.

October 30, 2001: Speech on Juror Problems in Criminal Cases for the Superior Court Judicial Conference in Chatham, Massachusetts. I have no notes, transcript, or recording. The address of the sponsoring organization is Suffolk County Courthouse, 13th Floor, 3 Pemberton Square, Boston, MA 02108.

October 30, 2001: Speech on The Defense of a Civil Lawsuit (The Theory of the Case) for the Superior Court Judicial Conference in Chatham, Massachusetts. I

have no notes, transcript, or recording. The address of the sponsoring organization is Suffolk County Courthouse, 13th Floor, 3 Pemberton Square, Boston, MA 02108.

March 2001: Panelist for a CLE on admitting medical evidence, Worcester County Bar Day. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is 370 Main Street, Worcester, MA 01608.

January 25, 2001: Speech on Introducing Evidence at Trial (Demonstrative Aids) for the Worcester County Bar Association in Worcester, Massachusetts. I have no notes, transcript, or recording. The address of the sponsoring organization is 370 Main Street, Worcester, MA 01608.

June 28, 1999: Remarks for a training on Commitment Hearing and Medication Options: Beyond Routine Representation of Persons with Mental Illness, Mental Health Legal Advisors Committee. I have no notes, transcript or recording. The address of MHLAC is 24 School Street, 8th Floor, Boston, MA 02108.

February 26, 1999: Speech on Introducing Evidence at Trial (Expert Witnesses) for the Worcester County Bar Association in Worcester, Massachusetts. I have no notes, transcript, or recording. The address of the sponsoring organization is 370 Main Street, Worcester, MA 01608.

January 2, 1998: Administered the Oath of Office to the Worcester School Committee and vice chair of the City Council. I have no notes, transcript, or recording. The address of the Worcester Public Schools is 20 Irving Street, Worcester, MA 01609. The address of the Worcester City Council is 455 Main Street, Worcester, MA 01608.

October 28, 1997: Remarks during a farewell reception when I left the Gardner District Court. I have no notes, transcript or recording, but press coverage is supplied. The address of the Gardner District Court is 108 Matthews Street, Gardner, MA 01440.

September 8, 1997: Introduced several attendees of Judge William Luby's portrait unveiling ceremony. I have no notes, transcript, or recording. The address of the Central District Court is 225 Main Street, Worcester, MA 01608.

March 19, 1997: Remarks at the 15th Annual Ulysse J. Cormier Government Appreciation Program to students from Our Lady of the Holy Rosary School. I have no notes, transcript, or recording. The address of the school is 99 Nichols Street, Gardner, MA 01440.

Fall 1996: Remarks before men on probation who participated in the Responsible Fatherhood Program, which addressed the effects of domestic violence on

children, North Central Correctional Institute, Gardner, MA. I have no notes, transcript, or recording. The address of the NCCI is 500 Colony Road, P.O. Box 466, Gardner, MA 01440.

May 30, 1996: Remarks about Irma Landman at the court employee of the year award reception, Gardner District Court. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Court is 108 Matthews Street, Gardner, MA 01440.

Winter 1996: Remarks to a class of the Citizens Police Academy, Gardner City Police Department. I have no notes, transcript, or recording. The address of the Gardner City Police is 31 City Hall Avenue, Gardner, MA 01440.

March 1995: Remarks at the Cormier Government Appreciation Day, Our Lady of the Holy Rosary School. I have no notes, transcript, or recording, but press coverage is supplied. The address of the school is 99 Nichols Street, Gardner, MA 01440.

March 1994: Remarks at the Cormier Government Appreciation Day, Our Lady of the Holy Rosary School. I have no notes, transcript, or recording. The address of the school is 99 Nichols Street, Gardner, MA 01440.

June 16, 1993: Participated in roundtable discussions on city violence during the "Building Safer Neighborhoods: A Cooperative Response" forum, sponsored by Safe & Healthy Neighborhood Coalition. I have no notes, transcript, or recording. The Coalition does not have a physical address.

June 4, 1993: Remarks on handling domestic violence cases during the Domestic Violence Forum: A View from the Bench, Coalition for a Violence Free Community. I have no notes, transcript, or recording, but press coverage is supplied. The Coalition does not have a physical address.

May 27, 1993: Commencement address for the Notre Dame Preparatory School graduation ceremony. I have no notes, transcript, or recording. The address of the school is 171 South Street, Fitchburg, MA 01420.

May 30, 1991: Remarks at the Leominster Mediation Project ceremony for newly certified mediators. I have no notes, transcript, or recording. The address of the Leominster District Court is 25 School Street, Leominster, MA 01453.

I also administered the Oath of Citizenship and spoke at the following Naturalization Ceremonies: March 13, 2007, February 7, 2008, April 3, 2008, June 25, 2008, April 29, 2009, May 28, 2009, July 22, 2009, August 26, 2010, November 23, 2010, June 8, 2011, July 21, 2011 and September 21, 2011. A copy of the speech I used at each event is supplied as is press coverage of my remarks at the May 28, 2009 event.

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.

Lee Hammel, *Hillman Selected for Federal Court*, Worcester Telegram & Gazette, Aug. 6, 2011. Copy supplied.

Responses to Massachusetts Continuing Legal Education, Inc. questions on general matters, pre-trial matters, courtroom practices and other matters and sample order (2011). Copy supplied.

Staff, *Lawyers Turning to Online Searches on Jurors, Witnesses*, Massachusetts Lawyers Weekly, Oct. 4, 2010. Copy supplied.

Phillip Bantz, *With Massachusetts' Judiciary in Crisis, Gov. Patrick's Nominations Questioned: Eighteen Judges Named Since Feb.*, Massachusetts Lawyers Weekly, Oct. 4, 2010. Copy supplied.

David E. Frank, *Good Faith E-Discovery Error Leads to Sanctions: N.Y. Ruling Has Mass. Bar Paying Attention*, Massachusetts Lawyers Weekly, Feb. 15, 2010 (re-printed in multiple outlets). Copy supplied.

Telephone interview on February 12, 2006 with Zachary Hillman for his article, *Pleading Guilty and Video Teleconferencing: Is a Defendant Constitutionally "Present" when Pleading Guilty by Video Teleconference?*, 7 J. High Tech. L. 41 (2007). Article supplied.

Kyle Alspach, *Fitchburg Man Named Magistrate Judge on Federal Bench*, Fitchburg Sentinel & Enterprise, Feb. 9, 2006. Copy supplied.

Lee Hammel, *Federal Court Magistrate Named*, Worcester Telegram & Gazette, Nov. 3, 2005. Copy supplied.

Sheri Qualters, *Long-Awaited Tech Upgrades Seen Coming to Courts by '06*, Boston Business Journal, June 11, 2004. Copy supplied.

Press release, *Massachusetts Trial Court Installs MassCourts in Boston Municipal Court Department*, Massachusetts Supreme Judicial Court, Nov. 20, 2003. Copy supplied.

BMC to Debut MassCourts Information System This Fall, Lawyers Journal, Sept. 2003. Copy supplied.

Shaun Sutner, *Trial Courts Across State to Go Online*, Worcester Telegram & Gazette, July 28, 2003. Copy supplied.

Andrew J. Manuse, *MassCourts Digital System Nearly Ready*, Boston Herald, July 28, 2003. Copy supplied.

Press release, *Trial Court's MassCourts Information Technology System to Begin in Boston Municipal Court*, Massachusetts Supreme Judicial Court, July 24, 2003. Copy supplied.

Staff, *Questions to Mass. Superior Court Judges of 'New' Science under Lanigan/Daubert*, Massachusetts Lawyers Weekly, Apr. 21, 2003. Copy supplied.

Lee Hammel, *Angelini Says No to Judgeship List*, Worcester Telegram & Gazette, Apr. 10, 2003. Copy supplied.

SJC Weighs Policy to Restrict Online Court Records, Providence Journal-Bulletin, Mar. 7, 2003. Copy supplied.

Elizabeth Dinan, *Mass. Court System Spends $13M for Maximus Software*, Mass High Tech, Mar. 3, 2003. Copy supplied.

John O. Cunningham, *Massachusetts Courts' New Technology Project Looks Promising*, Massachusetts Lawyers Weekly, Feb. 3, 2003. Copy supplied.

Press release, *MAXIMUS Signs $13 Million MassCourts Contract*, MAXIMUS, Jan. 28, 2003. Copy supplied.

Ralph Ranalli, *Court Record System to Go Online Next Year*, Boston Globe, Jan. 24, 2003 (re-printed in multiple outlets). Copy supplied.

Bainbridge D. Testa, *Massachusetts Court Database Is Finally on the Way*, Massachusetts Lawyers Weekly, Jan. 13, 2003. Copy supplied.

MassCourts Will Soon Change Trial Court Case Management, Court Compass, Winter 2003. Copy supplied.

Jason M. Scally, *Massachusetts Lawyers Weekly at 30: Tech Advances Change the Way Lawyers Practice*, Massachusetts Lawyers Weekly, Sept. 16, 2002. Copy supplied.

IT Evaluators Scrutinize MassCourts Bids, Court Compass, Autumn 2002. Copy supplied.

Matthew French, *Courting a Connected System*, Mass High Tech, Aug. 12, 2002. Copy supplied.

Gary Murray, *Judge Works on Order in the Courts*, Worcester Telegram & Gazette, Aug. 7, 2002. Copy supplied.

Questions & Answers, Court Compass, Summer 2002. Copy supplied.

Gary Murrary, *Probate Judge Calls It a Career*, Worcester Telegram & Gazette, Mar. 27, 2001. Copy supplied.

Brian S. McNiff, *Praise Heaped on Nominee*, Worcester Telegram & Gazette, Oct. 21, 1999. Copy supplied.

Shaun Sutner, *Massachusetts Is Trying New Jury Methods*, Worcester Telegram & Gazette, Aug. 8, 1999. Copy supplied.

Emilie Astell, *Sidewalk at the Aud Is Parking Lot for Court*, Worcester Telegram & Gazette, July 9, 1999. Copy supplied.

Emilie Astell, *Cellucci Pressured to Pick Local Judges*, Worcester Telegram & Gazette, June 20, 1999. Copy supplied.

Brian S. McNiff, *Judicial Candidate Reviewed*, Worcester Telegram & Gazette, Apr. 22, 1999. Copy supplied.

Emilie Astell, *Hillman Officially Joins Superior Court Bench*, Worcester Telegram & Gazette, Dec. 18, 1998. Copy supplied.

John J. Monahan, *Request for Court Lawyer Is Denied*, Worcester Telegram & Gazette, Sept. 2, 1998. Copy supplied.

Jim Bodor, *Lifeline for Addicts Falls Short*, Worcester Telegram & Gazette, Aug. 13, 1998. Copy supplied.

Ian Donnis, *Courts Focus on Crime, Drug Link*, Worcester Telegram & Gazette, June 10, 1998. Copy supplied.

Bronislaus B. Kush, *Legislators Hear Litany of Courthouse Problems*, Worcester Telegram & Gazette, Feb. 28, 1998. Copy supplied.

Ian Donnis, *Disorder in the Court as Judge is Feted*, Worcester Telegram & Gazette, Oct. 29, 1997. Copy supplied.

Ian Donnis, *Hillman Leaving for New Post with Praise from Home Front*, Worcester Telegram & Gazette, Sept. 4, 1997. Copy supplied.

Emilie Astell, *Hillman a Surprise Choice*, Worcester Telegram & Gazette, Sept. 3, 1997. Copy supplied.

Emilie Astell, *Judges Await Money for Elbow Room*, Worcester Telegram & Gazette, May 20, 1997. Copy supplied.

Ian Donnis, *Town Shows Its Support Again for Tiny Court*, Worcester Telegram & Gazette, Feb. 6, 1997. Copy supplied.

Ian Donnis, *Leominster Man Still Bitter over '93 Rock-Concert Incident*, Worcester Telegram & Gazette, Oct. 29, 1996. Copy supplied.

Mike Elfland, *Gardner Probation Chief Retires*, Worcester Telegram & Gazette, Apr. 30, 1995. Copy supplied.

Mike Elfland, *Gardner Probation Office Judged to be Top Notch*, Worcester Telegram & Gazette, 1994. Copy supplied.

Dianne Williamson, *Man Acquitted Speedily*, Worcester Telegram & Gazette, Sept. 9, 1992. Copy supplied.

Anna L. Bisol, *Even After Hours, the Judge Is "In,"* Worcester Telegram & Gazette, Sept. 6, 1992. Copy supplied.

Anna L. Bisol, *Students Enjoy Star Status with Classes on Saturdays*, Worcester Telegram & Gazette, May 24, 1992. Copy supplied.

Christine Guilfoy, *Debating Required Sentences*, Worcester Telegram & Gazette, Mar. 1, 1992. Copy supplied.

North County Notebook, Worcester Telegram & Gazette, Jan. 26, 1992. Copy supplied.

Emilie Astell, *Judge Cultivates Fairness in Disputes*, Worcester Telegram & Gazette, Jan. 20, 1992. Copy supplied.

North County Notebook, Worcester Telegram & Gazette, Dec. 22, 1991. Copy supplied.

November 1991: I was interviewed by WCVB-TV Channel 5 about Small Claims Courts. I have been unable to obtain a copy of this interview.

Thomas Warnke, *Hillman Ready to Sit on Bench*, Worcester Telegram & Gazette, Jan. 9, 1991. Copy supplied.

Anna L. Bisol, *Park 2000 Suits See Movement, Legal Action to Protect Water*, Worcester Telegram & Gazette, Sept. 5, 1990. Copy supplied.

Karen Kromer, *Lunenburg Sued in Oil Spill*, Worcester Telegram & Gazette, Mar. 14, 1990. Copy supplied.

Coria Holland, *Walsh Hires Solicitor, Assistant after Conferring with Manca*, Worcester Telegram & Gazette, Nov. 21, 1989. Copy supplied.

John Gearan, *'Say Hey Kid' Cool Customer at Card Show*, Worcester Telegram & Gazette, July 17, 1989. Copy supplied.

Peter B. Nugent, *Ferreri Appeals Dog-Removal Fine*, Worcester Telegram & Gazette, Apr. 24, 1989. Copy supplied.

Peter B. Nugent, *Dog Owner Disobeys Ruling, Is Fined $100*, Worcester Telegram & Gazette, Mar. 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.

From 1991 to 1995, I was an Associate Justice of the Gardner District Court (appointed). As a District Court judge, I handled criminal misdemeanor and felony probable cause hearings. I also had a full civil docket.

From 1995 to 1997, I was the Presiding Justice of the Gardner District Court (appointed).

From 1997 to 1998, I was the Presiding Justice of the Worcester Central District Court (appointed). Upon my appointment, Worcester District Court handled 12,000 cases per year making this court the busiest of the state's 60 District Court divisions.

From 1998 to 2006, I was a Judge of the Massachusetts Superior Court (appointed). A Superior Court Judge has jurisdiction over criminal felony cases and all civil filings with a claim for damages over $25,000. As a Superior Court Justice, I tried 40 to 50 civil and criminal cases per year.

From 2006 to present, I have been a United States Magistrate Judge for the United States District Court for the District of Massachusetts, Worcester Division (appointed). As a Magistrate Judge, I manage and try civil cases with the consent of the parties (jury and non-jury), and am responsible for the initiation and management of criminal felonies, not including trial, and all aspects of criminal misdemeanors.

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

My best estimate is that I have tried between 1300 to 1500 cases in my years as a trial judge.

i. Of these, approximately what percent were:

jury trials:	40%
bench trials:	60%
civil proceedings:	40%
criminal proceedings:	60%

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. *Commonwealth v. Morgan*, Docket No. 99-2506, Hampden Superior Court

This was a two week first degree murder trial that took place in November 2002. The victim was kidnapped and executed by the Defendant for allegedly robbing the Defendant's drug "stash." The Defendant made a series of inculpatory statements to third parties that were admitted at trial. I presided over the trial and heard and ruled on Defendant's Motion for a New Trial. The case was affirmed by the Massachusetts Supreme Judicial Court and reported at *Commonwealth v. Morgan*, 449 Mass. 343 (2007). Opinion supplied.

Counsel:

For the Commonwealth: Calvin Carr, Esq., Hamden County District Attorney's Office, 50 State Street, Springfield, MA 01102; 413-747-1000

For the Defendant: Linda Thompson, Esq., Thompson & Thompson, PCC, 1331 Main Street, Springfield, MA 01103; 413-739-2100

2. *Commonwealth v. Laguer*, Docket No. 83-103391, Worcester Superior Court

The Defendant was convicted in 1983 for brutally raping his next door neighbor. Her testimony at trial, the clothing that she was wearing, and a pair of socks were the only connections between the Defendant and the crime scene. Between 1983 and 2001 his conviction was affirmed by the Massachusetts Appeals Court and Massachusetts Supreme Judicial Court. I presided over the Defendant's Motion for DNA Testing filed in 2001. It took over 15 months to establish a testing protocol and the resulting Order has become a template for a contested DNA testing. After the testing was completed, I ruled on the Defendant's Motion for a New Trial. The denial of that motion was affirmed by the Massachusetts Supreme Judicial Court and reported at *Commonwealth v. Laguer*, 448 Mass. 585 (2007). Opinion supplied.

Counsel:

For the Commonwealth: Sandra L. Hautanen, Esq., District Attorney's Office, 2 Main Street, Worcester, MA 01608; 508-755-8601

For the Defendant: David M. Siegel, Esq. (DNA Testing Only), New England School of Law, 154 Stuart Street, Boston, MA 02116; 617-422-7270

For the Defendant: James C. Rehnquist, Esq., (Motion for a New Trial only) Goodwin & Proctor LLP, Exchange Place, Boston, MA 02109; 617-570-1000

3. *Gath v. M/A-COM, Inc.*, Docket No. 98-6221, Middlesex Superior Court

The Plaintiff was seriously injured when knocked off of his bicycle by an unsecured metal gate at the Defendant's premises. Shortly after the accident, the Defendants destroyed the gate. This was a two week civil trial with a jury verdict for the Plaintiff in the amount of $14,250,000. I was the trial judge and heard the Motion for New Trial, which I denied. The verdict was affirmed by the Massachusetts Supreme Judicial Court and reported at *Gath v. M/A-Com, Inc.*, 440 Mass. 482 (2003). This is a leading Massachusetts case on spoliation of evidence and improper closing argument. Opinion supplied.

Counsel:

For the Plaintiff: Frederic N. Halstrom, Esq., 132 Boylston Street, P.O. Box 121203, Boston, MA 02112; 617-262-1060

For the Defendant: James S. Franchek, Esq., Franchek Law, LLC, 92 State Street, Boston, MA 02109; 617-573-0020

4. *Commonwealth v. Barnes and Levesque*, Docket Nos. 2000-0073 (1-6) and 2000-0074 (1-6), Worcester Superior Court

   This was the "Worcester Fire Case" where six firefighters died fighting a fire in a cold-storage warehouse. The Defendants were two mentally challenged homeless adults who were charged with manslaughter for their role in starting, but not reporting the fire. I allowed the Defendants' Motion to Dismiss which was based upon the insufficiency of evidence before the Grand Jury. My decision was overturned by the Massachusetts Supreme Judicial Court and reported at *Commonwealth v. Levesque*, 436 Mass. 443 (2002). Thereafter, the case was continued without a plea or finding with the assent of the District Attorney's office. This case set the standard for establishing criminal liability for failing to report a dangerous condition. Opinion supplied.

   Counsel:

   For the Commonwealth: Lawrence J. Murphy, Esq., District Attorney's Office, 2 Main Street, Worcester, MA 01608; 508-755-8601

   For the Defendant: Thomas Levesque: Edward Ryan, Jr., Esq., O'Connor and Ryan, P.C., 61 Academy Street, Fitchburg, MA 01420; 978-345-4166

   For the Defendant: Julie Barnes: Louis P. Aloise, Esq., Aloise & Wilcox, P.C., One Exchange Place, Worcester, MA 01608; 508-755-8118

5. *Modestino, Admx. v. Levine, et al.*, Docket No. 96-01590, Worcester Superior Court

   I was the trial judge on this two and one-half week civil trial. The Plaintiff's testate/son was a hemophiliac who died from AIDS when blood he was transfused with was infected with the HIV virus. This was one of the first cases in the country that was tried by a jury on the issue of liability for infecting a blood transfusion patient with the HIV virus. After two and one-half weeks of trial and one week of deliberations, the jury found for the Defendants.

   Counsel:

   For the Plaintiff: Bruce A. Bierhans, Esq., 294 Pleasant Street, Stoughton, MA 02072; 781-297-0005

   For the Defendant: Levine: Peter C. Knight, Esq., Morrison Mahoney LLP, 250 Summer Street, Boston, MA 02210; 617-439-7514

   For the Defendant Brettler: Claudia A. Hunter, Esq., Hunter & Bobit, P.C., 83 Atlantic Avenue, Boston, MA 02110; 617-371-1440

6. *Commonwealth v. Boyarsky*, Docket No. 2003-555, Worcester Superior Court

This was a first degree murder trial that took place in September of 2005. The Defendant broke into his neighbors' apartment and bludgeoned her to death with a baseball bat. There was considerable forensic evidence and a contested confession. I presided over the trial and ruled on the Defendant's Motion to Suppress his confession, which I denied. The case was affirmed by the Massachusetts Supreme Judicial Court and reported at *Commonwealth v. Boyarsky*, 452 Mass. 700 (2008). Opinion supplied.

Counsel:

For the Commonwealth: Thomas Landry, Esq., Worcester County District Attorney's Office, 225 Main Street, Room G-301, Worcester, MA 01608; 508-755-8601

For the Defendant: Brian Buckley, Esq., Fletcher, Tilton, and Whipple Attorneys at Law, 370 Main Street, 12th Floor, Worcester, MA 01608; 508-459-8000

7. *Commonwealth v. Feynard*, Docket No. 2000-0463, Worcester Superior Court

I was the trial judge in this drug trafficking case. I also denied the Defendant's Motion to Suppress, which ruling was affirmed by the Massachusetts Appeals Court and reported at *Commonwealth v. Feynard*, 62 Mass. App. Ct. 200, and by the Massachusetts Supreme Judicial Court and reported at *Commonwealth v. Feynard*, 445 Mass. 72 (2004). The Defendant was stopped for a motor vehicle offense and the police officer became suspicious because of the Defendant's evasive answers. The Defendant was ordered to remain at roadside until a drug sniffing dog could be delivered to the scene. That dog detected the odor of drugs from the car and the police searched, and found, a large amount of drugs inside of the car. The issue on appeal was whether the police could detain the Defendant while the dog was brought to the scene and whether there is an expectation of privacy in the odors coming from a vehicle. Opinion supplied.

Counsel:

For the Commonwealth: Peter Pratt, Esq., Worcester County District Attorney, 225 Main Street, Room G-301, Worcester, MA 01608; 508-775-8601

For the Defendant: Michael Hussey, Esq., 340 Main Street, Worcester, MA 01608; 508-368-1820

8. *Commonwealth v. Sok*, Docket No. MICR 199-153, Middlesex Superior Court

   This was a first degree murder case that took place in 2001. I presided over the trial and denied the Defendant's Motion for a New Trial. The case was affirmed by the Massachusetts Supreme Judicial Court and reported at *Commonwealth v. Sok*, 439 Mass. 428 (2003). The 15-year-old Defendant stabbed the victim to death over gang related issues. The Defendant moved to suppress his confession and physical evidence. There was a trial issue about how to admit evidence of gang involvement without unfairly prejudicing the jury. My cautionary instruction to the jury before, during, and after trial was affirmed by the Supreme Judicial Court.

   Counsel:

   For the Commonwealth: Mark Eichler, Middlesex County District Attorney's Office, 15 Commonwealth Avenue, Woburn, MA 01801; 617-679-4000

   For the Defendant: Paul D'Agostino, Esq., 449 Broadway, Everett, MA 02149; 617-381-1188.

9. *Butler v. Sigma-Aldrich, Inc.*, Docket No. 02-40238-TSH, United States District Court for the District of Massachusetts

   I was the trial judge in this personal injury case that was tried to a jury between May 1 and May 10, 2006. The Plaintiff was a research assistant at BASF Corporation in Worcester who accidentally sustained a "needle stick" injury, with an experimental serum that was contaminated. The two week trial resulted in a Defendant's verdict. There were significant trial issues regarding the authentication and admission of electronically stored documents, and whether emailed lab results were business records within the meaning of FRE 803(6).

   Counsel:

   For the Plaintiff: Elizabeth W. Morse, Esq., Tashjian, Simsarian & Wickstrom, 370 Main Street, Worcester, MA 01608; 508-756-1578

   For the Defendant: Joseph J. Leghorn, Esq., Nixon Peabody, LLP, 100 Summer Street, Boston, MA 02110; 617-345-1000

10. *Wachusett Potato Chip Co. v. Mohawk Beverage, Inc., et al.*, Docket No. 07-40029-TSH, United States District Court for the District of Massachusetts

    I was the trial judge on this jury trial that took place between September 20 and 23, 2010. The Plaintiff sought payment for the delivery of goods over a course of conduct that spanned 15 years. Neither party kept accurate records,

and each attempted to prove/disprove damages through emails, letters, and how they 'ordinarily' did business. The jury found for the Plaintiff and awarded damages in the amount of $1,169,098.94. This case is pending on appeal.

Counsel:

For the Plaintiff: James Galliher, Esq., Bonville & Howard, 154 Prichard Street, Fitchburg, MA 01420; 978-345-4144

For the Defendant: John J. Curley, III Esq., McEvilly & Curley, 48 West Street, Leominster, MA 01453; 978-534-3556

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. *Commonwealth v. Druce*, Docket No. 03-1403, Worcester Superior Court. Opinion supplied.

   For the Commonwealth: Lawrence J. Murphy, District Attorney, 225 Main Street, Room G-301, Worcester, MA 01608; 508-755-8601

   For the Defendant: John H. Lachance, Esq., 5 Edgell Road, Framingham, MA 01701; 508-879-5730

2. *Commonwealth v. Laguer*, Docket No. 83-103391, Worcester Superior Court. Opinion supplied in response to 13(c).

   For the Commonwealth: Sandra L. Hautanen, Assistant District Attorney, 225 Main Street, Room G-301, Worcester, MA 01608; 508-755-8601

   For the Defendant: James C. Rehnquist, Esq., Goodwin Procter, LLP, 88 Exchange Place, Boston, MA; 617-570-1000

3. *Advanced Cell Technology, Inc. v. Infigen, Inc. (Defendant and Plaintiff in counterclaim) v. Advanced Cell Technology, Inc.(Defendant in counterclaim)*, Docket No. 01-0376C, Worcester Superior Court. Opinion supplied.

   For the Plaintiff: James C. Donnelly, Jr. Esq., Mirick O'Connell DeMallie & Lougee, LLP., 100 Front Street, Suite 17, Worcester, MA; 508-791-8500

   For the Defendant: Coleen Hennessey, Esq., Peabody & Arnold, Federal Reserve Plaza, 600 Atlantic Ave., Boston, MA 02210; 617-951-2100

4. *Commonwealth v. Feynard*, Docket No. 00-0463, Worcester Superior Court. Opinion supplied in response to 13(c).

   For the Commonwealth: Peter Pratt, Esq., Worcester County District Attorney, 225 Main Street, Room G-301, Worcester, MA 01608; 508-775-8601.

   For the Defendant: Eric Brandt, Esq. 44 Bromfield Street, Boston, MA 02108, 617-482-6212

5. *United States v. Kearney*, Docket No. 08-40022-FDS, United States District Court for the District of Massachusetts. Opinion supplied.

   For the Plaintiff: Karin M. Bell, United States Attorney's Office, 595 Main Street, Suite 206, Worcester, MA 01608; 508-368-0106

   For the Defendant: Stylianus Sinnis, Esq., Federal Public Defender Office-District of Massachusetts, 51 Sleeper Street, 5th Floor, Boston, MA 02210; 617-223-8080

6. *United States v. Wilkerson, et al.*, Docket No. 08-10345-DPW, United States District Court for the District of Massachusetts. Opinion supplied.

   For the United States: John T. McNeil, United States Attorney's Office, 1 Courthouse Way, Suite 9200, Boston, MA 02210; 617-748-3242

   For the Defendant Wilkerson: Max D. Stern, Esq., Stern, Shapiro, Weissberg, & Garin, 90 Canal Street, Boston, MA 02114; 617-742-5800

   For the Defendant Turner: Barry P. Wilson, Esq., 240 Commercial Street, Boston, MA 02109; 617-248-8979

7. *In Re Department of Justice Grand Jury Subpoenas to Company X*, Docket No. 08-MC-10253-PBS, United States District Court for the District of Massachusetts. Opinion supplied.

   For Petitioner the United States: Gregg D. Shapiro, Esq., Office of the United States Attorney, One Courthouse Way, Suite 9200, Boston, MA 02210; 617-748-3366

   For the Respondent Company X: Robert D. Keefe, Esq., Wilmer Hale, LLP, 60 State Street, Boston, MA; 617-526-6000

8. *Jodoin v. Baystate Health Systems, Inc. et al.*, Docket No. 08-40037-TSH. United States District Court for the District of Massachusetts. Opinion supplied.

   For the Plaintiff: Tyson R. Ence, Esq., Rosenberg Schapiro Englander Chicoine & Leggett, P.C., 44 School Street, Suite 800, Boston, MA 02108; 617-482-4455

   For the Defendant: Jay M. Presser, Esq., Skoler, Abbott & Presser, One Monarch Place, Suite 2000, Springfield, MA 01144; 413-737-4753

9. *Commonwealth v. Morgan*, Docket No. 99-2506, Hampden Superior Court. Opinion supplied in response to 13(c).

   For the Commonwealth: Calvin Carr, Esq., Hampden County District Attorney's Office, 50 State Street, Springfield, MA 01102; 413-747-1000

   For the Defendant: Linda Thompson, Esq., Thompson & Thompson, PCC, 1331 Main Street, Springfield, MA 01103; 413-739-2100

10. *Applewood Properties, Inc., et al. v. Signature Building Systems, Inc.*, Docket No. 07-40002-TSH, United States District Court for the District of Massachusetts. Opinion supplied.

    For the Plaintiff: John S. Day, Esq., 185 Devonshire Street, Boston, MA 02110; 617-348-9380

    For the Defendant: Francis J. DiMento, Esq., DiMento & Sullivan, Seven Faneuil Hall Marketplace, Boston, MA 02109; 617-523-2345

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.

   Commonwealth v. Zanetti, 454 Mass. 449 (2009)
   Reversal of jury verdict for failure to grant Defendant's Motion for Required Finding of Not Guilty at close of Government's case.

   Commonwealth v. Naylor, 73 Mass. App. Ct. 518 (2009)
   Reversal of jury verdict due to ineffective assistance of trial counsel.

Mohamad v. Kavlakian, 69 Mass. App. Ct. 261 (2007)
A creditor brought civil contempt proceedings against mortgagees. I dismissed the complaint against two of the mortgagees. The Massachusetts Appeals Ccourt reversed that dismissal.

MacDonald v. Paton, 57 Mass. App. Ct. 290 (2003)
The Town of Athol Selectman had brought a defamation action against the operator of a web site, newspaper, and others alleging that the web site had characterized him as a nazi. The web site operator brought a Motion to Dismiss, which I denied. That denial was reversed by the Massachusetts Appeals Court.

Commonwealth v. Desrosier, 56 Mass. App. Ct. 348 (2002)
The Defendant pled guilty to second degree murder before another judge and moved to withdraw his plea. I granted the motion on the grounds that the record did not support that his plea was made freely and voluntarily. The granting of that motion was reversed.

Commonwealth v. Levesque, 436 Mass. 443 (2003)
The Defendants were two mentally challenged homeless adults who were charged with manslaughter for their role in starting, but not reporting a fatal fire. I allowed the Defendants' Motion to Dismiss, which was based upon the insufficiency of evidence before the Grand Jury. My decision (supplied in response to Question 13c) was overturned by the Massachusetts Supreme Judicial Court.

Commonwealth v. Kwiatkowski, 418 Mass. 543 (1994)
After a trial before me, the Defendant was convicted of stalking and violation of a domestic restraining order. The Massachusetts Supreme Court reversed the conviction ruling that the statute was unconstitutionally vague.

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.

Most of my opinions are unpublished. During my time in the Massachusetts Trial Court, I wrote several hundred opinions. Only a very small percentage of those opinions were published. Since my appointment as a Magistrate Judge in 2006, I have written over 300 opinions; only a handful has been published. The unpublished opinions are docketed by the clerk's office and I have electronic copies.

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.

Commonwealth v. Sliech-Brodeur, 457 Mass. 300 (2010). My opinion is found in Hampden County Superior Court docket 04-1164 and is supplied.

Commonwealth v. Boyarsky, 452 Mass. 700 (2008). My opinion is found in Worcester Superior Court docket 03-555 and is supplied in response to 13(c).

Commonwealth v. Laguer, 448 Mass. 585 (2007). My opinion is found in Worcester County Superior Court docket 83-103391 and is supplied in response to 13(c).

Commonwealth v. Feynard, 445 Mass. 72 (2005). My opinion is found in Worcester County Superior Court docket 00-0463 and is supplied in response to 13(c).

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 assess recusal in accordance with 28 U.S.C. § 455 (2006). The Massachusetts District Court does not have an automatic recusal system. We do have a Conflict Checking Feature in our CM/ECF (our case management system) which alerts me if I have a potential conflict with someone or some entity that is a party in a newly filed case assigned to me.

During my time in the Massachusetts Trial Court I assessed recusal in accordance with Massachusetts Supreme Judicial Court Rule 3:09 (The Code of Judicial Conduct).

I recused sua sponte in the following cases:

Mulvey v. Judge Timothy S. Hillman, et al., Civil Action No. 08-40022, United States District Court for the District of Massachusetts, Worcester Division. The Plaintiff was a criminal defendant who sued me seeking civil relief while the criminal case was still pending before me. The civil case was drawn to me randomly. The court clerk's office entered an Order of Recusal on my order and the civil case was redrawn to another judge.

Castillo v. O'Brien, Civil Action No. 05-40040, United States District Court for the District of Massachusetts, Worcester Division. This case was referred to me by District Judge Saylor for a Report and Recommendation on Mr. Castillo's petition for a Writ of Habeas Corpus. Mr. Castillo had been convicted in a state criminal proceeding. As I began researching the case, I discovered that I had ruled on a number of motions in the case during my tenure as a State Superior Court Judge. I entered an Order of Recusal setting forth the above grounds as reason for recusal and had that order docketed in the case.

Commonwealth v. Laguer, Docket No. 83-103391, Worcester Superior Court. I did not recuse myself in the case of *Commonwealth v. Laguer*. Early in the proceedings, the Government advised that the victim's daughter consulted my law firm, but did not hire us, to help probate her father's estate. I did not feel that a conflict existed but did conduct a thorough colloquy on the record with both the Assistant District Attorney in charge of the case and the Defendant.

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.

City Solicitor, City of Gardner (1989 – 1990); appointed by Mayor Charles Manca

Town Counsel, Town of Petersham (1988 – 1990); appointed by Board of Selectmen

Town Counsel, Town of Athol (1988 – 1990); appointed by Board of Selectmen

Town Counsel, Town of Lunenburg (1981 – 1990); appointed by Board of Selectmen

City Solicitor, City of Fitchburg (1979 – 1990); appointed by Mayors David Gilmartin, Bernard Chartrand, Ronald Ingemie, and Jeffrey Bean

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 did not serve as a clerk to a judge.

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

1975 – 1988
Timothy S. Hillman, Attorney & Counselor at Law
341 Main Street
Fitchburg, Massachusetts 01420

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.

1974 – 1975
Murphy and Pusateri
410 Main Street
Fitchburg, Massachusetts 01420
Staff Attorney

1975 – 1977
Worcester County District Attorney's Office
1 Main Street
Worcester, Massachusetts 01608
Assistant District Attorney

1976 – 1988
Timothy S. Hillman, Attorney & Counselor at Law
341 Main Street
Fitchburg, Massachusetts 01420
Attorney

1979 – 1990
City of Fitchburg
City Hall
718 Main Street
Fitchburg, Massachusetts 01420
City Solicitor

1981 – 1990
Town of Lunenburg
Town Hall
17 Main Street
Lunenburg, Massachusetts 01462
Town Counsel

1988 – 1990
Hillman & Haley, Attorneys at Law
341 Main Street
Fitchburg, Massachusetts 01420
Attorney

1988 – 1990
Town of Athol
Town Hall
584 Main Street
Athol, Massachusetts 01331
Town Counsel

1988 – 1990
Town of Petersham
Town Hall
Main Street
Petersham, Massachusetts 01366
Town Counsel

1989 – 1990
City of Gardner
City Hall
95 Pleasant Street
Gardner, Massachusetts 01440
City Solicitor

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

I did not so serve 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.

My law practice was a general practice with a concentration on municipal law and civil and criminal trials. From 1975 to 1977, I was an Assistant District Attorney and was permitted to have a limited private practice. My law practice centered around drafting wills, representing clients in real estate transactions, and representing plaintiffs in motor torts. After I left the D.A.'s office in 1977 and until 1988 I represented criminal defendants and my private practice was expanded to include the representation of the municipalities listed above. As town counsel or city solicitor I represented the municipalities in court, gave legal advise to their boards and elected officials, and drafted and reviewed legal documents.

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

While serving as an Assistant District Attorney, I prosecuted criminal cases in Worcester County. After leaving the D.A.'s office in 1977, I represented criminal defendants and plaintiffs in tort cases. In 1977, I became the City Solicitor for the City of Fitchburg. Thereafter, my practice slowly became more focused on municipal law, and eventually my typical clients were municipalities. Within the municipal law specialty, I developed an expertise in representing cities and towns on trial matters. In addition, I continued to represent criminal defendants and plaintiffs in tort cases.

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 primarily devoted to litigation. I was frequently in court.

i. Indicate the percentage of your practice in:
   1. federal courts: 10%
   2. state courts of record: 75%
   3. other courts: 0%
   4. administrative agencies: 15%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 65%
   2. criminal proceedings: 35%

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

I estimate that I tried 300 to 400 cases to verdict, judgment or final decision. I was chief counsel in all cases.

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.

I have tried to answer this question as accurately as possible, but because of the passage of time since I was in private practice, I have been unable to compile a complete list or to access the records of some of these cases.

1. *Rushia v. Town of Ashburnham*, Docket No. 82-1628, United States District Court for the District of Massachusetts, Honorable Walter J. Skinner (deceased); *aff'd*, 701 F.2d 7 (1st Cir. 1983)

   I was trial and appellate counsel for the Town of Ashburnham in 1982. The town passed a by-law (the Public Display to Minors By-law) seeking to keep allegedly pornographic magazines off of the shelves of the towns stores, but still available for sale. The Plaintiff sued the town seeking declaratory and injunctive relief, alleging that by-law was unconstitutional. After trial, judgment for Defendant was affirmed by the Court of Appeals for the First Circuit.

   For the Plaintiff: Darragh K. Kasakoff, Attorney at Law, 339 Main Street, Worcester, MA 01608; 508-757-7721

2. *Commonwealth v. Thompson*, Docket No. 88-1343, Gardner District Court/ Fitchburg District Court, Honorable Martha Brennan

   The Defendant drove a car that was involved in a fatal accident when he unsuccessfully tried to pass a car on a state highway. I defended Mr. Thompson at trial on charges of vehicular homicide in 1989-1990. He was found not guilty of vehicular homicide. There were significant forensic and engineering/accident reconstruction issues at trial.

   Counsel:

   For the Commonwealth of Massachusetts: Assistant District Attorney Mark Noonan, Attorney at Law (now Honorable Mark Noonan, Leominster District Court), 25 School Street, Leominster MA 01453; 978-537-9797

3. *Anderson, Administratrix v. Blanchette, et al.*, Docket No. 82-2647, United States District Court for the District of Massachusetts, Honorable Mark Wolf

   I was trial counsel for the Defendant City of Fitchburg in this case. The Plaintiff's estate sued the city seeking damages for his death from a police shooting during a breaking and entering into the Fitchburg Art Museum. The case was tried for approximately seven days before being settled. The Plaintiff and another had broken into the Fitchburg Art Museum after hours and had tripped the alarm. The police responded, and during a search of the building surprised the Plaintiff who made a sudden movement. That movement caused the police to shoot him fatally.

Counsel:

For the Plaintiff: David Casey, Attorney at Law, One International Place, Boston, MA 02110; 617-921-8257

For the Defendant: Chief Francis Roddy, Austin Joyce, Attorney at Law, Reardon Joyce, & Ackerson, PC, 4 Lancaster Terrace, Worcester, MA 01609; 508-754-7285

4. *Moss v. Wyman et al.*, Docket No. WOCV 1988-2630, Commonwealth of Massachusetts, Worcester Superior Court, Honorable Daniel Ford

I was counsel for the Plaintiff who sued the Town of Barre's Zoning Board of Appeals after denial of his request for a variance/special permit under the town's Zoning By-law. The Plaintiff had lived in a trailer in the town of Barre, Massachusetts for over 25 years. The town felt that use was not permitted under the Zoning By-law and began enforcement proceedings. The Plaintiff sought a variance from the by-law which was denied by the Zoning Board of Appeals. I represented the Plaintiff before the Board and filed an appeal of the denial to the Worcester Superior Court. The denial was overturned by Superior Court Judge Daniel Ford. This case was tried in 1989.

Counsel:

For the Defendant: Town of Barre Zoning Board of Appeals, Honorable Charles B. Swartwood, c/o JAMS, One Beacon Street, Boston, MA 02108; 617-565-4662

5. *United States v. Savolis*, Docket No. 5:81CR49, United States District Court for the District of Vermont, Rutland Division, Honorable James Holden (deceased)

I was counsel for Defendant Savolis, who was charged with conspiracy to import and distribute marijuana into Vermont from Columbia, South America. He was alleged to have procured marijuana in Columbia and organized its importation via airplane into the United States. I represented Mr. Savolis during all phases of the case, including discovery, motions to suppress, and trial. The Defendant was acquitted after a five week trial. The trial took place in 1983 to the best of my recollection.

Counsel:

For the Government: Gerald O'Neill, District of Vermont, United States Attorney's Office, United States Courthouse and Federal Building, Post Office Box 10, Rutland, VT 05701; 902-773-0231

The only other counsel for whom I have contact information is counsel for Defendant Ames: Jeffrey Denner, Attorney at Law, 4 Longfellow Place, Boston, MA 02114; 617-227-2800

6. *United States v. Peterson*, Docket No. 8848 CR 1394, Commonwealth of Massachusetts-Ayer District Court/Lowell District Court, Honorable Neil Colicchio (deceased)

I was counsel for Defendant Peterson, who was charged with motor vehicle homicide. Ms. Petersen was a high school student who was driving friends home from a party. Her front tire blew out and two of her friends died. I represented her at all stages of the proceedings from arraignment to trial. After a four day trial the Defendant was acquitted. The trial took place in 1989.

Counsel:

For the Commonwealth of Massachusetts: Joseph Shields, Middlesex County District Attorney's Office, 615 Concord Street, Framingham, MA 01702; 508-820-2939

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.)

Information Technology project
From 2002 to 2004, I was Project Executive for the Massachusetts Trial Court Information Technology project and was responsible for the procurement and implementation of the statewide, integrated case management and docketing system for all levels of the Massachusetts Trial Court system.

RESTART Reentry Court
In 2008, in partnership with the United States Probation Office, I established a federal Reentry Court program (RESTART) for high risk, ex-offenders who have recently been released from prison. The goal of RESTART is to reduce recidivism, and to successfully reintegrate ex-offenders into the community with an emphasis on employment skills. RESTART has been in operation for over two years and is becoming a national model for reentry courts.

Co-Chair of the Chambers Functional Requirements Group
In April of 2009, I was appointed as the national co-chair of a group of judges and courtroom support staff who are responsible for the design and implementation of the next generation of the federal courts' case management and electronic filing system. The

project is expected to last for four years and as a co-chair I manage and direct over 40 judges, courtroom staff, and technical staff.

Pro se Mediation Panel
In March 2010, Chief Magistrate Judge Judith Dein and I, in collaboration with the Federal Bar Association, established a panel of volunteer attorneys to represent pro se parties in civil case mediations. Over 10% of the civil litigants in the Massachusetts federal court are pro se and this program provides court appointed legal counsel for pro se litigants for court-involved mediations.

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

From 1999 through 2005, I taught a course on law and psychiatry at the Massachusetts School of Law in North Andover, Massachusetts. No syllabus is available. From 2002 through 2005, I taught a course on trial advocacy at Clark University in Worcester, Massachusetts. No syllabus is available.

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

I am the beneficiary of a non-vested contributory retirement plan from my years in the Massachusetts State Court System.

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

I have no 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 I am confirmed, I do not believe that any of my family members, other persons, parties, categories of litigation, or financial arrangements would likely present a potential conflict of interest. I have been a United States Magistrate Judge since 2006, and was a judge of the Massachusetts Trial Court before that. As a Magistrate Judge I am subject to the Code of Conduct for United States Judges and as a Massachusetts Trial Court judge I was subject to the Code of Judicial Conduct (Massachusetts Supreme Judicial Court Rule 3:09).

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

I have listed my wife, brother, children, nieces, and nephews, and their employers in the Judge Conflict/Exclusion List Report function in the court's case management and electronic filing system. That system sends me an alert if any of the listed are named as a party in any of my cases. To date, no one has been so named. I also review the notices of case assignment and referral to ensure that no conflict arises which is not flagged by the conflict database. If confirmed, I will continue to follow the federal recusal statute and Code of Conduct for Federal Judges. If necessary I will seek advice from the Code of Conduct Committee of the Judicial Conference. I have erred, and always will err, on the side of caution.

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.

Our court sponsors legal mentoring programs for disadvantaged high school and college students. The students are assigned to a judge for the months of June and July, and are part of the chambers staff for that period of time.

Our court also sponsors a robust legal education program for inner city youths. This program relies on judicial involvement and coaching for mock trials and judicial lectures. I assist my wife, who is the coach of the Lunenburg High School Mock Trial team, with any technical questions which arise during her preparation for their competitions.

While in private practice I was responsible for the Northern Worcester County Bar Association's annual holiday public service program. We developed a program to distribute holiday packages to the working poor, i.e., those families that did not qualify for public assistance but that were having trouble making ends meet. The families were identified by social service agencies and we distributed toys, food, oil vouchers, and other winter necessities.

26. **Selection Process**:

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

In January of 2011, Judge Nancy Gertner announced that she was taking Senior status, and her vacancy was announced in the early Spring of 2011. Senator John Kerry appointed a committee to screen candidates for that vacancy. On April 27, 2011, I submitted the Preliminary Screening Application and Questionnaire for Judicial Candidates to the Committee. On June 16, 2011, I was interviewed by the Committee. I was informed thereafter that the Screening Committee had recommended me for further consideration. On July 27, 2011, I was interviewed by Senators Kerry and Brown. On August 4, 2011, I was notified by the Senators that they were recommending me to the White House for appointment.

Since August 11, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 23, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. 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
Hillman, Timothy S.	United States District Court - 1st Circuit	11/30/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Court Judge	**5a. Report Type (check appropriate type)** ☑ Nomination, Date 11/30/2011 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 1/1/2010 to 11/30/2011
7. Chambers or Office Address Donohue Federal Building 595 Main Street Worcester, MA 01608	**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 Hillman, Timothy S.	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.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2010	Lunenburg High School Teacher Salary
2.	2011	Lunenburg High School Teacher Salary
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Hillman, Timothy S.	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.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Hillman, Timothy S.	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). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. Income during reporting period (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. Gross value at end of reporting period (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Fidelity Fund	B	Dividend	K	T	Exempt				
2. Fidelity Growth Company Fund	B	Dividend	K	T					
3. Active Small Cap Stock Portfolio	A	Dividend	K	T					
4. State Street Daily Mutual Alpha S/LT	A	Dividend	J	T					
5. Workers Credit Union Checking & Savings	A	Interest	L	T					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes (See Columns B1 and D4): A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000; I =$15,000 or less; J =$15,001 - $50,000; K =$50,001 - $100,000; L =$100,001 - $250,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3): 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 5 of 6	Name of Person Reporting Hillman, Timothy S.	Date of Report 11/30/2011

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Hillman, Timothy S.	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		43	192	Notes payable to banks-secured (auto)		15	963
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		16	003
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		213	246
Real estate owned-add schedule		435	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		32	000	Education loan		6	819
Cash value-life insurance							
Other assets itemize:							
Mass. Deferred Compensation Plan		68	562				
Federal Thrift Savings Plan		1	467				
				Total liabilities		252	031
				Net Worth		328	190
Total Assets		580	221	Total liabilities and net worth		580	221
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 400,000
Vacation home (25% interest)	35,000
Total Real Estate Owned	$ 435,000

AFFIDAVIT

I, Timothy S. Hillman, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/30/2011
(DATE)

(NAME)

Sandra I. Burgos
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
MY COMM. EXPIRES June 13, 2014

(NOTARY)

Senator COONS. Thank you very much. If I might then begin our first round of questions.

I would be grateful if, in order, you would simply describe your judicial philosophy and your approach to the use of precedent in the making of decisions.

Mr. HELMICK. Thank you, Senator. I gather you would like me to begin.

Senator COONS. Yes, please.

Mr. HELMICK. Very good. I guess I'd indicate first that my view of what judges should do fundamentally is settle disputes about the party and they should settle them in a fashion that precedent predicts. So that every party, at the end of a decision that has been made by a district court judge, can look at the case and know that they were treated just like other parties who are similarly situated, without concern or bias or prejudice or emotion on the part of the judge.

And if a judge comes to a case fairly and openly, with patience and humility, then they are serving their role and their function, as well.

I mentioned precedent at the start of my answer, and I'd indicate that precedent is everything, particularly for a district court judge at that level. In that way can parties and future potential parties to litigation know what results they can expect given the facts in their case versus others who have been similarly situated in the past.

Thank you.

Senator COONS. Thank you very much.

Ms. LEWIS.. I certainly agree with my fellow nominee. I believe the role of the judge is to determine what the applicable law is based upon the precedents and to apply those precedents fairly and impartially, without regard to any improper consideration, and to do that in a way that is respectful and courteous to everyone in the courtroom.

Senator COONS. Thank you, Ms. Lewis.

Judge Hillman.

Judge HILLMAN. Thank you, Senator. I would echo what my colleagues have said. In my over 20 years of experience on the bench, I hope that my philosophy has evolved to one of being fair and having my decisions rendered expeditiously. The litigants deserve nothing less than getting those decisions as quickly as we can get them done, provided that we take our time and do it correctly.

The only other thing I would like to add as part of my philosophy is respect, and that is not only respect for myself, but respect for the litigants, respect for the lawyers, and, most importantly, for the process.

As far as the stare decisis, I intend to obviously follow the law as it is enacted by Congress and the interpretations that are given by the appellate courts and the Supreme Court.

Senator COONS. That was a particularly articulate trio of responses.

And next, if you would, just turn to a question that you heard me ask previously of Judge Shwartz about the appropriate role of a court in interpreting the laws as written and enacted by an elected legislative body.

Mr. HELMICK. Thank you again, Mr. Chairman, for that question.

I would say first that it's a limited role. It's a fixed role. As we all know, matters passed by the Congress are presumed to be constitutional.

With regard to any laws that come before the court, the court's scrutiny should be limited and strict, and interpretations should be based upon prior precedent, which would begin with the Supreme Court and then, for my State of Ohio, the sixth circuit, as well, and that that must be followed whenever a statute is reviewed or a determination is made regarding the propriety of a statute.

Thank you.

Senator COONS. Thank you, Mr. Helmick.

Ms. Lewis.

Ms. LEWIS.. And I certainly would agree with that, as well. I think when you're dealing with an act of Congress, it's presumed to be constitutional. If you need to—if you cannot tell from the text of the act or the statute what is meant in a way that you can resolve a dispute, then you do have to go and look to precedent to decide how to interpret that.

For me, that would be the United States Supreme Court and the fourth circuit court of appeals, and that's what I would do.

Senator COONS. Thank you, Ms. Lewis.

Judge Hillman and I believe you have had some experience with this.

Judge HILLMAN. Thank you, Senator. And, actually, I just have to echo what my colleagues said and I don't have a lot to add to it. The substantial deference, enormous deference that is due to the legislative acts is only tempered by any interpretative cases in the circuit courts or in the United States Supreme Court.

Senator COONS. Thank you, Judge Hillman.

I will now defer to Senator Grassley.

Senator GRASSLEY. Thank you each for your willingness to serve. I am going to start with Mr. Helmick.

You have made some arguments in court, there representing terrorism. There is some concern that you may believe terrorism cases are less serious than other criminal cases, and that, in turn, causes some concern about how you would handle terrorism cases that may come before you.

A pretty simple question. Do you believe the U.S. is at war with terrorists?

Mr. HELMICK. Yes, Senator, I do.

Senator GRASSLEY. Do you believe terrorists pose a danger to Americans?

Mr. HELMICK. Yes, Senator, I do.

Senator GRASSLEY. When you were representing Wassim Mazloum—and you know he was convicted by a jury of conspiracy to kill U.S. troops overseas and providing material support for terrorists.

According to the sentencing guidelines, Mazloum deserved life in prison, but he received only an 8-year sentence.

Do you believe that that was an appropriate sentence?

Mr. HELMICK. Senator, I don't know that I have an opinion about what an appropriate sentence should be. You're exactly correct, the advisory guideline range was life. I did not ask for a sentence. I

think, technically, Senator, it was 8 years and 4 months, 100 months. I did not ask for a specific sentence.

I merely advocated on behalf of my client in arguing that perhaps the life sentence that was called for in the advisory sentencing guidelines was too severe or too harsh.

It was the district court judge that chose that sentence. And I might add, Senator, that that sentence is on appeal now by cross-appeal by the government before the United States Court of Appeals for the Sixth Circuit and will be argued this spring.

So the government does have a remedy with their dissatisfaction as a result of that sentence, but I did not choose that sentence nor did I ask for it, sir.

Senator GRASSLEY. In reviewing the dockets where you defended terrorists on capital murders, it looks like you are frequently accusing the government of, "outrageous conduct."

It leads me to believe that you regularly employ a defense strategy—if you cannot win on facts, attack the government.

Do you believe you will be able to make the transition from defense attorney to impartial judge?

Mr. HELMICK. Thank you for that question, Senator. Yes. I am very confident that I can do that. I should add, Senator—this may not change your perspective—many of those motions are form motions that are produced in capital cases and the like and we feel compelled or have a duty to file those motions so that the record is preserved.

As you know, they are routinely denied. But in order to protect the record, in many of those cases, it's necessary to file those motions in the event that there might be some change in constitutional precedent or law at a later time.

Senator GRASSLEY. As a prospective judge, would a government prosecutor appearing before you feel that they would be treated fairly and impartially?

Mr. HELMICK. Senator, I don't mean to seem immodest, but I think that every prosecutor with whom I've ever worked on the State or Federal level feels that I was fair as an adversary and that I would be fair as a judge, as well.

Senator GRASSLEY. In the year 2000, you faced disciplinary action for failing to comply with a court-issued subpoena. You refused to turn over an incriminating letter signed by your former client in the same case and you refused to appear before a grand jury.

The trial found you in contempt of court. You appealed the decision. Ultimately, the Supreme Court of Ohio held that you must comply with the subpoena, although they lifted your contempt citation.

The Supreme Court of Ohio stated that your concerns regarding the attorney-client privilege were not enough to, "override the public interest and maintain public safety in promoting administration of justice,"

Would you please give a short and direct answer as to why you refused to appear before the grand jury as ordered to do so by the trial court after it denied your motion to quash the subpoena?

Mr. HELMICK. Thank you, Senator. The shortest response that I can give would be that this was a case of first impression. There was no precedent in Ohio about what to do in such a case with re-

gard to such evidence; that I sought out the advice of a disciplinary counsel in Columbus, the Supreme Court of Ohio. He is the senior lawyer that is in charge.

He is the one that agreed that I should disclose the existence of a threat—excuse me—that I could disclose the existence of a threat and that I should. He agreed with my assessment. After I did that, I asked him, Senator Grassley, whether or not—what I should do with the letter and he told me "I don't know" was the response I got from the chief disciplinary counsel.

In reviewing the disciplinary rules in Ohio, Senator, the way that document came to me—I don't know how much you want me to go into this, sir. I don't want to cut into your time.

But the way that it came to me, it was classified as a client secret in Ohio, which is afforded the same protection as attorney-client privileged information and discussion and, as a result of that, I felt I had no choice but to challenge the matter.

The State of Ohio was on board with me. They did not ask that I be jailed or anything else for contempt. There was a fine imposed. The judge put a stay on the fine and I was given leave to appeal the matter to the higher courts.

As you mentioned, Senator, the court of appeals voted 3–0 in my favor in vacating the contempt citation. They lauded me on the way I handled the case and commended me for doing everything right in the case, and that was also true of the unanimous seven members of the Ohio Supreme Court who did the same thing.

It was for them, Senator, to reach the balancing test about whether or not, under those new unprecedented facts, I should actually turn over the letter. They voted 4–3 that I should. I respect that decision and I complied with it, sir.

Senator GRASSLEY. Following up on that, in your view, under what circumstances is it appropriate for the court to override the attorney-client relationship?

Mr. HELMICK. Senator, I only have experience, I suppose, in the case that I had. There are much more classic examples where it would have been easy for me to have made the decision.

For example, had I received the instrumentality of the crime for which the defendant was charged, Senator, the classic example would be a gun that someone brings to you and says, "Here, I have this. This is what I used to shoot someone," the law is clear that I have to turn over that evidence at that time.

This was somewhat different. The State only knew about the letter because I chose to disclose the threat in order to protect their witness. And I moved quickly, Senator, in calling the disciplinary counsel. It was only a matter of a few hours from the time I was given the letter until I spoke with the detective in the case.

He was able to get the man, David Morris, and his family and move them to a safe house.

Senator GRASSLEY. Thank you for your answers.

Do not feel bad, Mr. Hillman, if I do not ask you questions. I am going to ask Ms. Lewis questions.

Do you want me to go ahead?

Senator COONS. Yes. Then I may ask some.

Senator GRASSLEY. I want to ask you about the experience you have and give you a chance to respond to an article that was pub-

lished anonymously on a Website called fitsnews.com. That article questioned your qualification to be a district court judge. And, again, I want to stress that this was published anonymously.

I think it is only fair to give you an opportunity to respond. The article concludes that your work at your firm has been, "mostly ceremonial, cosmetic, superficial."

So I think it would be fair to let you address that.

Ms. LEWIS.. Thank you, Senator. I would like to address that. Obviously, we don't know who wrote that or why they would write such a thing. But I can tell you that I have a wealth of experience in this justice system. I have practiced law in it for almost 30 years. I have represented all different kinds of clients in all different kinds of cases, and I'm not talking wreck cases. I mean very complicated civil matters.

So that person, whoever wrote that, was not very familiar with my legal experience.

Senator GRASSLEY. Since you just stressed that you have a great deal of experience in civil, let me ask you about lack of experience then with criminal cases.

According to your questionnaire, your private practice has not included any criminal cases. Is there anything more that you can share with us about your legal background to ease concerns about your lack of criminal law experience?

Ms. LEWIS.. Thank you for that question, Senator. It's true. My practice has been exclusively civil. But I have moved, as I said in my last response, from one area of substantive law to another frequently.

So I'm a pretty quick learner and I have taken the opportunity since my nomination to actually attend criminal trials and other proceedings that I might be called upon to preside over, if I'm fortunate enough to be confirmed. And, of course, criminal trials are very much like the civil trials that I've tried. The rules of evidence are the same.

I've also attended many sentencing proceedings, pleas, just the kinds of things that I would face as a district court judge. And I've even attended some seminars on the sentencing guidelines and stuff.

I want to assure you and really all the members of the Committee that I will be completely prepared for whatever matter comes before me, be it civil or criminal.

Senator GRASSLEY. In your Senate questionnaire, you indicate that you were involved in three cases your firm handled before the Supreme Court. In two of those cases, you indicate that you contributed briefs and preparation of oral argument. However, your name does not appear on any of the briefs submitted in the case.

You did not provide the third brief and my staff was unable to locate a copy of it. Could you please clarify or perhaps expand upon the role that you played in those cases?

Ms. LEWIS.. The role that I played in those cases is exactly as I explained in my questionnaire. And I'm not sure why you didn't get a copy of anything that I participated in, but I can check on that for you.

My role, I guess, as a young lawyer—and some of these cases did come across my desk as a young lawyer—I wasn't particularly con-

cerned about whether my name appeared on the brief. I think most people in the practice know that a lot of the work, a lot of the research, the writing, actually even framing the arguments, is done by some of the younger lawyers who may not share in the glory.

But I was asked to identify those in my questionnaire, and I did so.

Senator GRASSLEY. Thank you for that answer.

The next question—I do not want to imply that there is anything wrong with being politically involved, but I want to set that as a background for my next series of questions. And this will be the last questions I will have of you.

Both you and your husband have been active politically. You hosted a political fundraiser at your house for then Senator Biden, and you also have donated considerable sums to the Democratic candidates.

Moreover, you served as part of the transition team of Democratic Governor Jim Hodges, who also appointed you to various committees. And as I said, there is certainly nothing wrong with that, but political history may concern future litigants, should you be confirmed.

What is your view on the role of politics in the judicial decision-making process?

Ms. LEWIS.. Thank you, Senator. Politics has absolutely no role in what a judge does. If I'm fortunate enough to be confirmed, any political views of mine or anyone else's will have nothing to do with my decision-making.

I'm going to determine what the applicable law is according to the precedent and apply it to the facts that come before me, without regard to anything improper, including political views.

Senator GRASSLEY. I think you answered my next question with your last sentence. Well, I think you have answered the third question, as well. Thank you.

Ms. LEWIS.. Thank you.

Senator COONS. If I might, Ms. Lewis, just to follow-up on that sort of line of questioning. You have been a partner, if I am not mistaken, in Lewis & Babcock since 1987; is that correct?

Ms. LEWIS.. I believe that's correct, yes.

Senator COONS. And you have participated in the preparation and briefing of at least three cases that ultimately went to the Supreme Court. One of them is quite well known, I think, Lucas v. South Carolina Coastal Council.

Ms. LEWIS.. Yes.

Senator COONS. And it established that principled state land use law would constitute impermissible taking under the Fifth Amendment.

As someone who was very active in county government and land use law for a long time previously, that interested me.

What constraints, in your view, subject to that precedent, do localities face when seeking to impose conditions or extractions as a condition for approving development by a landowner? What are the constraints?

Ms. LEWIS.. Well, Senator, that's really—that's not a question that I really feel prepared to answer. The land regulation law that

we've done in our law firm has primarily been handled by my other partners. But I do know that it's an active area.

And if I were called upon to answer any of those questions, I would have to consult the Supreme Court precedent and the fourth circuit precedent to decide what to do.

Senator COONS. Thank you.

Mr. Helmick, the situation that Senator Grassley asked you about was one that was quite interesting to me, as well. You confronted an extremely serious ethical dilemma, one where, if I understand correctly, your client presented you with a letter that detailed an assassination plot to kill the remaining chief witness.

Could you just describe in a little more detail the balance you struck, because, obviously, it resulted in a contempt citation? So some may argue that you did not pursue the perfect case.

I thought you laid out how you struck the balance between attorney-client and public safety, but tell me in a little bit more detail how you struck that balance and what you learned from it and what you would apply to your role as a district court judge.

Mr. HELMICK. Thank you for that question, Senator, and a chance to clarify and expound upon what I talked about earlier.

I guess I'd indicate, in the first instance, the letter came to me from my investigator, an agent for me. The letter was not given to me by the client, but was actually intercepted from his mother.

That triggered the protection of the client secret doctrine in Ohio. When I got it, I immediately called my co-counsel together. We reviewed the letter. We determined that the threat was real and that it was serious.

I consulted the disciplinary rules at once. Ohio rules say that you may disclose, not "shall." And so I thought I had the authority to do it, and I also knew that I wanted to do it if I did have that authority, and that's when I called the chief disciplinary counsel for his advice and, again, he agreed both that I had the discretion and he agreed with my decision to exercise it.

I then called the judge at home that evening and advised her of the threat. She put me in touch with the detective and I advised him of the threat, and he moved, as I said, David Morris and his family over there.

What to do with the letter was a separate matter. The disciplinary counsel told me, "You're off the case, counselor." That's the one thing I do know for sure. When I said, again, "What should I do with the letter," "I don't know, but you're off the case."

I hadn't even got that far in terms of thinking through the process, but he said, "You've just effectively ratted out your client, Jeff, and, therefore, you need to take action to get off the case," and I did.

I was lauded by the local county prosecutor for bringing the threat to their attention. Then the next day I was served with a grand jury subpoena to produce the letter.

Again, I sought out the advice of counsel. Fortunately, it was a family member, a lawyer that's very good that's married to my cousin, because, obviously, no one was going to pay for me to go through this process, through the court of appeals and the Ohio Supreme Court in terms of legal fees and so forth.

And in meeting with him and reading the rules, it really looked like it was a client secret under Ohio law. The court of appeals disagreed. And so I felt that I had no choice at that point. In order to trigger review, I had to withhold the letter. Otherwise, I couldn't get a determination past the trial court.

The prosecutor's office wanted me to appeal and they wanted me to turn over the letter, but they understood the dilemma that it presented. And for them, had they chosen to proceed forward because I had not done what I had done, he got subsequent counsel, they would have moved to suppress the letter from the trial court, and that would have created a problem for them in terms of an issue with the trial court in that trial.

That client received new counsel. He went forward to trial without the letter. He was convicted and sentenced to death.

But the issue about what I should do with the letter still remained. The Ohio Supreme Court is the authority on discipline in Ohio. They set the rules, they make the rules, they make the changes. And I needed to get it there or at least through the intermediate appellate court.

They disagreed with the intermediate appellate court and said, "It is a client secret. Helmick was right." But then they had to decide what should we do in this case of first impression, and that's when they decided, on balance, that I should turn over the letter in a 4–3 decision.

Senator COONS. Thank you. And do I remember correctly? Did Senator Brown, in his introduction, specifically refer to a process in which Senators Portman and, I think before him, Voinovich specifically consulted with opposing counsel in coming up with a recommendation for you? Because I thought Senator Grassley had a fair question about someone who has been an engaged advocate, whether prosecution and defense counsel could expect equal treatment before you.

Mr. HELMICK. My understanding is that—and I don't know firsthand—but that they contacted prosecutors at the municipal, State and Federal level.

Senator COONS. Judge Hillman, if I might, you expressed in an article some time ago, I think it was in 1992, your opposition to mandatory sentencing. I would just be interested if you would answer one final question about the proper role of mandatory sentences in our criminal justice system and when they are helpful or unhelpful.

Judge HILLMAN. Well, thank you for that question, Senator. That was in 1992, and I have evolved a great deal. Those were the——

Senator COONS. I am familiar with having things taken out of context from one's previous writings.

Judge HILLMAN. Actually, it was not taken out of context. It was our first experience in Massachusetts with mandatory sentences, and all of the judges were being a little bit, I think, over-reactive, myself included.

I have since come around to the realization that the mandatory minimum sentences are a legitimate legislative function and I'm very comfortable dealing with them.

Senator COONS. Thank you very much, Your Honor.

I want to conclude today's hearing, if I might, simply by thanking each of the three of you for your long service in the bar, to the public in a variety of roles, both as volunteers, as court-appointed counsel, as leaders in your community, and to particularly thank your family, your friends, and your supporters who have been engaged in sustaining you through this process so far.

It is my hope we will be able to vote you out of Committee in advance, all of your nominations.

Thank you so much for appearing before this Committee today.

We will hold the record open for a week for those members of the Committee who were not able to join us today who may wish to submit further questions.

With that, this hearing is adjourned.

[Whereupon, at 4:04 p.m., the hearing was concluded.]

[Questions and answers and submissions follows.]

QUESTIONS AND ANSWERS

Responses of Timothy S. Hillman
Nominee to be United States District Judge for the District of Massachusetts
to the Written Questions of Senator Chuck Grassley

1. **A 2006 Worcester Telegram & Gazette article titled "Judge Hillman defends judiciary; Unpopular rulings protect rights," covered a speech you gave to the County Bar Association. According to the article, you said lawyers and judges are "slow moving targets" for critics on both ends of the political fence who have little regard for the rights of others and little understanding of the American Legal System.**

   a. Can you please explain what you meant by this?

   Response: As a trial judge for the past 22 years, I am sworn to dispense justice fairly and evenly without regard to the political, social, or philosophical leaning of the litigants. Because judges are bound to decide the cases before them according to the law, without regard to public opinion, they are naturally subject to discussion, speculation, and criticism.

2. **You have a long career as a judge in the state and now federal court system. what is the most difficult decision you have made?**

   Response: The decision to dismiss the charges in the "Worcester Six" fire case mentioned in Question 3 below.

3. **In a case that received significant media attention, you dismissed charges against two homeless individuals indicted in the "Worcester Six" incident, where a fire set by the defendants killed six firefighters. The Massachusetts Supreme Court later reversed your dismissal.**

   a. Can you explain your decision to dismiss the charges against these individuals?

   Response: The Defendants, two homeless adults, each of whom suffered from a severe intellectual disability, accidentally started a fire in an abandoned warehouse and failed to report it. The issue of whether individuals in their situation were liable for involuntary manslaughter was an open question of law in Massachusetts. Based upon the facts, the arguments of the parties, and the law as it existed in Massachusetts at the time, I found their conduct did not meet the legal standard for involuntary manslaughter and dismissed the case.

   b. In hindsight, what do you think of the Massachusetts Supreme Court's logic in overruling your decision?

   Response: As noted, this case presented a difficult and previously unresolved legal question. I made my decision based upon my best interpretation of the law

at the time, but the Massachusetts Supreme Judicial Court resolved the question differently. Although it differed from my own, the court's logic was reasonable. More importantly, because the Massachusetts Supreme Judicial Court is the highest authority interpreting Massachusetts law, its decision settled the previously open question and became binding precedent for me and other lower court judges in the state.

4. What is the most important attribute of a judge, and do you possess it?

Response: I believe that the most important attribute of a judge is respect. Respect for oneself, respect for the litigants and lawyers who appear before the court, and most importantly, respect for the laws as they are enacted by Congress and interpreted by the First Circuit and Supreme Court. I believe that 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: I believe that a judge should demonstrate patience, respect, and a willingness to learn. A judge must make every litigant feel that they have had a full and fair opportunity to have their case heard. Also, a judge should not be afraid to be educated by the parties about an issue in a case that is new or untested. I believe that 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, I am.

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 statutory interpretation, I would begin with the text of the statute. If the text were unclear or if no text were at issue, I would look to whether courts in other jurisdictions, both federal and state, had issued instructive opinions on the issue. I would also carefully research the legal principles involved to see if the First Circuit or Supreme Court had issued instructive opinions on similar issues, or if there were any parallels in other areas of the law. In addition, I would make sure that I had a command of the factual underpinnings that gave rise to the

issue. I would also ask the litigants to brief discrete aspects of the issue if I thought they would be of assistance.

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: The decisions of the First Circuit and the Supreme Court are binding precedent and I would apply the decision and not substitute my own judgment. It is not my role to substitute my judgment for that of a higher court.

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: In my 22 years as a trial judge, I have never declared a state or federal law unconstitutional. An inquiry into the constitutionality of a federal statute should be undertaken with the understanding that all statutes are entitled to a strong presumption that they are constitutional and are, if possible, to be interpreted in a manner that renders them constitutional.

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 I am fortunate enough to be confirmed, I intend to actively manage my caseload. I have learned during my 22 years as a trial judge that getting involved early in the life of the case is critical. I intend to meet with the litigants soon after the case is entered in court so that a realistic, but firm schedule can be entered. I also will schedule follow-up sessions with the litigants to make sure that they remain on task. In addition, the District of Massachusetts has a robust mediation program which is intended to facilitate case settlement, while lowering the expense to both the litigants and the court. I intend to strongly urge parties to participate in the court's mediation program.

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: In addition to the measures outlined in my answer to Question 10 above, I intend to take advantage of our court's technology to conduct telephonic and video hearings and conferences. As a magistrate judge, I have had the privilege of conducting pretrial proceedings for the District Judges on a substantial number of criminal and civil cases. It is extremely important to stay involved in the case to make sure that the parties are meeting their scheduling obligations and to maximize the opportunity to explore a non-trial resolution. The use of video and telephonic

conferences helps the court stay in contact with the litigants, control the case schedule and reduce expenses.

12. Please describe with particularity the process by which these questions were answered.

Response: I received these questions late in the day on February 22nd. I worked on them the evening of February 22nd and during the day on February 23rd. Late in the day of February 23rd, I forwarded my answers to the Department of Justice for review, together with a letter of transmittal to the Senate Judiciary Committee. On February 24th, I reviewed the draft with a Justice Department official before their submission.

13. Do these answers reflect your true and personal views?

Response: Yes they do.

Responses of Timothy S. Hillman
Nominee to be United States District Judge for the District of Massachusetts
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 decide my cases fairly and expeditiously. It is critical to promoting confidence in the judicial system that decisions be made promptly. In addition, my judicial philosophy is based upon respect. Respect for myself, respect for the litigants, and most importantly, respect for the law as enacted by Congress and as interpreted by the First Circuit and the Supreme 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: In my 22 years as a trial judge, I have strived to treat every litigant with respect and dignity. Judges must remember that what we do on a daily basis is oftentimes a monumental, life-changing event for the litigants. It is extremely important that all litigants who appear before me have been given an opportunity to fully present their position (and feel that they have had that opportunity), and that their cases be decided fairly and according to the law. These principles apply equally to all parties regardless of their beliefs, wealth, or other characteristics.

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 Judges are bound by their oath to follow the precedents established by the Circuit Courts and the Supreme Court. Any deviation from this standard is a violation of that oath.

Responses of Jeffrey J. Helmick
Nominee to be United States District Judge for the Northern District of Ohio
to the Written Questions of Senator Chuck Grassley

1. **In your Senate Questionnaire, and in Senator Brown's testimony, reference is made to former-Senator Voinovich's participation in recommending your nomination. You were nominated in May 2011, approximately six months following the election of Senator Portman. Did you have any interviews or meetings with Senator Portman, since he was elected to the Senate, prior to your nomination? If so, please update your Senate Questionnaire, question 26.a, to reflect those meetings.**

   Response: I did not have any interviews or meetings with Senator Portman prior to my nomination.

2. **During your hearing, I asked you about the terrorist you previously represented, Wassim Mazloum. You know that he was convicted by a jury of conspiracy to kill U.S. troops overseas and of providing material support to terrorists. Those are very serious crimes. According to the Sentencing Guidelines, Mazloum deserved life in prison. When asked if you believe that eight years was an appropriate sentence, you replied: "I don't know that I have an opinion about what an appropriate sentence should be." You represented this terrorist, should have known the facts of his case better than almost anyone—including the sentencing judge, sat through the sentencing hearing, and listened to the arguments made by the prosecutors.**

   a. **How is it the case that you do not have an opinion about what sentence is appropriate?**

      Response: I do not have an opinion because I do not feel it is my role as an advocate to opine about the appropriateness of the judge's sentencing decision for my client. The decision of what is an appropriate sentence is for the sentencing judge alone. My role as Mazloum's appointed counsel was that of an advocate. Since a sentence of life imprisonment is the most serious non-death sentence the law provides, it was my constitutional and ethical duty as his counsel to advocate for a lower sentence, provided it was supported under the law. The district court judge, James G. Carr, then a judge on the United States Foreign Intelligence Surveillance Court, made his sentencing decision after hearing evidence presented over the lengthy trial and chose the sentence he deemed appropriate.

   b. **What evidence or assurances can you provide the Committee that you have sufficient experience or judgment to determine appropriate sentences, should you be confirmed?**

      Response: For more than twenty years, I have been before judges at every level of the criminal justice system and have had the benefit of observing the processes

they undergo in determining an appropriate sentence. I believe I have learned much from that experience. Relatedly, many of my cases have been settled through negotiated pleas rather than trials. Accordingly, I have gained experience in what the government considers an appropriate sentence in a variety of cases.

In addition, if I were fortunate enough to be confirmed, I would have the federal sentencing guidelines to assist me in the determination of the appropriate sentence. Calculation of the correct guideline range is not only the first step in the sentencing process, but also provides the "starting point and initial benchmark" in determining an appropriate sentence. *Gall v. United States*, 552 U.S. 38, 49 (2007).

c. If confirmed, when you have less information before you than you had in the Mazloum case, what factors will you apply to determine an appropriate sentence?

Response: If I were confirmed, my role in the sentencing process as a judge would be very different from my role as an advocate in the Mazloum case. As a judge, I would rely upon information contained in the Presentence Report, the information and advice provided by the U.S. Probation Officer who prepared the report, and the relevant evidence and argument brought forth for consideration by the parties. I would then determine the legally appropriate sentence by applying the sentencing guidelines and the relevant statutes to the facts above.

3. In your response to my questions on the Mazloum case, you also stated that you did not ask for a specific sentence, but that you argued "that perhaps the life sentence that was called for in the advisory sentencing guidelines was too severe or too harsh."

a. Do you normally refrain from recommending a sentence? If not, why did you refrain from doing so in this case?

Response: Yes, I normally refrain from recommending a sentence.

b. What was the basis for arguing the life sentence that was called for in the advisory sentencing guidelines was too severe or too harsh?

Response: The basis for arguing that the life sentence was inappropriate in Mazloum's case was due to the individualized and comparative nature of his conduct. Mazloum was the last of the three defendants sentenced in the case. All three had an advisory guideline range of life imprisonment. Defendant Amawi, arguably the most culpable, had already received a sentence of 20 years. Defendant El-Hindi had already received a sentence of 12 years. Defendant Mazloum, compared to these two co-defendants, was less culpable because his contacts with the government's cooperating witness were fewer and shorter in duration, his actions were generally less egregious, and because he voluntarily

ceased any continued participation or activity in furtherance of the conspiracy months before arrests were made in the case. Under the circumstances, I had an ethical obligation to my client to argue that his comparatively less culpable conduct justified a sentence of less than life in prison.

c. Please clarify your use of the word "perhaps" in your hearing response. Was this word used in your argument to the court or did you make stronger arguments for leniency?

Response: While I do not recall any specific language I used at sentencing, I do recall making the argument that Mazloum was less culpable than the two co-defendants who had been previously sentenced due to his lesser contact with the government's cooperating witness, actions that were generally less egregious, and his voluntarily ceasing participation or activity in the conspiracy well before termination of the investigation.

4. The information we learn from terrorists indicates that 100 months in jail has little deterrence value and represents a very low risk for terrorists, compared to the opportunity to kill Americans. Do you believe that a sentence of 100 months is sufficient punishment for a convicted terrorist who conspired to kill U.S. soldiers?

Response: The appropriate sentence for any offender who was convicted of very serious crimes, including terrorism, or any crime, must be determined based on consideration of the sentencing guidelines, information in the Presentence Report and through adherence to 18 U.S.C. § 3553(a) and other relevant statutes. Section 3553(a) requires a judge to consider factors, including but not limited to, the nature and circumstances of the offense, the history and characteristics of the offender, and the need to punish the offender, protect the public and deter others from such conduct. As I explained in response to question 2a, I do not believe it would be appropriate for me to give my personal view about the sufficiency of the sentence given to Mazloum because my role and responsibility in that case was to serve as his court-appointed advocate.

5. If confirmed, how would you apply the Sentencing Guidelines, particularly in terrorism cases? What, in your view, would justify downward departures from the advisory guidelines?

Response: In every case, I would first determine the appropriate guideline sentencing range, which would serve as the starting point and initial benchmark for the sentence. I would then consider all other relevant information, including the Presentence Report, recommendations from the probation officer, evidence and argument from the parties and other factors mandated under 18 U.S.C. § 3553(a) and other relevant statutes.

Downward departures within the guideline structure are limited to select instances and may only be granted sparingly as expressly authorized in the United States Sentencing Guidelines Manual, and relevant case law. Only when evidence and the law supported such a recognized downward departure would I allow such a departure. The Supreme Court has also held that the district court is required to consider the other factors set forth in Section 3553(a), including the "history and characteristics of the defendant," the need to "afford adequate deterrence to criminal conduct," and the need "to protect the public from further crimes of the defendant," and should impose a sentence above or below the advisory guideline if those factors require it. *Gall v. United States*, 552 U.S. 38, 50 (2007).

6. **During your hearing, when I asked you about your regular use of accusing the government of outrageous conduct—which is essentially accusing them of unethical behavior—you responded that you "feel compelled or have a duty to file those motions so that the record is preserved... to protect the record... in the event that there might be some change in constitutional precedent or law at a later time."**

   a. **While I appreciate your candor in describing your routine practice, do you feel it is appropriate conduct, as an officer of the court, to accuse another lawyer of unethical behavior or outrageous conduct without evidence of actual misconduct?**

      Response: I have never accused a government lawyer of unethical behavior. To be clear, the term "outrageous government conduct" is a legal term of art, used by the courts to connote a defense based upon a constitutional due process violation, akin to the defense of entrapment. *See, e.g., United States v. Russell*, 411 U.S. 423, 431 (1973) (suggesting the possibility that entrapping conduct by law enforcements agents could be "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction"). In Mazloum's case, the defense did not challenge the government's description of the acts he committed, but did challenge the circumstances surrounding his involvement in the offense, which was initiated by a paid government witness.

      All three defendants argued that the offenses would not have occurred without government interaction. "Outrageous conduct" is the legal term used to characterize such circumstances. The defense did not create that term, and at no time did we accuse any prosecutor or other persons of unethical conduct.

      The motion to dismiss was supported by a long-standing general entrapment doctrine that prohibits government officials from "implant[ing] in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." *Sorrells v. United States*, 287 U.S. 435, 442 (1932).

As recently as 1999, the Sixth Circuit acknowledged the existence of this general constitutional principle, which permits a court to dismiss the charges when the government's involvement in creating the crime is so great "that a criminal prosecution violated the fundamental principles of due process." *United States v. Warwick*, 167 F.3d 965, 974 (6th Cir. 1999), *quoting Russell*, 411 U.S. at 430. In *Warwick*, the Sixth Circuit chose to continue its lack of recognition of this defense when the defense sounds squarely in inducement, despite some Supreme Court precedent and other Circuit Court cases to the contrary. We clearly stated in the motion that the Sixth Circuit precedent was against us, but filed the motion because we needed to preserve the issue for higher review. The government filed no memorandum in opposition. The issue is part of the pending appeal before the Sixth Circuit.

While I regularly file all legal motions necessary to protect a client's rights, I do not regularly file motions raising the outrageous government conduct defense because that issue is not presented in most cases.

b. Please explain how accusing the government of outrageous conduct or unethical behavior preserves the record for a potential, future constitutional change in the law.

Response: The motion to dismiss in Mazloum's case was filed in order to protect the defendants' due process rights under the United States Constitution in the event that the Sixth Circuit's decisions declining to recognize such a defense based on outrageous government conduct were later reversed by the court sitting en banc, or the Supreme Court. Failure to file such a motion would result in waiver of such a claim before appellate courts. Preserving such issues for appellate purposes is an essential responsibility for ethical and constitutionally-effective trial counsel.

7. Question 12A of the Senate Questionnaire requests nominees to provide "material you have written or edited, including material published only on the internet." In response to this question, you listed and attached a number of monthly and bi-monthly newsletters you produced on behalf of the Maumee Valley Criminal Defense Lawyers Association, an organization you also helped found.

In some of these publications, an informational side bar contains references to a website for members of the Association to access. These sidebars instruct members to "contact Jeff Helmick to obtain a username and password for the Members Only section." Other statements invite readers to visit the website because it contains "a wealth of useful information," especially the members' only section "since most of the goodies are protected there."

a. Why did you not include the web-only content as requested by the Senate?

Response: I have not written or edited any web-only content, on that site or any other. Further, I do not have any access to any of the web-only content. All content was lost in an off-site, third-party server failure several years ago. The site has not been functional for some time.

b. What type of information was available on the website?

Response: Information included only contact information, a few available case opinions of interest, membership information, a list of web sites as possible resources, a list of upcoming legal education seminars, plus a members' only section (discussed further below). The site contained no articles, analysis, opinions or advice written or edited by me or others.

c. Please describe the information available in the members' only section.

Response: The members' only section, as best as I can recall, contained only the judicial opinions of some cases of interest and back issues of the case summary newsletter. Since the newsletter was mailed to members and local judges, I was fortunate to have hard copies which I produced in response to the request in the Senate Questionnaire.

d. Please attach any and all online information you wrote, published, and/or edited as a part of this website, as well as any additional responsive material you may have omitted earlier.

Response: Again, I did not write, publish or edit anything other than that described in these responses and as contained in the newsletters, which I have provided. I also have not omitted any other material responsive to question 12A of the Senate Questionnaire.

8. In 2002, you and your law partner, Jeff Gamso, successfully lobbied Lucas County to raise the fee limit for court-appointed attorneys from $25,000 to $60,000 working each capital case. As a result of your efforts, the county also raised the $50/hour fee rate to $90/hour out-of-court and $100/hour in-court.

News articles about your efforts, which you included as attachments to your questionnaire, list the rates of similar, or larger counties, in Ohio. At the time, the highest rates appeared to be set at $50,000. Additionally, one article reports that only 22 attorneys were certified to handle these trials and only four were certified to handle appeals.

a. Why did you ask for a $60,000 fee limit, a 20% premium over the next highest counties?

Response: I did not ask for a $60,000 fee limit. I suggested when asked by the Chief of Staff of the Lucas County Board of Commissioners, which oversees and

sets fee schedules for court-appointed counsel, that Lucas County's rates be raised to comparable rates in other large counties. I suggested a rate of $80 per hour out-of-court, and $100 per hour in-court, with a cap to be shared by both attorneys of $50,000, a rate well below the market rates for litigators in this corner of Ohio.

Local law requires that the County Commissioners solicit the opinion of local bar associations before making any determination. The Toledo Bar Association unanimously recommended to the Commissioners a rate of $125 per hour for both in-court and out-of-court work, with a joint cap of $90,000. The bar association also recommended a fee cap of $25,000 for appellate cases.

Ultimately, the Lucas County Commissioners chose the rates and caps, at a rate higher than the one I suggested, but lower than that recommended by the Toledo Bar Association. I was not a member of the Toledo Bar Association at the time.

b. Prior to 2002, approximately how many death-penalty trials, for which you received compensation from the court, did you handle per year?

Response: In the years prior to 2002, I handled seven total death penalty cases, three of which went to trial, for which I received compensation from the court, an average of approximately three-quarters of one case per year.

c. Prior to 2002, approximately how many death-penalty appeals, for which you received compensation from the court, did you handle per year?

Response: I handled no death-penalty appeals in the years prior to 2002.

d. Beginning in 2003, once the fee hike was fully enacted, approximately how many death-penalty trials, for which you received compensation from the court, did you handle per year?

Response: Since the Lucas County fee increase in 2003, I have handled six death-penalty cases in Lucas County, two of which went to trial, for which I received compensation from the court. In addition, since 2003, I handled one death-penalty trial in a neighboring county at a much lower fee rate, and I handled one federal death-penalty trial that was unaffected by the rate change in Lucas County. The Lucas County cases after the fee hike average approximately two-thirds of one case per year.

e. Beginning in 2003, once the fee hike was fully enacted, approximately how many death-penalty appeals, for which you received compensation from the court, did you handle per year?

Response: Since the fee increase in 2003, I have handled no death-penalty appeals for which I received compensation from the court.

f. By how much did you see your practice's gross income increase as a result of the fee increase?

Response: As a result of the fee increase in Lucas County, my practice's gross income increased approximately $45,000 total over the nine years from 2003 through 2011, inclusive.

g. By what percentage did you see your practice's gross income increase as a result of the fee increase?

Response: As a result of the fee increase in Lucas County, my practice's gross income increased approximately 3.3 percent over the nine years from 2003 through 2011, inclusive.

9. I understand you have served as defense counsel in several death penalty cases. If confirmed, will you uphold and enforce the federal death penalty statute?

Response: Yes.

10. Do you believe that the death penalty is an acceptable form of punishment?

Response: With few exceptions, the death penalty has been held to be constitutional by the Supreme Court. If confirmed, I would adhere to this precedent and would uphold and enforce the federal death penalty statute.

11. In Roper v. Simmons, the Supreme Court relied on foreign law in holding that the execution of minors violated the Eighth Amendment. Do you think it is proper to look to foreign law to determine the meaning of the Eighth Amendment to the United States Constitution?

Response: No.

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.

12. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is integrity, for integrity encompasses fairness, honesty, decency, ethics and adherence to the rule of law. I believe I possess this attribute.

13. 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, open minded, respectful and courteous at all times. Relatedly, a judge must never be influenced by sympathy, emotion or prejudice, but decide cases under the rule of law. I believe I meet this standard.

14. **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.

15. **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: I would always begin by reviewing the plain language and meaning of the words of the statute. If the plain language of the statute did not resolve the issue, I would also review any legislative history which might explain the meaning of the words used in the statute. Next, I would look for analogous cases from the Supreme Court and the Sixth Circuit Court of Appeals. If none of these steps resolved the issue, I would look for analogous cases from other federal circuits.

16. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: I would apply binding Supreme Court and Court of Appeals precedent without regard to my personal judgment.

17. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A court should first look for controlling precedent on the constitutionality of any statute. Assuming there were no binding precedent and the case were before the court with valid jurisdiction and proper standing, a court would look to see if the statute could be construed fairly without reaching the constitutionality of the statute. A federal court should only declare a statute unconstitutional where it is clear that it violates the Constitution or where it is clear that Congress has exceeded its constitutional boundaries.

18. 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 work diligently to move cases forward with scheduling orders, the prompt resolution of pending motions or other issues brought before the court, and I would monitor the cases carefully to see that they were adjudicated promptly. I would also make extensive efforts at alternative dispute resolution, including the use of magistrate judges and mediators to facilitate settlement, in addition to my own efforts.

19. 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 vital role in controlling the pace and conduct of litigation in their courtrooms. If confirmed, I would set timely scheduling orders in every case and frequently monitor the progress of the litigation to ensure there were no undue delays in discovery and dispositive motion practice. I would rule as quickly as possible on pending motions and other dispositive matters and make regular use of alternative dispute resolution.

20. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on February 22, 2012. I drafted my answers and forwarded them on February 23, 2012, to the Department of Justice for review. I spoke with representatives with the Justice Department and finalized my answers on February 27, 2012, for submission to the Senate Judiciary Committee.

21. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Jeffrey J. Helmick
Nominee to be United States District Judge for the Northern District of Ohio
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's role is to resolve disputes between and among the parties in the way the applicable statutes, precedents, and other legal authorities require. By such adherence to the rule of law, a judge will allow every litigant to know that their case was decided under the relevant facts and in a way that precedent mandates. By treating all parties with respect, open mindedness, patience and dignity, judges ensure that no party can ever reasonably conclude that their case was decided by emotion, personal feelings, or prejudice.

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: My entire career has been as a litigator, largely at the trial level. I have represented individuals and businesses in a variety of civil matters, both in state and federal courts. I have also represented the criminally accused. As a result, I have a broad perspective on the experiences of many different types of litigants in a number of settings. I will remember those experiences should I be confirmed, and would always approach every litigant with patience, open mindedness, respect and dignity.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: I believe judges must strongly adhere and be committed to the doctrine of stare decisis. Judges are obliged to adhere to precedent whether they personally agree with such precedent or not. Adherence to precedent will ensure the integrity of the judicial system and assure every litigant that their case was decided on the relevant facts and applicable law, and not on prejudice or personal feelings.

Responses of Mary Geiger Lewis
Nominee to be United States District Judge for the District of South Carolina
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: I do not agree with the reference to the Constitution as a "living" document that constantly evolves as society interprets it.

   a. **If not, please explain.**

      Response: The Constitution establishes a structure of enduring principles that can be applied to a changing society, but the text is fixed, absent amendment through the process set out in Article V.

2. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

   Response: I would use an interpretation process based on an analysis of the text and history of the constitutional provision involved. I will also be bound to follow any precedent of the Supreme Court or the Fourth Circuit interpreting that provision. In the absence of such binding precedents, I would also look to decisions from other courts for guidance.

3. **The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the *McDonald v. Chicago* decision, do you personally believe the right to bear arms is a fundamental right?**

   Response: After thoroughly analyzing this issue, the Supreme Court held in *McDonald v. Chicago* that the right to bear arms recognized in *Heller* is a "fundamental" right and thus it "applies equally to the federal government and the states." 130 S.Ct. 3020, 3050 (2010). As a prospective lower court judge I do not feel that it would be appropriate to give my personal opinion on a question that has been conclusively resolved by the Supreme Court.

   If I were confirmed as a judge, I would faithfully apply *Heller* and *McDonald*, and my personal views would play no role in my decisions on this or any other issue.

   a. **Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

Response: According to Supreme Court precedent, not all rights guaranteed in the Bill of Rights are considered "fundamental rights." For example, the Supreme Court has never ruled that the Third Amendment protection against quartering of soldiers, the Fifth Amendment grand jury indictment requirements, the Seventh Amendment right to a jury trial in civil cases and the Eighth Amendment's prohibition on excessive fines are applicable to the states through the Fourteenth Amendment. *See McDonald v. Chicago*, 130 S. Ct. 3020, 3035 n.13 (2010).

b. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.

Response: Yes. According to the Supreme Court's opinion in *McDonald v. Chicago,* the question of whether a particular right guaranteed in the Bill of Rights applies to the states through the Due Process Clause of the Fourteenth Amendment turns on whether the right "is fundamental to *our* scheme of ordered liberty." *Id.* at 3036.

c. The *Heller* Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.

Response: In both *Heller* and *McDonald*, 128 S.Ct. at 2066, the Supreme Court has made it clear that the Second Amendment codified a pre-existing right.

d. What limitations remain on the individual, Second Amendment rights now that the amendment has been incorporated against the States?

Response: In *Heller*, the Court identified some limitations, stating "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. We also recognize another important limitation on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those 'in common use at the time.'" *Dist. of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008)(footnote omitted).

4. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?

Response: I do not believe that it is appropriate for foreign laws or traditions to be used in the interpretation of the Constitution. Supreme Court precedents do, however, permit reference to the laws of individual states in determining whether a punishment is "unusual" under the Eighth Amendment.

a. If so, do you believe one standard more meritorious than the other? Please explain why or why not.

Response: Please see response immediately above.

5. In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No. It is not proper to rely on foreign or international law in determining the meaning of the Constitution.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Please see response immediately above.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

6. The Eleventh Amendment provides that "[t]he Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." That is a pretty clear textual command, but the Supreme Court, in *Hans v. Louisiana*, 134 U.S. 1 (1890), held that state sovereign immunity extends not only to suits by citizens from other states, but also to suits by citizens from the same state. Is *Hans* consistent with the plain terms of the Eleventh Amendment?

Response: As the Supreme Court has explained, *Hans* "recognized that the States' sovereign immunity is not limited to the literal terms of the Eleventh Amendment. Although the text of the Amendment refers only to suits against a State by citizens of another State, we have repeatedly held that an unconsenting State also is immune from suits by its own citizens." *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 446 (2004) (internal citation omitted).

a. If not, what justification is there for the decision?

Response: The Supreme Court has held that the *Hans* decision was based not on the text of the Eleventh Amendment, but rather on a broader principle of state sovereign immunity that is protected by the Constitution. As the Court has explained:

> Instead of explicitly memorializing the full breadth of the sovereign immunity retained by the States when the Constitution was ratified, Congress chose in the text of the Eleventh Amendment only to address the specific provisions of the Constitution that had raised concerns during the ratification debates and formed the basis of the *Chisolm* [*v. Georgia*] decision [that citizens of one state could sue another state in federal court]. As a result, the Eleventh Amendment does not define the scope of the States' sovereign immunity; it is but one particular exemplification of that immunity.

Federal Maritime Safety Comm'n v. South Carolina State Ports Authority, 535 U.S. 743, 752-53 (2002) (citations and internal quotation marks omitted).

7. Have you handled any cases or do you have any experience involving discrimination law? If so, please describe the matter and your responsibilities.

Response: No, I do not have experience involving discrimination law.

8. Over the last ten years, the Supreme Court has issued a number of rulings clarifying citizens' rights under the Fourth Amendment. All of these decisions will affect the methods law enforcement use to combat crime and how the facts are developed during prosecutions and trials. Which decision(s) do you believe could have the biggest impact on federal district court judges and why?

Response: Federal district court judges are required to apply the Fourth Amendment as interpreted by the Supreme Court and the Circuit Courts of Appeals to police encounters with citizens.

During the last ten years, the Supreme Court has issued a number of decisions that clarify the scope of the Fourth Amendment as well as the application of the exclusionary rule to evidence obtained in violation of the Fourth Amendment. For example, in *Georgia v. Randolph*, 547 U.S. 103 (2006), the Court held that a warrantless search of a residence was improper where the officers obtained the consent to search from a co-occupant but another occupant was physically present and refused to consent. In *Davis v. United* States, 131 S. Ct. 2419 (2011), the Court clarified that the exclusionary rule does not apply when the police conduct a search in compliance with binding precedent that is later overruled. And in *Hudson v. Michigan*, 547 U.S. 586 (2006) the Court ruled that violations of the Fourth Amendment "knock and announce" rule do not warrant the exclusion of evidence seized in the execution of an otherwise valid search warrant.

Just last month, in *United States v.* Jones, 132 S. Ct. 945 (2012) the Supreme Court ruled that the attachment of a Global-Positioning-System (GPS) tracking device to a vehicle and subsequent use of that device to monitor a vehicle's movement on public streets was a search within the meaning of the Fourth Amendment. The *Jones* decision may have a significant influence on litigation in the lower courts because it provides guidance on the

application of the Fourth Amendment in cases involving a use of GPS devices and other advances in technology.

9. How would you determine what level of scrutiny to apply in a case alleging a Due Process violation? Please be specific as to the cases on which you would rely.

Response: The Supreme Court has held that "the due process clause specifically protects those fundamental rights and liberties which are objectively deeply rooted in this nation's history and tradition and implicit in the concepts of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotation marks omitted). In general, a law that burdens a fundamental right protected by the due process clause is subject to strict scrutiny – that is, it must be narrowly tailored to serve a compelling state interest. Where, however, a law does not infringe on this sort of "fundamental liberty interest," then the due process clause requires only that it be "rationally related to legitimate government interests." *Glucksberg*, 521 U.S. at 728.

10. How would you determine what level of scrutiny to apply in a case alleging an Equal Protection violation? Please be specific as to the cases on which you would rely.

Response: The Supreme Court has held that "equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976)(footnote omitted). The Court has held that the suspect classifications that trigger strict scrutiny are classifications based on "race, alienage, or national origin." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985).

The Court has also held that a form of heightened scrutiny applies to "quasi-suspect" classifications, including laws that discriminate based on gender or against non-marital children. *See Clark v. Jeter*, 486 U.S. 456, 461 (1988); *Cleburne Living Center*, 473 at 440-441. Such a law "fails unless it is substantially related to a sufficiently important governmental interest." *Cleburne Living Center*, 473 U.S. at 441.

All other classifications that do not fall within the previous categories are subject to the rational basis level of scrutiny, which requires that the challenged law be upheld so long as "there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe*, 509 U.S. 312, 320 (1993).

11. In your questionnaire, you state you "presented oral arguments to appellate courts." Please list the cases in which you presented oral arguments to appellate courts and the legal issues you personally handled in those cases.

Response: *Paddock Equipment Co. v. University of South Carolina*, 289 S.C. 219, 345 S.E.2d 749 (1986). I presented the oral argument before the South Carolina Court of Appeals. I personally handled all of the issues raised by the appeal, which concerned whether a state statutory limit of the remedies available in bid challenges applied to a bid protest related to the construction of a swimming pool.

Winfield Towles v. South Carolina Medical Malpractice Liability Insurance and Joint Underwriting Association, South Carolina Supreme Court Memorandum Opinion 88-MO-054. I was primary author of the brief and presented the oral argument on behalf of Dr. Towles in this appeal to the South Carolina Supreme Court. I handled all of the legal issues involved, which related to the limits of insurance coverage for medical malpractice.

Russo v. Sutton, 317 S.C. 441, 454 S.E.2d 895 (1995). I was primary author of the brief and presented the oral argument in this appeal to the South Carolina Supreme Court on behalf of the Respondent. I handled all of the issues involved in this appeal which related to the viability of a cause of action for alienation of affections and the retroactivity of a decision to eliminate that cause of action.

12. In your questionnaire, you estimated the number of cases you have tried to verdict, judgment or final decision to be 15. Can you please list these 15 cases and whether you were sole counsel, associate counsel, or something else for each case?

Response: *Hutson S. Davis, Jr., v. Deborah S. Kelley*, S. C. Court of Common Pleas, Fifth Judicial Circuit. I was sole counsel in this trial.

Russo v. Sutton, S.C. Court of Common Pleas, Fifth Judicial Circuit. I tried this case with my law partner. The trial responsibilities were divided by witness. The jury awarded my client a verdict, which was appealed. The case is reported at 422 S.E.2d 750, 310 SC 200 (1992).

Collins Entertainment Corp. v. Drews Distributing, Inc., Civil Action No. 6:96-3398-13 (D.S.C. 1996). I tried this case with my law partner. All of the trial responsibilities were divided.

Drews Distributing, Inc. v. Leisure Time Technologies, Inc., Civil Action No. 7:96-3307-13 (D.S.C. 1997). I tried this case with my law partner. All of the trial responsibilities were divided. Our clients received an award that was appealed and affirmed at 175 F.3d 849 (4th Cir. 1999).

Connie Walters v. Robert Bunch, S. C. Court of Common Pleas, Fifth Judicial Circuit. I tried this case with my law partner. I handled the direct examinations of our witnesses, and he handled cross-examination of the opposing witnesses. The other trial responsibilities were also divided.

Maynard v. Ben Arnold Heritage Co., S. C. Court of Common Pleas, Fifteenth Judicial Circuit. S.C. Supreme Court Memorandum Opinion No 88-MO-054. I was sole counsel for the defendant in this trial.

Rogers and LeBan v. Montgomery, S.C. Court of Common Pleas, Fifth Judicial Circuit. I was sole counsel for the plaintiff in this trial.

Lahicotte v. Moore, S.C. Court of Common Pleas, Fifth Judicial Circuit. I tried this case on behalf of the plaintiff with my law partner. My responsibility was direct examination of our

witnesses and his was cross-examination of the opposing witnesses. The remaining trial responsibilities were equally divided. The first trial resulted in a hung jury. We then tried the case a second time, and at that trial the responsibilities were divided similarly. *United States of America, ex rel, Michael K. Drakeford, M.D. vs. Tuomey Healthcare System, Inc.*, C/A No. 3:05-cv-2858-MJP. I tried this case with my law partner and co-counsel. Witnesses were divided by subject matter, with the remaining trial responsibilities being evenly divided.

Cunningham v. Home Health Care (S.C. Richland County Magistrate's Court). I was sole trial counsel in this case.

Dr. Winfield Towles v. South Carolina Medical Malpractice Liability Insurance and Joint Underwriting Association, S.C. Court of Common Pleas, Eighth Judicial Circuit. I tried this case on behalf of the plaintiff with my law partner. Responsibilities were divided by witness, with other trial responsibilities equally divided. The verdict was appealed, but the appellate decision is not reported.

Kaiser v. Estate of William N. Geiger, Jr., S.C. Probate Court, Fifth Judicial Circuit. I tried this case with co-counsel. We divided trial responsibilities equally.

American Amusement Co. v. Brigham, S. C. Court of Common Pleas, Second Judicial Circuit. I was sole counsel in this trial.

I have also served as associate counsel for defendants in at least two confidential attorney disciplinary trials.

a. Were any of the cases in which you were sole counsel reported?

Response: No.

13. At your hearing, Senator Coons asked you about *Lucas v. South Carolina Costal Council*, in which you contributed to the "Petition for Certiorari and the Petitioner's Brief and Reply Brief on the merits and prepared the senior partner for the oral argument." Which particular legal issues did you research and address when contributing to these two briefs?

Response: My research and contribution to these briefs were related to these issues:

(1) Whether the Constitution's Fifth Amendment guarantee against government takings should be qualified by any exception for nuisances;

(2) Whether any nuisance exception should be applicable when the regulation eliminates the worth of property;

(3) Whether the fact that a regulation is within a state's police power means that compensation can be denied under the Fifth Amendment; and,

(4) Whether the matter was ripe for adjudication.

a. Were you solely responsible for these issues?

Response: No. My work was part of a team effort.

14. One case you list in your questionnaire as one of the "ten (10) most significant litigated matters which you personally handled" is *Johnson v. Collins Entm't, Inc.* For which specific legal issues were you solely responsible in this case?

Response: Neither I nor any one lawyer on our litigation team was solely responsible for any particular legal issue in this case. I was heavily involved in all aspects of the defense of claims for alleged civil RICO violations and claims for declaratory and injunctive relief. I was the primary lawyer responsible for fact discovery and development.

a. Please describe in detail what work you performed on these issues.

Response: I personally handled much of the discovery in this case, which included propounding and responding to numerous interrogatories and requests for production, taking and defending depositions and drafting numerous motions and oppositions to motions. I also argued summary judgment motions and contributed to the brief on an appeal to the Fourth Circuit. The decision appears at 199 F.3d 710 (4th Cir. 1999).

15. For all but one of the cases you list as your ten most significant, your representation terminated on or before 2002. Have you handled significant litigated matters in the last ten years?

Response: Yes, in addition to continuing to handle the litigation of *Tuomey Healthcare Systems, Inc.*, I have handled many other cases, as indicated below.

a. Please list these significant cases and the issues litigated.

Response: *Matsuura v. E.I. DuPont de Nemours & Co.*, 330 F. Supp. 2d 1101 (D. Hawaii 2004). This case concerned fraud in the inducement of a settlement in a products liability case. The fraud centered upon the defendant's failure to produce critical evidence the defendant was required by court rules to provide. This case was decided under Hawaii state law.

Florida Evergreen Foliage v. E.I. Dupont de Nemours & Co., 336 F. Supp. 2d 1239 (S.D. Fla. 2004). This case concerned fraud in the inducement of a settlement in a products liability case. The fraud centered upon the defendant's failure to produce critical evidence the defendant was required by court rules to provide. This case was decided under Florida state law.

Layman v. State of South Carolina, 376 S.C. 434,658 S.E.2d 320 (2008). This was a South Carolina Supreme Court case concerning whether a return to work statutory program (TERI) constituted a contract.

Palmetto Pharmaceuticals, LLC v. AstraZeneca, LP, United States District Court, District of South Carolina, C/A No. 2:11-cv-00807-SB-JDA. This is an ongoing patent infringement case involving Crestor®.
Harris Teeter, Inc. v. McNair Law Firm, P.A., S.C. Court of Common Pleas, Ninth Judicial Circuit, Civil Action No. 2006-CP-10-1169. This was a legal malpractice case involving the failure to cure a default of a commercial lease.

Herron, et al. v. Toyota of Greenville, et al., S.C. Court of Common Pleas, Second Judicial Circuit, Civil Action No. 2006-CP-02-1230. This is a consumer group action case against car dealers under the South Carolina Motor Vehicle Act for charging illegal fees.

Holiday Sands Ocean Front Resort v. Carolina First, S.C. Court of Common Pleas, Fifteenth Judicial Circuit, Civil Action No. 2010-CP-26-9586. This is a lender liability case.

TD Bank v. Holiday Sands, et al., S.C. Court of Common Pleas, Fifteenth Judicial Circuit, Civil Action No. 2010-CP-4707. This is a complex foreclosure action involving multiple properties.

TD Bank v. Holiday Sands, et al., S.C. Court of Common Pleas, Fifteenth Judicial Circuit, Civil Action No. 2010-CP-26-10252. This is a complex foreclosure action involving multiple properties.

Harris Teeter v. Moore & Van Allen, 390 S.C. 275, 701 S.E.2d 742 (2010). This was a legal malpractice case involving settlement advice and the lawyer judgment rule.

Richard & Barbara Hagerty v. Dixon Hughes, LLC, et al., S.C. Court of Common Pleas, Ninth Judicial Circuit, Civil Action No. 2008-CP-08-1498. This was an accountant malpractice case centering on the accountant's failure to discover a thirty million dollar Ponzi scheme.

Bodman v. State of South Carolina, et al., In the Original Jurisdiction of the South Carolina Supreme Court (filed March, 2011). This case is before the South Carolina Supreme Court involving challenges to the constitutionality of sales tax exemptions.

Mansfield, et al, v. Edisto Electric Cooperative, S.C. Court of Common Pleas, Second Judicial Circuit, Civil Action No. 2009-CP-05-100. This is a challenge to how and when rural electric cooperatives may pay capital credits to former customers.

The National Bank of South Carolina (now Carolina First) v. Ridgeland at the Park, et al., S. C. Court of Common Pleas, Thirteenth Judicial Circuit, Civil Action No. 2010-CP-23-2891. This was a real estate foreclosure action with counterclaims involving the bank's failure to properly administer the loan.

Lynch v. Estate of Edward Saleeby, S. C. Court of Common Pleas, Fourth Judicial Circuit, Civil Action No. 2003-CP-16-0655. This case centered on the legal rights to royalties for a large landfill.

The Estate of Jacquelin K. Stephenson, et al., v. T. Heyward Carter, Jr., et al., S.C. Court of Common Pleas, Ninth Judicial Circuit, Civil Action No. 2011-CP-10-400. This is an accountant and legal malpractice action involving the failures to inform three sisters of their two brothers' raiding a trust and their mother's estate.

Burgess, et al., v. Santee Electric Cooperative, et al., S. C. Court of Common Pleas, Third Judicial Circuit, Civil Action No. 2010-CP-45-278. This is challenge to an electric cooperative's board's powers to, inter alia, pay per diem, pay insurance, and set up retirement programs for board members.

16. In the case of *United States ex rel. Drakeford v. Tuomey Healthcare Sys., Inc.*, how many witnesses were called in the nearly month-long trial?

Response: Eighteen.

a. How many witnesses did you personally examine during the trial?

Response: Sixteen witnesses were called by the government, and two witnesses were called by Tuomey.

My responsibility at trial, in addition to jury selection, was to cross-examine the 22 contracting physicians the Government indicated it intended to call in its case-in-chief, many of whom were held under subpoena for the duration of the trial. After I cross-examined the government's first physician witness, it declined to call any of the other contracting physicians. I did not personally conduct any other examinations.

I also participated in every decision and every aspect of strategy during that trial. I prepared co-counsel to examine the witnesses assigned to them. I was also the primary author of the trial brief and its attachments which included the selection of exhibits and witnesses to be presented. I was the primary author of the closing argument.

b. For which specific legal issues were you solely responsible?

Response: With the exception of jury selection, for which I was solely responsible, the responsibilities relating to the legal issues were equally shared by me, my law partner and co-counsel.

17. 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." The Senate questionnaire you submitted asked you to describe what you have done to fulfill these responsibilities and to list specific instances and the amount of time devoted to each. You mentioned

the services you have provided as a State court-appointed representative, but you did not list the amount of time you spent on these matters.

a. To how many cases were you appointed?

Response: I have been appointed by the courts to handle pro bono matters throughout my career. I do not have computer records before 2000, but I estimate that I was so appointed once per year from 1987 to 1999. Since that time I have been appointed at least four times.

b. Approximately, how many hours per year did you spend on these cases?

Response: These matters for which I have been appointed generally involved the state's efforts to terminate parental rights. These matters require a series of periodic hearings, at least two, and ending in a final merits hearing. Each matter required me to meet with the individual or individuals whom I was appointed to represent and often some or all of the other parties and witnesses. The hearings themselves generally require at least three to five hours of my time.

I did not record my time, as it is not billed, but I estimate that over the course of my career my time spent per year to be an average of approximately 25 hours on appointed cases and 25 hours on other pro bono matters.

c. Were any of these matters criminal matters?

Response: No.

i. If so, please describe in detail.

Response: Please see response immediately above.

d. Have you represented any clients pro bono without being court appointed? If so, please describe your representation.

Response: Yes. Throughout my 27 years in private practice I have represented many individuals who were in serious need of representation but were without the means to pay for that representation. My non-court-appointed pro bono cases have included serious attorney grievance matters, consumer contract disputes, employment issues, landlord-tenant issues and others.

18. Please describe with particularity the process by which these questions were answered.

Response: I received these questions late on February 22, 2012. I prepared my responses which were reviewed by representatives of the Department of Justice, and I subsequently finalized my responses and submitted them on February 27, 2012.

19. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Mary Geiger Lewis
Nominee to be United States District Judge for the District of South Carolina
to the Written Responses of Senator Chuck Grassley

1. **In 1986, I authored amendments to the False Claims Act that empowered individual citizens to act on behalf of the federal government and recover taxpayer dollars lost to fraud and abuse of government programs. I also sponsored legislation to update the False Claims Act in 2009. Since the passage of the 1986 amendments, this important law has helped recover over $30 billion for American taxpayers from those who seek to defraud the federal government.**

   One of the cases of interest to me is your representation of a Hospital chain that was found to have violated the Stark law, which prohibits financial arrangements between hospitals and doctors that rely upon referrals of patients. This case also had a False Claims Act component. It appears that part of the defense strategy put forth was to attack the whistleblower who filed the *qui tam* case.

   Specifically, one of the briefs for the defendants stated that the whistleblower who filed the case was "a malcontent physician with a long history of disruptive behavior and an economic motive to hurt [the Hospital chain]". That same brief argued that the Government "made an ill-advised decision to intervene, apparently based on its view that its own crabbed and incorrect view of the law is more important than Tuomey's health care mission."

   As an advocate of whistleblowers, I have long found the strategy of attacking a whistleblower as, to use the words in your brief, "ill-advised". Ultimately, a jury found against the Hospital in this case and the judge awarded the federal government over $44 million.

   a. **What is your personal view of whistleblowers?**

      Response: Whistleblowers play a very powerful, important and successful role in deterring fraud and abuse in government programs. My law firm currently represents three whistleblowers in two separate qui tam actions.

   b. **Based upon your past involvement in a strategy to discredit a whistleblower, what assurance can you give the Committee that you will protect the rights of whistleblowers in the courtroom, should you be confirmed?**

      Response: An advocate has a responsibility to test the credibility of an opposing witness by pointing out the witness's biases, prejudices and motives, even if that witness is a whistleblower. Should I be confirmed, my role would be to apply the law fairly and impartially to all of the parties who came before me. Federal law protects whistleblowers, and if confirmed, I would faithfully apply that law.

c. Part of your defense of the Hospital included the argument that the Government's enforcement of the Stark statute was "contrary to the Express Provisions and Purpose of the Medicare Statute." The brief you filed supporting this argument claims that because the goal of Medicare is to ensure adequate medical care for the aged throughout the country, any attempt to enforce the Stark law would prohibit the hospital from carrying out that mission.

Response: Our brief on behalf of Tuomey Healthcare System did not argue that the government may never enforce the Stark law or that any attempt to enforce the law would prevent hospitals from providing adequate medical care. Rather, our position was that a particular interpretation of the Stark law advanced by the government in the Tuomey case should be rejected.

One of our arguments was that the government's interpretation of the Stark law was inconsistent with 42 U.S.C. § 1395, which provides that "nothing in this subchapter [which includes the Stark law] shall be construed to authorize any Federal officer or employee to exercise any supervision or control over . . . the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services...." We argued the government's interpretation of the Stark law in *Tuomey* was inconsistent with this provision because it would have allowed the government to exercise supervision or control over the operation of Tuomey and other hospitals and the compensation of their employees.

We also argued that the government's interpretation of the Stark law in *Tuomey* was inconsistent with implementing regulations of the Center for Medicare and Medical Services – the agency responsible for promulgating and interpreting the regulations. We argued that the government's interpretation should be rejected because the guidance provided by CMS is entitled to controlling weight under well-established precedents.

d. The Stark law is an amendment to Medicare. This means that a condition of participation is that prohibited financial arrangements based upon self-referrals will not be reimbursed by the program. Based upon your argument, it appears you believe that the Government cannot enforce any condition that limits how a Medicare provider operates. Do you still believe that providers have a legal right to Medicare payments without any conditions set forth by Congress? How do you square this argument with the Supreme Court's decision in South Dakota v. Dole, where the Supreme Court held that Congress can attach conditions on the receipt of federal funds?

Response: Providers do not have a legal right to Medicare payments without complying with legal conditions set forth by Congress. Our argument in the *Tuomey* case was not that the government can never enforce the Stark law.

Rather, we argued that the government's interpretation of the Stark law was incorrect as applied to the facts of *Tuomey*, that our client had not violated the Stark law, and that even if it had done so, it did not act with the fraudulent intent required to violate the False Claims Act.

e. Please explain your argument that the Government cannot enforce the Stark law "to prevent Tuomey from achieving this important goal" of providing Medicare services to the elderly.

Response: Please see my response to 1(c) above.

f. Do you believe that Congress is prohibited from placing conditions on Medicare providers? If so, why?

Response: No. I do not believe that Congress is prohibited from placing conditions on Medicare providers.

g. Many federal courts have found that a violation of the Stark law is a basis for False Claims Act liability. Do you continue to believe that the Stark law does not form the basis for False Claims Act liability?

Response: The particular Stark law violation alleged in *Tuomey* was not accompanied by the fraudulent intent required to establish liability under the False Claims Act. I have not previously expressed a view on whether the Stark law could form the basis for False Claims Act liability in other contexts, and do not believe it would be appropriate to give my personal view on an issue that could come before me as a judge.

2. In *Littlejohn v. South Carolina*, your law firm, along with Attorney Dick Harpootlian, who was the State Democratic Chairman, negotiated a settlement with the State Budget and Control Board. The Chair of the State Board at the time was Democrat Governor Jim Hodges. Given not only Mr. Harpootlian's relationship to Governor Hodges, but also your previous work on the Governor's transition team, can you understand why concerns were raised that the agreement may not have represented an arms-length negotiation?

Response: Particularly when public funds are involved, any settlement agreement in a class action case should be scrutinized for fairness and reasonableness. In federal court, for example, a district court may not approve a settlement that finds for the members of the class without first finding that it is "fair, reasonable and adequate." FRCP 23(e)(2). In *Littlejohn*, the South Carolina Circuit Court found the settlement to be a reasonable and adequate result for the class.

a. Canon 2 of the Code of Conduct for United States Judges calls on a Judge to avoid even the appearance of impropriety. If a Judge had ties to attorneys

similar to those between you, Mr. Harpootlian, and Governor Hodges in *Littlejohn*, do you believe Canon 2 would have been satisfied? Please explain.

Response: Canon 2 of the Code of Conduct for United States Judges requires, without exception, that a judge "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." It follows that there is no more basic principle pertaining to the judiciary than that judges should be free of personal interest or bias and free from predisposition in their decision-making.

Recusal is not required where the judge merely had a prior professional relationship with an attorney appearing before the judge. Such a relationship alone does not equate to bias when that attorney appears before the judge. Rather, the relationship between the judge and attorney must have occurred during the attorney's involvement in a case now before the judge for recusal to be required.

A decision to recuse also depends upon whether the judge feels he or she can disregard the relationship and whether others can reasonably be expected to believe that the relationship is disregarded. The test for the appearance of impropriety is whether a judge's "impartiality might reasonably be questioned." 28 USC § 455. Specific disqualification circumstances are set forth in 28 U.S.C. § 455(b).

b. If you are confirmed as a judge, how would you go about handling any potential or actual conflicts of interest or other recusal issues that might arise because of your prior activities?

Response: It is the obligation of the judge to disclose all facts that might be grounds for disqualification. I would disclose any potential disqualifying facts to the parties and their counsel. In appropriate circumstances I might ask the parties and their lawyers to consider, out of my presence, whether to waive disqualification. If all of the parties so agree, I would continue to participate in the proceeding. If all parties do not agree, I would respect their decision. It should be emphasized that the parties' agreement to waive disqualification must be on the record; otherwise, it would not be considered effective. See 28 USC § 455(e).

Even if the parties genuinely waive their objections to disqualification, if I still feel that I cannot be impartial, or if the ground for disqualification was one of those enumerated in 28 USC § 455 (b), then I would be obligated to recuse myself. A judge not only has the discretion, but the duty, to recuse himself or herself if the judge feels that he or she cannot be truly impartial. If confirmed, I would strictly adhere to all of the statutes and other applicable standards governing recusal.

3. **I am concerned about your lack of experience in criminal law matters. You mentioned in the hearing that you can quickly learn criminal law. You noted in your response that "criminal trials are very much like the civil trials that I've tried. The rules of evidence are the same." Given that federal criminal trials are governed by a different set of procedures than are civil trials, could you please explain your statement?**

   Response: I did not mean to suggest that there were no differences between the procedural rules that apply to criminal trials and those that apply in civil trials. I was attempting to convey the important fact that the same evidentiary rules apply. The introduction or exclusion of testimony and exhibits under the Federal Rules of Evidence is at the heart of a criminal trial, and I have a great deal of experience with those rules. I have also taken the opportunity to become more familiar with the rules of criminal procedure, as well as some areas of substantive criminal law with the assistance of my law partner who is a former Assistant United States Attorney and continues to focus his practice in the area of criminal law.

4. **You further responded: "I've also attended many sentencing proceedings, pleas, just the kinds of things that I would face as a district court judge. And I've even attended some seminars on the sentencing guidelines and stuff."**

   a. **What role did you play in the criminal trials, other proceedings, sentencing proceedings and pleas you referenced in your response to my question at the hearing?**

      Response: I was referring to proceedings that I attended after my nomination to further inform myself about criminal law and procedure. My role was as an observer who was allowed to discuss with the presiding judge the manner in which the proceedings were conducted, the rulings that were made and the basis for those rulings.

   b. **You further stated, "I will be completely prepared for whatever matter comes before me, be it civil or criminal." Could you please further articulate what specific steps or actions you will take beyond mere attendance at seminars to ensure you are prepared?**

      Response: I have been fortunate to have had district court judges who have allowed me to shadow them. I have spent an entire day of criminal proceedings with one district court judge who provided me with the same materials he reviewed in order to prepare to sentence criminal defendants convicted of a wide range of offenses. I was able to see how a pre-sentence report is structured and used, to observe sentencing proceedings, and to discuss the proceedings with the judge afterwards.

      I have also observed plea proceedings and had the benefit of one-on-one instruction from the presiding judge on the proper conduct of such proceedings.

I have also accepted an invitation from a well-respected district court judge to join him for an entire session of criminal proceedings where I will be allowed to join him in the courtroom and in chambers to see exactly how he approaches the criminal matters before him.

I plan to continue to take advantage of the generous offers from our district court judges to allow me to shadow them, and to study substantive criminal law, the Sentencing Guidelines and the materials I have been provided by the Administrative Office of the U.S. Courts so that, if confirmed, I will be fully prepared to assume my duties.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is integrity. He or she must be committed to the fair and impartial application of the law to the facts and must treat everyone in the courtroom with dignity and respect. 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: In my view, the appropriate temperament of a judge is one of humility. The most important elements are patience, diligence and respect for everyone who comes before the court. 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: When faced with a matter of first impression, I would start with an analysis of the text of the provision at issue. If the plain language of the text did not provide a clear answer, I would look to the Supreme Court and the Court of Appeals for the Fourth Circuit for precedents interpreting a similar provision for guidance, as well as any persuasive authority from other federal courts.

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 own judgment of the merits, or your best judgment of the merits?

Response: I would be bound to apply that decision, as precedent from a higher court.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Statutes enacted by Congress are presumed to be constitutional. It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional only when Congress has clearly exceeded its Constitutional authority or infringed on a right protected by the Constitution.

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 manage my caseload by enforcing deadlines established by scheduling orders, by rendering prompt decisions, and by working as hard as is necessary to conduct the court's business.

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 that judges have a role in controlling the pace and conduct of litigation. If confirmed, I would take the steps that I describe in response to Question 11 above.

13. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on February 22, 2012. I prepared my responses which were reviewed by representatives of the Department of Justice, and I subsequently finalized my responses and submitted them on February 27, 2012.

14. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Mary Geiger Lewis
Nominee to be United States District Judge for the District of South Carolina
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 the role of the judge is to determine the applicable law based upon precedent, to apply that law fairly and impartially to the facts before him or her, and to do so in a respectful and courteous manner.

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: Judges have an obligation to apply the law fairly and impartially in any case without regard to the political beliefs, economic status, gender, or ethnicity of those who appear before him or her. If confirmed I will do precisely that.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: The doctrine of stare decisis applies to all courts. If confirmed, I would strictly adhere to the doctrine.

Responses of Patty Shwartz
Nominee to be United States Circuit Judge for the Third Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

   a. **If not, please explain.**

      Response: The Constitution does not change based upon the times. The Constitution is only changed through the amendment process.

2. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: No, except in the rare circumstance in which binding precedent so dictates.

   a. **If not, please explain.**

      Response: A lower court confronted with a constitutional question must follow the binding precedent. In the context of the Eighth Amendment, the Supreme Court has considered the "evolving standards of decency." *Graham v. Florida*, 130 S. Ct. 2011, 2021 (2010) (citations omitted). To identify these standards, the Supreme Court has observed that "community consensus" is "not itself determinative," but it should be given weight. *Id.* at 2026. According to the Supreme Court, "the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." *Atkins v. Virginia*, 536 U.S. 304, 312 (2002) (citations omitted). As a lower court judge, I am bound to follow this precedent.

3. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

   Response: A statute is presumed to be constitutional. If a case involved a claim that a statute infringed a constitutional right, I would first determine whether binding precedent resolves the specific claim. If it did not, then I would consider the statute, the provision of the Constitution embodying the right alleged to be infringed, the factors set forth in the binding precedent concerning the contours of the constitutional right, and the applicable level of scrutiny to determine if the statute unconstitutionally infringes such a right.

4. **The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the *McDonald v. Chicago* decision, do you personally believe the right to bear arms is a fundamental right?**

   Response: The United States Supreme Court has held that the Second Amendment confers an individual and fundamental right to bear arms, *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3042 (2010), and I would follow that precedent.

   a. **Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

      Response: The United States Supreme Court has held that almost all of the rights set forth in the Bill of Rights are fundamental rights and I would follow that precedent.

   b. **Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.**

      Response: Yes. The United States Supreme Court has held that many but not all of the provisions in the Bill of Rights are fundamental rights that apply against the States through selective incorporation under the Due Process Clause of the Fourteenth Amendment.

   c. **The *Heller* Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.**

      Response: The United States Supreme Court reviewed the text and history of the Second Amendment and held that the Second Amendment embodies a pre-existing right, *Heller*, 554 U.S. at 592, and I would follow that precedent.

   d. **What limitations remain on the individual, Second Amendment rights now that the amendment has been incorporated against the States?**

Response: The Supreme Court and the Court of Appeals for the Third Circuit have not fully resolved this question. In *Heller*, however, the Supreme Court identified a few such limits, explaining that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 554 U.S. at 626-27.

Responses of Patty Shwartz
Nominee to be United States Circuit Judge for the Third Circuit
to the Written Questions of Senator Chuck Grassley

1. **In your opening remarks at your hearing you indicated that members of the Department of Justice and the White House Counsel's Office had assisted you throughout the process. Other than what is contained in your response to Question 26.a. of your Senate Questionnaire, were there additional contacts with those entities? If so, please describe the nature of your contact, including dates of any meetings and summaries of communications or meetings.**

   Response: On several occasions after my nomination on October 5, 2011, I communicated with representatives of both the Department of Justice and White House Counsel's Office concerning the status of my nomination and the nomination hearing. In addition, I contacted representatives of the Department of Justice to obtain answers to procedural questions. In addition, I discussed arranging a second meeting with Senator Robert Menendez and met with a representative of the White House Counsel's Office on January 13, 2012, in connection with that second meeting. I also met with representatives of the Department of Justice and White House Counsel's Office on February 14, 2012, in connection with my February 15, 2012 hearing.

2. **Your call, in your commencement speech, to disregard precedent or preexisting doctrine "to best accommodate the demands of a greater society" sounds a lot like those who advocate a "living" constitution that evolves over time.**

   a. **Do you think judges should consider the current preferences of society when ruling on a constitutional challenge? Should current preferences of society be a basis for overruling longstanding Supreme Court or Circuit precedent?**

      Response: I gave the speech referred to in this question at my 1986 law school graduation and was not referring to constitutional interpretation or the role and responsibility of a judge. A judge must follow binding precedent and should not consider societal preferences in ruling on a case, except in the rare circumstance where binding precedent so dictates. In determining whether a particular punishment violates the Cruel and Unusual Punishment Clause of the Eighth Amendment, the United States Supreme Court considers societal preferences to identify "evolving standards of decency." *Graham v. Florida*, 130 S. Ct. 2011, 2021 (2010) (citations omitted). Although the Supreme Court has observed that "community consensus" is "not itself determinative," it should be given weight. *Id.* at 2026. According to the Supreme Court, "the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." *Atkins v. Virginia*, 536 U.S. 304, 312 (2002) (citations omitted). As a lower court judge, I am bound to follow this precedent.

b. On the living constitution theory, Justice Scalia has said, "the risk of assessing evolving standards is that it is all too easy to believe that evolution has culminated in one's own views." Do you agree with Justice Scalia?

Response: I am not familiar with the context in which Justice Scalia made this statement and I am not exactly sure what he was trying to convey and, therefore, I cannot say whether I agree with the statement or not. To the extent Justice Scalia was expressing a concern about the influence of a judge's personal views on a case, I can say that a judge's personal views should play no role in deciding a case. Rather, a judge should decide a case based only on the governing law and the facts embodied in the record.

3. In my question regarding your meeting with Senator Menendez you stated that you talked generally about your understanding of certain substantive areas of the law but that he didn't ask you to reveal your views on "any of those cases."

a. What were the "substantive areas of the law" which you discussed and what did you tell him with regard to those?

Response: To the best of my recollection, between the two meetings I had with Senator Menendez, he asked me about my understanding of what constitutes settled law and my understanding of several areas of substantive law including the rights of corporations, executive power, executive privilege, the levels of scrutiny that apply to a law being challenged as violating either the Equal Protection Clause or Due Process Clause, federalism, and the Ninth Amendment. I do not recall if all of these subjects were discussed at both meetings. At no time did he ask for, nor did I offer, my personal views nor did I give any indication as to how I would rule on any issue that might come before me as a judge. His inquiry focused on my understanding of various areas of the law.

b. What cases did you discuss?

Response: Senator Menendez mentioned two cases: *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010) and *Roe v. Wade,* 410 U.S. 113 (1973). He mentioned *Citizens United* in the context of our discussion of the rights of corporations, as indicated in my response below. With respect to *Roe*, he simply asked if it was settled law, which I understood to be his reference to binding precedent or *stare decisis*, and I said yes. *Citizens United* is also binding precedent. This was the extent of our discussion about these cases.

c. You indicated, in a response to Senator Coburn, that you discussed, in a general way, your understanding of executive power. What is your general understanding of the scope and limits of executive power?

Response: Under Supreme Court precedent, "Justice Jackson's familiar tripartite scheme provides the accepted framework," *Medellin v. Texas*, 552 U.S. 491, 524

(2008), for considering questions of executive power. First, when the President "acts pursuant to an expressed or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Id.* (internal quotation marks omitted). Second, when the President acts in the "absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." *Id.* (internal quotation marks omitted). Third, when the President takes actions that are "incompatible with the expressed or implied will of Congress, his power is at its lowest ebb and the Court can sustain his actions only by disabling the Congress from acting upon the subject." *Id.* at 524-25 (internal quotation marks omitted).

4. Senator Menendez issued a statement where he said, in part, the following:

"In my opinion, Judge Shwartz did not adequately demonstrate the breadth of knowledge of constitutional law and pivotal Supreme Court decisions such as *Citizens United* that we should expect from a United States Circuit Court judge."

a. In your first interview with him, did Senator Menendez ask you specifically about the Supreme Court's holding in *Citizens United*? What, specifically, did he ask you?

Response: Senator Menendez asked me a general question about whether or not corporations have rights.

b. What did you tell him?

Response: I explained that it was my understanding of the law that corporations have the same First Amendment rights as people, in addition to certain rights under the Fourth, Fifth, Sixth, and Seventh Amendments. I do not believe that I mentioned the *Citizens United* case by name, and he indicated that it is the Supreme Court precedent on this topic. If there was a misunderstanding about my knowledge of that case this may have been the reason.

5. Would you please update your Senate Questionnaire, question 26.a and 26.b. to fully describe all your interviews with Senator Menendez?

Response: In addition to the interview referenced in question 26.a, I met with Senator Menendez on January 13, 2012. As to question 26.b, my original response remains accurate. At no time has anyone, including Senator Menendez, discussed any case, issue, or question in a manner that could be interpreted as seeking any assurance about how I would rule on any case, issue, or question.

6. It appears that your legal and judicial experience is entirely at the trial court level. Please provide to the committee a description of your appellate experience including:

a. The number of appellate briefs you have written, edited, or otherwise contributed to in a significant manner, and a description of each.

Response: I have not written any appellate briefs. During my time as an Assistant United States Attorney, I consulted with and provided support to the appellate lawyers who handled cases I prosecuted in the trial court, including providing the legal arguments (including in written briefs) made to the trial court and identifying portions of the trial record that were relevant to the issues on appeal.

b. The number of appellate arguments you have participated in, and a description of each.

Response: None.

c. The number of appellate opinions you have written, edited, or otherwise contributed to in a significant manner.

Response: I have authored hundreds of opinions at the trial level but have not authored any appellate opinions. Some of the cases that I have considered at the trial level have been akin to judicial review of an agency decision and thus similar to the type of situation an appellate court confronts. *See, e.g., Solid Waste Services Inc. v. Morris County Municipal Utilities Authority*, Civ. No. 08-327, 2008 WL 5046715 (D.N.J. Nov. 20, 2008).

d. Any other particular experience related to the duties of an appellate court judge, beyond the response you gave to Senator Coons (legal research and writing, record development.)

Response: As an Assistant United States Attorney for more than thirteen years and a United States Magistrate Judge for almost nine years, I have been exposed to a variety of areas of civil and criminal law and procedure. As an Assistant United States Attorney, I briefed and argued significant questions of law and tried cases. As a judge, I have considered briefs and arguments in connection with complex motions and tried cases. Because of the variety of cases that have come before me and the daily requests for resolutions of disputes, I have experience in judicial decision-making in a wide range of substantive legal areas and types of proceedings. Such decision-making involves educating myself on the governing law, applying the law to the facts established in the record, reaching an impartial decision, and providing reasons for the decision. The skills needed to perform these tasks are the same skills needed to fulfill the duties of an appellate judge. The American Bar Association recognized the strength of this collection of experiences in its unanimous rating that I am well qualified for a circuit court judgeship.

Although the job of an appellate judge differs in some significant respects from my current duties, I am also accustomed to making transitions in the law. When I became a United States Magistrate Judge, for example, I went from focusing almost

exclusively on criminal law and procedure to spending approximately eighty percent of my time handling civil cases. To ensure I was prepared for these duties, I educated myself on the federal and local rules of civil procedure and civil practice in our court and, for each case, educated myself on the governing substantive law. I would apply the same approach as an appellate judge if I am confirmed.

Moreover, as a Magistrate Judge, I have become well-versed in issues of jurisdiction and am familiar with standards of review, which are important concepts in appellate proceedings. For instance, in each matter I am asked to decide, I must ensure that the District Court has jurisdiction over the case and that I, as a Magistrate Judge, have the authority to decide the issue. Similarly, an appellate court must have jurisdiction over the case and appellate jurisdiction over the issue on appeal. Concerning standards of review, as a Magistrate Judge, I am aware that each of my decisions can be appealed and that those decisions are subject to a certain standard of review. To ensure that I develop a proper record for review, I must understand the standard that the reviewing court would apply to my decision. My understanding of the limits of a particular court's authority and familiarity with the standards of review would be transferable to an appellate judgeship if I am confirmed.

7. **Interpretation of the Commerce Clause is a longstanding cause for debate and dissention among constitutional scholars. The Supreme Court recognized limits on Congress' Commerce Clause power in *United States v. Lopez*. Other Supreme Court precedent has taken a more expansive view, relying on *Wickard v. Filburn*, to find a broad congressional power to regulate commerce on even non-economic activity as long as it relates to a wider and proper federal scheme. Currently unanswered questions, such as whether Congress can mandate individual behavior and/or regulate economic inactivity, leave a lot of room for lower court interpretation.**

   a. **If assessing a commerce clause issue where Congress has mandated action from a group of previously inactive citizens, what case precedent would you apply? Assume that this is an economic activity that plainly affects interstate commerce.**

   Response: I have not comprehensively researched this area of the law but I am not presently aware of any precedent from the United States Supreme Court or the Court of Appeals for the Third Circuit that has addressed a situation in which a statute mandated economic activity from a group of previously inactive citizens. The United States Supreme Court may resolve this issue in connection with its review of the Patient Protection and Affordable Care Act and such a decision would provide precedential guidance. In the absence of such guidance, a lower court considering a challenge to such a law would be guided by the Supreme Court's recent cases on the limits of Congress' power under the Commerce Clause, including *Gonzales v. Raich*, 545 U.S. 1 (2005), *United States v. Morrision*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995).

b. Are there any scenarios you can think of where Congress may mandate private citizens to purchase certain goods or services under penalty of fine and/or jail time?

Response: Congress enacted the Patient Protection and Affordable Care Act, which mandated private citizens to purchase services or pay a penalty. The United States Supreme Court is currently reviewing this statute and may provide precedential guidance as to whether Congress has the authority to enact such a law. I am not aware of any prior decision of the Supreme Court or the Court of Appeals for the Third Circuit addressing this question.

c. Under current Court precedent, the Court aggregates intrastate economic activity to determine whether it substantially affects interstate commerce. This has allowed the Court to find that a farmer growing wheat for his own personal consumption substantially affected interstate commerce. Under this theory of the Commerce Clause, are you able to give me an example of purely intrastate economic activity that Congress could not regulate?

Response: I do not think it would be appropriate for me to attempt to answer this question outside the context of a specific statute that is aimed at regulating particular conduct. If called upon to examine such a statute, I would consider the statutory text and the authority on which Congress relied to enact it. To determine if the statute falls outside Congress' Commerce Clause authority, I would consider the binding precedent of the United States Supreme Court, including *Raich*, *Morrision*, and *Lopez*, as well as the factual record before the court to determine whether the activity had no substantial effect on interstate commerce.

d. Is there any justiciable limit to Congress' power to regulate purely intrastate economic activity?

Response: The federal government is one of limited and enumerated powers. Under Article 1, Section 8, and Supreme Court precedent, Congress has the authority to regulate instrumentalities of interstate commerce, channels of interstate commerce, and activities that substantially impact interstate commerce. If the activity that Congress is regulating does not fall within one of these categories or if the statute at issue violates some other provision of the Constitution, then it is beyond Congress' power to regulate such activity.

8. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

Response: A judge's personal opinion should play no role in deciding any case or in interpreting the Constitution.

9. What would be your definition of an "activist judge"?

Response: As the United States District Judge for whom I clerked stated, "judges have cases, not causes." Thus, an activist judge would be one who seeks to further causes, policies, or personal preferences through his or her decisions rather than deciding the cases before the court based upon the law and the facts.

10. 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 researched this issue comprehensively but, as a general matter, the Establishment Clause prohibits the government from establishing a religion and the Free Exercise Clause protects an individual's freedom to believe and worship. With respect to the interplay between these two provisions, the Supreme Court has "recognize[d] that there is room for play in the joints between the Clauses, some space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005) (citations and internal quotation marks omitted).

11. Do you believe there is a right to privacy in the U.S. Constitution?

Response: The United States Supreme Court has held that there is a constitutional right to privacy. *See, e.g.*, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

a. Where is it located?

Response: The United States Supreme Court has stated that the right to privacy or personal autonomy is a liberty interest that the Due Process Clauses of the Fifth and Fourteenth Amendments protect. *See, e.g.*, *Lawrence v. Texas*, 539 U.S. 558, 567 (2003); *Washington v. Glucksberg*, 521 U.S. 702, 719-20, 726 & n.19 (1997); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 846-51 (1992).

b. From what does it derive?

Response: Please see my response to Question 11a.

c. What is your understanding, in general terms, of the contours of that right?

Response: The United States Supreme Court has described the right to privacy or personal autonomy as protecting "the right to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1998) (citations omitted).

12. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

Response: Constitutional rights are not identified by "reading between the lines." Rather, the Supreme Court has interpreted the Constitution to include certain fundamental rights even though the rights are not literally expressed in the text. Relying on the Due Process Clause, the United States Supreme Court has made clear that the "Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted).

b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

Response: Judges should not be searching for "penumbras" and "emanations." Indeed, the United States Supreme Court has stated that it is "reluctant to expand the content of substantive due process" and directed courts "to exercise the utmost care whenever [they] are asked to break new ground in this field." *Glucksberg*, 521 U.S. at 720.

13. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is to impartially decide only the case before the court based upon an application of the governing law to the facts established in the record, regardless of the judge's personal views. I believe my conduct as a United States Magistrate Judge shows that I possess this attribute.

14. 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: As the United States District Judge for whom I clerked succinctly expressed it, appropriate judicial temperament is characterized by "courtesy to all, partiality to none." I believe that I have comported myself in accordance with this standard as a United States Magistrate Judge by being courteous, patient, impartial, diligent, and respectful of the litigants, the lawyers, and the process.

15. 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.

16. 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 presented with a case of first impression that involves a federal statute, I would review the statutory text and if the language is clear, apply it to the facts of the case. If the language were ambiguous, I would examine the statutory scheme of which the particular text is a part, the legislative history, and analogous cases from the United States Supreme Court and Court of Appeals for the Third Circuit to see how those courts construed similar text and to identify the analytical framework those courts employed. If there were no such precedent, then I would research cases from other federal courts to determine if other courts considered similar issues and if so, examine the reasoning of those cases for possible guidance.

17. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own best judgment of the merits?

Response: I would be bound by and would apply the precedent of the United States Supreme Court and the Court of Appeals for the Third Circuit, regardless of my personal views about its correctness.

18. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A statute is presumed constitutional and a court may deem it unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds," *United States v. Morrison*, 529 U.S. 598, 607 (2000), or if it unlawfully infringes a right that the Constitution protects.

19. 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: According to Internal Operating Procedure 9.1 of the Court of Appeals for the Third Circuit, a prior precedential decision of one panel is binding on all subsequent panels. Thus, one panel cannot overrule a precedential decision of another panel. Only a circuit court sitting *en banc* may overturn the circuit's precedent. Pursuant to Federal Rule of Appellate Procedure 35, such a sitting should only occur when the panel's decision conflicts with United States Supreme Court precedent, the case involves "a question of exceptional importance," or it is "necessary to maintain uniformity of the court's decisions." The factors that dictate when an *en banc* sitting should occur are among the factors appellate judges sitting *en banc* would consider in deciding whether to overturn circuit precedent.

20. Please describe with particularity the process by which these questions were answered.

Response: I received the questions during the evening of February 22, 2012, prepared answers to the questions, reviewed my responses with a representative of the Department of Justice on February 26, 2012, and requested that my responses be submitted to the Senate Judiciary Committee.

21. Do these answers reflect your own views?

Response: Yes.

Responses of Patty Shwartz
Nominee to be United States Circuit Judge for the Third 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: Under Article III of the Constitution, a judge decides cases and controversies. Consistent with this obligation, my judicial philosophy is to impartially decide only the case in front of me based upon the governing law and the facts established in the record, to give the parties an opportunity to be heard, to render fair and prompt decisions, and to provide reasons for the decisions for the benefit of the litigants, the public, and any higher court that may be asked to review the decision.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: As a United States Magistrate Judge, I have acted in accordance with my oath by handling every case impartially and treating all litigants fairly, courteously, and respectfully, regardless of their station, beliefs, or legal position. I would continue to do so as an appellate judge if I am 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: Stare decisis is a foundation of our legal system and all judges, regardless of the court on which they sit, must be committed to it. It provides notice as to what the law is, predictability as to how a court would treat a particular set of facts, and stability to our nation of laws. That said, a court has the authority to overrule its incorrect prior decisions if the law or facts require such a result, as the United States Supreme Court has done, for example, in *Brown v. Board of Education*, 347 U.S. 483 (1954), when it overruled *Plessy v. Ferguson*, 163 U.S. 537 (1896).

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VIA EMAIL AND FIRST CLASS MAIL

May 12, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Jeffrey James Helmick to the United States District Court for the Northern District of Ohio

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Jeffrey James Helmick who has been nominated for a position on the United States District Court for the Northern District of Ohio. As a result of our investigation, a Substantial Majority of the Committee is of the opinion that Mr. Helmick is "Well Qualified". A minority of the Committee is of the opinion that Mr. Helmick is "Qualified" for the position.

A copy of this letter has been provided to Jeffrey James Helmick.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Jeffrey James Helmick
The Honorable Robert F. Bauer
Michael Zubrensky, Esq.(via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on May 12, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon. Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
Hon. Jon Kyl
Hon. Lindsey O. Graham
Hon. John Cornyn
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Hon. Tom Coburn

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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 Magistrate Judge Timothy S. Hillman
To the United States District Court for the District of Massachusetts

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Timothy S. Hillman who has been nominated for a position on the United States District Court for the District of Massachusetts. As a result of our investigation, the Committee is of the unanimous opinion that Judge Hillman is "Well Qualified" for this position.

A copy of this letter has been provided to Judge Hillman.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Timothy S. Hillman
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

March 17, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Mary G. Lewis
To the United States District Court
for the District of South Carolina

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Mary G. Lewis who has been nominated for a position on the United States District Court for the District of South Carolina. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Lewis is "Qualified" for the position.

A copy of this letter has been provided to Mary G. Lewis.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Mary G. Lewis
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on March 17, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
Hon. Jon Kyl
Hon. Lindsey O. Graham
Hon. John Cornyn
Hon. Mike Lee
Hon. Tom Coburn

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VIA EMAIL AND FIRST CLASS MAIL

October 5, 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 Magistrate Judge Patty Shwartz
To the United States Court of Appeals for the Third Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Patty Shwartz who has been nominated for a position on the United States Court of Appeals for the Third Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Judge Shwartz is Well Qualified for the position.

A copy of this letter has been provided to Patty Shwartz.

Sincerely,

Allan J. Joseph
Chair

cc: Magistrate Judge Patty Shwartz
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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February 10, 2012

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirken Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

As a former United States Attorney (D.SC) serving in the Administration of President George H.W. Bush, I am proud to write this letter of support for the nomination of Mary G. Lewis for a District Court Judgeship. I have known Mary Lewis for more than 20 years and worked closely with her over the past five, defending a difficult enforcement action with criminal implications. Simply put, Mary Lewis is one of the finest attorneys I know. Her outstanding reputation is well deserved.

By way of background, I served as a federal prosecutor during the Reagan Administration for four years before serving three years in private practice prior to being nominated for U. S. Attorney. In all, I have been practicing 32 years, mostly defending criminal investigations and related enforcement actions. During my time working with Ms. Lewis, she has demonstrated an uncanny ability to detect and resolve complex legal issues with criminal overtones. She has the intellect, analytical skills and temperament to be an outstanding District Judge.

I am proud to support the nomination of Mary Lewis and will make myself available should you have any questions.

Very truly yours,

E. Bart Daniel

Cc: The Honorable Charles E. Grassley
The Honorable Lindsey Graham

Statement of Senator Chuck Grassley

Before the Committee on the Judiciary

On the Nominations of:

Patty Shwartz, to be United States Circuit Judge for the Third Circuit

Jeffrey J. Helmick, to be United States District Judge for the Northern District of Ohio

Mary Geiger Lewis, to be United States District Judge for the District of South Carolina

Timothy S. Hillman, to be United States District Judge for the District of Massachusetts

February 15, 2012

Mr. Chairman:

Today we continue to make real progress on President Obama's judicial nominees. Earlier this afternoon we confirmed the 127th Article III judge nominated by President Obama. With today's confirmation we have confirmed over 62% of the President's circuit judge nominees. This is the same confirmation percentage for President Bush's circuit nominees at the comparable point in his first term.

Today marks the 21st nominations hearing held in this committee during this Congress, and we will have heard from 80 judicial nominees. All in all, nearly 85% of President Obama's judicial nominees have received a hearing.

We continue to hear concerns about the judicial vacancy rate. I would note we are making progress as we continue to confirm judicial nominees. But let me emphasize again, that for more than half of the vacancies, including those designated as "judicial emergencies," the President has failed to submit a nomination. So critics need to look at the beginning of the process when commenting on vacancies.

Even as we go forward with the hearing today, there remains an underlying concern about the President's abuse of the appointment power. I will not elaborate on that again today, but note that we are operating in a different environment. It is the President who has put a cloud over the confirmation process,

I welcome the nominees who are appearing before us today, their friends and families. I look forward to the testimony and will have questions for the nominees.

Judge Shwartz received a B.A from Rutgers in 1983 and a J.D. from the University of Pennsylvania Law School in 1986. Upon graduation, Judge Shwartz worked for a year as an associate with the law firm of Pepper, Hamilton & Scheetz. In 1987, Judge Shwartz began a two-year clerkship with Judge Harold A. Ackerman of the U.S. District Court of the District of New Jersey.

Immediately after her clerkship, she began a fourteen-year career as a criminal prosecutor with the U.S. Attorney's Office for the District of New Jersey. During her time as an Assistant U.S. Attorney, she prosecuted individuals for violent crime, drug trafficking, and white collar cases. After several years, she was assigned to the Special Prosecutions Division, handling public corruption cases. A short time later, Judge Shwartz was promoted to Deputy Chief of the

Criminal Division. In February of 1999, she was promoted to Chief of the Criminal Division, which she held until 2001. In 2001, she began a brief stint as Executive Assistant U.S. Attorney, supervising the Criminal, Civil, and Fraud Divisions. In 2002, she returned to serve as Chief of the Criminal Division, overseeing the expansion and reorganization of the division.

In 2003, Judge Shwartz was appointed to be U.S. Magistrate Judge for the District of New Jersey.

Mr. Helmick graduated with his B.A. in 1983 from the University of Michigan, and with his J.D. in 1988 from the Ohio State University Moritz College of Law. Following law school, Mr. Helmick worked as an Associate at Marshall & Melhorn in Toledo, Ohio. Between 1989 and 2001, he managed a small general practice firm. He litigated plaintiff's personal injury cases and employment issues on behalf of small companies and individuals. Mr. Helmick has worked as a retained counsel and appointed counsel in

death penalty cases and in some federal criminal prosecutions.

Mrs. Lewis began her legal career clerking for the Honorable Owens Taylor Cobb, Jr. of the South Carolina State Court. After completing her clerkship, she joined the firm Lewis & Babcock in 1985 as an associate and became a partner in 1987. Her firm has handled three matters before the Supreme Court. She was a member of the appellate team in these matters and contributed to the briefs and preparations for oral argument.

Judge Hillman received his B.A. from Coe College in 1970 and his J.D. from Suffolk Law School in 1973. Judge Hillman began his legal career in 1974 as a staff attorney at Murphy and Pusateri. In 1975, he became an Assistant District Attorney where he prosecuted criminal cases for Worcester County. He left the D.A.'s office in 1978 and represented criminal defendants in private practice until 1988. He also

represented multiple municipalities in this stretch of time as either city solicitor or town counsel.

Judge Hillman began his judicial career in 1995 when he was appointed to be associate judge of the Gardner District Court. He became the Presiding Justice in 1997 and served there until 1998, when he was appointed to be Presiding Justice of the Worcester Central District Court. From 1998 to 2006, Judge Hillman was a judge of the Massachusetts Superior Court.

Judge Hillman is currently a United States Magistrate Judge for the United States District Court for the District of Massachusetts, Worcester Division.

Again, I welcome the nominees and their families. I look forward to reviewing the testimony.

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(1940-2011)
AARON LASSER
(1895-1970)
B. WILLIAM HOCHMAN
(1933-1983)

*NJ AND NY BARS
>NJ AND PA BARS
#NJ, NY AND DC BARS

January 9, 2012

FEDERAL EXPRESS
Senator Patrick Leahy
437 Russell Senate Building
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

On Thursday, January 5, 2012, I read an article in The New York Times concerning the nomination of Magistrate Judge Patty Shwartz to The Third Circuit Court of Appeals. As a result of that article, I am writing to you to support the nominee.

I am a resident of New Jersey, but a lover of Vermont. For more than twenty-five years, my wife, Joan, and I have owned a wonderful old farmhouse in Pawlet and the times we have spent there have moulded and shaped our lives, as well as the lives of our children and grandchildren. In the words of the author Wallace Stegner, Vermont has been, to our family, "*a place where friendship has its home and happiness its headquarters.*"

As a Trustee of Vermont Law School and The Nature Conservancy, I have attempted, in some small measure, to contribute my time to sustain and perpetuate the good works of those institutions. In the process, I have observed, in so many ways, your assiduous dedication to the intellectual and economic well-being of your state and the needs of its constitutents-as well as your devotion to the Rule of Law and the excellence of our judical system. In that sense, I urge you and the members of the Judiciary Committee to support and endorse the nomination of Patty Shwartz. I have known Patty for more than thirty years. We clerked, at different times, for the same federal Judge, the late Honorable Harold A. Ackerman, who instilled in all of us the qualities of decency, fairness, and integrity which have marked the professional and private life of Judge Shwartz.

Patty Shwartz is incredibly bright, thoughtful, serious. diligent, good natured, self-effacing-

with a wisdom borne of curiousity and aptitude. In everything she has done-as an attorney, a prosecutor, a magistrate Judge-she has excelled. The Third Circuit will be well-served by this very unusual person and, hopefully, her excellence and absolute integrity will be recognized and appreciated without the intervention of factors unrelated to her merit.

Thank you for your consideration. I am now off to Vermont and another magnificent drive through the Mettowee Valley to our home.

Respectfully yours,

SHEPPARD A. GURYAN

SAG/lh

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January 23, 2012

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
United States Senate
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Mary G. Lewis

Dear Chairman Leahy and Senator Grassley:

As a member of the South Carolina Bar who has had the opportunity to know Mary Lewis professionally and personally for more than twenty years, I write this letter to offer my wholehearted support for President Obama's nomination of Ms. Lewis to the United States District Court for the District of South Carolina. I am privileged to be able to speak to Ms. Lewis's professional and personal traits that qualify her to serve as a District Court Judge.

First, Ms. Lewis is a woman of sound character and integrity. She enjoys in our legal community a well-earned reputation for honesty and fairness in dealing with counsel and with the court. I have had the opportunity to serve as counsel in several cases with Ms. Lewis, and she conducts herself with integrity and honor at all times. When she makes a representation to you as opposing counsel, you can take it to the bank. She does not play loose with the facts or the law. When Ms. Lewis makes oral argument to the court, you can be assured that she has done her homework and will construe case law and statutes accurately and fairly. She does what a lawyer should do by educating and informing the court while zealously advocating for her client's interests. And when Ms. Lewis is your co-counsel or represents an opposing party, you better be prepared because she certainly will be. In short, Mary Lewis is a woman of character and integrity who will bring respect and honor to the United States District Court.

Second, Mary Lewis is a fine legal talent. From the beginning of her legal career, she has shown tremendous intellectual capacity. She graduated from the University of South Carolina as a member of Order of the Coif, and, in the years since, she has continued to demonstrate keen analytical ability and effective written and oral advocacy skills. Ms. Lewis has a broad and comprehensive knowledge of the law and a breadth of practical experience that qualifies her to be an effective judge immediately. She has prepared and tried cases involving a wide range of legal theories in the state and federal courts, and her substantial experience qualifies her to serve on the bench. She commands the respect of the Bar for her intellectual ability, and she will continue to do so as a District Court Judge.

Third, Mary Lewis portrays that thing called "judicial temperament" that is so hard to define. To me, judicial temperament encompasses many qualities -- courtesy, patience, fairness and compassion, to name a few. I have known Ms. Lewis as a lawyer and as a friend, and I can tell you without equivocation that she is a compassionate soul. I have seen her and her family extend many kindnesses to people in need in our community, at all times respecting the recipient's inherent dignity and worth. Ms. Lewis is patient, and she is fair. She strives to treat people with respect and courtesy, regardless of the situation. In a hotly contested case in which we both were involved, tempers flared at times between lawyers for the various parties. Despite the pressure and the personalities involved, Ms. Lewis was at all times courteous and professional in her conduct. She does not rattle under pressure, and she does not lose her temper. Ms. Lewis also has a wonderful sense of humor that serves her very, very well.

Mary Lewis is a talented lawyer and an extraordinary woman. Her experience, integrity and intellect will make her an outstanding District Court Judge. I completely and unconditionally support her nomination, and I urge you to confirm her to the United States District Court for the District of Columbia.

Sincerely,

Kevin A. Hall

KAH/dj

Mark Wagoner
State Senator
2nd District

Committees:
Finance and Financial Institutions
Health, Human Services
and Aging – Vice Chairman
State and Local Government
and Veterans Affairs

Ohio Senate
Senate Building
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February 3, 2012

Senator Patrick Leahy
437 Russell Senate Building
Washington, DC 20510

Senator Chuck Grassley
135 Hart Senate Office Building
Washington, DC 20510

Jeffrey Helmick

Dear Senators Leahy and Grassley:

I write to support the confirmation of Jeff Helmick for appointment to the current judicial vacancy for the United States District Court for the Northern District of Ohio, Western Division. I have been a member of the Toledo Bar practicing for about 15 years. In addition, I also serve as the State Senator for the 2nd Senate District in northwest Ohio, which includes much of the Western Division of the Court. In the Ohio Senate, I chair the Ohio Senate Judiciary Committee. Through my experience in the courts and in government, I have certainly learned of Jeff Helmick's outstanding reputation. He is someone who has stood for principles, litigated honestly, and ably defended our constitutional system of government.

These types of traits would make Mr. Helmick an outstanding federal judge. He is held in very high esteem by the local bar, and his support crosses partisan lines.

Very truly yours,

Mark Wagoner
Chairman of the Ohio Senate Judiciary Committee

MDW:aan
cc: Senator Sherrod Brown
Senator Rob Portman
Senate Judiciary Committee

NEXSEN|PRUET

William W. Wilkins
Member
Admitted in SC

February 10, 2012

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I write to strongly support the nomination of Mary G. Lewis for the position of United States District Judge for the District of South Carolina.

I am very familiar with the many outstanding qualities possessed by Ms. Lewis. I observed her not only while I was serving as a federal judge, but also since retiring from the bench and returning to the private practice of law. Indeed, we are presently working together on major litigation involving STARK and related Medicare issues. She is not only a joy to work with but brings so much to the table because of her exceptionally bright minded, keen intellect and knowledge of the law. She is without a doubt one of the best lawyers in South Carolina.

Most importantly, Ms. Lewis has an even temperament, never loses her composure, and treats everyone from every walk of life with respect. I predict that, if confirmed, Ms. Lewis will quickly earn the reputation of being one of the very best trial judges in the nation.

Very truly yours,

Billy Wilkins

William W. Wilkins

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United States District Court
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Jack Zouhary
Judge

Phone (419) 213-5675
Fax (419) 213-5680

October 27, 2011

Senator Patrick Leahy
437 Russell Senate Building
Washington, DC 20510

Senator Chuck Grassley
135 Hart Senate Office Building
Washington, DC 20510

Jeffrey Helmick

Dear Senators:

I have been a district judge for the Northern District of Ohio since 2006. I write to enthusiastically support the confirmation of Jeff Helmick to the district court vacancy in Toledo.

I am currently the sole active judge on our court in the Western Division and therefore will be the one working most closely with whomever is appointed. Fortunately, the two senior judges in our Division continue to assist with the case load, but for which, to borrow a phrase, "I would be in a world of hurt." That assistance will not last, and Jeff's prompt confirmation is important so we may continue to deliver to the public, the lawyers and the clients they serve, our promise of securing "the just, speedy and inexpensive determination of every action and proceeding."

Perhaps more importantly, you will find no better candidate than Jeff. He possesses the intelligence, the passion for our justice system, the necessary temperament and the people skills to be an outstanding district court judge. In the private practice, lawyers are able to choose their partners. Federal judges do not have such a luxury; we must work with whomever you confirm. I would be thrilled to have Jeff as my "partner" on the Bench.

Best regards.

Very truly yours,

Judge Jack Zouhary

JZ:nls
cc: Senator Sherrod Brown
Senator Rob Portman

NOMINATION OF RICHARD GARY TARANTO, NOMINIEE TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT; GERSHWIN A. DRAIN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN; ROBIN S. ROSENBAUM, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA

WEDNESDAY, FEBRUARY 29, 2012

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

The Committee met, pursuant to notice, at 1:34 p.m., Room SD–226, Dirksen Senate Office Building, Hon. Al Franken, presiding.

Present: Senators Grassley and Lee.

OPENING STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator FRANKEN. This hearing will come to order.

I would like to welcome each of you to this hearing of the Senate Judiciary Committee. We will hear from three nominees to the Federal bench: Richard Gary Taranto; Robin Rosenbaum, and Gershwin Drain. These nominees are accomplished lawyers and jurists. They unanimously have received positive reviews from the American Bar Association's Standing Committee on the Federal Judiciary, and have strong support. I am looking forward to hearing from each of them.

Ranking Member Grassley, would you like to give any opening remarks before we turn to our esteemed colleagues, Senator Levin and Senator Nelson, to introduce their nominees?

Senator GRASSLEY. I will say about 2 minutes and then put the rest of the statement in the record.

Senator FRANKEN. Very well.

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

Senator GRASSLEY. I think we ought to realize that we are making real progress on President Obama's judicial nominees. Since convening a couple months ago this second session of the 112th Congress, the Senate has been in session only 18 days, including today. During that time we've held three nomination hearings, re-

ceiving testimony from 12 judicial nominees. All in all, more than 85 percent of President Obama's judicial nominees have received a hearing.

We've confirmed 5 nominees in those 18 days. In total, we have confirmed 131 of President Obama's judicial nominees, and that's about 71 percent. We continue to hear concern about judicial vacancy, but I want to emphasize that for more than half of the vacancies, including those designated as judicial emergencies, the president has yet to submit nominations for those positions. So critics need to look at the beginning of the process when commenting on vacancies.

So I welcome all of our nominees today and I'll put the balance of my statement in the record.

Senator FRANKEN. And we will do that, without objection.

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

Senator FRANKEN. Well, now I'd like to introduce my colleague from Michigan, Carl Levin, who will talk about Judge Drain.

PRESENTATION OF JUDGE GERSHWIN A. DRAIN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN BY HON. CARL LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. First, thank you very much, Chairman Franken and Ranking Member Grassley. Thank you for holding this hearing, for the progress that you are making on these nominees. I am delighted to be here today to introduce Judge Gershwin Drain, whom the President has nominated to the Federal bench for the District Court in the Eastern District of Michigan. He is here today with his wife Meredith; his mother Vera; his daughters Shelly and Shannon, and Shannon's husband; his sister Cassandra; his aunt Winona; and his cousin.

Senator Stabenow wanted very much to be here today but she's not feeling well and she asked me if I would ask you to insert her statement in the record, so I would make that request.

Senator FRANKEN. Absolutely. Without objection.

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

Senator LEVIN. The American Bar Association's Standing Committee on the Federal Judiciary was unanimous in its decision that Judge Drain is qualified for this position on the Federal bench, as you have mentioned, Mr. Chairman. Judge Drain has had an impressive legal career. He graduated from the University of Michigan Law School and went on to earn a Master's of Judicial Studies degree in 1991.

Since 1997, he has served at the Wayne County Circuit Court as a judge. This is our highest trial court in Michigan. Prior to that service, Judge Drain served on both the District and Recorder's courts in Michigan, so he's had a great deal of trial experience which well prepares him for service on the Eastern District Court. He has also served as faculty and faculty advisor for the National Judicial College.

Judge Drain has served on the Detroit-Wayne County Criminal Advocacy Board, Criminal Jury Instruction Committee, Association

of Black Judges of the Michigan Mock Trial Program and Mentor Program. He served on his civic association, where he lives in the neighborhood in Detroit. His legal qualifications are indeed impressive, but in addition he's demonstrated a career-long dedication to helping people that our legal system serves to understand how it works.

He's been a long-time columnist for a newspaper in Michigan called *The Michigan Chronicle*. He has explained often complex legal issues in language that is accessible to his lay readers, broadening understanding of and appreciation for our courts.

Beyond his writing, Judge Drain has been active in the community as a member of the Education Committee of the Southfield Christian School Board. He has also helped guide prison inmates to rehabilitation. So, I very much support his nomination, as does Senator Stabenow, and again want to very much thank this committee for holding a hearing and hopefully moving forward on this very important nomination.

Senator FRANKEN. Thank you, Senator Levin, for taking this time. I know you've got a busy schedule, so certainly feel free to take off.

Senator Nelson, I know you're going to introduce Judge Rosenbaum.

PRESENTATION OF JUDGE ROBIN S. ROSENBAUM, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA BY HON. BILL NELSON, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator NELSON. Thank you, Mr. Chairman and Senator Grassley. You know, we are fortunate, Senator Rubio and I in Florida, that we don't have a lot of vacancies, fortunately because you all are so prompt in considering them. But you recognize that Senator Rubio and I bring to you nominees that are selected not because of politics, because that's the way we select them.

We have a Judicial Nomination Commission composed of prominent people in the communities and they do all of the applications, the interviewing, and they send at least three applicants to us for each judicial vacancy and then we interview them and tell the White House if we have an objection. The two Senators interview them together. That's what we've done with the panel that came forth, and the President then selected the judge that I'm going to introduce to you.

Now, Robin Rosenbaum, who has been nominated—she's a magistrate judge and she has been nominated to the Southern District—United States District Court in the Southern District of Florida. She is here with her husband Phil, who is right behind me; her two children, Evan and Rosie; her parents, and her two sisters. They're all here.

Senator FRANKEN. Welcome to all of you. You should be very proud.

Senator NELSON. And it is because of the bipartisanship that we come to the table as you examine this judge that we are offering for your consideration.

She had an undergraduate degree from Cornell, a law degree from the University of Miami. She started her legal career in the

Attorney General's Honors Program, where she worked as a trial attorney in the Federal programs branch of the Civil Division of DOJ.

She's been in private practice with one of our prominent law firms, Holland & Knight. She's been a law clerk for the 11th Circuit Court of Appeals, and she has been an Assistant USA. So she has had all of that experience before she was chosen by the judges to go to the magistrate court and has been there since 2007.

So we have an especially qualified applicant here. If you all give the green light after you've done all of your examination, you will find that Senator Rubio and I will try to process this as quickly as we can, working with you and the entire Judiciary Committee to get her on up and confirmed.

The Southern District, needless to say, is one of the busiest districts in the country and so any vacancy left for any period of time is something that we are quite concerned about. That is why we've had a pretty good record thus far.

Senator FRANKEN. Thank you, Senator Nelson. You're certainly free to continue with your busy day.

Right now, again, I want to thank both Senators for their introductions.

Right now I'd like to introduce the first panel. Our first witness is Mr. Richard Gary Taranto. I'll introduce you once you're seated. I think, why don't you stand up and be sworn, if that's all right. So, stay standing.

[Whereupon, the witness was duly sworn.]

Senator FRANKEN. Great. Please have a seat, and thank you. Congratulations.

Mr. Richard Gary Taranto is nominated to serve on the United States Court of Appeals for the Federal Court. Mr. Taranto is a partner at the law firm of Farr & Taranto. A graduate of Pomona College and Yale Law School, Mr. Taranto has served as a law clerk to Justice Sandra Day O'Connor and as assistant to the Solicitor General.

Mr. Taranto has extensive experience as an appellate practitioner and has received numerous awards for his advocacy. The American Bar Association's Standing Committee on the Judiciary unanimously gave Mr. Taranto its highest possible rating. Mr. Taranto, congratulations on your nomination. Please feel free to make a statement and to introduce anyone who is with you today. Hit the mike.

Mr. TARANTO. Sorry.

Senator FRANKEN. That's all right.

STATEMENT OF RICHARD GARY TARANTO, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

Mr. TARANTO. Well, thank you again, both Senators Franken and Grassley, for having me here today. I want to thank, of course, President Obama for reposing his trust in me for the Federal Circuit, whose work I know well and value highly, and look forward to contributing to, if confirmed.

I do want to introduce a few people who are here with me today: my wife, Vicki Plau and my daughter Nora.

Senator FRANKEN. Welcome.

Mr. TARANTO. Both of them are here. Our other two children are in California and watching, as are my parents also watching, and my sister and brother, and maybe one or both of my two 100-year-old grandmothers.

Senator FRANKEN. Whoa!

Mr. TARANTO. Whoa is right, yes.

[Laughter.]

Senator FRANKEN. Well, all I can say is, just eat right.

[Laughter.]

Mr. TARANTO. I will follow that advice, thank you. Also here today is my long-time partner, Bartow Farr, and our long-time assistant, Julie Mixell, as well as several friends and colleagues.

With that, I would be happy to answer any questions you have.

Senator FRANKEN. Well, first of all, congratulations to your family and to all your friends and colleagues. They must be very proud. Congratulations again to you on your nomination.

You have extensive experience as an appellate advocate. You have argued in most of the Federal Circuit Courts and in the Supreme Court. How will that experience as an advocate assist you as a judge?

Mr. TARANTO. Well, I think it gives me a sense, based on considerable experience, about what the appellate judging process is at its best and where it can go wrong. The mix of careful attention to facts, what parties expect in the way of scrupulous regard for the record, the desirability of clear and workable reasoning, both to explain to the parties why the winner has won and the loser has lost, and as important, to provide guidance to litigants and private practitioners for what the law is going to be as it applies to them.

Senator FRANKEN. Okay. I saw in your bio that you clerked for Sandra Day O'Connor.

Mr. TARANTO. I did.

Senator FRANKEN. What years was that?

Mr. TARANTO. It was her third term on the court, 1983–1984 term.

Senator FRANKEN. Uh-huh. Now, at that point was she as central to sort of the, you know—to where the court was as she turned out to be toward the end of her career there?

Mr. TARANTO. You know, from a law clerk's perspective she was central to our lives. This was, as I say, her third term on the court, so she had two terms under her belt and there were, therefore, many issues that were familiar to her, some that were new, as with any justice developing a long career on the court.

I must say I did not—I think we did not pay kind of attention to something that might be called a swing vote, or as you say being central in the votes. We discussed the cases with her and she decided them, and we assisted her in the reasoning explaining her position.

Senator FRANKEN. Now, was that based on—this is you as a clerk. Was that based on a philosophy of how you should be a clerk or was that just your being oblivious to what was going on historically?

[Laughter.]

Mr. TARANTO. I think it was more the philosophy of being a clerk.

Senator FRANKEN. Oh, good. I'm glad you said that.

[Laughter.]

Senator FRANKEN. Now I'm going to vote for you.

[Laughter.]

Senator FRANKEN. What did you learn from her? I'd really be curious. What did you learn from that experience from her? I mean, here is one of the iconic justices in the history of the Supreme Court. What did you learn from clerking from her that will inform your performance as a judge?

Mr. TARANTO. Well, I learned, I think, many things but one of them was the energy and concentration she brought to what was then an extraordinarily demanding docket on the Supreme Court. Some 140 cases were being decided each year—each term at that time in the Supreme Court's history.

I learned a lot about the ability to pierce through what can be mountains of paper to identify what is central to the disposition of the case. I learned a lot about the value of writing narrowly in a way that is tied to the facts of the case and not getting ahead of one's self as an institution, leaving different matters that are not then before the court to future cases. All of those were central virtues in my experience to clerking with Justice O'Connor.

Senator FRANKEN. Well, it sounds like that was an enormous privilege to clerk for her. I'm done with my questioning, Senator Grassley, of the witness.

Senator GRASSLEY. I have just two areas that I want to discuss with you, but I have several questions in each area. One of them I hope you've been alerted to that I want to ask you about, the Circuit you're going on and whistleblower protection.

But before I get to whistleblower protection, for several years you were amicus counsel for the American Psychiatric Association. What was your relationship with the association and what role did you play in crafting arguments on behalf of the association?

Mr. TARANTO. Since 1994, until about a year and a half ago, I was counsel to the committee within the APA that reviews potential opportunities for amicus participation, so I did that for quite a long time. I more or less inherited that position from Joel Klein, who had been the long-term amicus counsel, and indeed general counsel, to the APA.

So my job was to discuss with the committee year in and year out a fairly small number of matters each year that would present issues in the Supreme Court, occasionally in other courts, but almost entirely in the Supreme Court, issues bearing on the interests of psychiatric patients and psychiatrists.

The APA itself, of course, has a governing body which adopts formal position statements and policies, and my job was to help the committee decide whether those policies were affected, or might be affected, by what the court case was about and then to present the APA's position to the Supreme Court, with a very heavy emphasis on accurately representing what the psychiatric and psychological literature said about particular issues.

Senator GRASSLEY. I don't have any problems with the advocacy position that you filled, but I have some questions that I want to know whether it has any impact upon your potential of being on the Federal Circuit.

So I would ask you about being an amicus counsel in the briefs that you would have helped on with Romer and with Lawrence, and I ask you this because there are several challenges to the Defense of Marriage Act and other Federal restrictions on same-sex couples.

Given the Federal Circuit's appellate jurisdiction, such issues may come before you. So considering your past advocacy, do you have any doubts about your ability to be a fair and neutral arbiter should one of these cases come before you?

Mr. TARANTO. I have no doubt whatsoever the role that I played in the matters you mentioned was the role of an advocate representing a client and its formal positions on the matter.

Senator GRASSLEY. Okay. I'd like to ask you if you have any views on the standard of review that should be applied in due process and equal protection challenges to laws making distinctions based on sexual orientation.

Mr. TARANTO. Senator, I don't have a view about that, that it feels appropriate for me to discuss here. My sense has always been that it's very dangerous for a nominee to discuss a legal issue in advance of the adversarial process of adjudicating that issue in the concrete case.

It's unfair to the litigants who might suspect a kind of confirmation or commitment. It risks speaking more broadly than a narrow, case-specific ruling that the court should adopt, and it risks really an ill-considered kind of broad pronouncement when that adversarial process followed by careful study and collaboration are bypassed.

Senator CARPER. Let me move on then, still in the same area. The administration has announced a policy that it would not defend the Defense of Marriage Act. In justifying its refusal to defend the suit, if there is a suit, the administration has asserted—and I guess there is a suit. The administration has asserted that "classifications based on sexual orientation should be subject to a heightened standard of constitutional scrutiny".

So I think it's fair for me to ask you if you're aware of any Supreme Court precedent that would support the administration's position that "classification based on sexual orientation are the subject of heightened scrutiny".

Mr. TARANTO. Senator, I have not studied that question, so sitting right here I can't say that I'm aware of a precedent one way or the other on that question.

Senator GRASSLEY. Okay. I would like to have you answer, if there is anything further to say, in writing. Since you said you haven't had a chance to think about it, I guess you'll have some weeks to think about it.

Mr. TARANTO. I'm happy to answer that, yes.

Senator GRASSLEY. Okay. Do you agree that it would be improper for a District or Circuit Court to apply a level of scrutiny other than the rational basis standard, absent further guidance from the Supreme Court?

Mr. TARANTO. Again——

Senator GRASSLEY. And I think it's important for me to emphasize, absent further guidance from the Supreme Court.

Mr. TARANTO. Again, I think, as I understood the question, the answer to that question depends on knowing what the current Supreme Court precedents are. That's the question that I think I don't really know the answer to.

Senator GRASSLEY. Okay. But you would know whether or not Supreme Court precedent is important in this area.

Mr. TARANTO. Oh, absolutely. Indeed, Supreme Court precedent is not only important in that area, but for a lower Federal court judge is binding as to standards of review, as well as particular substantive rulings, and every lower court judge is bound to follow those standards until the Supreme Court has said otherwise.

Senator GRASSLEY. Yes. I'm going to quote Justices Scalia and Lawrence, "Countless judicial decisions and legislative enactments have relied on the ancient proposition that our governing majority's belief that certain sexual behavior is immoral and unacceptable constitutes a rational basis for regulation". So, whether or not you would agree with Justice Scalia that moral disapproval may serve as a rational basis for regulation, and why or why not?

Mr. TARANTO. I do think, Senator, that that's a question that I feel uncomfortable answering precisely to the extent it might come before me as a judge.

Senator GRASSLEY. Okay. I'll stop there then. Maybe I'll followup with an answer in writing.

In your view, does the Federal Government have authority to determine the eligibility requirement for Federal benefits as it did by defining marriage as between one man and woman in the Defense of Marriage Act? That's the last question I have in this area.

Mr. TARANTO. I think I need to give the same answer.

Senator GRASSLEY. Okay.

Mr. TARANTO. To the extent it would be possible to come before me as a judge, I don't think I should——

Senator GRASSLEY. I'll followup, then.

Mr. TARANTO. Okay. Thank you.

Senator GRASSLEY. On whistleblower protection—and I've been actively involved in whistleblower protection, going to parts of the False Claims Act that I helped write, or the Whistleblower Protection Act that I wrote with Senator Levin, who was here a little while ago, and that was in 1989.

I've always pushed for strong whistleblower protections for Federal employees. Considering that the Federal Circuit has exclusive jurisdiction over these cases, can you describe what experience, if any, you have had with the Whistleblower Protection Act? Before you answer that, I don't have the statistics with me that I used for a former nominee that's going on the same court you are, but there's been very few times—maybe a handful times out of a few hundred cases—where it seems to me like the court you're going on has read our statute.

Well, here it is. Up until February 2011, only 3 out of 219 cases that whistleblowers brought for appeal have whistleblowers won. In 2010, the court was 0 for 9 against whistleblowers. Maybe the whistleblowers weren't right, I don't know, because I don't know what cases. But it just seemed to me like one segment of people just can't lose that many times. There's got to be something wrong.

Anyway, let me repeat the question: can you describe what experiences, if any, you have with the Whistleblower Protection Act?

Mr. TARANTO. I have not had any experience under that particular act.

Senator GRASSLEY. Okay. The Federal—well, I guess I'm kind of repeating myself here, but let me do it for the purposes of the question. The Federal Circuit has issued a number of decisions that have substantially limited the types of disclosures that are protected under the Whistleblower Protection Act. Perhaps the most egregious example of the Federal Circuit placing hurdles in front of Federal Government whistleblowers is the 1999 decision in *LaChance* v. *White*.

In that case the Federal Circuit held that a whistleblower had to present irrefragable proof that wrongdoing actually occurred in order to prove a claim. Have you ever heard of the irrefragable proof standard, and what's your understanding of that standard?

Mr. TARANTO. Well, you know, Senator, I did not hear of it until I did my homework for this hearing and then of course I——

Senator GRASSLEY. Oh, somebody told you I might ask you about this?

Mr. TARANTO. Somebody suggested it was a matter of some concern to you, yes. My brief study of the matter since then has indicated two things. One, that in a 2002 case, subsequent to the *LaChance* case, not in the Whistleblower Protection Act context, the Federal Circuit said really that means clear and convincing evidence, a much more familiar standard in the law that "irrefragable proof".

I think I also saw a 2004 Whistleblower Protection Act case in which the Federal Circuit said—called *White* v. *Department of the Air Force,* in which the Federal Circuit said there is no requirement of proving government misconduct by irrefragable proof.

As far as I could tell from my own Westlaw search, that's the last pronouncement under the Whistleblower Protection Act that uses the term "irrefragable", only to reject it. So that's my understanding of where the law is, but as I say that's a fairly casual bit of research.

Senator GRASSLEY. So you think it's more like clear and convincing than anything else at this point? Is that what you're saying?

Mr. TARANTO. The *Ampro* case is explicit in saying the terminology we have used, sometimes irrefragable proof, sometimes something else, really ought to be treated as the same as clear and convincing evidence.

Senator GRASSLEY. Well, do you happen to believe that whatever that standard is now, irrefragable proof, or a substantial evidence standard should apply to whistleblower cases?

Mr. TARANTO. You know, I——

Senator GRASSLEY. I don't think we require that in the law we wrote.

Mr. TARANTO. No. At this point my understanding of any complexities within the precedents has run out, so I don't know beyond having looked at those two cases I mentioned, which suggests to me that irrefragable proof is not currently being applied under the Whistleblower Protection Act.

Senator GRASSLEY. Well, then I'll ask my staff, but I don't think I should bother to answer—ask these last two questions—should I, in regard to that standard of proof? No. We're OK on that.

I think I'll submit the rest of my questions, including what I've already said I might submit in writing. I have some other questions on judicial philosophy I will submit to you for answer in writing.

Mr. TARANTO. Thank you, Senator.

Senator FRANKEN. And we will hold the record open for a week for questions and answers.

[The questions appear under questions and answers.]

Senator FRANKEN. I'm on the Energy Committee. Irrefragable, I believe, is natural gas deposits that you can't exploit.

[Laughter.]

Senator FRANKEN. Right? Senator Lee is on Energy. I believe we know that.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

It's good to see you, Mr. Taranto. Thanks for joining us today.

Mr. TARANTO. Good to see you, Senator.

Senator LEE. I noticed that among your many other impressive qualifications is one that really stands out, that of substitute teacher. I have to know, what did you substitute teach?

Mr. TARANTO. I briefly substitute taught high school mathematics.

Senator LEE. You're a brave man. How did it go?

[Laughter.]

Mr. TARANTO. They didn't ask me to do much, so what they asked me to do, I was able to do.

Senator LEE. Yes. I suppose that's a good thing, given that you're going onto the Federal Circuit. A lot of mathematical issues dealing with claims against the government and patents, so there's a connection there somewhere.

You're someone who has clerked for one Supreme Court justice, Sandra Day O'Connor, and you clerked for another judge who almost became a Supreme Court justice, Judge Robert Bork. So that leads me to ask, is there any justice that has served over the last 100 years or so who you would say is sort of your judicial mentor, someone that you might pattern your judicial philosophy after?

Mr. TARANTO. If you will allow me to exclude living justices, both for reasons of judiciousness and to——

Senator LEE. That's a good idea, actually. Let's exclude the living.

Mr. TARANTO. And to filter out, of course, my unique relationship with Justice O'Connor. If there was a single justice that I would pick out as having more of the desirable characteristics that I value, it would—than anybody else, though of course these characteristics are widespread, it would probably be the second Justice Harlan, who sat on the court from the mid-1950's until 1970 or 1971, and that's because his opinions reflect just great respect for reason and tradition and precedent, recognition of the dangers, the need to guard against injecting personal preference into legal analysis, the great value of clarity and narrowness of ruling. It seems to me, though I haven't made a systematic study, that he did that at a very high level of consistency for his career.

Senator LEE. Some have commented that John Marshall Harlan, II, was something of a prototextualist or an early modern-day textualist. Would you agree with that assessment, and is that part of why you admire him?

Mr. TARANTO. I always have a little bit of trouble with attaching a label like textualist because most judges, even those who are disagree—or justices, even those who are disagreeing with each other on particular cases, would claim that mantle but give different interpretations to the text.

What I tried to identify in Justice Harlan was the caution and intense focus on giving reasons for everything in interpreting a text and relying very heavily on precedents and reading them with nuance and with great care, great attention to the particular facts that were at issue in the case, and then writing narrowly so as never to rule more broadly than the case demanded.

Senator LEE. Yes. One of the things that I've always admired about that justice was his commitment to the text and his commitment to the notion that the law supplies an answer, and that more often than not the overwhelming majority of the cases you find the answer in the text. There is a competing school of thought that focuses more on intentionalism than textualism. Do you gravitate toward either end of the spectrum when you're dealing with the matter of statutory construction?

Mr. TARANTO. You know, in my role as advocate, which is the role that I have had for my entire practice, as you will understand, what I have gravitated toward was attending to the different perspectives that the justices have had and trying to take account of all of them, to the maximum extent possible, to advance the interests of the particular client.

But I do understand the distinction that you are making between what the text says and how the legal community would have understood that text at the time as opposed to what some individual legislator or framer may have intended to put in the text and didn't.

Senator LEE. And your reaction to that sort of dichotomy is what?

Mr. TARANTO. Well, again, as a lawyer representing a client, the reaction has been if there's a justice on the case who cares one way or the other, one needs to pay careful attention to what one can say to try to persuade that justice. Sometimes, of course, the framer's intent, as reflected in the papers of the Constitutional Convention or the ratification debates, will in fact have a legitimate bearing on what the text was widely understood at the time to mean.

Beyond that I don't think that I could tell you that I have a particular settled judicial philosophy, and in any event, as relevant to the job that I'm being considered for, my task would be to follow the Supreme Court's precedent, not only substantive rulings but indeed what the Supreme Court says about methodology.

Senator LEE. Sure. Sure. Although certainly you would agree that the text is the guiding—is the principle guidepost. The text normally is the beginning and the end of the analysis when you are interpreting something, and very often you are interpreting something. If you're sitting on the Federal Circuit, for example, there

may not be an established precedent telling you what the official interpretation—what the precedential interpretation is.

Mr. TARANTO. I agree with that completely, particularly for complicated statutes. Congress has written texts that are often complicated, and complicated for very good reasons, to try to do certain things narrowly and not go too far and the text is the authoritative guide to the proper resolution of the case.

Everything else is a matter of trying to understand that text properly, including, of course, precedents that may have already addressed the issue because no judge ought to view a matter as never having been considered by jurists before.

Senator LEE. Well said. I see my time's expired. Thank you, Mr. Chairman. Thank you, Mr. Taranto.

Senator FRANKEN. Thank you, Senator. Well, sir, you'll be excused now. Thank you so much. Congratulations once again.

Mr. TARANTO. Thank you.

Senator FRANKEN. The record will be open for a week, so if any Senators have questions for you we'll get those to you and this will be open for a week.

Mr. TARANTO. Thank you, Senator. And thank you, Senator Grassley.

[The biographic Information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Richard Gary Taranto

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

   United States Circuit Judge for the Federal Circuit

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

   Farr & Taranto
   1150 18th Street, NW, Suite 1030
   Washington, DC 20036

   Residence: Bethesda, Maryland

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

   1957, New York, New York

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

   1978 – 1981, Yale Law School; J.D., 1981
   Spring 1978, University of Wisconsin, Mathematics PhD program; no degree
   Fall 1977, Yale University, Mathematics PhD program; no degree
   1973 – 1977, Pomona College; B.A., 1977

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.

1989 – present
Farr & Taranto (under present & predecessor names)
1150 18th Street, NW
Suite 1030
Washington, DC 20036
Partner

2008 – 2009
Sidwell Friends School
3825 Wisconsin Avenue, NW
Washington, DC 20016
Substitute math teacher

1986 – 1989
Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Assistant to the Solicitor General

1984 – 1986
Onek, Klein & Farr (now Farr & Taranto)
2445 M Street, NW
Washington, DC 20037
Associate

1983 – 1984
Supreme Court of the United States
One First Street, NE
Washington, DC 20543
Law clerk to Justice Sandra Day O'Connor

1982 – 1983
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Washington, DC 20001
Law clerk to Judge Robert Bork

1981 – 1982
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007
Law clerk to Judge Abraham Sofaer

Summer 1980
United States Department of Justice
Office of Legal Counsel
950 Pennsylvania Avenue, NW
Washington, DC 20530
Summer associate

Summer 1979
Kronish, Lieb, Shainswit, Weiner & Hellman (now Cooley LLP)
1114 Avenue of the Americas
New York, New York 10036
Summer associate

Spring 1978
University of Wisconsin Department of Mathematics
480 Lincoln Drive
Madison, Wisconsin 53706
Teaching assistant

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

   I have not served in the military. I did not register for selective service because men born between March 29, 1957, and December 31, 1959, were not required to register.

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

   Among top 100 lawyers in Washington, DC, *Super Lawyers* (2007 – 2011)

   Among nine top lawyers in "Band 1" list of Leading Individuals, Appellate Law, *Chambers USA: America's Leading Lawyers for Business* (2010, 2011)

   Among top 15 Supreme Court lawyers, *Legal 500 US 2011*; top 13, *Legal 500 US 2010*

   Amicus Award, American Academy of Psychiatry and the Law (2005)

   Recognized as one of two Moot Court Justices of the Term, Georgetown University Law Center Supreme Court Institute (2003)

   Article & Book Review Editor, Yale Law Journal (1980 – 1981)

   Summa cum laude, Pomona College (1977)

Phi Beta Kappa (1977)

Sigma Xi (honorary scientific society) (1977)

F.S. Jennings Prize in Writing, Pomona College (1977)

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

American Bar Association (1997 – present)

Supreme Court Institute, Georgetown University Law Center
Outside Advisory Board (1999 – present)

United States Judicial Conference
Appellate Rules Advisory Committee (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.

New York, 1982
District of Columbia, 1984

There have been no lapses in membership.

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

Supreme Court of the United States, 1984
United States Court of Appeals for the D.C. Circuit, 1983
United States Court of Appeals for the Federal Circuit, 1996
United States Court of Appeals for the First Circuit, 1986
United States Court of Appeals for the Second Circuit, 1999 (inactive)
United States Court of Appeals for the Third Circuit, 2003
United States Court of Appeals for the Fourth Circuit, 1993
United States Court of Appeals for the Fifth Circuit, 1998 (inactive)
United States Court of Appeals for the Eighth Circuit, 1998
United States Court of Appeals for the Ninth Circuit, 1990
United States Court of Appeals for the Tenth Circuit, 2004
United States Court of Appeals for the Eleventh Circuit, 2002 (inactive)

There have been no lapses in membership, although my membership is inactive in the courts indicated.

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.

Edgemoor Club (1993 – present)

Mathematical Association of America (2002 – 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, neither 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.

Illinois Tool Works v. Independent Ink: *A Lawyer's Take on Ending Special Suspicion of Patent Tying*, 2 Competition Policy International 169 (2006). Copy supplied.

With Peter Huber, *Ruth Bader Ginsburg: A Judge's Judge*, Wall St. J., June 15, 1993. Copy supplied.

The Psychiatrist-Patient Privilege and Third-Party Payers: Commonwealth v. Kobrin, 14 Law, Medicine & Health Care 25 (1986). Copy supplied.

A Process-Oriented Approach to the Contract Clause, 89 Yale L.J. 1623 (1980) (law school student note). Copy supplied.

With R.H. Elderkin, D.P. Berkowitz, F.A. Farris, C.F. Gunn, F.J. Hickernell, S.N. Kass, and F.I. Mansfield, *On the Steady State of an Age Dependent Model for Malaria*, in Non-Linear Systems And Applications: An International Conference, ed. V. Lakshmikantham (Academic Press 1977). Copy supplied.

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

I do not believe that I have anything that falls into this category.

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.

Joint letter to the Senate Judiciary Committee supporting the nomination of Edward DuMont to become a Judge on the Federal Circuit, March 22, 2011. Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Donald Verrilli to become Solicitor General, February 10, 2011. Copy supplied.

Letter to Senate Judiciary Committee from Former Assistants to the Solicitor General and Deputy Solicitors General supporting the nomination of Elena Kagan to become Associate Justice of the Supreme Court, June 25, 2010. Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Sonia Sotomayor to become Associate Justice of the Supreme Court, August 5, 2009. Copy supplied.

Letter to Senate Judiciary Committee supporting the nomination of David Ogden to become Deputy Attorney General, January 21, 2009. Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Samuel A. Alito to become Associate Justice of the Supreme Court, January 4, 2006. Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of John G. Roberts, Jr. to become a Judge on the U.S. Court of Appeals for the District of Columbia, December 18, 2002. Copy supplied.

Since 2009, I have served on the Advisory Committee on Appellate Rules and made several suggestions and given comments about potential rules amendments. Meeting minutes supplied.

I note that I am listed as a consultant at the end of United States Department of State, *A U.S. Policy Toward South Africa: The Report of the Secretary of State's Advisory Committee on South Africa*, January 1987. My consultation role for the Committee, however, ended in summer 1986, before any work on the Report was begun, and I did not see the Report, or any draft, until the Report was officially released, and hence had no role in preparing the Report. A copy is nevertheless 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.

September 20-21, 2011: *Law at the Edge of Psychiatry*, Charles E. Steinberg Lecture in Psychiatry and the Law, University of Rochester Medical Center. Copy supplied.

January 11, 2011: Member of panel at a joint meeting of the Giles S. Rich and Edward Coke Inns of Court – one focused on patent law, the other on appellate practice – held at the Federal Circuit. The informal discussion concerned the pros and cons of having specialized appellate counsel in patent cases. I have no notes, transcript, or recording, but a post-event report from the Giles S. Rich American Inn of Court is supplied. The address of the Edward Coke Inn of Court is Tayloe House, Howard T. Markey National Courts Building, 717 Madison Place, NW, Washington, DC 20439.

October 14, 2010: Mock argument before a panel of patent judges from the United States, England, Germany, and Japan, at the Harvard-WilmerHale Intellectual Property Law Conference held at the Harvard Law School. I represented one side, Carter Phillips of Sidley Austin the other, in a mock argument designed to educate lawyers about oral argument and, more specifically, to highlight similarities and differences among the patent laws of several countries. Audio recording supplied.

May 20, 2010, and June 8, 2010: Member of panel on current patent-law developments at the Federal Circuit Judicial Conference, held in Washington, DC. My topic was the law of patent misuse as it was involved in the then-undecided case of *Princo Corp. v. International Trade Comm'n*, 616 F.3d 1318 (Fed. Cir. 2010) (en banc). I made available a written discussion of the patent-misuse issues involved in that case and its predecessors. I made the same presentation, with immaterial word changes, at an internal lawyers' conference for Intel in Santa Clara, CA. The June version of the presentation, the only one I have retained, is supplied.

October 23, 2009: Member of panel on "The Role of the Courts in Patent Law and Policy," held at Georgetown University Law Center. A webcast video of the panel is available at www.law.georgetown.edu/webcast/eventDetail.cfm?eventID=936.

April 2, 2009: Mock argument before a panel of Federal Circuit judges, sponsored by American Bar Association, Intellectual Property Law Section, held at the Federal Circuit. I represented one side, Don Dunner of Finnegan Henderson the other, in a mock argument in a case about joint inventorship, designed to educate lawyers about oral argument at the Federal Circuit. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

October 22, 2008: Member of panel at CLE session, concerning intellectual property law, held at the Bloomberg Building, in New York, NY. I have no notes, transcript, or recording. The organizer of the panel was Hank Gutman of Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017.

April 1, 2008: Member of panel on "The Supreme Court Returns to the Patent Law" at the Georgetown University Law Center Conference on The Changing Patent Landscape, in Washington, DC. The general topic was the Supreme Court's newly active involvement in patent law. Audio recording supplied.

March 15, 2007: Member of panel at meeting of the Richard Linn Inn of Court, Chicago, IL. The general topic of the panel was the Federal Circuit. I have no notes, transcript, or recording. The Inn does not have a physical address.

March 1, 2006: Member of panel on "Supreme Court and Appellate Advocacy: Voices of Experience," sponsored by the Council of Appellate Lawyers, in Washington, DC. I have no notes, transcript, or recording. The Council is a division of the American Bar Association, which is located at 321 North Clark Street, Chicago, IL 60654.

October 21, 2005: Member of panel at meeting of (I believe) the Virginia Bar Association's Intellectual Property and Information Technology Law Section,

held at the Wintergreen resort in Virginia, to discuss the Supreme Court's recent decision in *Grokster*. I have no notes, transcript, or recording. The address of the Virginia Bar Association is 701 East Franklin Street, Suite 1120, Richmond, VA 23219.

July 13, 2005: Member of a panel at CLE event held at Simpson Thacher's office in New York, NY, in which I discussed the just-decided *Grokster* case. Video recording supplied.

May 4, 2004: Member of panel on "What's New in Psychiatry and the Law at the APA [American Psychiatric Association]?" at the annual meeting of the APA. I long served as amicus counsel to the APA, and in that role I participated in this panel, which discussed recent issues of interest to the APA at the Supreme Court. I have no notes, transcript, or recording. The address of the APA is 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209.

October 17, 2003: Luncheon address, at a meeting of the American Academy of Psychiatry and the Law, held in San Antonio, TX. My talk concerned amicus briefs in the Supreme Court and *Sell v. United States*, 539 U.S. 166 (2003) (involuntary psychiatric medication to restore competence to stand trial). Copy supplied.

October 2, 2003: Member of panel about the Federal Circuit at the first Harvard-Hale & Dorr Intellectual Property Law Conference, held at the Harvard Law School. I have no notes, transcript, or recording, but a news article about the panel is supplied.

April 1998: Member of panel about the Supreme Court's review of Federal Circuit cases, at a meeting of the Federal Circuit Bar Association's first Bench and Bar Conference held in Saint Thomas, U.S. Virgin Islands. I have no notes, transcript, or recording. The address of the Federal Circuit Bar Association is 1620 Eye Street, NW, Suite 900, Washington, DC 20006.

Mid-April 1996: Member of panel at a meeting of the American Intellectual Property Law Association, held in Arlington, VA. I had just filed the brief for Warner-Jenkinson in *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 520 U.S. 17 (1997), and I spoke about the upcoming consideration of the doctrine of equivalents in that case. I have no notes, transcript, or recording. The address of the American Intellectual Property Law Association is 241 18th Street South, Suite 700, Arlington, VA 22202.

Fall 1992: I spoke at the Houston Intellectual Property Law Association about the recently decided case, *Two Pesos v. Taco Cabana*, 505 U.S. 763 (1992), which I had argued for Taco Cabana. I have no notes, transcript, or recording. The Association does not have a physical address.

Summer 1992: Member of panel on 1991 Supreme Court Term, at a meeting of the American Bar Association, held in Orlando, FL. The panelists described some of the most prominent cases the Court had decided in the just-completed Term, but I do not recall what case(s) I was responsible for discussing. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

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.

Erin Fuchs, *Obama's SG Pick Draws Applause from Appellate Bar*, Law360, Feb. 8, 2011. Copy supplied.

Joan Biskupic, *High Court's Majestic Library Off Limits*, USA Today, Dec. 12, 2006. Copy supplied.

Adrianna Khoo, *Shades of Gray*, Lawdragon, Oct. 2005. Copy supplied.

Joan Biskupic, *Final Decision Puts Family First*, USA Today, July 5, 2005. Copy supplied.

Participant in group conference call interview, June 27, 2005, about the Supreme Court's decision in *Grokster*, which I had argued. Audio recording supplied. Several of my quotes were re-printed in multiple press outlets.

Tony Mauro, *Court Surfs File-Sharing, Cable Cases*, Nat'l L.J., Mar. 28, 2005 (re-printed in multiple outlets). Copy supplied.

Mark Moran, *High Court Poised to Rule on HMO Lawsuit Exemption*, 39 Psychiatric News 26 (2004). Copy supplied.

ABC News Special Report: A Nation Waits, Dec. 11, 2000. Transcript supplied.

Joint interview (other interviewee unknown), WTTG (channel 5) in Washington, DC, Dec. 12, 2000, about the previous day's oral argument in *Bush v. Gore*. I do not have a transcript or recording, and I do not recall the content of the interview.

Senate to Take up DOJ Nominations of Klein, Holder, National Journal's CongressDaily, July 11, 1997. Copy supplied.

David G. Savage, *States on a Winning Streak*, 82 A.B.A.J. 46 (June 1996). Copy supplied.

David Savage, *High Court Curbs Federal Lawsuits against the States*, L.A. Times, Mar. 28, 1996. Copy supplied.

Mary Deibel, *Supreme Court to Rule This Session on 2 Cases Involving Coors Brewery*, Denver Rocky Mountain News, Oct. 3, 1994 (quote re-printed in multiple outlets). Copy supplied.

Lyle Denniston, *Supreme Court Justices Get On-The-Bench Training*, Baltimore Sun, Oct. 2, 1994. Copy supplied.

Then There Were Two, Legal Times, June 20, 1994. Copy supplied.

Eva M. Rodriguez, *Ginsburg Takes Tiny Steps to Big Gains*, The Recorder, June 21, 1993. Copy supplied.

Barbara Franklin, *Business Is Upbeat*, New York Law Journal, June 17, 1993. Copy supplied.

Daniel Klaidman, *Gold Mine or Land Mine?*, Legal Times, May 31, 1993 (re-printed in multiple outlets). Copy supplied.

Trade-Dress Distress, Nation's Restaurant News, Nov. 9, 1992. Copy supplied.

Appearance on "The Supreme Court in American Life," discussing the Court's October Term 1991, C-SPAN, July 17, 1992. A video recording is available at http://www.c-spanvideo.org/program/Court199.

Paul M. Barrett, *Four-Man Firm Klein Farr Boasts Uncanny Success in High Court*, Wall St. J., July 3, 1992. Copy supplied.

Paul M. Barrett, *Justices Extend Trademark Shield to 'Trade Dress'*, Wall St. J., June 29, 1992. Copy supplied.

Texas Tortilla Flap Widens Trademark Law's Reach, Washington Post, June 27, 1992. Copy supplied.

Michaelle Mittelstadt, *Supreme Court Rules Taco Cabana's Appearance is Protected*, Austin American-Statesman, June 27, 1992. Copy supplied.

Ron Hutcheson, *Taco Cabana Wins Case of Look Alikes*, Fort Worth Star-Telegram, June 27, 1992. Copy supplied.

Paul M. Barrett, *High Court Rules Debtors Cannot Shrink Mortgages to Reflect Property Value Loss*, Wall St. J., Jan. 16, 1992. Copy supplied.

David Savage, *Insane Killer's Death Sentence Set Aside*, L.A. Times, Nov. 14, 1990 (re-printed in multiple outlets). Copy supplied.

Aaron Epstein, *Young Judge Has a Short Record*, Miami Herald, Oct. 30, 1987 (quote re-printed in multiple outlets). Copy supplied.

Ruth Marcus, *Bork: Rungmaster for New Lawyers*, Washington Post, July 23, 1987. Copy supplied.

Interview for "Report on Science" (about psychotherapist-patient confidentiality), Science, Mar. 7, 1986. Copy supplied.

Nancy Blodgett, *A Duty to Warn? Therapists Fear Rush of Suits*, 72 A.B.A.J. 28 (Jan. 1986). Copy supplied.

Dudley Clendinen, *Therapy Notes at Issue in Medical Fraud Case*, N.Y. Times, Mar. 17, 1985. Copy supplied.

LJ Pendlebury, *Supreme Court Clerks Favoring Private Practice*, Legal Times, July 2, 1984. 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:

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

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

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

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

I have not held any judicial office.

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

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

I have held no public offices. I have not been a candidate for elective office or been nominated unsuccessfully to any appointed office.

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

I have not been a member of, or officeholder in, and have not rendered services to, any political party or election committee. I have not held a position or played a role in any political campaign.

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

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

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

After graduating from Yale Law School in 1981, I clerked for Judge Abraham Sofaer, of the United States District Court for the Southern District of New York, from 1981 to 1982. I then moved to Washington, DC, and clerked for Judge Robert Bork, of the United States Court of Appeals for the District of Columbia Circuit, from 1982 to 1983. I clerked for Justice Sandra Day O'Connor, of the United States Supreme Court, from 1983 to 1984.

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.

1984 – 1986
Onek, Klein & Farr (now Farr & Taranto)
2445 M Street, NW
Washington, DC 20037
Associate

1986 – 1989
Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Assistant to the Solicitor General

1989 – present
Farr & Taranto (under present & predecessor names)
1150 18th Street, NW
Suite 1030
Washington, DC 20036
Partner

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

I have never served as an arbitrator or mediator 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.

My practice throughout my career has focused overwhelmingly on appellate litigation.

In my first two years of practice, as an associate at Onek, Klein & Farr from 1984 to 1986, I mostly wrote appellate briefs but did some non-appellate work, including assisting in representing the State of Missouri in district court proceedings involving the desegregation of the Kansas City, Missouri, schools. Through my firm, I also served, for a few months in the spring of 1986, as a legal consultant to the Secretary of State's Advisory Committee on South Africa, co-chaired by former Transportation Secretary William Coleman and former IBM Chairman Frank Cary.

I joined the Solicitor General's office in the summer of 1986 and served there until September 1989. Mostly I wrote briefs and argued cases in the Supreme Court, involving a wide spectrum of issues. That job also involved the review of requests by government offices for permission to appeal from losses in the district courts or to seek en banc review of appeals court losses.

From 1989 until the late 1990s, my work in private practice was heavily focused on the Supreme Court. I wrote briefs and argued cases on a wide variety of topics in the Court, including constitutional, bankruptcy, patent, trademark, federal procedure, antitrust, and copyright issues. I did some work in courts of appeals during those years as well. I also devoted time to assisting my partner in representing the National Cable Television Association (as it was then called), often in conjunction with other parties, in district court proceedings: proceedings involving the enforcement or modification of the Bell System breakup decree, and proceedings before a three-judge district court on the First Amendment validity of the "must carry" statute (imposing certain requirements that cable operators carry broadcast television stations). Finally, as an outside attorney, I assisted the Antitrust Division of the Department of Justice on a couple of occasions, chiefly on some of the legal briefing in its litigated case against Microsoft in the late 1990s.

Starting in 1996, I began doing a substantial amount of work for what was then Bell Atlantic. In particular, I devoted considerable time in 1996 and 1997 to the antitrust and Communications Act analysis of Bell Atlantic's merger with Nynex. I have continued to represent and to advise the company, now Verizon, in a wide range of matters – patent, antitrust, and communications – including its 2000 merger with GTE and its 2006 acquisition of MCI.

Starting in 1997, after I handled the *Warner-Jenkinson* patent case in the Supreme Court, I began to handle appeals in patent cases in the Federal Circuit. That work grew steadily and eventually came to dominate my work life. In the past dozen years, I have presented 20 arguments in the Federal Circuit – for patent holders and for patent defendants, across a variety of technology areas. Clients have included Honeywell Inc.; Housey Pharmaceuticals; Lemelson Medical, Education & Research Foundation; Monsanto Co.; Rambus Inc.; Verizon Communications; and W.L. Gore & Associates. Amidst this work, I have done the occasional non-patent appeal in a court of appeals other than the Federal Circuit.

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

In my two years as an associate at Onek, Klein & Farr (1984 – 1986), I did mostly appellate work in assisting the partners; there was no regular client, or type of client, except for the American Psychiatric Association, for which Joel Klein served as General Counsel. I also spent some time assisting the partners at the trial court level representing the State of Missouri in one of the remedy phases of the Kansas City school-desegregation case, and toward the end of that period I spent some time as a legal consultant to the Secretary of State's Advisory Committee on South Africa.

From 1986 to 1989, I served in the Solicitor General's office doing appellate work on behalf of the United States.

From 1989 to the mid-2000s, upon returning as a partner to what soon became Farr & Taranto, I mostly did Supreme Court work, on behalf of an assortment of clients, most of them one-time clients who happened to have Supreme Court cases. During that period, I also helped my partner Bartow Farr on several appellate or appellate-type projects for the National Cable Television Association. I began to do work for Bell Atlantic (now Verizon) in the early 1990s, and that work, including assisting on merger approvals and other antitrust and communications-law matters as well as patent matters, became a regular part of my practice starting in 1996.

Starting in the late 1990s, after handling the *Warner-Jenkinson* patent-law case in the Supreme Court, I began to work on appeals in patent cases in the Federal Circuit, and that work came largely to crowd out my Supreme Court work by 2005. My clients in patent matters have included both patent owners and accused infringers, and the cases have involved a variety of technology areas, including communications, biotechnology, and avionics, and disputes about a variety of patent issues, including validity and infringement and unenforceability. Clients have included Honeywell Inc.; Housey Pharmaceuticals; Lemelson Medical, Education & Research Foundation; Monsanto Co.; Rambus Inc.; Verizon Communications; and W.L. Gore & Associates.

Throughout my years of practice after 1989, I have handled a few cases in courts of appeals other than the Federal Circuit, mostly for Verizon. And until 2010, I was amicus counsel for the American Psychiatric Association, in which capacity I filed a number of amicus briefs (almost all in the Supreme Court) and reviewed requests from other organizations that the APA join their amicus briefs.

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.

Almost all of my work has involved litigation, almost all of it in the federal courts of appeals or the Supreme Court. I have frequently presented arguments in the Supreme Court and in federal appellate courts, chiefly in the Federal Circuit. I have argued 19 cases in the Supreme Court – eight while in the Solicitor General's office, and 11 cases in private practice. I have presented approximately 20 arguments in the Federal Circuit and appeared on briefs in still other cases. I have also argued cases in the First, Third, Fourth, Fifth, Eighth, Ninth, and D.C. Circuits.

With three exceptions (I believe), I have not appeared in federal district courts. Two of the exceptions were for arguing legal motions – a motion to dismiss in an antitrust case for Verizon in 1997 (then Bell Atlantic) and a summary-judgment motion in a patent case for Honeywell in 1999 or 2000. And in my first two years of practice, as an associate at Onek, Klein & Farr from 1984 to 1986, I assisted in representing the State of Missouri in district court proceedings involving the desegregation of the Kansas City, Missouri, schools. I have worked extensively on additional district court matters – chiefly patent cases – without appearing in court.

A small percentage of my work, such as assisting Verizon on merger approvals, has not involved work in the courts.

i. Indicate the percentage of your practice in:
   1. federal courts: 94%
   2. state courts of record: 1%
   3. other courts: 0%
   4. administrative agencies: 5%

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

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

I have not played an in-court role in any trial except for my role as an associate in helping to represent the State of Missouri in the Kansas City school desegregation case in 1985. (My other two district court appearances were for legal arguments on motions, before any trial.) But I have worked extensively on several patent cases at the trial level – on claim construction filings, expert reports, witness

preparation, summary judgment papers, opening and closing arguments, jury instructions, and post-trial motions. In three of those cases, I attended the jury trials in full and worked on all phases during the trial itself from behind the bar (as well as in the pretrial phases of the matters). I also attended, and worked from behind the bar on, an antitrust trial for Verizon (then Bell Atlantic) in Portland, Maine, in 1999.

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.

From 1986 to 1989, in the Solicitor General's Office, I briefed and argued cases in the Supreme Court. My oral arguments were in the following eight cases. Transcripts supplied.

ICC v. Texas, 479 U.S. 450 (1987) (ICC jurisdiction)

Shearson/American Express, Inc. v. McMahon, 482 U.S. 220 (1987) (arbitration under Securities Exchange Act)

Langley v. FDIC, 484 U.S. 86 (1987) (FDIC rights under acquired loan)

FERC v. Martin Exploration Management Co., 486 U.S. 204 (1988) (FERC natural gas regulation)

Pinter v. Dahl, 486 U.S. 622 (1988) (in pari delicto defense in securities action)

Karahalios v. National Federation of Federal Employees, 489 U.S. 527 (1989) (federal employee private right of action against union for breach of duty of fair representation)

Federal Savings and Loan Insurance Corp. v. Ticktin, 490 U.S. 82 (1989) (federal court jurisdiction over suit by Federal Savings and Loan Insurance Corporation)

Sable Communications of California, Inc. v. FCC, 492 U.S. 115 (1989) (First Amendment validity of law addressing "dial-a-porn")

In private practice since 1989, I have argued 11 cases:

Dewsnup v. Timm, 502 U.S. 410 (1992) (bankruptcy)

Two Pesos, Inc. v. Taco Cabana Int'l, 505 U.S. 763 (1992) (trademarks) (transcript misidentifies counsel; I argued on behalf of the respondent)

Puerto Rico Aq. & Sewer Auth. v. Metcalf & Eddy, 506 U.S. 139 (1993) (11th Amendment)

Keene Corp. v. United States, 508 U.S. 200 (1993) (federal jurisdiction)

TICOR Title Ins. Co. v. Brown, 511 U.S. 117 (1994) (class actions)

Morgan Stanley v. Pacific Mutual Life Ins., 511 U.S. 658 (1994) (separation of powers)

Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17 (1997) (patent infringement: doctrine of equivalents)

Lawyer v. U.S. Department of Justice, 521 U.S. 567 (1997) (voting rights)

Great-West Life Ins. Co. v. Knudson, 534 U.S. 204 (2002) (ERISA case) (appointed by Court)

Verizon Communications v. Law Offices of Curtis V. Trinko, 540 U.S. 398 (2004) (antitrust and telecommunications)

MGM Studios v. Grokster, 545 U.S. 913 (2005) (copyright)

Transcripts of the oral arguments I gave in all Supreme Court cases are supplied.

I have written, or participated in the writing of, briefs in many other cases argued by other attorneys. In some of those cases, the briefs have been for parties to the case, and in others they have been for amici. The briefs have included petitions for certiorari, briefs in opposition to certiorari, briefs on the merits of cases in which certiorari has been granted, and amicus briefs at the petition or merits stages. Since 1989, first as co-counsel, then as lead counsel (starting in 1994), I have submitted amicus briefs for the American Psychiatric Association in a substantial number of Supreme Court cases.

To the best of my knowledge, the following is a complete list of the Supreme Court cases in which my name appears on at least one brief. All of the briefs I was able to identify are supplied.

Allied-Bruce Terminix Cos. v. Dodson, No. 93-1001, 513 U.S. 265 (1995) (brief for petitioners)

Amerada Hess Corp. v. Director, Division of Taxation, Nos. 87-453, 87-464, 490 U.S. 66 (1989) (amicus brief)

American Express Co. v. Italian Colors Restaurant, No. 08-1473 (amicus supporting petitioners)

ANR Pipeline Co. v. Director of Property Valuation, No. 93-1995 (petition for writ of certiorari, reply brief)

AT&T v. Cincinnati Bell Tel., No. 99-1249 (brief in opposition)

Atlantic Richfield Co. v. Union Oil Co., No. 00-249 (brief in opposition)

Barnes v. Westinghouse Elec. Co., No. 92-566 (petition for writ of certiorari, reply brief)

Bell Atlantic Corp. v. FCC, No. 98-653 (petition for writ of certiorari, reply brief)

Bell Atlantic Corp. v. Twombly, No. 05-1126, 550 U.S. 544 (2007) (petition for writ of certiorari, reply brief, brief for petitioners, reply brief)

Boersma v. Karnes, No. 87-1337 (amicus brief supporting appellees)

Bolton v. Three Boys Music Corp., No. 00-689 (brief in opposition)

Bristol-Myers Squibb Co. v. Zenith Labs., No. 94-494 (petition for writ of certiorari, reply brief)

Brock v. Richland Shoe Co., No. 86-1520, 486 U.S. 128 (1988) (petition for writ of certiorari)

Burlington N. Ry. Co. v. Oklahoma Tax Comm'n, No. 86-337, 481 U.S. 454 (1987) (two amicus briefs supporting petitioner)

Cavalier Telephone v. Verizon Virginia, No. 03-271 (memorandum for respondent)

Cellco Partnership v. NextWave Personal Communications, No. 01-654 (petition for writ of certiorari)

Century-National Ins. Co. v. Quackenbush, No. 94-1120 (petition for writ of certiorari, reply brief, supplemental brief)

Cipollone v. Liggett Group Inc., No. 90-1038, 505 U.S. 504 (1992) (brief for respondents, supplemental post-argument brief)

Clark v. Arizona, No. 05-5966, 548 U.S. 735 (2006) (amicus brief supporting petitioner)

Connecticut v. New Hampshire, No. 119 Original (reply brief in support of motion to intervene; reply brief for intervenors; brief for intervenors regarding award of interest; intervenors' proposed findings of fact; brief for intervenors; exceptions and brief in support for intervenors; motion for leave to intervene, brief in support of motion to intervene; complaint of intervenors)

Continental Casualty Co. v. Fibreboard Corp., No. 91-1193 (petition for writ of certiorari reply brief, motion to grant, vacate and remand on grounds of mootness, reply brief in support of motion to grant, vacate and remand on grounds of mootness)

Daubert v. Merrell Dow Pharmaceuticals, No. 95-198, 509 U.S. 579 (1993) (brief in opposition, brief for respondent)

Department of Revenue of Oregon v. ACF Industries, Inc., No 92-74, 510 U.S. 332 (1994) (amicus brief supporting petitioners)

Desarrollos Metropolitanos v. Taber Partners I, No. 92-1958 (petition for writ of certiorari, reply brief)

Dewsnup v. Timm, No. 90-741, 502 U.S. 410 (1992) (brief in opposition, brief for respondents)

Eastman Kodak Co. v. Image Tech. Servs., No. 97-1298 (brief in opposition)

Eastman Kodak Co. v. Image Tech. Servs., No. 90-1029, 504 U.S. 451 (1992) (amicus brief supporting respondents)

City of Edmonds v. Washington State Building Code Council, No. 94-23, 514 U.S. 725 (1995) (amicus brief supporting respondents)

El Paso Natural Gas Co. v. Neztsosie, No. 98-6, 526 U.S. 473 (1999) (brief for respondents)

Eli Lilly & Co. v. Sun Pharmaceutical Indus., No. 10-972 (petition for writ of certiorari, reply brief)

Excel Communications v. AT&T Corp., No. 99-95 (petition for writ of certiorari, reply brief)

FCC v. Sable Communications of California, No. 88-525, 492 U.S. 115 (1989) (jurisdictional statement)

FERC v. Martin Exploration Mgt. Co., No. 87-363, 486 U.S. 204 (1988) (petition for writ of certiorari, brief for United States)

FSLIC v. Ticktin, No. 87-1865, 490 U.S. 82 (1989) (petition for writ of certiorari, brief for petitioner)

Finley v. United States, No. 87-1973 (brief for United States)

Ford Motor Credit Co. v. Department of Revenue, No. 88-1847 (brief for appellee)

Foster v. IBM, No. 96-1909 (brief in opposition)

Frank's Nursery & Crafts v. Dunham, No. 90-1365 (petition for writ of certiorari)

Franklin v. Gwinnett County School District, No. 90-918, 503 U.S. 60 (1992) (brief for petitioner, reply brief)

Freightliner Corp. v. Myrick, No. 94-286, 514 U.S. 280 (1995) (petition for writ of certiorari, reply brief, brief for petitioners, reply brief)

Goodyear Atomic Corp. v. Miller, No. 86-1172, 486 U.S. 174 (1988) (two amicus briefs supporting appellant)

Graham v. Florida, Nos. 08-7412, -7621, 130 S. Ct. 2011 (2010) (amicus brief supporting petitioners)

Great Western Directories v. Southwestern Bell Tel. Co., Nos. 95-1974, -1982 (petition for writ of certiorari)

Great-West Life & Annuity Ins. Co. v. Knudson, No. 99-1786, 531 U.S. 917 (2002) (brief for Court-appointed amicus)

Griffin v. Wisconsin, No. 86-5324, 483 U.S. 868 (1987) (amicus brief supporting respondent)

H.J. Inc. v. Northwestern Bell Tel. Co., No. 87-1252, 492 U.S. 229 (1989) (amicus brief supporting petitioners)

Havner v. Merrell Dow Pharmaceuticals, Inc., No. 97-1508 (brief in opposition)

Helmsley v. United States, No. 91-778 (petition for writ of certiorari, reply brief)

Holder v. Humanitarian Law Project, Nos. 08-1498, 09-89, 130 S. Ct. 2705 (2010) (opening brief, reply brief)

Honeywell Int'l v. Interfaith Community Organization, No. 04-1560 (petition for writ of certiorari)

Honeywell v. Litton Sys., No. 96-874 (application for stay pending certiorari, petition for writ of certiorari, reply brief)

Honeywell v. Minnesota Life & Health Ins. Guaranty Ass'n, No. 97-9 (petition for writ of certiorari, reply brief, petition for rehearing)

Housey Pharmaceuticals v. Merck & Co., No. 04-695 (petition for certiorari, reply brief)

Hyatt v. Boone, No. 98-856 (petition for certiorari, reply brief)

Illinois Tool Works v. Independent Ink, No. 04-1329, 547 U.S. 28 (2006) (amicus brief supporting petitioners)

Independent Life and Accident Insurance Co. v. Harrington, No. 94-2016 (brief in opposition)

Indiana v. Edwards, No. 07-208, 554 U.S. 164 (2008) (amicus brief)

Infineon Technologies AG v. Rambus, No. 03-37 (brief in opposition)

ICC v. Texas, Nos. 85-1222, 85-1267, 479 U.S. 450 (1987) (reply brief)

Iowa Mutual Ins. Co. v. LaPlante, No. 85-1589, 480 U.S. 9 (1987) (amicus brief supporting respondents)

J.E.M. AG Supply v. Pioneer Hi-Bred Int'l, No. 99-1996, 534 U.S. 124 (2001) (brief for respondent)

Jaffee v. Redmond, No. 95-266, 518 U.S. 1 (1996) (amicus brief supporting respondent)

Kansas v. Crane, No. 00-957, 534 U.S. 407 (2002) (amicus brief supporting respondent)

Kansas v. Hendricks, Nos. 95-1649, -9075, 521 U.S. 346 (1997) (amicus brief)

Karahalios v. Defense Language Institute, No. 87-636, 489 U.S. 527 (1989) (amicus brief supporting respondents)

Keene Corp. v. United States, No. 92-166, 508 U.S. 200 (1993) (brief for petitioner, reply brief)

Langley v. FDIC, No. 86-489, 484 U.S. 86 (1987) (brief for respondent)

Lawrence v. Texas, No. 02-102, 539 U.S. 558 (2003) (amicus brief supporting petitioners)

Lawyer v. United States Dep't of Justice, No. 95-2024, 521 U.S. 567 (1997) (motion to affirm of state appellees, brief for state appellees)

Lemelson Medical, Education & Research Found. v. Symbol Technologies, No. 01-1855 (petition for writ of certiorari, reply brief)

Lewis v. Continental Bank Corp., No. 87-1955, 494 U.S. 472 (1990) (amicus brief)

Lippert v. Delta Air Lines, No. 92-1643 (petition for writ of certiorari, reply brief)

Litton Systems v. Honeywell, No. 00-1617 (brief in opposition)

Long Island Care at Home v. Coke, No. 06-593, 551 U.S. 158 (2007) (petition for writ of certiorari, reply brief, brief for petitioner, reply brief)

MCI Telecommunications Corp. v. AT&T, No. 93-356, 512 U.S. 218 (1994) (reply brief)

Madison County v. Oneida Indian Nation of New York, No. 10-72 (brief in opposition)

Markman v. Westview Instruments, No. 95-26, 517 U.S. 370 (1996) (amicus brief supporting respondents)

Martin v. United States, No. 05-1221 (petition for writ of certiorari, reply brief)

Masson v. New Yorker Magazine, No. 89-1799, 501 U.S. 496 (1991) (brief for respondents)

McCarver v. North Carolina, No. 00-8727 (amicus brief supporting petitioner)

McWherter v. Rural West Tennessee African-American Affairs Council, No. 93-1108 (jurisdictional statement)

MedImmune v. Genentech, No. 05-608, 549 U.S. 118 (2007) (amicus brief supporting respondents)

Medlock v. Pledger, No. 90-38, 499 U.S. 439 (1991) (amicus brief supporting petitioners)

Metro-Goldwyn-Mayer Studios v. Grokster, No. 04-480, 545 U.S. 913 (2005) (brief for respondents)

Microsoft Corp. v. AT&T Corp., No. 05-1056, 550 U.S. 437 (2007) (amicus brief supporting respondent)

Morgan Stanley & Co. v. Pacific Mutual Life Ins. Co., No. 93-609 (brief for respondent)

Morgan Stanley Capital Group v. Public Utility Dist. No. 1, Nos. 06-1457, -1462, 554 U.S. 527 (2008) (brief for respondents)

Morrison v. Olson, No. 87-1279, 487 U.S. 654 (1988) (amicus brief supporting appellees)

Mullins Coal Co. v. Director, Office of Worker's Compensation Programs, No. 86-327, 484 U.S. 135 (1987) (brief for respondent)

National Cable Television Ass'n v. Bell Atlantic Corp., No. 94-1900 (petition for writ of certiorari, reply brief)

National Cable Television Ass'n v. FCC, No. 95-775 (petition for writ of certiorari, reply brief)

National Cable Television Ass'n v. Gulf Power Co., Nos. 00-832, -843, 534 U.S. 327 (2002) (amicus brief in support of reversal)

National Kidney Patients Ass'n v. Sullivan, No. 92-569 (petition for writ of certiorari)

Nielson v. Private Fuel Storage, No. 04-575 (petition for writ of certiorari, reply brief, supplemental brief)

City of Norfolk v. Collins, No. 89-989 (reply brief, response of petitioners to Solicitor General's amicus brief)

NYNEX Corp. v. Discon, No. 96-1570, 525 U.S. 128 (1998) (supplemental brief, brief for petitioners, reply brief)

Official Committee of Unsecured Creditors v. U.S. Bank, No. 04-183 (petition for writ of certiorari, reply brief)

Oklahoma Natural Gas Co. v. Williams Natural Gas Co., No. 89-1296 (petition for writ of certiorari, reply brief, response of petitioner to Solicitor General's amicus brief)

Old Stone Corp. v. United States, No. 06-837 (petition for writ of certiorari, reply brief)

Olmstead v. L.C. ex rel. Zimring, No. 98-536, 527 U.S. 581 (1999) (amicus brief supporting respondents)

Olympic Airways v. Husain, No. 02-1348, 540 U.S. 644 (2004) (brief for respondents)

Orthofix S.R.L. v. EBI Medical Systems, No. 99-687 (brief in opposition)

PGA Tour v. Martin, No. 00-24, 532 U.S. 661 (2001) (petition for writ of certiorari, reply brief, brief for petitioner, reply brief)

Pacific Bell Tel. Co. v. Linkline Communications, No. 07-512, 555 U.S. 438 (2009) (amicus brief supporting petitioners)

Panetti v. Quarterman, No. 06-6407, 551 U.S. 930 (2007) (amicus brief supporting petitioner)

Perry v. Louisiana, No. 89-5120, 498 U.S. 38 (1990) (amicus brief supporting petitioner)

Pinter v. Dahl, No. 86-805, 486 U.S. 622 (1988) (amicus brief)

Pizza Hut v. Papa John's Int'l, No. 00-995 (brief in opposition)

Plaut v. Spendthrift Farm, No. 93-1121, 514 U.S. 211 (1995) (motion for leave to file brief amicus curiae and amicus curiae brief supporting petitioners)

Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy, No. 91-1010, 506 U.S. 139 (1993) (brief for petitioner, reply brief)

Quanta Computer v. LG Electronics, No. 06-937, 553 U.S. 617 (2008) (brief in opposition, supplemental brief)

Quill Corp. v. North Dakota, No. 91-194, 504 U.S. 298 (1992) (amicus brief supporting respondent)

Read Corp. v. Powerscreen of America, No. 02-1053 (brief in opposition)

Riggins v. Nevada, No. 90-8466, 504 U.S. 127 (1992) (amicus brief supporting petitioner)

Rockwell Int'l v. Celeritas Technologies, No. 98-850 (petition for writ of certiorari, reply brief)

Romer v. Evans, No. 94-1039, 517 U.S. 620 (1996) (amicus brief supporting respondents)

Rufo v. Inmates of Suffolk County Jail, Nos. 90-954, -1004, 502 U.S. 367 (1992) (amicus brief supporting petitioners)

Rural West Tennessee African-American Affairs Council v. McWherter, No. 94-1922 (motion to dismiss or affirm for appellees)

Rush Prudential HMO v. Moran, No. 01-1021, 536 U.S. 355 (2002) (amicus brief supporting respondents)

Sable Communications of California v. FCC, Nos. 88-515, -525, 492 U.S. 115 (1989) (brief for the cross-appellants/appellees, reply brief)

Samsung Electronics Co. v. Rambus, No. 80-121 (brief in opposition)

Sell v. United States, No. 02-5664, 537 U.S. 1186 (2003) (motion for leave to file amicus curiae brief and brief supporting respondent)

Seminole Tribe of Florida v. Florida, No. 94-12, 517 U.S. 44 (1996) (amicus brief supporting respondents)

Sempra Generation v. Public Utilities Commission, Nos. 06-1454, -1457, -1462, -1468, 554 U.S. 527 (2008) (brief in opposition)

Shearson/American Express v. McMahon, No. 86-44, 482 U.S. 220 (1987) (amicus brief supporting petitioners)

Shell Oil Co. v. Director of Revenue, No. 87-609 (amicus brief supporting appellee)

City of Sherrill v. Oneida Indian Nation of New York, No. 03-855, 544 U.S. 197 (2005) (brief for respondents, petition for rehearing)

Smith v. Stratus Computer, No. 94-1416 (brief in opposition)

Sofaer v. District of Columbia Court of Appeals, No. 99-1143 (petition for writ of certiorari, reply brief)

SBC Communications v. FCC, No. 98-652 (brief for respondent supporting petitioner)

Stubblefield Construction Co. v. San Bernardino, No. 95-114 (brief in opposition)

SKF USA v. United States Customs & Border Protection, No. 09-767 (brief in opposition for private respondents)

Swidler & Berlin v. United States, No. 97-1192, 524 U.S. 399 (1998) (amicus brief supporting petitioners)

Talbert Fuel Systems Patents Co. v. Unocal Corp., No. 02-90 (brief in opposition)

Tauber v. Salomon Forex, No. 93-1314 (petition for writ of certiorari, reply brief, petition for rehearing)

3M Co. v. LePage's, No. 02-1865 (petition for writ of certiorari, reply brief, supplemental brief)

Ticor Title Ins. v. Brown, No. 92-1988, 511 U.S. 117 (1994) (petition for writ of certiorari, reply brief, brief for petitioners, reply brief)

Touby v. United States, No. 90-6282, 500 U.S. 160 (1991) (petition for writ of certiorari, brief for petitioners, reply brief)

Turner Broadcasting Sys. v. FCC, No. 95-992, 512 U.S. 622 (1994) (for petitioners), No. 95-992, 520 U.S. 180 (1997) (reply brief, jurisdictional statement, appellants' opposition to motions to affirm, brief for appellant, reply brief)

Two Pesos v. Taco Cabana, No. 91-971, 505 U.S. 763 (1993) (motion to dismiss writ as improvidently granted, reply to petitioner's response to motion to dismiss, brief for respondents)

United Mine Workers of America 1974 Benefit Plan and Trust v. LTV Steel Co., No. 91-0933 (petition for writ of certiorari)

United States v. Albertson, No. 89-52 (petition for writ of certiorari)

United States v. Chesapeake & Potomac Tel. Co., No. 94-1893, 94-1900 (brief and reply brief for private petitioner)

United States v. Georgia, Nos. 04-1209, -1236, 546 U.S. 151 (2006) (amicus brief supporting petitioners)

United States v. Munoz-Flores, No. 88-1932, 495 U.S. 385 (1990) (petition for writ of certiorari)

United States v. GWI PCS, No. 00-1621 (Motion for leave to file and brief of amici curiae supporting petitioner)

United States Postal Service v. National Ass'n of Letter Carriers, No. 87-59, 485 U.S. 680 (1988) (petition for writ of certiorari)

Upjohn Co. v. North Haven Planning & Zoning Comm'n, No. 90-1471 (petition for writ of certiorari, reply brief)

Verizon Communications v. Law Offices of Curtis V. Trinko, No. 02-682, 540 U.S. 398 (2004) (petition for writ of certiorari, reply brief, brief for petitioner, reply brief)

Wal-Mart Stores v. Samar Bros., No. 99-140, 529 U.S. 205 (2000) (amicus brief supporting respondent)

Wards Cove Packing Co. v. Atonio, No. 87-1387, 490 U.S. 642 (1989) (amicus brief supporting petitioners)

Warner Cable Communications v. Niceville, No. 90-1463 (motion for leave to file amicus curiae brief and brief supporting petitioner)

Warner-Jenkinson Co. v. Hilton Davis Chemical Co., No. 95-728, 520 U.S. 17 (1997) (petition for writ of certiorari, reply brief, brief for petitioner, reply brief)

Washington Mills Electro Minerals Corp. v. DeLong Equipment Co., No. 93-634 (petition for writ of certiorari, reply brief)

Whitfield v. Richland Shoe Co., No. 86-1520, 486 U.S. 128 (1988) (brief for the petitioner)

Wisconsin v. City of New York, Nos. 94-1614, -1631, -1985, 517 U.S. 1 (1996) (amicus brief supporting petitioners)

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.

Each of the following ten cases was particularly significant for me, whether because of the general significance of the issues or because of the significance of the case to my client or because it took a particularly significant amount of time and effort on my part.

1. *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17 (1997).

This case addressed the doctrine of equivalents for patent infringement. I represented Warner-Jenkinson, which had been held liable for infringement under the doctrine of equivalents. After the Federal Circuit had split en banc over the principles governing that doctrine, Warner-Jenkinson retained me and my firm in 1995 to seek certiorari. The Supreme Court took the case. I was the lead attorney in briefing and arguing the case. The Court narrowed the doctrine of equivalents in ways that gave Warner-Jenkinson a remand, leading to ultimate settlement of the particular case, and, more generally, to a tightening of the doctrine in patent law.

Co-counsel was Robert Chambers, Wood, Herron & Evans, 2700 Carew Tower, 441 Vine Street, Cincinnati, OH 45202 (513.241.2324). Opposing counsel was David Schmit, Frost, Brown, Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, OH 45202 (513.651.6985). The United States as amicus curiae was represented by Deputy Solicitor General Lawrence Wallace, now retired, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530 (202.514.2203); Cornelia (Nina) Pillard, now of Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001 (202.662.9401).

2. *Great-West Life Ins. Co. v. Knudson*, 534 U.S. 204 (2002).

This case involved a question about the scope of one of ERISA's right-to-sue provisions. Janette Knudson, a victim of a severely disabling car accident, had medical care paid for by her ERISA health plan, which then sued her for reimbursement under ERISA after she obtained a tort settlement from the car manufacturer. After the Ninth Circuit held that the ERISA provision did not permit such a suit, the health plan petitioned for certiorari, and Knudson's counsel declined to defend that legal conclusion. The Supreme Court took the case and in spring 2001 appointed me as amicus to defend the Ninth Circuit's ruling. I filed a brief and argued the case and prevailed 5 to 4.

As appointed amicus, my sole co-counsel was my partner Bartow Farr, of Farr & Taranto, 1150 18th Street, NW, Suite 1030, Washington, DC 20036 (202.775.0184). Counsel for the health plan was James Jorden of Jorden Burt LLP, 1025 Thomas

Jefferson Street, NW, Suite 400 East, Washington, DC 20007 (202.965.8135). Counsel for the United States was then-Assistant to the Solicitor General Paul Wolfson, who is now at WilmerHale, 1875 Pennsylvania Avenue, NW, Washington, DC 20006 (202.663.6390).

3. *Verizon Communications v. Law Offices of Curtis V. Trinko*, 540 U.S. 398 (2004).

This case addressed the scope of the monopolization provision of the Sherman Act as it applied to a local telephone company accused of deficiencies in cooperating with new competitors in the wake of the Telecommunications Act of 1996. Verizon retained me in 2000 to assist other attorneys in the district court seeking dismissal of a case making a monopolization claim (among others) on that ground. After the district court dismissed the case, I played a leading role in the briefing in the Second Circuit, though Verizon Deputy General Counsel John Thorne argued the case. When the Second Circuit reinstated the monopolization claim, we obtained Supreme Court review and, ultimately, reversal. I had the lead role in briefing and argued the case in the Supreme Court.

My principal co-counsel were John Thorne, Deputy General Counsel, Verizon, 1320 North Courthouse Road, Arlington, VA 22201 (703.351.3900), and Aaron Panner and Michael Kellogg of Kellogg, Huber, Hansen, Todd, Evans & Figel, 1615 Street, NW, Suite 400, Washington, DC 20036 (202.326.7900). In the Supreme Court, my principal opposing counsel was Donald Verrilli, then of Jenner & Block, now Solicitor General of the United States, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530 (202.514.2203).

4. *MGM Studios v. Grokster*, 545 U.S. 913 (2005).

This case addressed the copyright liability of distributors of software for sharing of electronic files, particularly music, through peer-to-peer networks, where some but not all of the users are directly infringing in sharing copyrighted works without authorization. After the Supreme Court granted the copyright owners' petition for certiorari, the two defendants – Grokster and StreamCast Networks – retained me and my firm in late 2004 to represent them. I had the lead in briefing the case and I argued it. The Supreme Court rejected the broader asserted grounds for such distributor liability but approved an inducement basis for potential liability.

Besides my partner Bartow Farr, my main co-counsel were Fred Von Lohmann, then of the Electronic Frontier Foundation and now Senior Copyright Counsel at Google, 1600 Amphitheatre Parkway, Mountain View, CA 94043 (415.488.6087); Michael Page, Durie Tangri, 217 Leidesdorff Street, San Francisco, CA 94111 (415.362.6666); and Charles Baker, Fulbright & Jaworski, 1301 McKinney Suite 5100, Houston, TX 77010 (713.651.5151). Principal opposing counsel were Donald Verrilli, then of Jenner & Block, now Solicitor General of the United States, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530 (202.514.2203); and then-Solicitor General Paul Clement, now with Bancroft, 1919 M Street, NW, Suite 470, Washington, DC 20036 (202.234.0090).

5. *United States v. Prigmore*, 243 F.3d 1 (1st Cir. 2001) (before Judges Stahl, Selya, and Coffin).

This case involved a criminal prosecution charging three employees of a medical-device company with certain violations relating to the FDA's role in medical-device regulation. I was retained by the employees in 1997 after they were convicted on one count, with the other counts not having been tried. An initial appeal produced, at our urging, a remand to dispose of the remaining counts before there could be a final judgment for appeal. *United States v. Leichter*, 160 F.3d 33 (1st Cir. 1998) (before Judges Torruella, Campbell, and Boudin). I played a central role in the briefing and argued that appeal. Then, after proceedings on remand, the case returned to the First Circuit on appeal, where again I played a central role in the briefing and argued the case. That appeal produced a vacating of the conviction and a remand. I believe that, on remand, a plea requiring no prison time was agreed on.

My main co-counsel were Robert Keefe of what is now WilmerHale, 60 State Street, Boston, MA 02109 (617.526.6334) and Andrew Good of what is now Good & Cormier, 83 Atlantic Avenue, Boston, MA 02110 (617.523.5933). Opposing counsel in the first appeal was then-Assistant United States Attorney Stephen Higginson, now a Judge of the United States Court of Appeals for the Fifth Circuit, 600 South Maestri Place, New Orleans, LA 70130 (504.310.7700). Opposing counsel in the second appeal was David Kris, then of the Department of Justice Criminal Division, now General Counsel of Intellectual Ventures, 3150 139th Avenue SE, Building 4, Bellevue, WA 98005 (425.467.2300).

6. *Litton v. Honeywell*, 140 F.3d 1449 (Fed. Cir. 1998) (before Judges Rader, Newman, and Bryson), and 238 F.3d 1376 (Fed. Cir. 2001) (before Judges Rader, Mayer, and Bryson).

This case involved an appeal of a verdict of patent infringement under the doctrine of equivalents, and under state-law torts, against Honeywell. After Honeywell lost on appeal in 1996, it retained me and my firm to seek certiorari. The Supreme Court vacated the decision in light of *Warner-Jenkinson* and remanded to the Federal Circuit, where I played the lead role in briefing and where I argued the case, which the Federal Circuit ruled (in the 1998 ruling) should be remanded for further consideration of Honeywell's liability. In the district court, I played a lead role in the briefing, and I argued the matter, leading to a summary judgment of non-liability. On plaintiff Litton's appeal to the Federal Circuit, I played the lead role in the briefing and argued the case, producing (in the 2001 ruling) a holding of non-infringement by Honeywell, plus a remand for further proceedings on the state-law claims. The matter was settled before further proceedings.

My main co-counsel were Honeywell's then-General Counsel Ed Grayson, now retired, 210 Chapoquoit Road, Falmouth MA 02540 (508.548.5948), John Donofrio, now General Counsel of the Shaw Group, 4171 Essen Lane, Baton Rouge, LA 70809 (225.932.2500), Greg Long of Sheppard Mullin Richter & Hampton, 333 South Hope

Street, 43rd Floor, Los Angeles, CA 90071 (213.617.5443), Kent Raygor of Sheppard Mullin Richter & Hampton, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067 (310.228.3730), and George Quillin of Foley & Lardner, 3000 K Street, NW, Suite 600, Washington, DC 20007 (202.672.5413). My principal opposing counsel in the first appeal was the late Leslie Misrock of Pennie & Edmonds, joined by Frederick Lorig, now of Quinn Emanuel, 865 South Figueroa Street, 10th Floor, Los Angeles, CA 90017 (213.443.3000). My principal opposing counsel in the second appeal was now-Chief Justice John Roberts, Supreme Court of the United States, 1st Street NE, Washington, DC 20543 (202.479.3000).

7. *Rambus Inc. v. Infineon Technologies*, 318 F.3d 1081 (Fed. Cir. 2003) (before Judges Rader, Bryson, and Prost).

This was the first of a series of cases in which I have represented Rambus in the Federal Circuit. In a suit brought by Rambus alleging infringement of several patents by Infineon, the district court in 2001 construed the claims narrowly and rejected infringement and also upheld in part a jury verdict that Rambus committed fraud through its participation in a standard-setting organization. Rambus retained me just after the jury verdict. I played a leading role in the briefing and I argued the case on appeal. In this 2003 ruling, the Federal Circuit reversed the claim constructions, remanding for further proceedings on infringement, and also reversed the judgment of fraud. On remand in the district court, where I did not participate, the case settled before judgment after proceedings on Infineon's charge that Rambus had improperly destroyed documents.

I represented Rambus in further appeals in related cases, arguing for Rambus on three additional occasions – the last of them a re-argument before a five-judge panel of the Federal Circuit. *Samsung Electronics v. Rambus*, 523 F.3d 1374 (Fed. Cir. 2008) (before Judges Rader, Schall, and Farnan, DJ); *Hynix Semiconductor v. Rambus*, 2011 WL 1815978 (Fed. Cir.) (initially before Chief Judge Michel and Judge Linn; on re-argument before Judges Newman, Lourie, Bryson, Gajarsa, and Linn). The latter has been remanded for further proceedings.

In the 2003 appeal, my principal co-counsel were William West, now of Pillsbury, 2300 N Street, NW, Washington, DC 20037 (202.663.8875); Michael Schaengold, of Patton Boggs, 2550 M Street, NW, Washington, DC 20037 (202.457.6523); Greg Stone and Paul Watford of Munger Tolles & Olson, 355 South Grand Avenue, 35th Floor, Los Angeles, CA 90071 (213.683.9255 and 213.683.9172). In the later appeals, co-counsel have included Carter Phillips and Eric Shumsky of Sidley Austin, 1501 K Street, NW, Washington, DC 20005 (202.736.8270 and 202.736.8496).

My principal opposing counsel in the 2003 appeal was former-Judge and -Solicitor General Kenneth Starr, who is currently the President of Baylor University, One Bear Place #97096, Waco, TX 76798 (254.710.3555), joined by John Desmarais, then of Kirkland & Ellis, now of Round Rock Research, P.O. Box 1042, Mt. Kisco, NY 10549 (888.651.0028). In the 2008 appeal, opposing counsel included David Healey, now of Fish & Richardson, 1 Houston Center, 1221 McKinney Street, Houston, TX 77010

(713.654.5310), and Brian Riopelle, McGuireWoods LLP, 901 East Cary Street, Richmond, VA 23219 (804.775.1084). In the 2011 case, my principal opposing counsel was Sri Srinivasan, now Principal Deputy Solicitor General, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530 (202.514.2203).

8. *Housey Pharmaceuticals v. Bayer*, 2005 WL 752364 (Fed. Cir.) (before Judges Rader, Clevenger, and Bryson) and 2006 WL 2233214 (Fed. Cir.) (before Judges Rader, Schall, and Bryson).

This case involved a claim of unenforceability of a patent owned by Housey Pharmaceuticals, which hired me in January 2004, just after the district court found the patent unenforceable. I played the leading role in the briefing, and I argued the case, in the Federal Circuit, which held in 2005 that the district court had clearly erred but remanded to permit the district court's further consideration of the issue. The district court found unenforceability again on remand, and I played the leading role in the briefing and I argued the case in the Federal Circuit in the subsequent appeal. In 2006, the Federal Circuit affirmed the remand ruling. (I also represented Housey Pharmaceuticals in unsuccessfully seeking Supreme Court review in *Housey Pharmaceuticals, Inc. v. Astrazeneca*, 366 F.3d 1348 (Fed. Cir. 2004).)

My co-counsel was Terrance Rader, of Rader, Fishman & Grauer, 39533 Woodward Avenue, Suite 140, Bloomfield Hills, MI 48304 (248.594.0600). My opposing counsel was Jeffrey Bove, of Connolly Bove Lodge, & Hutz, 1007 North Orange Street, Suite 900, P.O. Box 2207, Wilmington, DE 19899 (302.658.9141).

9. *Verizon Services Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295 (Fed. Cir. 2007) (before Chief Judge Michel and Judges Gajarsa and Dyk).

This case involved my client Verizon's assertion of several patents against Vonage. Verizon enlisted me in 2006 to aid in the district court work, though not to have an in-court role, and I did so, assisting in all phases of the trial-level litigation, before and during the jury trial. Verizon won a jury verdict, which was followed by stay briefing and argument in the Federal Circuit, as well as merits briefing and argument, all within a couple of months. I played a leading role in the briefing and I did both arguments in the Federal Circuit, which affirmed in substantial part. The case was thereafter settled.

Co-counsel were John Thorne, Deputy General Counsel, Verizon, 1320 North Courthouse Road, Arlington, VA 22201 (703.351.3900), and several lawyers from Winston & Strawn, including Geoffrey Eaton, 1700 K Street, NW, Washington, DC 20006 (202.282.5705), and Peter McCabe and Dan Webb, 35 West Wacker Drive, Chicago, IL 60601 (312.558.5954 and 312.558.5856). My opposing counsel was Roger Warin, Steptoe & Johnson, 1330 Connecticut Avenue, NW, Washington, DC 20036 (202.429.6280), joined by Scott Doyle, now of Shearman & Sterling, 801 Pennsylvania Avenue, NW, Suite 900, Washington, DC 20004 (202.508.8170).

10. *Bard Peripheral Vascular v. W.L. Gore & Associates*, No. 2010-1510, Federal Circuit, argued May 3, 2011 (before Judges Newman, Gajarsa, and Linn).

This case involves a suit for patent infringement by Bard against Gore, based on a patent issued in 2002 after an interference involving competing applications from 1974 that twice went to the Federal Circuit. After a jury verdict in late 2007, and denials of post-trial relief in 2009, Gore retained me to assist on the eventual appeal. There were many issues litigated in the trial court, including several validity issues and unenforceability. I played a central role in the selection of appeal issues and in the briefing, and I argued the case, in the Federal Circuit. The Federal Circuit has not yet decided the case.

My co-counsel include recently retired senior counsel at Gore, Iain Campbell, 551 Paper Mill Road, Newark, DE 19711; William Maledon, Osborn Maledon, 2929 North Central Avenue # 2100, Phoenix, AZ 85012 (602.640.9000); and David Pfeffer and Harry Marcus, of Locke Lord Bissell & Liddell, 3 World Financial Center, New York, NY 10281 (212.415.8600). My principal opposing counsel is Steven Cherny, Kirkland & Ellis, 601 Lexington Avenue, New York, NY 10022 (212.446.4800), joined by, among others, Gregory Garre of Latham & Watkins, 555 Eleventh Street, NW, Washington, DC 20004 (202.637.2200).

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 law practice has been overwhelmingly a litigation practice. I include in such litigation those occasions on which I participated in discussions with attorneys for the United States about what positions, if any, the United States would take as an amicus in cases that I was working on for clients, whether the client had already participated in the litigation or was planning for such participation. I have done very little work that was not part of litigation.

One area of activity that is somewhat different from ordinary litigation consists of work on several mergers involving the company that is now Verizon: the 1997 merger of Bell Atlantic and Nynex; the 2000 merger of Bell Atlantic with GTE (which formed "Verizon"); and the 2006 merger of Verizon with MCI. In each situation, my client was Bell Atlantic/Verizon, and I participated in preparation of papers for submission, and occasionally in in-person presentations, to either the Justice Department's Antitrust Division or the Federal Communications Commission as those offices were reviewing the mergers before they were completed.

In recent years, I also have spent time advising Verizon on various issues that may affect its overall involvement in litigation. That advisory work has chiefly concerned patent

law. As part of that advisory work, on approximately half a dozen occasions in 2008 and 2009 (perhaps into 2010), I accompanied at least one representative of Verizon to meet with staff of Senators or Representatives to discuss some of the issues relating to damages in patent cases when Congress was considering potential amendments to the patent statute. I also accompanied at least one representative of Verizon to meet with congressional staff on a couple of occasions when Congress was considering altering the pleading standard the Supreme Court had articulated in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 7 (2009). I believe that that is the sole legislative lobbying activity in which I have engaged.

I also did several projects for the Antitrust Division of the Department of Justice. For several months in 1998, I was retained as an outside consultant to aid in the Division's consideration of possible antitrust issues raised by certain practices of Visa and MasterCard. My role came to an end before the Division completed its investigation and made a decision to take action. Earlier, in late 1994 to early 1995, I was retained by the Antitrust Division to assist in some of the briefing in a case involving a consent decree against Microsoft. Later, from fall 1999 to early 2001, I was retained by the Division to assist in some of the briefing for the government in its litigated antitrust case against Microsoft.

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

In spring 1992, I taught a seminar on "Supreme Court Practice" at Georgetown University Law Center. The course involved study of the components of practicing in the Supreme Court: petitions for certiorari; briefs in opposition to certiorari; merits briefs; amicus briefs; and oral arguments. I no longer have a syllabus for the course.

In fall 1995, I taught "Federal Courts and the Federal System" at Georgetown University Law Center. The course involved study of the topics that are traditionally part of a "federal jurisdiction" class: standing and related doctrines; non-Article III courts; congressional control of courts' jurisdiction; federal question jurisdiction; federal common law; implied rights of action; appellate review; habeas corpus; Eleventh Amendment issues; the scope of Section 1983; and abstention doctrines. A syllabus is supplied.

In fall 2002, I taught "Patent Law" at Harvard Law School. The course involved study of a broad range of issues in patent law: eligible subject matter; utility; disclosure and claiming requirements; novelty and other priority issues; obviousness; infringement; and some other issues. A syllabus is supplied.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not have any arrangements for deferred income or future benefits from previous business relationships.

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

I have no plans, commitments, or agreements to pursue outside employment during service with a 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 am unaware of any individuals, family or otherwise, that are likely to present potential conflicts of interest. Such conflicts as are likely to arise seem likely to come from my representation of clients. It is possible that potential conflicts of interest may be presented with regard to current or former clients. Specifically, I am aware of several particular matters in which I have participated that either are pending in the Federal Circuit or have a potential to be in the Federal Circuit. I would not participate in those matters as a judge. My present or former clients in those matters are Fiserv, Inc.; Honeywell Inc.; Gilbert Hyatt; Rambus Inc.; Timken Co.; Verizon Communications; US Bank N.A.; and W.L. Gore & Associates.

It is unlikely that, after I left, my firm would handle matters before the Federal Circuit, but if it did, I would recuse myself for at least a period of time. I would apply the standards of 28 U.S.C. § 455 and the Code of Judicial Conduct, as well as any other pertinent principles of judicial ethics, to determine whether to recuse in other matters, including in matters that involve former clients of my firm but that are themselves unrelated to any matters that I or my firm handled.

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 consult rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Judicial Conduct, and based on that consultation I would compile a comprehensive list of matters and/or clients (or other persons) for easy flagging of potential conflicts of interest. In close cases I would consult other judges and any persons designated by the court or judicial organizations to provide advice on such questions as they 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.

I have done essentially two kinds of legal work that are relevant to this question. First, without undertaking a representation of a client, I have given many hours in freely helping lawyers to clarify their appellate arguments, sometimes in briefing, more often in moot courts held in preparation for oral arguments. Much of this work has been through the Supreme Court Institute of the Georgetown University Law Center, which holds moot courts in most cases argued in the Supreme Court, and for which I have long done a handful of moot courts each year. Some of this work has been through the National Association of Attorneys General, for which I have done many moot courts over the years. Some of it has been for lawyers from the Public Defender Service: for example, I devoted many hours to assisting on *United States v. Dixon*, 509 U.S. 688 (1993). Some of it has been for lawyers who are representing persons suffering physical injury and suing for torts: for example, I helped the plaintiffs' attorneys prepare in *Wyeth v. Levine*, 555 U.S. 555 (2009), and *Norfolk & Western Ry. Co. v. Ayers*, 538 U.S. 135 (2003). I performed a similar role for an attorney for a discharged postal employee in *United States Postal Service v. Gregory*, 534 U.S. 1 (2001), and for various environmental plaintiffs (who may not be so uniformly disadvantaged) in cases such as *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997), *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009), *Massachusetts v. EPA*, 549 U.S. 497 (2007), *Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743 (2010), and *American Electric Power Co. v. Connecticut*, 131 S. Ct. 2527 (2011). Although I have not maintained records, I have invested a substantial number of hours in this work over the years.

Second, I have undertaken representations in several cases in the Supreme Court that involved disadvantaged clients and/or were without pay or for much reduced rates. Examples include: *Touby v. United States*, 500 U.S. 160 (1991) (criminal defendants in drug case); *Dewsnup v. Timm*, 502 U.S. 410 (1992) (bankruptcy matter); *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992) (damages remedy for sexual harassment of high school student); *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002) (victim of tort accident seeking to keep recovery against ERISA claim of insurer); and *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010) (First Amendment challenge to application of "material support" statute to certain speech and association involving designated foreign terrorist organizations). I also drafted an amicus brief, pro bono, for the State and Local Legal Center in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996). When undertaken, these and other matters have each consumed large amounts of time in a given year – sometimes a couple of months of full-time work.

26. **Selection Process**:

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

On January 25th or 26th, 2011, I spoke to an official in the White House Counsel's Office, who asked me whether I was interested in the possibility of serving on the Federal Circuit, and I confirmed that I would be interested. On July 6, 2011, I spoke with that official again, and was told that I was still under consideration. Since August 10, 2011, I have been in contact with officials from the Office of Legal Policy of the Department of Justice. On September 12, 2011, I interviewed 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
Taranto, Richard G.	Federal Circuit	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**
Circuit Judge	☑ Nomination, Date 11/10/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2010 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.**	
Farr & Taranto 1150 18th Street, NW, Suite 1030 Washington, DC 20036	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	Farr & Taranto
2.	Administrator	Farr & Taranto Profit Sharing Plan and Trust
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 Taranto, Richard G.	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	Farr & Taranto partnership income	$904,230.00
2.	2010	Farr & Taranto partnership income	$1,163,448.00
3.	2009	Farr & Taranto partnership income	$1,515,016.00
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 9	Name of Person Reporting Taranto, Richard G.	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.	Pomona College	Tuition, room, & board	K
2.	Princeton University	Tuition, room, & board	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 9	Name of Person Reporting Taranto, Richard G.	Date of Report 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) 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. PNC (cash & CDs)	E	Interest	O	T	Exempt				
2. Farr & Taranto capital account	H1	Distribution	M	U					
3. 401(k) Plan # 1 (apportioned share)									
4. - American Chartered Bank CD	A	Interest							
5. - Comerica Bank CD	C	Interest							
6. - American General Financial Bond (0 coupon)		None							
7. - National Rural Utility Bond	B	Interest							
8. - CIT Bank CD	C	Interest	K	T					
9. - American Express CDs	C	Interest	L	T					
10. - GE Capital CD	A	Interest	K	T					
11. - Ally Bank CD	A	Interest	K	T					
12. - HSBC Bank CDs	C	Interest	L	T					
13. - UBS Note (earnings only at term)		None	J	T					
14. - Barclay's Note (earnings only at term)		None	J	T					
15. - HSBC Corp. Note	D	Int./Div.	K	T					
16. - MidFirst Bank CD	B	Interest	K	T					
17. - UBS Bank CD	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
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 5 of 9	Name of Person Reporting Taranto, Richard G.	Date of Report 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). 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. - Philadelphia Bonds (0 coupon)		None	L	T					
19. - Sacramento Bond (0 coupon)		None	J	T					
20. - Discover Bank CD	C	Interest	L	T					
21. - BMW Bank	A	Interest	K	T					
22. - Ft. Lee NJ Bond	D	Interest	K	T					
23. - ING Annuity	D	Int./Div.	K	T					
24. - MetLife Annuity	D	Int./Div.	K	T					
25. - Ohio National Foundation Plus Annuity	D	Int./Div.	L	T					
26. UBS Cash Funds	A	Interest	K	T					
27. Allstate Life Annuity	C	Int./Div.	K	T					
28. Ciena Corp. stock		None							
29. EMC Corp. stock		None							
30. Pfizer Corp. stock	A	Dividend							
31. Alcan Aluminum Note	D	Int./Div.	M	T					
32. American Express Century Bank CD	C	Interest							
33. American Express Bank CD	B	Interest							
34. Banco Popular CD	C	Interest							

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
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
Q =Appraisal
U =Book Value

B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000

R =Cost (Real Estate Only)
V =Other

C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
S =Assessment
W =Estimated

D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000

T =Cash Market

E =$15,001 - $50,000

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting Taranto, Richard G.	Date of Report 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) 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. Banco Santander	C	Interest							
36. BMW Bank CDs	C	Interest	M	T					
37. CIT Bank CD	D	Interest	M	T					
38. Discover Bank CD	C	Interest							
39. GE Money Bank CDs	D	Interest	M	T					
40. GE Capital Finance CDs	B	Interest	M	T					
41. Goldman Sachs Bank UT CD	B	Interest							
42. HSBC Finance Corp. Notes	C	Int./Div.	K	T					
43. New Frontier Bank CD	B	Interest							
44. Premier Bank CD	A	Interest							
45. Seattle Savings Bank CD	C	Interest							
46. Sherman County Bank CD	A	Interest							
47. Bank of America CD	B	Interest	L	T					
48. Fed'l Home Loan Mortgage Corp. Bond	A	Interest							
49. Goldman Sachs Bank NY CD	A	Interest	L	T					
50. Stearns Bank CD	A	Interest							
51. Ally Bank CDs	C	Interest	M	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
K =$1,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
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 9	Name of Person Reporting Taranto, Richard G.	Date of Report 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) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. UBS Bank CD	A	Interest	L	T					
53. Barclay's Bank CD		None	M	T					
54. Barclay's Note (earnings at term)		None	J	T					
55. Other assets:									
56. - Lightbridge Corp.	A	None	J	T					
57. - UBS Bank	A	Int./Div.	K	T					
58. - Southwest Bank CD	D	Interest	L	T					
59. - Bank of America CD	B	Interest	L	T					
60. - Western Bank CD	C	Interest							
61. - HSBC Financial Notes	C	Int./Div.	K	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
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P2 =$25,000,001 - $50,000,000
Q =Appraisal
U =Book Value

B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000

R =Cost (Real Estate Only)
V =Other

C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
S =Assessment
W =Estimated

D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000

T =Cash Market

E =$15,001 - $50,000

FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Taranto, Richard G.	Date of Report 11/10/2011

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

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Taranto, Richard G.	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: S/ Richard G. Taranto

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 (incl. CDs)	2	485	651	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		328	823	Notes payable to relatives			
Unlisted securities – see schedule		206	008	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	1	973	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property (approx.)		220	000	Tuition obligations 2011-12		67	700
Cash value-life insurance		208	974				
Other assets itemize: Partnership capital account		137	058				
				Total liabilities		67	700
				Net Worth	5	492	314
Total Assets	5	560	014	Total liabilities and net worth	5	560	014
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged?	No		
On leases or contracts (jointly liable on firm's lease, $59,200 due to end in 7/2012)		59	200	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	
HSBC Notes	$72,319
Alcan Alum. Notes	$106,611
Fort Lee NJ Notes	$47,021
Phila PA Notes	$91,650
Sacramento Notes	$11,167
Lightbridge Corp.	$255
	$328,823
Unlisted Securities	
Allstate Annuity	$41,054
Ohio Nat'l Fdtn Plus Annuity	$54,373
ING Annuity	$39,080
UBS Note	$14,605
MetLife Annuity	$39,196
Barclays Notes	$17,700
	$206,008
Real Estate	
Personal Residence #1	$1,326,200
Personal Residence #2	$647,300
	$1,973,500

AFFIDAVIT

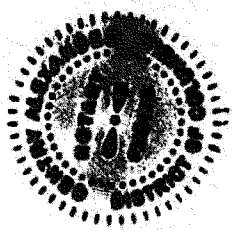
I, Richard Gary Taranto, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 10, 2011
(DATE)

Richard G. Taranto
(NAME)

(NOTARY)

Gentry Alexander
District of Columbia
My Commission Expires
June 30, 2013



Senator FRANKEN. Thank you so much.

Okay. Let's have our second panel up here, which is Judge Drain and Judge Rosenbaum, both of whom were introduced by their respective Senators. Welcome to both.

I am going to have you both stand and take this oath.

[Whereupon, the witnesses were duly sworn.]

Senator FRANKEN. Please be seated.

I'll start with Judge Drain, since you're to my left there, the first. Would you—I'd love for you to be able to introduce your family.

STATEMENT OF GERSHWIN A. DRAIN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Judge DRAIN. I would, thank you.

Senator FRANKEN. And any friends who are here as well.

Judge DRAIN. Okay. Thank you, Senator Franken. Before I introduce family, I do want to thank President Obama for the nomination. I am deeply honored and humbled by it.

And I want to thank Senator Leahy for scheduling this hearing. I want to thank you, Senator Franken, for presiding here, and you also, Senator Grassley. I want to thank you for serving as the Ranking Member. I also want to thank Senator Carl Levin for that very generous and kind introduction.

I do have a fair amount of family here that I'd like to introduce, with your permission. I want to first introduce my wife, Meredith Drain, who has been an incredible partner for 43 years. We got married when we were young college students.

Senator FRANKEN. Welcome.

Judge DRAIN. And I have my oldest daughter here, Shelley Drain. She's a lawyer and she works for the Prosecutor's Office in Wayne County. Her husband, Keith Strange, was not able to be here this afternoon. My youngest daughter is also here, Shannon Salinas, and she's also a lawyer. She works for the American Council of Life Insurers. Her husband, Norberto Salinas, my son-in-law, he works for the House Judiciary Committee.

And then my mom is here, and yesterday she became 88 years young.

Senator FRANKEN. Happy birthday.

Judge DRAIN. So I am happy that she was able to make it here.

And my sister—my older sister Cassandra Rutledge is here. She's a retired school teacher. My younger sister, Vernie Drain, is not here. She's an M.D. and she works for the VA Hospital in Cincinnati, Ohio.

My cousin is here, Johnna Cheek; my aunt Winona Thomas; my nephew Caleb Rutledge, and I have a number of other relatives and friends watching on the webcast. So, thank you, Senator Franken, for allowing me to make these introductions.

Senator FRANKEN. Absolutely. So your mom had a doctor and a lawyer.

Judge DRAIN. Yes. Yes.

Senator FRANKEN. Well, congratulations.

Judge DRAIN. To her real tribute. To her real tribute. She really taught us the value of a good education and the importance of hard work.

Senator FRANKEN. Fabulous.

Judge DRAIN. So, we're grateful to her for that.

Senator FRANKEN. Well, happy birthday, again. This is a pretty good birthday present, I would think, to have your son being nominated for a Federal judgeship.

Judge Rosenbaum, would you care to introduce your family and friends who are here?

[The biographic information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Gershwin Allen Drain

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

   United States District Judge for the Eastern District of Michigan

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

   Michigan Third Circuit Court
   1411 Coleman A. Young Municipal Center
   2 Woodward Avenue
   Detroit, Michigan 48226

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

   1949; Detroit, Michigan

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

   1987 – 1991, University of Nevada – Reno; Masters of Judicial Studies, 1991

   1970 – 1972, University of Michigan Law School; J.D., 1972

   1966 – 1970, Western Michigan University; B.S., 1970

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
Michigan Third Circuit Court
2 Woodward Avenue
Detroit, Michigan 48226
Judge

1987 – 1997
Recorders Court for the City of Detroit
1441 St. Antoine Street
Detroit, Michigan 48226
Judge

1986 – 1987
36th District Court for the City of Detroit
421 Madison Avenue
Detroit, Michigan 48226
Judge

1974 – 1986
Federal Defender Office
613 Abbott Street, Fifth Floor
Detroit, Michigan 48226
Attorney

1973 –1974
City of Detroit, Department of Transportation
1301 East Warren Avenue
Detroit, Michigan 48207
Attorney

1972 – 1973
Michigan Third Circuit Court
2 Woodward Avenue
Detroit, Michigan 48226
Legal Research Clerk

Other Affiliations (uncompensated):

1990 – 1992; 2008 – 2011
Southfield Christian School
28650 Lahser Road
Southfield, Michigan 48034
School Board

2002 – 2008
Highland Park Baptist Church
28600 Lahser Road
Southfield, Michigan 48034
Deacon Board

2002 – 2008
InnerChange Freedom Initiative
(A division of Prison Fellowship Ministries)
44810 Riverside Parkway, #100
Leesburg, Virginia 40176
Board of Directors

2000 – 2006
New Creations Community Outreach
(Formerly Transition of Prisoners)
40 Hague Street, #100
Detroit, Michigan 48202
Board of Directors

1992 – 1999
Wayne County Criminal Advocacy Program
Frank Murphy Hall of Justice
1441 St. Antoine Street
Detroit, Michigan 48226
Board of Directors

1996 – 1998
Cornerstone Schools
6861 East Nevada Street
Detroit, Michigan 48235
Board of Directors

1993 – 1998
Justice Fellowship
(A division of Prison Fellowship Ministries)
44810 Riverside Parkway, #100
Leesburg, Virginia 40176
Board of Directors

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

I did not serve in the U.S. 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.

   Michigan Chronicle's Men of Excellence Award (2011)

   Rosedale Park Baptist Church Cornelius Community Service Award (2004)

   Wayne County Neighborhood Legal Services Appreciation Award (1993, 1995, 1998)

   Detroit News Michiganian of the Year (1997)

   WWJ-950 Citizen of the Week (1997)

   St. Gregory High School Alumni of the Year (1993)

   United Sisterhood Appreciation Award (1993)

   Justice Fellowship Appreciation Award (1988)

   Scholarship to the University of Michigan Law School (1970 – 1972)

   Athletic Scholarship (football) to Western Michigan University
   Partial Scholarship (1966 – 1968)
   Full Scholarship (1968 – 1970)

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 Council of Business Court Judges (2008 – 2009)

   Association of Black Judges of Michigan (1986 – present)
   Co-Chair, Law Day Mock Trial (1990)
   Mock Trial Program, Judge and Coach (1993 – 1998)
   Adopt-a-School and Mentoring Program (1993 – 1998)

   Michigan Bar Association (1972 – present)
   Criminal Jury Instruction Committee (mid- to late-1990s)
   Criminal Law Section (1974 – 2000)
   Prisons & Corrections Section (1998)

   Michigan Judges Association (1995 – present)

   National Bar Association (2011 – present)

Wayne County Criminal Advocacy Program
Board of Directors (1992 – 1999)

Wolverine Bar Association (1980 – 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.

Michigan, 1972

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, 1973
United States District Court for the Eastern District of Michigan, 1972

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.

Cornerstone Schools
Board of Directors (1996 – 1998)

Highland Park Baptist Church (1980 – present)
Deacon Board (2002 – 2008)

NAACP (1984 – present)
Life Member since March of 1989

National Judicial College (1993 – 2003)
Faculty Counsel (1997 – 2003)
Faculty Advisor (1993)
Faculty Instructor (approx. 1994 – 2002)

New Creations Community Outreach (formerly Transition of Prisoners)
Board of Directors (2000 – 2006)

North Rosedale Park Civic Association (1980 – present)
CB Patrol (similar to Neighborhood Watch) (1986 – 1988)
Home & Garden Tour Committee (2010)

Prison Fellowship Ministries (1987 – 2008)
Justice Fellowship Michigan Task Force (1987 – 1990)
Justice Fellowship Board of Directors (1993 – 1998)
InnerChange Freedom Initiative Board of Directors (2002 – 2008)

Southfield Christian School
Board Member (1990 – 1992; 2008 – 2011)
Christian Education Committee (1990 – 1992; 2008 – 2011)

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

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.

Marijuana, 'the Gateway Drug,' MICHIGAN CHRONICLE (June 27, 2000). Copy supplied.

Our Judges Are Hardworking, MICHIGAN CHRONICLE (June 13, 2000). Copy supplied.

The Majesty of Calmness, MICHIGAN CHRONICLE (May 16, 2000). Copy supplied.

Prison Ministry in Uganda a Lesson for Judge, Part III, MICHIGAN CHRONICLE (Mar. 21, 2000). Copy supplied.

The Uganda Youth Forum and the Rev. Haman Cross Jr., Part II, MICHIGAN CHRONICLE (Mar. 8, 2000). Copy supplied.

Sowing the Seed: Building New Democracy in Uganda, Part I, MICHIGAN CHRONICLE (Feb. 28, 2000). Copy supplied.

Crime and Education, MICHIGAN CHRONICLE (Nov. 16, 1999). Copy supplied.

A Texas Prison Ministry Trip, Part II, MICHIGAN CHRONICLE (Oct. 12, 1999). Copy supplied.

A Texas Prison Ministry Trip, Part I, MICHIGAN CHRONICLE (Oct. 5, 1999). Copy supplied.

Judge Dalton A. Roberson Celebrates Retirement, MICHIGAN CHRONICLE (July 20, 1999). Copy supplied.

Legacy of Sunnie Wilson: 'Toast of the Town,' MICHIGAN CHRONICLE (June 29, 1999). Copy supplied.

The Judge Beverley Jasper Legacy, MICHIGAN CHRONICLE (June 8, 1999). Copy supplied.

Wayne County Court Helps Control Flow of Narcotics, MICHIGAN CHRONICLE (Apr. 27, 1999). Copy supplied.

Judge Robert Evans Receives Recognition Award, MICHIGAN CHRONICLE (Apr. 20, 1999). Copy supplied.

GM's Roy Roberts receives Soul and Spirit Award, MICHIGAN CHRONICLE (Mar. 16, 1999). Copy supplied.

SCLC Celebrated MLK Weekend, MICHIGAN CHRONICLE (Mar. 2, 1999). Copy supplied.

Alvin Poussaint Speaks at Wayne State Martin Luther King Celebration, MICHIGAN CHRONICLE (Feb. 9, 1999). Copy supplied.

Young Leaders of Legacy Associates, MICHIGAN CHRONICLE (Jan. 26, 1999). Copy supplied.

Last Respects to Mike Wahls, a 'Great and Good Man,' MICHIGAN CHRONICLE (Dec. 22, 1998). Copy supplied.

Judge Keith Receives Devitt Award, MICHIGAN CHRONICLE (July 7, 1998). Copy supplied.

Gospel Group with a Mission, MICHIGAN CHRONICLE (June 9, 1998). Copy supplied.

Religion Reduces Recidivism, MICHIGAN CHRONICLE (Apr. 28, 1998). Copy supplied.

Challenge of Court Consolidation, MICHIGAN CHRONICLE (Apr. 7, 1998). Copy supplied.

Dads and Daughters, MICHIGAN CHRONICLE (Mar. 3, 1998). Copy supplied.

Message from Mayor Young, MICHIGAN CHRONICLE (Jan. 13, 1998). Copy supplied.

Clergy, Courts, Counselors Celebrate, MICHIGAN CHRONICLE (Nov. 11, 1997). Copy supplied.

President Carter's Book Reveals His Faith, MICHIGAN CHRONICLE (Oct. 28, 1997). Copy supplied.

NLA Banquet Focuses on Help, Hope, MICHIGAN CHRONICLE (Oct. 14, 1997). Copy supplied.

NAACP, Detroit Tigers Pay Tribute to Jackie Robinson, MICHIGAN CHRONICLE (Sept. 30, 1997). Copy supplied.

Fixing Old Flaws from the Felony-Murder Rule, MICHIGAN CHRONICLE (Sept. 2, 1997). Copy supplied.

The Law's Great Lady, MICHIGAN CHRONICLE (Aug. 19, 1997). Copy supplied.

Wonderful Washington, D.C., MICHIGAN CHRONICLE (Aug. 5, 1997). Copy supplied.

The Law I Love to Hate, Part II, MICHIGAN CHRONICLE (Late Apr. 1997). Copy supplied.

The Law I Love to Hate, Part I, MICHIGAN CHRONICLE (Apr. 22, 1997). Copy supplied.

Student Essayists Impress Judges and Sponsors, MICHIGAN CHRONICLE (Mar. 25, 1997). Copy supplied.

Judge Anna Diggs-Taylor Quietly Makes History, MICHIGAN CHRONICLE (Feb. 25, 1997). Copy supplied.

School Celebrates Diversity, MICHIGAN CHRONICLE (Dec. 11, 1996). Copy supplied.

Judges Help Students through Mentoring Program, DETROIT LEGAL NEWS (Nov., 1996). Copy supplied.

A 'Worthy' Prayer Breakfast, MICHIGAN CHRONICLE (Sept., 1996). Copy supplied.

Mentoring Banquet a Success, MICHIGAN CHRONICLE (June 12, 1996). Copy supplied.

Prison Ministries Rehabilitate, MICHIGAN CHRONICLE (May, 1996). Copy supplied.

Law Office Is a Detroit Landmark, MICHIGAN CHRONICLE (Apr. 17, 1996). Copy supplied.

Ship Brings Slavery to Life, MICHIGAN CHRONICLE (Mar. 27, 1996). Copy supplied.

Edelman Addresses Deltas on Founder's Day, MICHIGAN CHRONICLE (Mar. 13, 1996). Copy supplied.

Promise Keepers '96: A Refocus on Humility and Unity (1996). MICHIGAN CHRONICLE. Copy supplied.

Promises of a Promise Keeper, MICHIGAN CHRONICLE (Dec. 19, 1995). Copy supplied.

Students Celebrate Brotherhood, MICHIGAN CHRONICLE (Dec. 12, 1995). Copy supplied.

Judges Begin Third Year of Mentoring Program, DETROIT LEGAL NEWS (Dec. 1, 1995). Copy supplied.

The Mentor in Mentoring, MICHIGAN CHRONICLE (Nov. 28, 1995). Copy supplied.

Elderly, Infirm Expensive to House, MICHIGAN CHRONICLE (Nov. 21, 1995). Copy supplied.

Real Rehabilitation Is Possible, MICHIGAN CHRONICLE (Oct. 31, 1995). Copy supplied.

Is Mandatory Mentoring Needed?, MICHIGAN CHRONICLE (Sept. 19, 1995). Copy supplied.

Parents of Murdered Children Helps Family, Loved Ones Heal, MICHIGAN CHRONICLE (Aug. 30-Sept. 5, 1995). Copy supplied.

'As a Man Thinketh' Is Thought-Provoking, MICHIGAN CHRONICLE (Aug. 29, 1995). Copy supplied.

A Message to Men Who Abuse Their Mates, MICHIGAN CHRONICLE (Aug. 22, 1995). Copy supplied.

Local Judge Teaches College, MICHIGAN CHRONICLE (Aug. 8, 1995). Copy supplied.

Archer Welcomes Metro Mayors to Annual Prayer Breakfast, MICHIGAN CHRONICLE (July 4, 1995). Copy supplied.

Working to Sweep Detroit Clean, MICHIGAN CHRONICLE (June 13, 1995). Copy supplied.

African Americans Highlight Promise Keepers Conference, MICHIGAN CHRONICLE (May 30, 1995). Copy supplied.

Jail Tours: Positive Prevention, MICHIGAN CHRONICLE (May 16, 1995). Copy supplied.

Edwards Compiles Chronicle Essays, MICHIGAN CHRONICLE (May 9, 1995). Copy supplied.

Appointed Attorneys Get a Bad Rap, MICHIGAN CHRONICLE (Apr. 18, 1995). Copy supplied.

Mentors vs. Mentees, MICHIGAN CHRONICLE (Apr. 11, 1995). Copy supplied.

Renaissance Rules in MLK Essay Competition, MICHIGAN CHRONICLE (Apr. 4, 1995). Copy supplied.

Black Judges Assn. Worships at New St. Paul Tabernacle COGIC, MICHIGAN CHRONICLE (Apr. 4, 1995). Copy supplied.

New Book Offers Tips on Preventing Crime, MICHIGAN CHRONICLE (Mar. 28, 1995). Copy supplied.

A 'Review' of Life behind the Wall, MICHIGAN CHRONICLE (Mar. 21, 1995). Copy supplied.

What Does a Life Sentence Mean?, Part II, MICHIGAN CHRONICLE (Mar. 8-14, 1995). Copy supplied.

What Does a Life Sentence Mean?, Part I, MICHIGAN CHRONICLE (Mar. 7, 1995). Copy supplied.

The Death of Conscience, MICHIGAN CHRONICLE (Feb. 21, 1995). Copy supplied.

Mayor Launches MELL Program, MICHIGAN CHRONICLE (Feb. 21, 1995). Copy supplied.

Understanding the Man behind the City, MICHIGAN CHRONICLE (Feb. 8-14, 1995). Copy supplied.

Another Life Lost to AIDS, MICHIGAN CHRONICLE (Jan. 24, 1995).

New Autobiography Is Meaningful, MICHIGAN CHRONICLE (Jan. 17, 1995). Copy supplied.

Angel Tree Project Delivery Day, MICHIGAN CHRONICLE (Jan. 10, 1995). Copy supplied.

Judge, Mayor Honored by NBA, MICHIGAN CHRONICLE (Jan. 3, 1995). Copy supplied.

The Angel Tree Project, MICHIGAN CHRONICLE (Dec. 6, 1994). Copy supplied.

'Success Runs in our Race,' MICHIGAN CHRONICLE (Nov. 1, 1994). Copy supplied.

Men Need Mentors and Models Too, Part II, MICHIGAN CHRONICLE (Oct. 19, 1994). Copy supplied.

Men Need Mentors and Models Too, Part I, MICHIGAN CHRONICLE (Oct. 18, 1994). Copy supplied.

The Importance, Value of Work, MICHIGAN CHRONICLE (Oct. 11, 1994). Copy supplied.

Courting AIDS is 'Dancing with Death,' MICHIGAN CHRONICLE (Sept. 13, 1994). Copy supplied.

Purging a Larcenous Intent, MICHIGAN CHRONICLE (Sept. 28-Oct. 4, 1994). Copy supplied.

The ABJM Gavel Is Passed, MICHIGAN CHRONICLE (Aug. 23, 1994). Copy supplied.

Judge Denise Page Hood becomes Detroit's Newest Federal Judge, MICHIGAN CHRONICLE (Aug. 16, 1994). Copy supplied.

New Book is Spiritually Enlightening, MICHIGAN CHRONICLE (July 5, 1994). Copy supplied.

Engler, Archer and McKinnon Attend Mayor's Prayer Breakfast, MICHIGAN CHRONICLE (June 28, 1994). Copy supplied.

Gangsta Rap Has Got to Go, Part III, MICHIGAN CHRONICLE (June 21, 1994). Copy supplied.

Gangsta Rap Has Got to Go, Part II, MICHIGAN CHRONICLE (June 14, 1994). Copy supplied.

Gangsta Rap Has Got to Go, Part I, MICHIGAN CHRONICLE (June 7, 1994). Copy supplied.

The Difficult Duty of Parental Discipline, MICHIGAN CHRONICLE (May 31, 1994). Copy supplied.

Reminders to Responsible Parents, MICHIGAN CHRONICLE (Apr. 26, 1994). Copy supplied.

Judge Leads a 'HIP' Program, MICHIGAN CHRONICLE (Apr. 19, 1994). Copy supplied.

Many Turn Out for a Tremendous Tribute to Judge Myron Wahls, MICHIGAN CHRONICLE (Apr. 12, 1994). Copy supplied.

Dads Make a Difference, MICHIGAN CHRONICLE (Apr. 5, 1994). Copy supplied.

'Volunteer Slavery,' MICHIGAN CHRONICLE (Mar. 29, 1994). Copy supplied.

Judges Celebrate Black History Month at Little Rock Baptist, MICHIGAN CHRONICLE (Mar. 22, 1994). Copy supplied.

I Have a Dream of Nonviolence, MICHIGAN CHRONICLE (Mar. 15, 1994). Copy supplied.

Three Strikes Is Poor Policy, MICHIGAN CHRONICLE (Mar. 8, 1994). Copy supplied.

Myron Wahls Preaches, Prays and Plays . . . and Will Be Honored with Jazz Tribute, MICHIGAN CHRONICLE (Mar. 8, 1994). Copy supplied.

'Sacred Honor': An Inside Account of the Triumphs of Colin Powell, MICHIGAN CHRONICLE (Mar. 1, 1994). Copy supplied.

Judges Mentor Middle School Students, MICHIGAN CHRONICLE (Feb. 15, 1994). Copy supplied.

Detroit TOP is a Top Program, MICHIGAN CHRONICLE (Feb. 8, 1994). Copy supplied.

An Open Letter to Judge Keith, MICHIGAN CHRONICLE (Jan. 26, 1994). Copy supplied.

Commendation for Judge Crockett, MICH. CHRONICLE (Jan. 18, 1994). Copy supplied.

Having Lunch at the TULC, MICHIGAN CHRONICLE (Nov. 10-16, 1993). Copy supplied.

The Crime Was So Brutal, the Suspect So Young, COLLEAGUE – MICHIGAN JUDICIAL INSTITUTE (May 1993) (originally printed in Detroit Free Press on Jan. 11, 1993). Copy supplied.

"Deadly Consequences," COLLEAGUE – MICHIGAN JUDICIAL INSTITUTE (May 1993). Copy supplied.

A Review of "Courts That Succeed," COLLEAGUE – MICHIGAN JUDICIAL INSTITUTE (May, 1991). Copy supplied.

Remembering, MICHIGAN CHRONICLE (Feb. 14, 1991). Copy supplied.

Letter to the Editor: Leader Doesn't Speak for Blacks, DETROIT NEWS (Aug. 18, 1985). Copy supplied.

Letter to the Editor: Death Penalty Brands Society, DETROIT NEWS (June 28, 1985). Copy Supplied.

Although the following articles were all published between 1990 and 2000, I was unable to ascertain the exact publication dates:

Can the Blind Serve as Jurors?, MICHIGAN CHRONICLE. Copy supplied.

Are Michigan Judges and its Laws Soft on Crime?, MICHIGAN CHRONICLE. Copy supplied.

OAKS, Stokes Celebrate MLK, MMM, MICHIGAN CHRONICLE. Copy supplied.

Surviving a Lifetime Commitment, MICHIGAN CHRONICLE. Copy supplied.

Gathering for Praise in Prison, MICHIGAN CHRONICLE. Copy supplied.

Judge Stephens Speaks at Worship Service, MICHIGAN CHRONICLE. Copy supplied.

Bond Pending Sentence is Fair, MICHIGAN CHRONICLE. Copy supplied.

A Special Wedding Celebration, MICHIGAN CHRONICLE. Copy supplied.

Thanks Again, Gov. Blanchard, MICHIGAN CHRONICLE. Copy supplied.

An Open Letter about Friends, MICHIGAN CHRONICLE. Copy supplied.

Bar Honors Roberts, Roberts, MICHIGAN CHRONICLE. Copy supplied.

Cahalan Award to Milton Henry, MICHIGAN CHRONICLE. Copy supplied.

Judge Samuel Adam Turner Remembered, MICHIGAN CHRONICLE. Copy supplied.

The Decision to Practice Law, MICHIGAN CHRONICLE. Copy supplied.

Deacon Frank Drain: a Legacy of Christian Living, MICHIGAN CHRONICLE. Copy supplied.

Vision, Values and Vocation, MICHIGAN CHRONICLE. Copy supplied.

Thoughts about Bishop David Ellis, MICHIGAN CHRONICLE. Copy supplied.

The Greater Grace Family, MICHIGAN CHRONICLE. Copy supplied.

Rosey Grier Speaks Here for Prison Fellowship Ministries, MICHIGAN CHRONICLE. Copy supplied.

Rev. Vann Celebrates Presidency, MICHIGAN CHRONICLE. Copy supplied.

Dr. Frederick Sampson Leads Arthritis Awareness Project, MICHIGAN CHRONICLE. Copy supplied.

A Parent's Prevention Program, Parts I and II, MICHIGAN CHRONICLE. Copies supplied.

Middle Schoolers Enjoy Jail Tour, Mock Trial, MICHIGAN CHRONICLE. Copy supplied.

Refreshing to See Good Kids, MICHIGAN CHRONICLE. Copy supplied.

Golightly Enters 21st Century, MICHIGAN CHRONICLE. Copy supplied.

Archer and Northwest Optimists Encourage Youth Oratory, MICHIGAN CHRONICLE. Copy supplied.

Judge Worthy Shares Wisdom with Essay Winners, MICHIGAN CHRONICLE. Copy supplied.

Cornerstone Has a Plan, Part II, MICHIGAN CHRONICLE. Copy supplied.

School Offers Faith-Based Education, Part I, MICHIGAN CHRONICLE. Copy supplied.

'Guide My Feet' Devoted to Loving, Leading Youths, MICHIGAN CHRONICLE. Copy supplied.

One Woman's Journey to Power, MICHIGAN CHRONICLE. Copy supplied.

Novel Tackles Abortion Issue, MICHIGAN CHRONICLE. Copy supplied.

There may be additional articles that I wrote during my time as a columnist for the *Michigan Chronicle*. I was unable to find any others through a search of my records and publicly available news databases.

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 that I recall or have been able to identify.

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 March 19, 1991, I testified before the State of Michigan House Judiciary Committee Hearing on House Bill 4024, which would have amended the statute providing for mandatory sentences for drug crimes. I testified along with six other judges. A copy of the transcript of the testimony 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.

May 6, 2011: I participated on a panel for the National Business Institute (NBI), entitled "What Civil Court Judges Want You to Know" where we discussed civil procedure. It was held at the St. John's Conference Center in Plymouth, Michigan. I have no notes, transcript or recording. The address of the NBI is P.O. Box 3067, Eau Claire, WI 54702.

April 23, 2011: I spoke at the Ryan Road Correctional Facility Volunteers Banquet on the qualities of a good volunteer. Outline supplied.

January 6, 2011 and Spring 2011: I participated in informal roundtable discussions with new students at Cooley Law School during the "Professionalism in Action" orientation program. The discussions were about ethics and ethical conduct. I have no notes, transcript or recording. The address of Cooley Law School is 300 South Capitol Avenue, P.O. Box 13038, Lansing, MI 48901.

October 22, 2010: I gave the invocation at the Rosedale Park Baptist Church Pastor Appreciation Event. I have no notes, transcript or recording. The address of the church is 14179 Evergreen, Detroit, MI 48223.

September 23, 2010: I served as a panelist for a "View from the Bench" program of the Young Lawyers Section of the Michigan State Bar. I have no notes, transcript or recording, but press coverage is supplied. The address of the Michigan State Bar is 306 Townsend Street, Lansing, Michigan 48933.

May 8, 2010: I spoke at the Mound Road Correctional Facility Volunteers Banquet on the qualities of a good volunteer. Outline supplied.

February 10, 2010: I taught one class at Thomas M. Cooley Law School for Professor Monica Navarro on the Top Twelve Courtroom Demeanor Items. Outline supplied.

June 16, 2009: I taught one class at Thomas M. Cooley Law School for Professor John Taylor on Discovery and Issues Surrounding Discovery. Outline supplied.

November 11, 2008: I spoke at a Gettysburg Group Meeting as a career speaker to a group of students. The Gettysburg Group is a mentoring program for needy students, with a theme of "giving back to the community." I have no notes, transcripts, or recordings. The Gettysburg Group had no physical address.

April 26, 2008: I was one of several guest speakers at A Citizens Alliance on Prisons and Public Spending (CAPPS) Seminar. Outline supplied.

April 2007: I briefly introduced Rufus Harris at a Christian Arts & Music Project (CAMP) concert at the Mound Correctional Facility and thanked him after he had concluded his performance. I have no notes, transcript or recording. The address of CAMP is 5119 Highland Road, PMB 207, Waterford, MI 48327.

January 17, 2005: I was the guest speaker at the Redford Township Community Prayer Breakfast held at St. Valentine Catholic Church. I spoke on Martin Luther King Qualities. Outline supplied.

August 29, 2004: I spoke at Christ Presbyterian Church honoring Pastor Milton R. Henry at his birthday celebration. I spoke on "Caleb like Qualities." Outline supplied.

August 13 – 17, 2001: I was one of three faculty members who taught a course entitled "Great Issues in Law as Reflected in Literature." This was a course put on by the National Judicial College in Ashland Oregon. I have no notes, transcript or recording. The address of the National Judicial College is Judicial College Building/MS 358, Reno, Nevada 89557.

May, 2001: I spoke to a group of first-graders from Mount Calvary Lutheran School on becoming a lawyer and judge, and I explained the judicial system. I have no notes, transcripts, or recordings. The address of the school is 17100 Chalmers Street, Detroit, Michigan 48205.

August 7 – 11, 2000: I was one of four faculty members who taught a course entitled "Great Issues in Law as Reflected in Literature." This course was put on by the National Judicial College in Ashland, Oregon. I have no notes, transcript or recording. The address of the National Judicial College is Judicial College Building/MS 358, Reno, Nevada 89557.

May 25, 2000: I spoke at Burton International School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. Discussion outline and notes supplied.

August 9 – 13, 1999: I was one of four faculty members who taught a course entitled "Great Issues in Law as Reflected in Literature." This course was put on by the National Judicial College in Ashland, Oregon. I have no notes, transcript or recording. The address of the National Judicial College is Judicial College Building/MS 358, Reno, Nevada 89557.

May 22, 1999: I spoke at a Men's Breakfast for Revival Tabernacle at Jimi's Family Restaurant. I spoke on "Ezekiel's Dry Bones" about the importance of maintaining good relationships. Outline supplied.

May 3, 1999: I spoke at Columbian Primary School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I use the same materials as supplied for the May 25, 2000 event.

April 18, 1999: I was the guest speaker at the Annual Men's Spring Banquet for King David Missionary Baptist Church. I spoke on the importance of maintaining good relationships. Outline supplied.

November 8, 1998: I was the guest speaker at the Men's Day service for Scott Memorial United Methodist Church. I spoke on Ezekiel and the importance of maintaining good relationships. Outline supplied.

October 16, 1998: I spoke at a lecture and preaching series at True Love Missionary Baptist Church in Detroit, Michigan. I spoke on the "Importance of Repentance." Outline supplied.

September 22, 1998: I spoke at the Northville (Michigan) Chamber of Commerce luncheon. I spoke on ministering to inmates and on the merger of the Detroit Recorder's Court with the Michigan Third Circuit Court. I have no notes, transcripts, or recordings. The address for the Northville Chamber of Commerce is 195 South Main Street, Northville, Michigan 48167.

September 20, 1998: I was the Men's Day speaker at Grace Community Church. I spoke on Ezekiel and the importance of maintaining good relationships. Outline supplied.

April 26, 1998: I was the guest speaker at the Annual Men's Day Spring Banquet for King David Missionary Baptist Church held at the American Serbian

Memorial Hall. I spoke on service and mistakes. I was only able to locate a partial outline, which is supplied.

February 11, 1998: I spoke at Boynton Elementary School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I used the same materials as supplied for the May 25, 2000 event.

July 13 – August 1, 1997: The National Judicial College has a three week course entitled "General Jurisdiction," which covers most subjects a judge will face in court. As part of that course I taught two 2-hour segments on the Right to Counsel and Double Jeopardy, and one 1-hour segment on Guilty Pleas. Syllabi on Double Jeopardy and Guilty Pleas supplied. I was unable to locate the syllabus for Right to Counsel, but it is similar to the one supplied for the July 14-August 2, 1996 event.

April 26, 1997: I spoke at a legal seminar sponsored by the National Lifers of America, Inc. at the Ryan Road Correctional Facility about Michigan's law requiring a mandatory sentence of life without parole for certain crimes involving 650 grams of drugs. I have no notes, transcripts, or recordings. The address for Ryan Road Correctional Facility and the National Lifers of America, Inc. (Ryan Chapter) is 17600 Ryan Road, Detroit, Michigan 48212.

February, 1997: I spoke at Golightly Elementary School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I used the same materials as supplied for the May 25, 2000 event.

July 14 – August 2, 1996: The National Judicial College has a three week course entitled "General Jurisdiction," which covers most subjects a judge will face in court. As part of the course I taught three criminal law subjects: Discovery, Guilty Pleas and the Right to Counsel. Syllabi supplied.

July 9, 1996: I spoke at an Eighth Grade Graduation Ceremony for Malcolm X Academy about staying in school, working hard, and hanging on to one's dreams. It was held at the Wayne County Community College Auditorium. Speech supplied.

February 7, 1996: I spoke at Golightly Elementary School in Detroit, Michigan for the M.E.L.L. program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I used the same materials as supplied for the May 25, 2000 event.

July 9-28, 1995: The National Judicial College has a three week course entitled "General Jurisdiction," which covers most subjects a judge will face in court. I taught four subjects: Right to Counsel, Guilty Pleas, Discovery and Confrontation. Syllabi on Discovery, Guilty Pleas, and Confrontation supplied. I was unable to locate the syllabus on Right to Counsel, but it was similar to that supplied for the July 14-Aug. 2, 1996 event.

June 13, 1995: I spoke at a Fifth Grade Promotional Ceremony at Chrysler Elementary School. I spoke about staying in school, working hard, and being careful about who to follow and whose advice to take. Speech supplied.

June 2, 1995: I gave the Immaculate Heart of Mary Eighth Grade Commencement speech. I spoke about staying in school, working hard, and being careful about who to follow and whose advice to take. Speech supplied.

May 1, 1995; May 2, 1994; April 30, 1993: I was a Law Day speaker at Redford High School in Detroit, Michigan. I spoke on the law, being a lawyer, being a judge and various legal topics. Outline for 1995 supplied. I have no notes, transcripts or recordings for 1993 or 1994.

February 1, 1995: I spoke at Chrysler Elementary School in Detroit, Michigan for the M.E.L.L. Program. The mission of M.E.L.L. (Medical, Educational, Legal, Law Enforcement) is to provide children with information about the medical, legal, psychological and social consequences of alcohol and other drug use and abuse. I used the same materials as supplied for the May 25, 2000 event.

July 10-29, 1994: The National Judicial College has a three week course entitled "General Jurisdiction," which covers most subjects a judge will face in court. As part of the course I taught criminal law subjects: Right to Counsel, Confrontation, Criminal Discovery, Double Jeopardy and Guilty Pleas. Syllabi for Criminal Discovery and Guilty Pleas supplied; I was unable to locate the syllabi for Right to Counsel, Confrontation, or Double Jeopardy, but they were similar to those supplied for the July 13-Aug. 1, 1997, July 14-Aug. 2, 1996, and July 9-28, 1995 events.

July 10 – 22, 1994: I co-taught a segment entitled "Fairness and Equity in the Courts" that lasted three hours. It was part of a two week course entitled: "The Decision Making Process" taught at the National Judicial College at Reno, Nevada. Materials supplied.

October 28, 1993: I participated in a Career Day and spoke to classes at Southfield Christian School. I spoke about the legal and judicial professions. Outline supplied.

July 11 – August 6, 1993: I served as a discussion group leader for the National Judicial College's "General Jurisdiction" course. We typically had two

discussion group sessions per day, three to four days per week. The discussion group had 10-12 judges in it. I have no notes, transcript or recording. The address of the National Judicial College is Judicial College Building/MS 358, Reno, Nevada 89557.

March 13, 1993: I spoke to a group of high school juniors and seniors for "The Institute for Black Family Development." My topic was "Understanding Civic Responsibility." The address of the Institute is 928 East Ten Mile Road, Ferndale, Michigan 48220. Seminar objectives supplied.

1989 – 1992: I taught a weekly sixth grade Sunday school class at Highland Park Baptist Church. I have no notes, transcripts, or recordings. The address of the church is 28600 Lahser Road, Southfield, Michigan 48034.

September 25, 1991: I spoke at a parent-teacher meeting at East Bethlehem Lutheran Church and School in Detroit. I spoke primarily on parents' responsibilities to their children, especially in terms of what should be taught at home as opposed to in school. Outline supplied.

April 10, 1991: I participated in a Career Day and spoke to classes at Southfield Christian School. I spoke about the legal and judicial professions. I have no notes, transcripts, or recordings. The address of Southfield Christian School is 28650 Lahser Road, Southfield, Michigan 48034.

August 9, 1989: I was the speaker at the Graduation Exercises at Wayne County Regional Police Training Center, Schoolcraft College – Radcliff. I spoke about the high calling of public service and the importance of following the rules, not cutting corners, and doing things by the book. Notes supplied.

1989: I taught a class on Fourth, Fifth, and Sixth Amendment Rights of a Defendant at the Police Training Center at Schoolcraft College. I have no notes, transcripts, or recordings. The address of the Training Center is Schoolcraft College – Radcliff, 1751 Radcliff Street, Garden City, Michigan 48135.

May 7, 1988: I spoke at the Alabama State University Alumni Association Regional Conference held in Detroit, Michigan about excellence in education. Handwritten outline supplied.

May 29, 1987: I gave the high school commencement address for Evangel Christian Academy. I spoke on persistence and perseverance. Handwritten outline supplied.

September 27, 1986: I spoke at a pre-game service for the University of Michigan football team in Ann Arbor, Michigan. I spoke about the importance of persistence, perseverance and not quitting. Outline supplied.

August 17, 1986: I spoke at the Murdock's 20th Biennial Family Reunion held at the Westin Hotel in the Renaissance Center in Detroit. I spoke on reducing family relationship tension. Outline supplied.

June 10, 1986: I gave comments at the National Summit on Black Church Development about progress and changes since the 1984 summit. Video supplied.

January 22, 1984: As an attorney I spoke at a rally to generate support and funds for the defense of a man that many believed had been wrongly convicted. I spoke about why people should get involved in his defense and government issues in general, especially elections. Outline supplied.

November 5, 1983: I spoke at a pre-game service for the University of Michigan football team in Ann Arbor, Michigan. I spoke about three ways to win: being strong and courageous; being obedient and following the rules; and having faith in oneself. I have no notes, transcripts, or recordings. The address for the Athletic Department of the University of Michigan is 1000 South State Street, Ann Arbor, Michigan 48109.

I have spoken at Sunday morning worship services (1997 – 2007) and Bible studies (2007 – present) to inmates at the Mound Road Correctional Facility on a monthly basis about different books of the Bible. The address of the Mound Road Correctional Facility is 17601 Mound Road Detroit, Michigan 48212. All of the message outlines I could find are supplied.

In January 1991; February 1992; January 1993; January 1995 and January 1997, I taught Sentencing at the Michigan Judicial Institute. I have no notes, transcripts, or recordings. The address for the Michigan Judicial Institute is 925 West Ottawa Street, Lansing, Michigan 48913.

During my election and re-election campaigns for judicial office in 1984, 1992, 1998, and 2010, I gave many speeches off the cuff discussing why I should be elected and re-elected. Those speeches generally discussed my qualifications, my experience, my professional ratings by groups like the Detroit Bar Association, and why I deserved to be elected or re-elected. I have no notes, transcripts or recordings.

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

Obama Nominates Drain for Federal Bench, DETROIT LEGAL NEWS, Nov. 21, 2011 (reprinting quotes from May 13, 2009 article listed below). Copy supplied.

Kenneth Sasse, *The Detroit Federal Defender Office: An Early History*, THE COURT LEGACY (Historical Society for the United States District Court for the Eastern District of Michigan), May 2010. Copy supplied.

League of Women Voters candidate questionnaire, 2010. Copy supplied.

Detroit Free Press candidate questionnaire, 2010. Copy supplied.

John Minnis, *One Judge's Testimony*, DETROIT LEGAL NEWS, May 13, 2009. Copy supplied.

Candice Cunningham, *Lawyers, Judges Honored*, DETROIT NEWS (Jan. 14, 2004). Copy supplied.

Charles Osgood, *Judge Visits Prisons To Help Convicts Find Religion*, CBS NEWS (July 15, 1998). Copy supplied.

Chuck Colson, *Visiting Those in Prison: Judge Gershwin Drain*, BREAKPOINT.ORG (July 10, 1998). Copy supplied.

David Ashenfelter, *Black Judges Secure in Circuit Court Race*, DETROIT FREE PRESS (June 1, 1998). Copy supplied.

David Crumm, *Freedom To Worship: Judge Shares His Spiritual Conviction with Prisoners*, DETROIT FREE PRESS (Nov. 9, 1997) (re-printed in multiple outlets). Copy supplied.

Sharon Cohen, *Prisoner Hopes for Drug Law Change*, ASSOCIATED PRESS (Sept. 6, 1997) (re-printed in multiple outlets). Copy supplied.

Cecil Angel, *Recorder's Court Judges Are Topic of Turf Battle*, DETROIT FREE PRESS (May 11, 1995). Copy supplied.

Jack Kersnak and Janet Wilson, *13-Year-Old Forgotten After Mutilation Ordeal*, DETROIT FREE PRESS (Apr. 21, 1994). Copy supplied.

Tom Henderson, *Sedentary Judge Finds Marathons Apt Remedy*, DETROIT NEWS (Sept. 11, 1990). Copy supplied.

I am also quoted on the New Creations Community Outreach web site about TOP, its prisoner re-entry program. Copy of the site supplied.

I have responded to a number of candidate surveys during my judicial election campaigns, but I have been unable to obtain or recall any other than what is listed above.

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

36th District Court for the City of Detroit – appointed first, then elected (1986 – 1987); jurisdiction over traffic and ordinance violations, landlord-tenant disputes, misdemeanors, and civil cases where the amount in controversy was less than $25,000.

Recorder's Court for the City of Detroit – appointed first, then elected (1987 – 1997); jurisdiction over felony prosecutions in the City of Detroit, Michigan.

Michigan Third Circuit Court – elected; Criminal Division (1997 – 2000): jurisdiction over felony prosecutions in Wayne County, Michigan; Civil Division (2000 – Present): jurisdiction over state civil cases where the amount in controversy exceeded $25,000 in Wayne County, Michigan.

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

I have presided over approximately 600 cases that have gone to verdict or judgment after trial. This does not include cases where summary judgment has been granted.

i. Of these, approximately what percent were:

jury trials:	55%
bench trials:	45%
civil proceedings:	30%
criminal proceedings:	70%

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

My trial court opinions were never published. In the vast majority of the decisions I made, I ruled from the bench. I never kept a separate file of the opinions I did write. They are scattered throughout the thousands of case files for matters before me over the last 25 years. Sitting by assignment on the Michigan Court of Appeals, I wrote the following published opinions:

Lehmann v. State Employees' Retirement System, 207 Mich. App. 453 (1994) (per curiam)

Michigan v. Morton, 175 Mich. App. 1 (1989) (Drain, J., dissenting)

Auto-Owners Ins. Co. v. Farm Bureau Mut. Ins. Co., 171 Mich. App. 46 (1988)

Boyd v. Layher, 170 Mich. App. 93 (1988)

Sargent v. A.M. Eckhouse, D.O., P.C., 171 Mich. App. 703 (1988) (per curiam)

Wilkerson v. Jackson Public Schools, 170 Mich. App. 133 (1988) (per curiam)

Ingham County Employees' Ass'n v. Ingham Circuit Court, 170 Mich. App. 118 (1988) (per curiam)

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. *Johnston v. Royal American Mortgage*, Docket No. 08-113688-CZ; *Hartzler v. Royal American Mortgage*, Docket No. 09-013768-CZ, Wayne County Circuit Court, Civil Division. Opinion supplied.

These two cases involved approximately 50 plaintiffs. There were originally about 10 defendants in the case, all employees, managers or owners of Royal American Mortgage. Six of the ten defendants either settled their claims before trial or were dismissed. Essentially, this was a mortgage fraud case that had elements of a ponzi scheme to it. The manager and his wife ran the company. The manager filed for bankruptcy the day before trial and his wife filed for bankruptcy the day of trial. The owner of the company and his wife went to trial on the case and most of the 50 plaintiffs testified as to their losses on the mortgages that they financed. The jury found the owner (but not his wife) liable and assessed damages of approximately $9 million. The trial lasted about two weeks.

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2. *Michigan v. Magana*, Docket No. 90-11712, Recorders Court for the City of Detroit

Magana was convicted in my courtroom of being in possession of over 650 grams of a powder containing cocaine. Michigan law at the time required that I give him a natural life sentence without the possibility of parole, which I did. The Michigan Supreme Court subsequently struck down the portion of the statute disallowing the possibility of parole in *Michigan v. Bullock*, 440 Mich. 15 (1992). Following that decision, I resentenced Magana to a life sentence with the possibility of parole. In May of 2000 he had a hearing and was given parole after serving about 10 years in prison.

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3. *Wilcoxson-Bey v. Providence Hosp. & Med. Ctrs., Inc.*, Docket No. 05-524008-NH, Michigan Third Circuit Court, Civil Division

Plaintiff was diagnosed with a monoamniotic-monochorionic twin pregnancy, a rare, high-risk pregnancy in which both fetuses share a single amniotic sac. A monoamniotic twin pregnancy involves increased risk of complication. In this case, one twin died and the other was born with a severe brain injury and is extremely mentally disabled. The plaintiff brought a medical malpractice suit against the hospital and doctors who provided her care. At issue was whether the defendants provided an adequate standard of care in prescribing twice-weekly rather than daily monitoring of the fetuses. In a bench trial, I awarded the plaintiff $3 million.

The defendants appealed my decision to the Michigan Court of Appeals, which ruled that I should have granted summary judgment in defendants' favor. The plaintiff then appealed to the Michigan Supreme Court, which reversed and remanded for consideration of issues that had not been decided in the initial

decision. *Wilcoxson-Bey v. Providence Hosp. & Med. Ctrs., Inc.*, 483 Mich. 1023 (2009). The Court of Appeals then affirmed.

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4. *Michigan v. Cato-Riggs*, Docket No. 95-014094, Recorders Court for the City of Detroit. Opinion supplied.

In this case, a jury convicted Cato-Riggs of the first degree premeditated murder of her husband. The case drew national attention because he was shot to death in front of his house just 10 days after his return from the Persian Gulf War, where he had served as a Patriot Missile crewman. The prosecutor on the case showed that Cato-Riggs decided to arrange her husband's death after he survived the war in order to collect $150,000 in life insurance money. I sentenced Cato-Riggs to a natural life sentence without the possibility of parole.

On appeal, the defendant raised two issues relating to the admission of evidence against her and the Sixth Amendment right to counsel. The Court of Appeals affirmed the conviction. *Michigan v. Riggs*, 223 Mich. App. 662 (1997). The Michigan Supreme Court denied a delayed application for leave to appeal.

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5. *Diamond v. Witherspoon*, Docket No. 01-133307-NO; *Moody v. Witherspoon*, Docket No. 01-118433-CZ, Michigan Third Circuit Court, Civil Division

Three plaintiffs brought tort suits against former Detroit Police Sergeant Witherspoon and the City of Detroit. The action arose out of the criminal sexual conduct committed against the plaintiffs by Witherspoon during traffic stops in 1999 and 2000.

At the civil trial, it was undisputed that Witherspoon had pleaded guilty to three counts of extortion and three counts of criminal sexual conduct in connection with the plaintiffs' assaults. The City of Detroit was also a defendant in the case because of evidence that Witherspoon's superiors were on notice that he was breaking the law but nevertheless continued to allow him to work and patrol the streets. A jury found Witherspoon and Detroit both liable, with the city 35% at fault and Witherspoon 65% at fault. The total judgment in the case for all three plaintiffs was $7.5 million. The City appealed the judgment and the case was affirmed on appeal in *Diamond v. Witherspoon*, 265 Mich. App. 673 (2005). The trial lasted about a week.

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6. *Detroit Medical Center (DMC) v. Karmanos Cancer Institute*, Docket No. 07-712136-CK, Michigan Third Circuit Court, Civil Division

The DMC brought suit against the Karmanos Cancer Institute seeking injunctive relief to permanently prohibit the Center from moving out of the DMC to a new location in Detroit based on the terms of their contract. The DMC is a complex of hospitals situated in midtown Detroit that serves much of Detroit's indigent population, yet has a national reputation for the services that it provides. The Karmanos Cancer Institute was on the campus of the DMC and consisted of several floors in one of the hospitals on campus. At the time Karmanos was one of 39 National Cancer Institute-designated comprehensive cancer centers in the United States and among the nation's best cancer centers.

After several days of testimony and site visits to the involved facilities, I applied the test for injunctive relief and ordered the Karmanos Cancer Institute to stay on the campus of the DMC. Karmanos did not appeal my decision.

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Robert G. Brower for the DMC
Dennis J. Levasseur, Esquire for the DMC
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Jon G. March for Karmanos Cancer Institute
Miller, Johnson, Snell, & Cummiskey, PLC
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7. *Gen. Motors Corp. v. Alumi-Bunk, Inc.*, Docket No. 04-422587-CB, Michigan Third Circuit Court, Civil Division

Defendants, Alumi-Bunk, Inc. and an individual defendant, had a contract with General Motors Corporation, plaintiff, to purchase a fleet of cars. General Motors alleged that Alumi-Bunk, Inc. promised to "upfit" (modify) the vehicles it purchased from General Motors in exchange for a significant discount on the price of the vehicles. General Motors claimed that Alumi made this promise during contract negotiations, but it was never made a part of the contract. General Motors argued that Alumi breached its promise to "upfit" the vehicles it purchased and that Alumi never intended to fulfill its promise to do so. The

promise was thus the basis for breach of contract claim and fraudulent inducement claims. I granted summary disposition in favor of defendants on both claims and dismissed General Motors' case.

The Court of Appeals reversed my decision on the fraudulent inducement claim, holding that there was adequate evidence to support such a claim. Defendants appealed that decision to the Michigan Supreme Court, and it reversed the Court of Appeals decision and affirmed my ruling in all respects. *Gen. Motors Corp. v. Alumi-Bunk, Inc.*, 482 Mich. 1080 (2008).

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8. *Michigan v. Djordjevic*, Docket No. 96-003784, Recorder's Court for the City of Detroit

The defendants, Djordjevic and Savich, owned a bar in Detroit, which was insured against fire loss. In December, 1995, the defendants offered to pay another man, Lowery, to burn down the bar. During the early morning hours of December 31, 1995, Lowery did so. During the fire he had set, Lowery died from soot and smoke inhalation.

The defendants were charged with arson, conspiracy to commit arson, and second degree murder. This case presented an issue of first impression in Michigan regarding the murder charge. I researched the issue and found a split of authority across the country. I followed the decisions holding that a defendant lacked the requisite malice in this type of situation and dismissed the murder charge. The Court of Appeals found the opposing line of authority more persuasive and reversed my decision. *Michigan v. Djordjevic*, 230 Mich. App. 459 (1998), *application for leave to appeal denied*, 459 Mich. 956 (1999). The murder charge was reinstated and defendants pled guilty to a lesser charge.

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Michael Cox for the Prosecution
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9. *Mackie v. Bollore, S.A.*, Docket No. 07-704897-CZ, Michigan Third Circuit Court, Civil Division

This case arose from a dispute between Ali Mackie and the trademark holders of Zig-Zag cigarette papers – Bollore, North Atlantic Trading Company (NATC), and North Atlantic Operating Company (NAOC). In March of 1999, Bollore, NATC, and NAOC obtained an $11 million contempt judgment in the U.S. District Court for the Northern District of Texas for violations of copyright and trademark laws. Seeking to collect on the contempt judgment, Bollore, NATC, and NAOC obtained orders from the Texas court declaring plaintiffs in this case – Mackie's mother and the Freetown Mini Mart – to be alter egos of Mackie. That court added those parties as co-judgment debtors to the contempt judgment, pierced the corporate veil of Freetown, appointed a receiver, and ordered them to turn over all non-exempt property to the receiver for satisfaction of the contempt judgment debt. Mackie and Freetown appealed to the Fifth Circuit Court of Appeals, but while the case was pending there, Bollore, NATC and NAOC seized and sold their personal property. After the seizure and sale, the Fifth Circuit reversed the District Court findings and orders.

Mackie and Freetown filed a complaint in the Michigan Third Circuit Court in 2007 against Bollore, NATC and NAOC alleging, among other things, malicious prosecution, abuse of process, intentional infliction of emotional distress, conversion, negligence, and unjust enrichment. Defendants moved for summary judgment based on the fact that at the time of the seizures, the Texas District Court orders were in effect and the conduct was not tortious. I granted summary judgment for the defendants on all the claims except the unjust enrichment claim, which was effectively settled. Plaintiffs appealed my dismissal of the other counts, and my decision was affirmed on appeal.

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J. Michael Huget for Defendant NATC and NAOC
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734-418-4254

10. *Michigan v. Williams*, Docket No. 92-008593-FC, Recorder's Court for the City of Detroit

This was a first degree murder case. The deceased was a middle school teacher who was gunned down outside the school where she taught. She was killed in a plot participated in by three people. The shooter was hired by the victim's husband's girlfriend, and they were assisted by a third defendant. When arrested, all three defendants made statements implicating one or both of their co-defendants. Because none of the three planned to testify and could not be cross-examined by co-defendants' counsel, each was entitled to a separate jury for their individual case. I had the option of conducting three separate back-to-back jury trials, one for each defendant, or seating three separate juries and having all three hear all of the common testimony together and having separate opening statements, closing arguments and testimony about their statements. I chose the latter. All three defendants were convicted and their convictions were affirmed on appeal.

Kym Worthy for the Prosecution
Wayne County Prosecutor's Office
1441 St. Antoine Street, 12th Floor
Detroit, MI 48226
313-224-5777

Dawn Ison for Defendant Williams
Currently Assistant U.S. Attorney
211 West Fort Street, Suite 2001
Detroit, MI 48226
313-226-9100

Kermit Bailer for Defendant Starks
Mr. Bailer is now deceased

Robert Mann for Defendant Harris
Mr. Mann is now deceased

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. *Michigan v. Morton*, 175 Mich. App. 1 (1989) (Drain, J., dissenting).

Paul J. Fischer for the Prosecution
Currently with the Attorney Grievance Commission
3034 West Grand Boulevard, Suite 8-450
Detroit, MI 48202
313-875-5110

Robert Slameka for Defendant
163 Madison Street, Suite 101
Detroit, MI 48226
313-961-5011

2. *Boyd v. Layher*, 170 Mich. App. 93 (1988) (Court of Appeals opinion).

Brian E. Thiede for Plaintiff
400 East Elm Street
Big Rapids, MI 49307
231-592-0141

Chad C. Schmucker for Defendant
Currently State Court Administrator
P.O. Box 48909
Lansing, MI 48909

3. *Johnston v. Royal American Mortgage*, Docket No. 08-113688-CZ (Opinion on a Motion for Summary Judgment). Opinion supplied in response to 13(c).

Peter S. Tangelos for the Plaintiff
1111 West Long Lake Road, Suite 101
Troy, MI 48098
248-541-5161

Thomas D. Pigott for the Plaintiff
Pigott, Ltd.
2620 North Centennial, Unit H
Toledo, OH 43617
419-776-4567

Matthew P. Allen for the Defendant
Miller Canfield
840 West Long Lake Road, Suite 200
Troy, MI 48098
248-267-3381

4. *Hartzler v. Royal American Mortgage*, No. 09-013768-CZ (Opinion on a Motion for Partial Summary Judgment). Opinion supplied.

Peter S. Tangelos for the Plaintiff
1111 West Long Lake Road, Suite 101
Troy, MI 48098
248-541-5161

Thomas D. Pigott for the Plaintiff
Pigott, Ltd.
2620 North Centennial, Unit H
Toledo, OH 43617
419-776-4567

Matthew P. Allen for the Defendant
Miller Canfield
840 West Long Lake Road, Suite 200
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248-267-3381

5. *Auto-Owners Ins. Co. v. Farm Bureau Mut. Ins. Co.*, 171 Mich. App. 46 (1988) (Court of Appeals opinion).

Edward B. Davison for the Defendant
Gault Davison, P.C.
8455 South Saginaw Street, Suite 2
Grand Blanc, MI 48439
810-234-3633

Charles F. Filipiak for Plaintiff
360 St. Andrews Road, Suite 302
P.O. Box 1966
Saginaw, MI 48605
989-790-0960

6. *Michigan v. Cato-Riggs*, Docket No. 93-104094 (Opinion on a Motion to Suppress Statements). Opinion supplied in response to 13(c).

Kym Worthy for the Prosecution
Wayne County Prosecutor's Office
1441 St. Antoine Street
Detroit, MI 48226
313-224-5777

Athina Siringas for the Defendant
Currently with Wayne County Prosecutor's Office
1441 St. Antoine Street, 12th Floor
Detroit, MI 48226
313-224-6642

7. *Merlo Constr. Co., Inc. v. Citizens Ins. Co. of America*, Docket No. 10-000814 (Opinion on a Motion for Summary Judgment). Opinion supplied.

Edward Miller for the Plaintiff
32100 Telegraph Road, Suite 200
Bingham Farms, MI 48025
248-593-6225

Kurt D. Meyer for the Defendant
Gregory and Meyer, P.C.
340 East Big Beaver Road, Suite 520
Troy, MI 48083
248-689-3920

8. *Michigan v. Washington*, Docket No. 90-009459 (Opinion on a Motion for Relief from Judgment). Opinion supplied.

Ronald Washington pro se

The state was not required to respond to this motion. I wrote an opinion denying the motion without requiring a response.

9. *Tohme v. Trans Mediterrian Agency*, Docket No. 04-505308-AE (Opinion and Order Affirming the Decision of Administrative Law Judge and Board of Review and Dismissing Appeal). Opinion supplied.

David E. Ghannam for the Defendant
15900 Michigan Avenue, Suite 1
Dearborn, MI 48126
313-945-0088

Gary Miotke for the Plaintiff
6828 Park Avenue
Allen Park, MI 48101
313-388-4809

10. *Karr v. Mich. Basic Property Ins. Ass'n*, Docket No. 08-014192-AV (Opinion and Order Affirming Trial Court's Rulings Below and Dismissing Plaintiff-Appellant's Claim of Appeal). Opinion supplied.

Ernest Karr, pro se, Plaintiff
14825 Grand River Avenue
Detroit, Michigan 48227
313-202-6003

John Honeyman for the Defendant
Patrick, Johnson & Mott, P.C.
27777 Franklin Road
Southfield, MI 48034
248-356-8590

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

Michigan v. Moore, Michigan Court of Appeals, Docket No. 130516 (1988), *granted, vacated, and remanded*, 496 U.S. 933 (1990).

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.

Bullington v. Corbell, 2011 Mich. App. LEXIS 1481, No. 297665 (Aug. 16, 2011). I allowed the plaintiff to serve the defendants by alternate service, and I later entered a default judgment as to all defendants. The Court of Appeals held that the service was inadequate to provide notice to all defendants and the default judgments should not have been entered, so it reversed.

AFSCME Council 25 v. County of Wayne, 290 Mich. App. 348 (2010). I ruled that the defendant County of Wayne was required to arbitrate a dispute over retiree health benefits even though the Collective Bargaining Agreement had expired. The Court of Appeals reversed, holding that defendants did not have to arbitrate the dispute under the terms of the agreement itself.

Truel v. City of Dearborn, 291 Mich. App. 125 (2010). I ordered the Wayne County Prosecutor's Office to turn over most of its investigative file regarding

alleged police misconduct, including a final report, in a civil suit filed by a plaintiff who had participated in the investigation. The Court of Appeals found that I erred in finding that the defendants demonstrated a sufficient showing of need to overcome the deliberative-process privilege, and reversed.

Shaw v. City of Ecorse, 283 Mich. App. 1 (2009). This appeal involved two consolidated cases. I was affirmed in Shaw and reversed in Bedo. In Bedo, I granted summary disposition to the defendant, ruling that he had not established a prima facie case under MCL 15.362. The Court of Appeals reversed, holding that a prima facie case had been established and that material questions of fact required further proceedings.

Special Property VI LLC v. Woodruff, 273 Mich. App. 586 (2007). This was a quiet title action brought by the plaintiff against a number of defendants to clear the title to property. I granted summary disposition for the plaintiff and the Court of Appeals reversed, holding that plaintiff failed to meet its burden to establish its title in the subject property by admissible evidence.

Bennett v. Detroit Police Chief, 274 Mich. App. 307 (2006). The plaintiff was a City of Detroit police officer who brought a wrongful discharge action against the City of Detroit, the Mayor, and the Police Chief. The plaintiff had been discharged for maintaining a website that contained criticism of the Police Chief. All three defendants moved for summary disposition on governmental immunity grounds. I granted the motion as to the Mayor and that was affirmed on appeal. I denied it as to the City and Police Chief and that was reversed.

City of Detroit v. State of Michigan, 262 Mich. App. 542 (2004). The State owned approximately 36 acres of land adjacent to the state fairgrounds. The State was in the process of leasing and/or selling this adjacent property to a private entity for the building and development of a race track and amphitheater. I denied the State's motion for summary disposition, holding that in the context of this case, the State had to comply with the City's zoning ordinances. The Court of Appeals held that the State did not have to comply.

Hayley v. Allstate Ins. Co., 262 Mich. App. 571 (2004). The plaintiffs filed suit regarding toxic mold they discovered in their home a year after an ice dam caused water damage. I denied the defendant's motion for summary disposition. The Court of Appeals reversed, holding that plaintiffs' coverage excluded loss caused by mold, even when the mold grew out of a covered event.

Hojeije v. Dep't of Treasury, 263 Mich. App. 295 (2004). This involved two consolidated cases bringing tort claims against the Department of Treasury and its agents, arising from their execution of search warrants. The defendants filed a motion for summary judgment based on governmental immunity. I denied the motion. The Court of Appeals reversed the denials of summary judgment.

Jenkins v. Patel, 256 Mich. App. 111 (2003). Judge Marianne Battani presided over a medical malpractice/wrongful death case where the plaintiff died from the malpractice and was awarded $10 million. After taking over her docket in 2000, I denied two post-trial motions filed by the defendant. One sought to apply the medical malpractice cap to the wrongful death and one sought remittitur. The Court of Appeals affirmed my decision holding that the medical malpractice caps did not apply to this wrongful death case, but it reversed my ruling on the remittitur issue. The Michigan Supreme Court reversed the Court of Appeals, holding that the medical malpractice caps applied to wrongful death cases where the underlying cause of death was medical malpractice. *Jenkins v. Patel*, 471 Mich. 158 (2004).

Michigan v. Chavis, 246 Mich. App. 741 (2001). The Court of Appeals reversed the defendant's bench trial conviction for making a false robbery police report. I found that defendant lied about the location and other details of the robbery and thus made a false robbery report. The Court of Appeals held that the offense required the defendant to lie about whether he was in fact robbed. In *Michigan v. Chavis*, 468 Mich. 84 (2003), the Michigan Supreme Court agreed with me, reversed the Court of Appeals, and reinstated the defendant's conviction.

Michigan v. Adams, 233 Mich. App. 652 (1999). I dismissed criminal charges against the defendant because the complainant failed to appear for trial. The prosecution argued that she was unavailable and that I should allow them to use the transcript of her preliminary examination. I found that the prosecution had not adequately demonstrated her unavailability; the Court of Appeals disagreed and reversed.

Michigan v. Djordjevic, 230 Mich. App. 459 (1998). The defendants were charged with arson, conspiracy to commit arson, and second-degree murder. The defendants hired an individual to commit the arson, and in the course of setting the fire, the house blew up, killing that individual. Finding a split of authority across the country, I dismissed the murder charge, finding that the defendants lacked the requisite malice to support the charge. The Court of Appeals found contrary authority more persuasive and reversed the murder dismissal. After the murder charge was reinstated the defendants pled guilty to manslaughter and received prison sentences.

Michigan v. Brown, 220 Mich. App. 680 (1996). The Court of Appeals reversed a sentence that I imposed based on an issue that was not raised before me at the trial court level. The defendant was convicted of felonious assault and use of a firearm during the commission of a felony. I sentenced him to two years on the gun conviction and a five year consecutive probationary sentence on the assault conviction. The Court of Appeals held that the probationary sentence ran concurrently with the prison sentence for the felony-firearm conviction.

Michigan v. Vann, 448 Mich. 47 (1995). The Court of Appeals decided that I had received evidence in violation of the spousal privilege statute. The Michigan Supreme Court reversed the Court of Appeals, agreeing with me that the evidence was admissible in this case pursuant to an exception to that privilege.

Michigan v. Thomas, 201 Mich. App. 111 (1993). I granted a motion to suppress evidence because the searching officers were acting pursuant to a defective search warrant. The prosecution conceded that the warrant was defective, but argued that the officers had independent authority to search the premises under the State Liquor Control Act, MCL 436.1 et. seq. The Court of Appeals reversed, holding that under the "pervasively regulated industry doctrine," a balance must be struck between enforcement needs and privacy rights and here the enforcement needs trumped.

Michigan v. Spearman, 195 Mich. App. 434 (1992). Two defendants were on trial – one had a bench trial and the other a jury trial. Both defendants were convicted of second degree murder. In my findings of fact in the trial of Spearman (who had the bench trial), I erroneously used some statements from Rush's confession that were only to be used against her. The Court of Appeals found that this error was not harmless beyond a reasonable doubt and reversed the Spearman conviction.

Michigan v. Brooks, 184 Mich. App. 793 (1990). This case dealt with the new juvenile automatic waiver statute. Defendant Brooks, age sixteen, was charged in Recorder's Court as an adult waived juvenile. Following a motion to suppress his confession, I dismissed the case because he was not immediately taken upon arrest to the juvenile division of the probate court as required by MCL 764.27. The Court of Appeals reversed, holding that the new juvenile waiver statute made compliance with MCL 764.27 unnecessary.

Dep't of Social Services v. American Commercial Liability Ins. Co., 435 Mich. 508 (1990). Although it did not directly consider an opinion I wrote in this case, the Michigan Supreme Court reversed an opinion of the Court of Appeals that directly relied on my opinion in *Auto-Owners Ins. Co. v. Farm Bureau Mut. Ins. Co.*, 171 Mich. App. 46 (1988).

There are other cases in which I ruled from the bench and the Michigan Court of Appeals reversed, reversed in part, or remanded the case in an unpublished opinion available only in hard copy in the clerk's office of the Michigan Court of Appeals. While there is no comprehensive way to collect all of these cases, I obtained a partial list of such cases from the clerk's office, which represents all of the unpublished reversals I could find from the 25 years I have been a judge. See attached list.

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.

In the large majority of cases before me, I ruled from the bench without writing. I wrote an opinion in approximately 2% of my cases. These opinions can be found at the clerks' offices in the files for cases I have handled.

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.

Michigan v. Cancel, Docket No. 88-010682.

Michigan v. Cato-Riggs, Docket No. 95-014094. Opinion supplied in response to 13(c).

Michigan v. Thomas, 201 Mich. App. 111 (1993).

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.

On each court in which I have served, when a party seeks my recusal I would consider the merits of it with reference to Michigan Court Rule 2.003 regarding disqualification of judges. Where such a motion is denied, the party seeking recusal has an automatic appeal of the decision to the Chief Judge of the court.

The following two cases are the only ones that I can recall in which my recusal was requested. There may have been others, but I did not keep a record of requests for recusal and there is no way to determine other cases in which my recusal was requested without doing a manual search through thousands of files I have handled over the last 25 years.

In *Bogert v. Sibley Limestone Quarry*, No. 07-716657, the plaintiffs sought my recusal by motion because I handled a prior matter involving Sibley Limestone Quarry. Because I had prior knowledge of the defendant, the plaintiffs felt I should be recused. I conducted a hearing on the motion to recuse and denied it. Plaintiffs appealed my denial to Chief Judge William Giovan, who affirmed my denial, and I continued to handle the case.

In *Tedders v. Tedders*, No. 01-130788, later consolidated with *Tedders v. Tedders*, 02-202503, Tedders (an attorney) was suing a number of her relatives and a bank in regard to some family financial matters. She initially sought my recusal by motion because I did not grant the requested continuance she wanted. I denied the request and was upheld by then-Chief Judge Mary Beth Kelly. I later recused myself after Tedders named me and many other judges as defendants in a lawsuit alleging that the courthouse was not in compliance with the Americans with Disabilities Act.

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

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

I have never held any public office other than judicial offices. In 1984, I ran unsuccessfully for Judge of the 36th District Court for the City of Detroit.

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, except that I have occasionally lent my name for use by other judicial candidates solely as an endorser and supporter. I estimate that I may have done this a dozen times in the 25 years I have been on the bench. The only specific instance I can

recall is that I endorsed Judge Edward Nykiel in 2010, when he was the incumbent candidate for the 33rd District Court.

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 in a pool of seven law clerks who did research and writing for all 28 Michigan Third Circuit Court Judges from 1972 to 1973.

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

I 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.

1973 – 1974
City of Detroit, Department of Transportation
1301 East Warren Avenue
Detroit, Michigan 48207
Attorney

1974 – 1986
Federal Defender Office
613 Abbott Street, Fifth Floor
Detroit, Michigan 48226
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 served as an arbitrator with the American Arbitration Association only a couple of times during the early 1990's. The records of these arbitrations are no longer available because of the American Arbitration Association's ten year retention policy.

b. Describe:

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

From 1973 to 1974, at the Detroit Department of Transportation, I handled property damage and minor personal injury cases regarding the city's buses. From 1974 to 1986, at the Federal Defender Office, I represented indigent defendants who were charged with criminal felonies.

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

During my one year with the City of Detroit Department of Transportation, I represented the City of Detroit when it was sued for incidents arising from its provision of public transportation.

During my 12 years with the Federal Defender Office, I represented indigent criminal defendants in federal court who were charged with a variety of crimes such as drug violations, bank robberies, counterfeiting, mail theft, interstate transportation of stolen property, and gun charges.

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. When I worked at the Federal Defender Office from 1974 to 1986, I was in court daily and tried numerous cases in federal court.

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: 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.

From 1974 to 1986, while at the Federal Defender Office, I tried, as sole counsel, approximately one case a month on average. Over 12 years, that is approximately 144 cases. While working for the City of Detroit Department of Transportation from 1973 to 1974, I tried three or four cases as sole counsel.

i. What percentage of these trials were:
   1. jury: 98%
   2. non-jury: 2%

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

I have never practiced before the Supreme Court of the United States.

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

a. the date of representation;

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

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

1. *U.S. v. Louzon*, 392 F. Supp. 1220 (E.D. Mich. 1975). When Louzon violated his probation by committing a new crime, the probation department waited until he had finished serving all of his prison time for the new crime before taking any action on the probation violation charge. I moved for dismissal of the probation violation charge on speedy trial grounds. Judge Charles Joiner held that Louzon had a constitutional right to a speedy disposition on the probation violation and that the probation department should have taken some action as soon as they learned of the new offense. Because of the lengthy delay, Judge Joiner dismissed the violation on Sixth Amendment, speedy trial grounds.

I was the sole attorney representing Louzon.

Former Assistant United States Attorney William D. Richards (Prosecutor)
Currently Judge of 46th District Court
26000 Evergreen Road
Southfield, Michigan 48037
248-796-5815

2. *U.S. v. Chamblis*, 425 F. Supp. 1330 (E.D. Mich. 1977). In this case, I represented a defendant charged with possession of heroin. Upon disembarking from a plane at the Detroit airport, the defendant was stopped by a Drug Enforcement Administration agent, who then took the defendant downstairs, searched him, and found heroin. I moved to suppress the heroin. Judge James P. Churchill granted my motion to suppress because the agent lacked probable cause to search the defendant. After suppressing the evidence, the Judge dismissed the case.

I was the sole attorney representing Chamblis.

Former Assistant United States Attorney Victoria L. Toensing (Prosecutor)
Currently with diGenova & Toensing, LLP
1776 K Street, NW, Suite 739
Washington, DC 20006
202-289-7701

3. *U.S. v. Mendenhall*, 596 F.2d 706 (6th Cir. 1979), *rev'd*, 446 U.S. 544 (1980). In this case, I represented at trial a defendant who was profiled, stopped, and then searched by federal agents at an airport, who found drugs upon the defendant. I moved to suppress the drugs, asserting that the agents lacked probable cause and that the defendant had not consented to the search. Judge Robert DeMascio denied the motion to suppress the evidence, but the Sixth Circuit reversed. The Supreme Court granted certiorari and reversed the Court of Appeals, though the majority was divided in its reasoning.

In addition to handling the case at trial, I assisted in the preparation of the case for appeal to the Sixth Circuit. I was not involved at the Supreme Court.

Renee S. Siegan for Defendant (Ms. Siegan left the Defender Office and I took over the case)
Currently with Saurbier & Siegan, P.C.
400 Maple Park Boulevard, Suite 402
Saint Clair Shores, Michigan 48081
586-447-3738

Former Assistant United States Attorney Victoria L. Toensing (Prosecutor)
Currently with diGenova & Toensing, LLP
1776 K Street, NW, Suite 739
Washington, DC 20006
202-289-7701

4. *U.S. v. Emler*, 423 F. Supp. 86 (E.D. Mich. 1976), *aff'd*, 570 F.2d 584 (6th Cir. 1977). In this case the defendant was charged with interstate transportation of stolen property, and I challenged the sufficiency of the indictment, asserting that it did not sufficiently plead the intent requirement for the offense. Judge Robert DeMascio denied my motion, and the Sixth Circuit affirmed. Emler was convicted and sentenced.

At the trial, I handled this case alone. I assisted in the preparation of the case for appeal to the Sixth Circuit.

Former Assistant United States Attorney Gordon Gold (Prosecutor)
Currently with Seyburn, Kahn, Ginn, Bess and Serlin, P.C.
2000 Town Center, Suite 1500
Southfield, Michigan 48075
248-353-7620

5. *U.S. v. McGraw*, 420 F. Supp. 443 (E.D. Mich. 1976). Defendant McGraw was convicted of possession of heroin, and the court imposed a suspended sentence and placed him on probation. When McGraw later violated his probation, he was sentenced to a term of imprisonment. At that point, I filed a motion under Rule 35 of the Federal Rules of Criminal Procedure to reduce McGraw's sentence. Judge Cornelia Kennedy denied the motion, holding that a Rule 35 motion can only be used to challenge the original sentence, not to challenge resentencing following a violation of probation

I handled this case alone.

Former United States Attorney Phillip Van Dam (emeritus) (Prosecutor)
Contact information unknown.

6. *U.S. v. Cooper*, 682 F.2d 114 (6th Cir. 1982). The issue in this case was whether there was sufficient probable cause in a warrant affidavit filed by the FBI to place a beeper in a package that the defendant, a UPS driver, then stole. I filed a motion to suppress the evidence before Judge Charles Joiner, who held that there was adequate probable cause to place the beeper. The Sixth Circuit affirmed, and Cooper was convicted and sentenced.

In this case I handled the trial and appeal alone.

Assistant United States Attorney John N. Thompson (Deceased) (Prosecutor)

7. *U.S. v. Ayotte*, 741 F.2d 865 (6th Cir. 1984). In this case I represented a defendant, Ayotte, who was on trial with two other defendants in a drug conspiracy case before Judge Horace Gilmore. During the trial, Judge Gilmore limited my cross-examination of an informant about things that he had written in a report and said before the grand jury. The Sixth Circuit held that it was reversible error to limit my cross-examination, and it reversed the defendant's conviction and remanded her case alone for a new trial.

I handled this case alone at trial and assisted in the appeal.

Assistant United States Attorney Elizabeth A. Wild (Prosecutor)
Currently with Berrien County Prosecuting Attorney's Office
811 Port Street
Saint Joseph, Michigan 49085
269-983-7111

Frederick Finn represented a Co-Defendant
615 Griswold Street, Suite 1616
Detroit, Michigan 48226
313-964-1383

8. *U.S. v. Cox*, 593 F.2d 46 (6th Cir. 1979). In this case I represented a defendant who was charged with making a false statement in an application for a passport. The defendant executed the application for a passport under a name he had assumed in accordance with Michigan common law. At the conclusion of all of the evidence, I moved for a judgment of acquittal based on the fact that the defendant had not made a material false statement because he had in fact assumed a new name. Judge Ralph Guy denied the motion and the jury convicted the defendant, but the Sixth Circuit reversed, holding that the motion for judgment of acquittal should have been granted. The case was remanded with direction to dismiss the indictment.

I handled this case alone at trial and assisted on the appeal.

Assistant United States Attorney Kenneth J. Haber (Prosecutor)
Currently with Law Offices of Kenneth Joel Haber, P.C.
15879 Crabbs Branch Way
Rockville, Maryland 40855
301-670-0016

9. *U.S. v. Leja*, 568 F.2d 493 (6th Cir. 1977). Defendant Leja was charged with possession, manufacture and distribution of phencyclidine. In my cross-examination of the government's informant, Judge Charles Joiner would not permit me to ask how much the informant was paid for his work on cases other than the one that was being tried. The Sixth Circuit reversed the conviction

because the cross-examination was limited and what the informant was paid in other matters went to his bias and motive to fabricate and distort his testimony.

I handled the trial alone at trial and assisted on the appeal.

Former Assistant United States Attorney Ronald W. Mellish (emeritus)
(Prosecutor)
Currently at 41155 Belvidere Street
Macomb, Michigan 48045
586-954-3777

10. *U.S. v. Touchstone*, 726 F.2d 1116 (6th Cir. 1984). In this case I represented Touchstone, who was a defendant in a large drug conspiracy case. Twenty-five people were indicted, and, when the trial started, there were approximately twelve defendants. By the end of the six-week trial, only about six defendants' cases went to the jury, with the other defendants having accepted plea bargains. My client, Touchstone, and one of his co-defendants, Godwin (represented by now-District Judge David Lawson), failed to appear for trial after the third day. Lawson and I asked Judge Philip Pratt to sever our clients from the trial. Touchstone was convicted in his absence and was later sentenced to four years imprisonment after his arrest. I also raised a Fourth Amendment objection to a government search, objected to both the evidence of and the district court's jury instructions on flight, and challenged the district court's limitation of cross-examination. The Sixth Circuit affirmed the convictions.

I represented Touchstone at trial alone and assisted with the appeal.

Former Assistant United States Attorney Christopher Andreoff (Prosecutor)
Currently with Jaffe Raitt Heuer & Weiss
27777 Franklin Road, Suite 2500
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248-351-3000

Former Assistant United States Attorney Robert M. Morgan (Prosecutor)
Currently at 615 Griswold Street, Suite 1125
Detroit, Michigan 48226
313-961-7070

The following attorneys represented co-defendants at trial:

Milton Henry (Deceased)

Lester Hudson
Contact information unknown

Daryle G. Salisbury
42400 Grand River Avenue, Suite 106
Novi, Michigan 48375
248-348-6820

(Hon.) David M. Lawson
Now United States District Judge
231 West Lafayette Boulevard, Room 802
Detroit, Michigan 48226
313-234-2660

Leonard A. Henk
Kallas & Henk, P.C.
43902 Woodward Avenue, Suite 200
Bloomfield Hills, Michigan 48302
248-335-5450

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

    Throughout my career, I have been actively involved in the Association of Black Judges of Michigan. Over the years, I have participated in the mock trial program (as both a judge and a coach) as well as various mentoring programs involving local students. I have been involved in the Adopt-a-School program and hosted students for visits to the courthouse. I was also active in the National Judicial College. I taught courses for the college for about ten years, including courses on criminal law and one titled "Great Issues of Law as Reflected in Literature." I also served as a liaison between the administration and the volunteer judges who taught for the college.

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.

    Criminal Law (Undergraduate Course); Wayne State University; Fall 1989. I taught the steps in the criminal process, from arraignments to sentencing. I have been unable to locate the syllabus.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I will receive payments upon retirement from the Wayne County (Michigan) Retirement System.

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

I have no plans to pursue outside employment if appointed as a District Judge other than to serve on appropriate non-profit boards and to remain active with my neighborhood and church.

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.

Other than my wife and two daughters, I cannot think of any family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present any conflicts-of-interest if I am confirmed. If, by chance, my wife and two daughters appeared in a case before me I would recuse myself. I would review each case assigned to me to determine whether any potential conflict existed, and handle any potential conflicts in accordance with the recusal statutes and 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.

I would follow the recusal statutes and the Code of Conduct for United States Judges.

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

I have been involved in a prison ministry with Rosedale Park Baptist Church since 1997. Through this ministry, for several years, I led the Sunday morning worship service at the Mound Road Correctional Facility twice a month and then, more recently, once a month. For the last three or four years I have been leading a monthly Bible study. This amounted to 15 to 30 hours a month (including preparation time). I also spoke on occasion at the prison on issues such as parole.

From 2000 to 2006 I was on the Board of Directors of New Creations Community Outreach, formerly called Transition of Prisoners (TOP). This organization was involved in helping men coming out of prison with issues such as education, employment, social skills, and family issues. I devoted approximately four hours a month to this project.

I am annually involved with my church in a program called "Angel Tree." The program arranges for the purchase and delivery of Christmas gifts to the children of inmates. I have devoted approximately eight hours a year to this project.

I have also gone on mission trips to Texas (one week), Uganda (ten days), and Jamaica (one week), working with youth and/or inmates.

From 1993 to 1998 I was involved with the Association of Black Judges adopt-a-school and mentoring program, working with at-risk youths. When I was involved in this program, I spent five hours a month on it.

26. **Selection Process**:

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

In December 2010, an announcement was made that applications were being accepted by the Judicial Advisory Committee for the United States District Court

for the Eastern District of Michigan, which is appointed by U.S. Senators Carl Levin and Debbie Stabenow, for two open federal judgeships in the Eastern District of Michigan. I submitted my application in late January 2011. On March 14, 2011, I received a letter from Senators Levin and Stabenow indicating that my name, along with four others, was sent to the White House for possible nomination for the two vacancies. Since May 31, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 28, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 17, 2011, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Drain, Gershwin A.	U.S. District Court, Eastern District of Michigan	11/17/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type** (check appropriate type)	**6. Reporting Period**
U.S. District Court Judge	☑ Nomination, Date 11/17/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2010 to 11/07/2011
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.**	
Wayne County Circuit Court 1411 Coleman A. Young Municipal Center 2 Woodward Avenue Detroit, Michigan 48226	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.	Circuit Judge	Wayne County Circuit Court
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 14	Name of Person Reporting Drain, Gershwin A.	Date of Report 11/17/2011

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	Wayne County, Michigan	$38,689.56
2.	2011	State of Michgan	$70,185.72
3.	2010	Wayne County, Michigan	$46,048.74
4.	2010	State of Michigan	$82,946.76
5.	2009	Wayne County, Michigan	$46,025.06
6.	2009	State of Michigan	$82,946.76
7.			

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.					

FINANCIAL DISCLOSURE REPORT Page 3 of 14	Name of Person Reporting Drain, Gershwin A.	Date of Report 11/17/2011

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 14	Name of Person Reporting Drain, Gershwin A.	Date of Report 11/17/2011

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 5 of 14	Name of Person Reporting Drain, Gershwin A.	Date of Report 11/17/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. 401K #1	D	Dividend	O	T	Exempt				
2. - SSga Russell 2000 Index									
3. - ING Stable Value Fund									
4. - PIMCO Total Return Fund									
5. - MFS Total Return Fund									
6. - Dodge & Cox Stock Fund									
7. - T Rowe Price Mid Cap Value Fund									
8. - ING Small Cap Growth Equity									
9. - American Funds Euro Pacific Europacific Growth Fund									
10. - SSgA Emerging Markets Fund									
11. - Lord Abbett Midcap Value Fund (Y)									
12. - Columbia Acorn, Z Fund (Y)									
13. 457 Plan #1	A	Dividend	L	T					
14. - American Century Value Investor Fund									
15. - American Funds The Investment Company of America									
16. - Fidelity Contrafund									
17. - Fidelity Equity Income Fund (Y)									

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 14

Name of Person Reporting	Date of Report
Drain, Gershwin A.	11/17/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. - Fidelity Puritan Fund									
19. - Franklin Utilities Fund									
20. - Invesco Van Kampen Growth & Income Fund									
21. - Nationwide International Index Fund									
22. - Nationwide International Value Fund									
23. - Neuberger Berman Genesis Fund									
24. - T Rowe Price Mid--Cap Growth Fund									
25. - Morgan Stanley Institutional Fund - U.S. Real Estate Port									
26. - Nationwide Fixed Account									
27. IRA #1		None	M	T					
28. - Franklin Templeton Mutual Global Discovery Fund									
29. - American Funds Growth Fund of America									
30. - American Funds New World									
31. - American Funds Capital World Growth & Income Fund									
32. - American Funds International Growth & Income Fund									
33. - Franklin Income Fund									
34. IRA #2	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 7 of 14

Name of Person Reporting	Date of Report
Drain, Gershwin A.	11/17/2011

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. - American Funds Capital Income Builder									
36. - American Funds Capital World Growth and Income Fund									
37. - American Funds New World Fund									
38. - American Funds The Growth Fund of America									
39. IRA#3	A	Dividend	J	T					
40. - American Funds Capital Income Builder									
41. - American Funds Capital World Growth & Income Fund A									
42. - American Funds Europacific Growth Fund A									
43. - American Funds New World Fund A									
44. - American Funds New World Fund C									
45. - American Funds Small Cap World Fund									
46. - American Funds The Growth Fund of America									
47. - American Funds The Investment Company of America									
48. - American Funds The New Economy Fund									
49. - American Funds Capital World Growth & Income Fund C									
50. IRA #4	A	Int./Div.	J	T					
51. - Calamos Global Growth & Income Fund Class C									

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 14

Name of Person Reporting	Date of Report
Drain, Gershwin A.	11/17/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
52. - Franklin Income Fund Class C									
53. - Franklin Rising Dividends Fund Class C									
54. - Ivy Asset Strategy Fund Class C									
55. Brokerage Account #1									
56. - Annaly Capital Management Inc. Stock	A	Dividend	J	T					
57. - Calamos Global Growth & Income Fund Class A		None	K	T					
58. - American Funds Capital World Growth & Income Fund Class A	A	Dividend	K	T					
59. - American Funds Capital World Growth & Income Fund Class C	A	Dividend	J	T					
60. - First Eagle Global Fund Class C	A	Dividend	K	T					
61. - Franklin Income Fund Class C	D	Dividend	L	T					
62. - Franklin High Yield Tax Free Income Fund Class C	A	Dividend	J	T					
63. - American Funds Growth Fund of America Class C	A	Dividend	J	T					
64. - American Funds Investment Company of America Class A	A	Dividend	K	T					
65. - Franklin Templeton Mutual Global Discovery Fund Class C	A	Dividend	K	T					
66. - American Funds New World Funds Class C	A	Dividend	J	T					
67. - Realty Income Corporation Reit	A	Dividend	K	T					
68. - Targa Resources Partners LP Com Unit	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 9 of 14

Name of Person Reporting	Date of Report
Drain, Gershwin A.	11/17/2011

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 54-60 of filing instructions.)*

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B: (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C: (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D: (2) Date mm/dd/yy	D: (3) Value Code 2 (J-P)	D: (4) Gain Code 1 (A-H)	D: (5) Identity of buyer/seller (if private transaction)
69. - American Funds Europacific Growth Fund Class C (Y)		None							
70. - Hartford Capital Appreciation Fund Class C (Y)		None							
71. Trust #1	C	Int./Div.	L	V					
72. - Adobe Systems Inc.									
73. - Alcoa Incorporated									
74. - American Public Education Inc.									
75. - Berkshire Hathaway Inc. Class B									
76. - Calpine Corporation Com New									
77. - Cenovus Energy Inc.									
78. - Corning Inc.									
79. - E M C Corporation Mass									
80. - Emulex Corporation Com New									
81. - Exelon Corporation									
82. - Harris Corporation Del									
83. - Hologic Inc.									
84. - Huntsman Corporation									
85. - ITT Corporation New Com New									

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 10 of 14

Name of Person Reporting	Date of Report
Drain, Gershwin A.	11/17/2011

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. - Intuitive Surgical Inc. Com New									
87. - Itron Inc.									
88. - Kodiak Oil & Gas Corporation									
89. - Kraft Foods Incorporated Class A									
90. - Medco Health Solutions Incorporated									
91. - Mindray Medical International Limited Spon Adr									
92. - Nestle S A Sponsored ADR									
93. - Parker Hannifin Corporation									
94. - Pepsico Incorporated									
95. - Qualcomm Incorporated									
96. - Riverbed Technology Incorporated									
97. - Roper Industries Incorporated New									
98. - Sierra Wireless Incorporated									
99. - Stryker Corporation									
100. - Teva Pharmaceutical Industries Limited ADR									
101. - Varian Med Systems Incorporated									
102. - Verifone Systems Incorporated									

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 11 of 14

Name of Person Reporting	Date of Report
Drain, Gershwin A.	11/17/2011

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
103. - Xylem Incorporated									
104. - Veolia Enfironment Sponsored ADR (Y)									
105. - MEMC Electr Matls Incorporated (Y)									
106. Hartford Harrford Variable Universal Life Ins. #1	A	Int./Div.	J	T					
107. - American Funds Internationoal									
108. - American Funds Global Growth									
109. - American Funds New World									
110. - HLS Dividend & Growth									
111. - American Funds Growth									
112. - American Funds Asset Allocation									
113. - HLS Int'L Opps									
114. - HLS Int Small Co									
115. - American Funds Small Cap									
116. - Franklin Templeton Mutual Shares Sec									
117. Hartford Variable Universal Life Ins. #2	A	Int./Div.	K	T					
118. - American Funds New World									
119. - American Funds International									

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 12 of 14	Name of Person Reporting Drain, Gershwin A.	Date of Report 11/17/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
120. - American Funds Global Growth									
121. - Fidelity Contrafund									
122. - Fidelity Mid Cap									
123. PNC Bank Checking & Savings Accts.	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 13 of 14	Name of Person Reporting Drain, Gershwin A.	Date of Report 11/17/2011

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

Part VII Investments and Trusts
Line 71:
Spouse has a 25% interest in a Trust account inherited in 2011 and has knowledge of the contents of the Trust. She is not a Trustee.

FINANCIAL DISCLOSURE REPORT Page 14 of 14	Name of Person Reporting Drain, Gershwin A.	Date of Report 11/17/2011

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 Gershwin A. Drain

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		8	244	Notes payable to banks-secured (loan)			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	095	624	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends			000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		104	064
Real estate owned – personal residence		151	712	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		10	285	Car lease		7	324
Cash value-life insurance		36	453	Home Equity Loan		17	630
Other assets itemize:							
Trust inheritance (25% interest)		74	187				
				Total liabilities		129	018
				Net Worth	1	247	487
Total Assets	1	376	505	Total liabilities and net worth	1	505	523
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 Capital Income Builder	$4,603
American Funds Capital World Growth & Income Fund	50,286
American Funds EuroPacific Growth Fund	135,555
American Funds International Growth & Income Fund	13,205
American Funds New World Fund	35,513
American Funds SMALLCAP World Fund	359
American Funds The Growth Fund of America	20,512
American Funds The Investment Company of America	18,976
American Funds The New Economy Fund	428
American Century Value Investor Fund	2,333
Annaly Capital Management, Inc. stock	1,442
Calamos Global Growth & Income Fund	23,137
Dodge & Cox Stock Fund	156,076
Fidelity Contrafund	5,481
Invesco Van Kampen Growth & Income Fund	10,311
Fidelity Puritan Fund	2,978
First Eagle Global Fund	15,479
Franklin High Yield Tax-Free Income Fund	1,149
Franklin Income Fund	104,413
Franklin Rising Dividends Fund	2,912
Franklin Templeton Mutual Global Discovery Fund	79,455
Franklin Utilities Fund	5,382
ING Small-Cap Growth Equity	60,290
ING Stable Value Fund	89,873
Ivy Asset Strategy Fund	2,793
MFS Total Return Fund	60,510
Neuberger Berman Genesis Fund	8,393
Nationwide Fixed Account	33,929
Nationwide International Index Fund	2,025
Nationwide International Value Fund	10,465
PIMCO Total Return Fund	79
Realty Income Corporation stock	16,244
SSgA Emerging Markets Fund	44,485
SSgA Russell 2000	12,397
T Rowe Price Mid-Cap Growth Fund	5,878
T Rowe Price Mid-Cap Value Fund	54,286
Targa Resources Partners LP stock	2,164
Morgan Stanley Institutional Fund - U.S. Real Estate Port.	1,828
Total Listed Securities	$1,095,624

AFFIDAVIT

I, Gershwin Allen Drain, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 10, 2011 (DATE)

Gershwin A. Drain (NAME)

Shannan M. Doyle (NOTARY)

SHANNAN M. DOYLE
Notary Public, State of Michigan
County of Oakland
My Commission Expires 09-02-2012
Acting in the county of Wayne

STATEMENT OF ROBIN S. ROSENBAUM, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA

Judge ROSENBAUM. Thank you, Senator Franken. I want to first thank the Committee for scheduling this hearing, and thank you, Senator Franken, for presiding over it. Thank you to the Ranking Member, Senator Grassley. Thank you, Senator Lee, for being here as well.

I also want to thank Senator Nelson for his remarks, and Senator Nelson and Senator Rubio for forwarding my name to President Obama. I'd like to thank President Obama for the nomination. I'd also like to thank the Judicial Nominating Commission for sending my name in the first place to Senators Rubio and Nelson.

I'd like to introduce my family, very quickly. This is my husband, Phil.

Senator FRANKEN. Welcome.

Judge ROSENBAUM. My daughter, Rosie. She's 10.

Senator FRANKEN. Hi, Rosie.

Judge ROSENBAUM. My mom, Hedy; my daughter, Evin, who's 12; my father, Jerry; my sister Marci; and my other sister, Jodi.

Senator FRANKEN. Well, congratulations to you all. You must be very proud.

Judge ROSENBAUM. Thank you.

Senator FRANKEN. Okay. Well, I guess we should just—I'll start the questions.

Senator GRASSLEY. I'm going to let Senator Lee go ahead of me because he's got to go at 3:30. So when you're done, go to him.

Senator FRANKEN. Okay. I will do that.

Let's see. Obviously you were both introduced by your respective Senators. Each of you are a judge and have experience. Judge Rosenbaum, you've been a magistrate judge since 2007. Judge Drain, you have been a State court judge for more than 25 years. How will each of your previous experiences help you in the transition to the Federal bench, and what challenges do you anticipate in making that transition?

Judge DRAIN. Senator Franken, I do have a pretty long history and I spent 12 years at the Federal Defender's Office. During that time I handled a whole host of Federal criminal matters. I handled a lot of trials. I even handled some cases in the Sixth Circuit, some of the appeals that—from cases that I handle.

So I had that experience for 12 years in Federal court. And then as a State court judge, I handled criminal cases and civil cases. I handled criminal cases for about 13 years in the Recorder's Court and Wayne Circuit Court, and during that time I handled all manner of crimes: murder, rape, robbery, assaults, drugs, weapons violations, the whole gamut. I did that for, again, 13 years.

And then in 2000 I moved to the Civil Division, and there I started handling civil cases, the personal injury cases, malpractice, legal and medical, contracts, employment cases, discrimination cases, just the whole gamut of civil matters.

And the challenge I see in moving to a Federal position, if I am fortunate enough to be confirmed, would be to start looking at Federal statutes and the Federal Constitution, the U.S. Constitution, whereas in the past I've been dealing with State statutes and the Michigan constitution.

They also have e-filing in Federal court. In our State court we really haven't gotten that advanced yet, so that would be a challenge also. But I would look forward to being confirmed with great excitement, and look forward to any other challenges that may surface.

Senator FRANKEN. Thank you.

Judge Rosenbaum.

Judge ROSENBAUM. As a Magistrate Judge I have been fortunate to have had the experience to handle exactly the same types of cases as District Judges handle on a daily basis, and I've been fortunate to be able to handle all different kinds of motions that get filed in Federal District Court. So I would be prepared to hit the ground running as a District Court judge, having worked on the same types of matters as a Magistrate Judge, if I am fortunate enough to be confirmed.

As far as challenges go, the one area in which a Magistrate Judge does not have authority to preside, by law, is over felony criminal trials and so that would be a new challenge for me. But I would feel confident that I would be able to address that accordingly because, first of all, I have presided over both Federal jury—Federal civil jury and Federal civil bench trials, and I spent 9 years as a Federal prosecutor. Five of those years I served as the Chief of the Economic Crimes Division. So, I would feel well prepared to preside over criminal trials as well.

[The biographic information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Robin Stacie Rosenbaum
   Robin Rothschild (Rothschild is my husband's last name)

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

   United States District Judge for the Southern 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.

   United States Courthouse
   299 East Broward Boulevard, Room 310-A
   Fort Lauderdale, Florida 33301

   Residence: Boca Raton, Florida

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

   1966; Chapel Hill, North Carolina

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

   1988 – 1991, University of Miami School of Law; J.D. (*magna cum laude*), 1991

   1984 – 1988, Cornell University; B.A., 1988

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

2007 – present
United States District Court for the Southern District of Florida
299 East Broward Boulevard
Fort Lauderdale, Florida 33301
United States Magistrate Judge

2009 – present
University of Miami School of Law
1311 Miller Drive
Coral Gables, Florida 33146
Adjunct Professor

1998 – 2007
United States Attorney's Office for the Southern District of Florida
500 East Broward Boulevard, Suite 700
Fort Lauderdale, Florida 33394
Assistant United States Attorney (1998 – 2007)
Chief, Economic Crimes Section, Fort Lauderdale (2002 – 2007)

1998
The Honorable Stanley Marcus, United States Circuit Judge
Eleventh Circuit Court of Appeals
99 Northeast Fourth Street, Room 1262
Miami, Florida 33132
Law Clerk

1996 – 1997
Holland & Knight LLP
515 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Associate

1995 – 1996
Office of the Independent Counsel
Independent Counsel Dan Pearson's Investigation of Former United States Secretary of Commerce Ronald H. Brown and Nolanda Hill
The office is no longer in existence.
Staff Counsel

1991 – 1995
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20001
Trial Attorney

Summer 1990
Wiley, Rein & Fielding (now known as Wiley Rein LLP)
1776 K Street, NW
Washington, DC 20006
Summer Associate

1988 – 1990
Dr. Jerry H. Rosenbaum
3037 East Commercial Boulevard
Fort Lauderdale, Florida 33308
Typist

Summers 1988, 1989
Camp Three Pines
Dr. Johnson's Camps
No longer in existence
Assistant Director

Other Affiliations (uncompensated):

2002 – 2007
Federal Bar Association, Broward County Chapter
c/o Kimberly Gilmour
4179 Southwest 64th Avenue, Suite 101
Davie, Florida 33314
Board of Directors (2002 – 2007)
President (2006 – 2007)
President-Elect (2005 – 2006)
Vice President (2004 – 2005)

2002 – 2003; 2006 – 2007
University of Miami School of Law, Law Alumni Association
1311 Miller Drive
Coral Gables, Florida 33146
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 never served in the military. I have not registered for selective service.

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

ORT American Jurisprudence Award (2010)
AV rating as an attorney, Martindale Hubbell
Top Government Lawyer, *South Florida Legal Guide* (2005, 2006)
FBI White Collar Sustained Prosecutorial Excellence Award (Firefighter's Hat Award) (2002)
Various plaques, letters of commendation, and other forms of recognition from several federal agencies in appreciation of efforts in furtherance of cases investigated by those agencies (FBI, Secret Service, Department of Homeland Security Inspector General's Office, Internal Revenue Service Criminal Investigation, Securities and Exchange Commission)
United States Department of Justice Special Achievement Awards (1993, 1994)
Pine Crest Preparatory School Arete Alumni Service Honor Society (1990)
University of Miami School of Law
- Order of the Coif
- Order of the Barrister
- Iron Arrow Honor Society ("Highest Honor Attained")
- Roger Sorino Award to the Outstanding Graduating Law Student
- Phi Alpha Delta Outstanding Scholar Award
- University of Miami School of Law Advanced Moot Court Competition
  - Winner
  - Best Oral Advocate Award
  - Best Brief Award
- Bar and Gavel Service Honor Society
- Omicron Delta Kappa Service Honor Society
- Member, *University of Miami Law Review*
- Dean's List
- Scholarship for serving as the Student Bar Association President (1990 – 1991)
- Scholarship for serving as the Student Bar Association Treasurer (1989 – 1990)

Cornell University
- Quill and Dagger Service Honor Society
- Dean's List

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
Broward County Bar Association
Federal Bar Association, Broward County Chapter
- President (2006 – 2007)
- President-Elect (2005 – 2006)
- Vice President (2004 – 2005)
- Board of Directors (2002 – 2007)

United States District Court for the Southern District of Florida
Bench and Bar Conference Committee (2008 – present)
Committee on the Fort Lauderdale Federal Courthouse (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.

Florida, 1991

There has been no lapse in membership.

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

United States Court of Appeals for the Eleventh Circuit, 1997
United States District Court for the Southern District of Florida, 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.

Cornell Alumni Admissions Ambassadors Network (2004 – present)
Iron Arrow Honor Society, University of Miami (1990 – present)
Mentors, Inc. (Washington, DC) (1992 – 1995)
University of Miami School of Law
Moot Court Board Alumni Board (2011)
Alumni Association Board (2002 – 2003; 2006 – 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.

Before I was inducted in 1990, the University of Miami's Iron Arrow Honor Society limited membership to men. Iron Arrow has admitted women since 1985. Other than that, to the best of my knowledge, none of the organizations listed above currently discriminates or previously discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

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.

In 2010, I signed the Sedona Conference's Cooperation Proclamation. Copy supplied.

On November 14, 1996, the Independent Counsel issued his Final Report on the investigation of Ronald H. Brown. I was staff counsel on the investigation and prepared the first draft of the report, which was edited and finalized by Judge Pearson, the Independent Counsel. 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 July 25, 2011, I gave remarks before the Florida Federal Judicial Nominating Commission. I have no notes, transcript or recording of my presentation.

On July 14, 2009, I gave remarks before the Florida Federal Judicial Nominating Commission. I have no notes, transcript or recording of my presentation.

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

The list that follows represents my best efforts, through searches of my records, calendars, and Internet databases, to identify speeches and remarks that I have given. There may be, however, other speeches or remarks that I have been unable to recall or identify. Often, when I engage in public speaking, I do so without outlines or prepared remarks.

November 18, 2011: Naturalization Ceremony at United States Citizenship and Immigration Services Oakland Park Field Office, Oakland Park, Florida. I presided over the proceedings. A copy of my notes is supplied.

August 19, 2011: Naturalization Ceremony at United States Courthouse, Fort Lauderdale, Florida. I presided over the proceedings. A copy of my notes is supplied.

August 9, 2011: Panel member, Judges' Panel at the United States District Court for the Southern District of Florida's Clerk's Office Retreat. I have no notes, transcript or recording. The event was organized by Clerk of Court Steve Larimore, 400 North Miami Avenue, Miami, Florida 33128.

July 28, 2011: Panel member, panel about consumer finance issues. I have no notes, transcript, or recording. The conference was sponsored by the American Conference Institute, 45 West 25th Street, Eleventh Floor, New York, New York 10010.

June 16, 2011: Speaker, University of Miami School of Law James Weldon Johnson Summer Institute (discussion and question-and-answer session about my career path and the responsibilities of a federal magistrate judge). I have no notes, transcript, or recording. The sponsor of the event was the University of Miami School of Law, 1311 Miller Drive, Coral Gables, Florida 33146.

June 3, 2011: Speaker, Career Day at North Fork Elementary School (question-and-answer session about being a lawyer and a judge). I have no notes, transcript, or recording. The sponsor of the event was North Fork Elementary School, 101 Northwest Fifteenth Avenue, Fort Lauderdale, Florida 33301.

June 2, 2011: Panel Member, The Role of Clients in the Courtroom. A copy of my notes is supplied.

May 20, 2011: Panel member, seminar entitled "Emerging Issues in Discovery," Palm Beach County Bar Association and Federal Bar Association Palm Beach Chapter. I provided attendees with a hand-out of my notes. A copy of the hand-out and an audio recording of the presentation are supplied.

April 14, 2011: Panel member, seminar on electronic discovery. I have no notes, transcript, or recording. The panel was sponsored by the American Bar Association, 321 North Clark Street, Chicago, Illinois 60654.

October 21, 2010: Award recipient, ORT America Jurisprudence Awards Reception. A copy of my acceptance speech is supplied.

October 15, 2010: Naturalization Ceremony at United States Courthouse, Fort Lauderdale, Florida. I presided over the proceedings. A copy of my notes is supplied.

October 1, 2010: Panel member, seminar on trial practice. I have no notes, transcript, or recording. The sponsor of the seminar was *The Daily Business Review*, One Southeast Third Avenue, Suite 900, Miami, Florida 33131.

August 16, 2010: Speaker, Nova Southeastern University Law Center Professionalism Day. I have no notes, transcript, or recording. The sponsor of the event was Nova Southeastern University Law Center, 3305 College Avenue, Fort Lauderdale - Davie, Florida 33314.

June 14, 2010: Speaker, University of Miami School of Law James Weldon Johnson Summer Institute (discussion and question-and-answer session about my career path and the responsibilities of a federal magistrate judge). I have no notes, transcript, or recording. The sponsor of the event was the University of Miami School of Law, 1311 Miller Drive, Coral Gables, Florida 33146.

May 6, 2010: Speaker, Florida Association of Women Lawyers (discussion and question-and-answer session about my career path and the responsibilities of a federal magistrate judge). I have no notes, transcript, or recording. The sponsor of the event was the West Palm Beach Chapter of the Florida Association of Women Lawyers, which does not have a physical address.

April 30, 2010: Panel member, complex litigation panel. I have no notes, transcript, or recording. The sponsor was the United States District Court for the Southern District of Florida, 400 North Miami Avenue, Miami, Florida 33128.

January 8, 2010: Sun-vitational High School Debate Tournament. I spoke about the power of oral argument and the responsibility to use it wisely. I have no

notes, recording, or transcript. The event was sponsored by the University School Debate Team, 3375 Southwest 75th Avenue, Sonken Building, Fort Lauderdale, Florida 33314.

October 23, 2009: Speaker, event for lawyers newly sworn in to practice in the Southern District of Florida (discussion of some of the rules and practices unique to federal court practice). I have no notes, transcript, or recording. The event sponsor was the Federal Bar Association, which can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

September 23, 2009: Panel member, panel about electronic discovery. I have no notes, transcript, or recording. The conference was sponsored by the American Conference Institute, 45 West 25th Street, Eleventh Floor, New York, New York 10010.

August 27, 2009: Speaker, luncheon (I believe that I spoke about *Brown v. Board of Education*). I have no notes, recording, or transcript, but FBA coverage is supplied. The event sponsor was the Federal Bar Association, which can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

June 1, 2009: Speaker, North Fork Elementary School (discussion about the five freedoms guaranteed by the First Amendment). I have no notes, transcript, or recording. The School is located at 101 Northwest Fifteenth Avenue, Fort Lauderdale, Florida 33301.

October 10, 2008: Panelist, Southern District of Florida Orientation conference, Federal Bar Association Broward County Chapter. I have no notes, transcript or recording, but FBA coverage is supplied. The Federal Bar Association can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

July 29, 2008: Speaker, brown-bag luncheon (question-and-answer session about my practices and procedures as a magistrate judge and the transition from practicing attorney to the bench). I have no notes, transcript, or recording. The event sponsor was the Federal Bar Association, which can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

February 27, 2008: Speaker, luncheon (speech and question-and-answer session about the role of a magistrate judge and the transition from practicing attorney to the bench). I have no notes, transcript, or recording. The event sponsor was the Federal Bar Association, which can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

December 7, 2007: My formal investiture as a United States Magistrate Judge. A copy of my remarks is supplied.

April 8, 2005: Panel member on panel entitled, "Internal Investigations: The Roles of In-House Counsel and Outside Counsel," Daily Business Review. Video recording 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.

Responses to a Florida Bar questionnaire about courtroom practices (May 14, 2009; updated August 20, 2011). Copies supplied.

Catherine Wilson, *Doctor Recovering from Botulism Poisoning Faces Fraud Charges*, Associated Press, Mar. 1, 2005. Copy supplied.

John Fakler, *$4.4 Million Awarded at Jonson Restitution Hearing*, South Florida Business Journal, Apr. 30, 2004. Copy supplied.

Ellen van Wageningen, *Scammer Sentenced to 20 Years*, Windsor Star, Jan. 23, 2004 (re-printed in multiple outlets). Copy supplied.

John Fakler, *Former Link Broker Strikes Deal with SEC*, South Florida Business Journal, Sept. 27, 2002. Copy supplied.

John Fakler, *Lack of Defense Lawyer Delays Johnson Trial*, South Florida Business Journal, Apr. 19, 2002. Copy supplied.

John Fakler, *Pony Express Shares Gallop Downward*, South Florida Business Journal, Mar. 1, 2002. Copy supplied.

Dani Davies, *Man Faces Charges of Bilking Investors*, Palm Beach Post, Feb. 24, 2002. Copy supplied.

On one occasion probably in about 2000 or 2001, I stood in as the spokesperson for the United States Attorney's Office during a press conference on a case regarding Mark Thurman. I have done my best to locate any statements or interviews of that conference that may exist in electronic databases but have been unable to find any.

Jon Burstein, *Woman Pleads Guilty in Phony Check Scheme*, South Florida Sun-Sentinel, Oct. 13, 1999. Copy supplied.

Michael Sniffen, *Justice Department to Take Over Remainder of Brown Investigation*, Associated Press, Apr. 19, 1996. Copy supplied.

Lourdes Fernandez, *'Professor' Brennan Gives UM Students Unique Legal Insight*, Miami Herald, Feb. 15, 1991. Copy supplied.

Lourdes Fernandez, *Retired Justice Brennan to Teach Law Course at UM*, Miami Herald, Jan. 19, 1991. Copy supplied.

In either my junior or senior year of college at Cornell University, I gave an interview to the Cornell public relations newspaper regarding my service as the student-elected member of the Cornell Board of Trustees. I have been unable to locate a copy of the article.

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, United States District Court for the Southern District of Florida from September 4, 2007, to the present. I was appointed by the district judges of the United States District Court for the Southern District of Florida. I serve an eight-year term. The jurisdiction of the United States District Court is general in nature and extends to all federal criminal cases and all civil cases in which federal subject-matter jurisdiction exists (*i.e.*, federal question cases and diversity cases). As a federal magistrate judge in the Southern District of Florida, I preside over civil jury and bench trials where the parties consent to magistrate judge jurisdiction, I conduct evidentiary hearings that district judges refer to me, I hold hearings on and rule on non-dispositive civil and criminal motions, and I hold hearings on and make reports and recommendations regarding dispositive civil and criminal motions. In addition, I handle criminal duty, including issuing criminal complaints, search warrants, and arrest warrants and presiding over criminal duty court.

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

Four.

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. *SEC v. Huff*, Case No. 08-60315-CIV-ROSENBAUM (S.D. Fla.)

This matter involved a United States Securities and Exchange Commission enforcement action against a defendant (Huff) and three relief defendants. The defendant was alleged to have used his companies to drain a publicly-traded company of approximately $130 million. After a seven-day bench trial, I entered judgment for the SEC and against Huff and two of the three relief defendants and judgment for one of the three relief defendants and against the SEC. Under the judgment, Huff was required to disgorge approximately $10 million and was barred from serving as an officer and director of a publicly traded company. Huff has appealed my judgment to the Eleventh Circuit, where the case is currently pending. Citations of opinions that I filed in this case include the following: *SEC v. Huff*, 758 F. Supp. 2d 1288 (S.D. Fla. 2010) (Amended Findings of Fact and Conclusions of Law); *SEC v. Huff*, 2011 WL 1102777 (S.D. Fla. Mar. 23, 2011); *SEC v. Huff*, 2010 WL 5287423 (S.D. Fla. Dec. 17, 2010); *SEC v. Huff*, 2010 WL 4537839 (S.D. Fla. Oct. 22, 2010); *SEC v. Huff*, 754 F. Supp. 2d 1284 (S.D. Fla. 2010), *amended and superseded by SEC v. Huff*, 758 F. Supp. 2d 1288 (S.D. Fla. 2010); *SEC v. Huff*, 2010 WL 780184 (S.D. Fla. Mar. 3, 2010); *SEC v. Huff*, 2010 WL 541634 (S.D. Fla. Feb. 9, 2010); *SEC v. Huff*, 2010 WL 503117 (S.D. Fla. Feb. 8, 2010); *SEC v. Huff*, 2010 WL 228000 (S.D. Fla. Jan. 13, 2010); *SEC v. Huff*, 2010 WL 148232 (S.D. Fla. Jan. 12, 2010); *SEC v. Huff*, 664 F. Supp. 2d 1288 (S.D. Fla. 2009).

Plaintiff SEC

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Linda S. Schmidt
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Defendant Huff and Relief Defendants

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William H. Mooney
Lynch Cox Gilman & Goodman, PSC
500 West Jefferson Street, Suite 2100
Louisville, Kentucky 40202
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2. *Lawson v. Plantation Gen. Hosp., L.P.*, Case No. 08-61826-CIV-ROSENBAUM (S.D. Fla.)

I presided over a jury trial in this employment discrimination case brought by a former hospital employee against the hospital that terminated her employment. The plaintiff, an executive secretary formerly employed by the defendant hospital, alleged discrimination based on her race, age, handicap, national origin, and gender under Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act of 1990, and the Age Discrimination in Employment Act. The defendant hospital argued that it had ended the plaintiff's employment as the result of a reduction in force that resulted in the layoff of numerous employees. Following a six-day trial, the jury returned a verdict for the hospital. Citations of opinions that I filed in this case include the following: *Lawson v. Plantation Gen. Hosp., L.P.*, 2010 WL 1258058 (S.D. Fla. Mar. 30, 2010); *Lawson v. Plantation Gen. Hosp., L.P.*, 2009 WL 3367369 (S.D. Fla. Oct. 15, 2009).

Plaintiff Lawson

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Defendant Plantation General Hospital Limited Partnership

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Allison Oasis Kahn
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3. *Peters v. Peake*, Case No. 08-81162-CIV-ROSENBAUM (S.D. Fla.)

I presided over a jury trial in this case brought by a doctor against the Veterans Administration. The plaintiff, who worked as a physician in the Veterans Administration hospital, alleged that after she complained about a sexually hostile work environment, the Veterans Administration retaliated against her by placing her in an administrative position. The Veterans Administration denied that it had done so and instead argued that it had transferred her to another position to compensate for the fact that three other physicians had been called to active duty, and the plaintiff had requested the hours that they worked. Upon transferring to the new position, however, the Veterans Administration contended that the plaintiff had acted in an unprofessional manner and had failed to attend work shifts without excuse. After a five-day trial, the jury returned a verdict for the Veterans Administration. My only opinion that has a citation in this case is the following: *Peters v. Peake*, 2009 WL 5214997 (S.D. Fla. Dec. 30, 2009).

Plaintiff Peters

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Defendant Secretary of Veterans Affairs James Peake

Steven R. Petri
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4. *Bettis v. Toys R Us*, Case No. 06-80334-CIV-ZLOCH/Rosenbaum (S.D. Fla.)
Paul v. D & B Tile of Hialeah, Inc., Case No. 09-60259-CIV-ZLOCH/Rosenbaum (S.D. Fla.)
Gossard v. JP Morgan Chase & Co., Case No. 08-60565-CIV-ZLOCH/ Rosenbaum (S.D. Fla.)
Sabatier v. Suntrust Bank, Case No. 06-20418-CIV-ZLOCH/Rosenbaum (S.D. Fla.)

These were four employment cases brought by the same plaintiff's attorney. In all four cases, the plaintiff's attorney moved for the district judge to recuse himself. The presiding district judge directed me to hold an evidentiary hearing on the allegations contained in the plaintiff's motions seeking recusal. I held a two-day evidentiary hearing and determined that plaintiffs' attorney's allegations lacked a basis in fact and in law. The district judge adopted my report and recommendation and imposed sanctions on the plaintiffs' attorney. The citation for my report and recommendation, as adopted by the district court, is as follows: *Bettis v. Toys R Us*, 646 F. Supp. 2d 1273 (S.D. Fla. 2009). Other opinions that I wrote in this matter include the following: *Bettis v. Toys R Us*, 2009 WL 1812439 (S.D. Fla. June 23, 2009); *Bettis v. Toys R Us*, 2009 WL 1758731 (S.D. Fla. June 22, 2009).

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5. *FTC v. First Universal Lending, LLC*, Case No. 09-82322-CIV-ZLOCH (S.D. Fla.)

   In this Federal Trade Commission ("FTC") enforcement action, the FTC sought to enjoin the defendants from operating their loan-modification and foreclosure-relief business. The district judge referred the defendants' motion to dismiss to me for an evidentiary hearing regarding the FTC's alleged destruction of records. Following a four-day hearing, I filed a report and recommendation recommending that the district judge deny the defendants' motion to dismiss. The district judge adopted my report and recommendation. The parties subsequently settled, with the defendants agreeing to an injunction permanently banning them from participating in the mortgage-loan-modification and foreclosure-relief business and to a monetary judgment against them for approximately $18.8 million. The citations to opinions that I filed in this case include the following: *FTC v. First Universal Lending, LLC*, 2011 WL 673879 (S.D. Fla. Feb. 17, 2011) (Findings of Fact and Conclusions of Law); *FTC v. First Universal Lending, LLC*, 2011 WL 688744 (S.D. Fla. Feb. 18, 2011); *FTC v. First Universal Lending, LLC*, 2011 WL 666149 (S.D. Fla. Feb. 12, 2011).

   Plaintiff Federal Trade Commission

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   Harold E. Kirtz
   Federal Trade Commission
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   Defendants First Universal Lending, LLC; David Jon Feingold, *et al.*

   David Jon Feingold (representing himself and the other defendants)
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   Palm Beach Gardens, Florida 33418
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6. *Jeld-Wen, Inc. v. Nebula Glasslam Int'l, Inc.*, Case No. 07-22326-CIV-DIMITROULEAS/Rosenbaum (S.D. Fla.)

   This was the fourth case in a series of litigation regarding allegedly defective storm windows. The defendant had sold the plaintiff certain resin and other glass

products and licensed to the plaintiff its patented process of producing impact-resistant (hurricane) glass. After the plaintiff had manufactured and sold windows produced using the defendant's products and process, a number of the windows yellowed and delaminated, so the plaintiff sued. The defendant alleged that the windows had failed as a result of something that the plaintiff had done or used in the process. The matter, which involved millions of dollars in potential damages, was hotly contested, and I presided over several discovery motions in the case. Ultimately, the parties settled the matter. Citations for opinions that I filed in this case include the following: *Jeld-Wen, Inc. v. Nebula Glasslam Int'l, Inc.*, 2008 WL 756455 (S.D. Fla. Mar. 11, 2008); *Jeld-Wen, Inc. v. Nebula Glasslam Int'l, Inc.*, 249 F.R.D. 390 (S.D. Fla. 2008); *Jeld-Wen, Inc. v. Nebula Glasslam Int'l, Inc.*, 248 F.R.D. 632 (S.D. Fla. 2008).

Plaintiff Jeld-Wen, Inc.

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7. *United States v. Wilson*, Case No. 10-60102-CR-ZLOCH/Rosenbaum (S.D. Fla.)

In this criminal case, the defendants were alleged to have run an underage prostitution ring. One of the defendants filed three pretrial motions, including a motion to dismiss, that the district judge referred to me. I held hearings on the motions and filed reports and recommendations on each motion. I recommended against dismissal, finding the charging statute to be constitutional, and I likewise recommended against severing the trial against the defendant into two trials, based on the charges against him. In addition, I recommended against granting the defendant's motion *in limine* seeking to preclude admission of recorded telephone calls of his. The district judge adopted my reports and recommendations, and subsequently, the defendant pled guilty and was sentenced to 102 months' imprisonment. Citations for the opinions that I filed in this case include the following: *United States v. Wilson*, 2010 WL 2991561 (S.D. Fla. July 27, 2010); *United States v. Wilson*, 2010 WL 2949642 (S.D. Fla. July 26, 2010); *United States v. Wilson*, 2010 WL 2609429 (S.D. Fla. June 5, 2010).

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Defendant Wilson

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8. *United States v. Perraud*, Case No. 09-60129-CR-ZLOCH/Rosenbaum (S.D. Fla.)

The defendants in this criminal case were charged with, among other crimes, obstruction of a proceeding of the Securities and Exchange Commission. They filed pre-trial motions, including, among others, two motions to dismiss. The district judge referred three motions to me for report and recommendation. I presided over hearings on the motions and issued reports and recommendations recommending (1) the granting in part and denying in part of the motion to dismiss the indictment for insufficiency; (2) the denial of the motion to dismiss the indictment for alleged prosecutorial misconduct; and (3) the granting in part and denying in part of a motion to compel. The district judge adopted all of the reports and recommendations. At trial, the trial judge granted the defendants' Rule 29, Fed. R. Crim. P., motion and dismissed the case against both of the defendants. The citations for my reports and recommendations in this case are as follows: *United States v. Perraud*, 672 F. Supp. 2d 1328 (S.D. Fla. 2009); *United States v. Perraud*, 2010 WL 228013 (S.D. Fla. Jan. 14, 2010); *United States v. Perraud*, 2010 WL 298601 (S.D. Fla. Jan. 20, 2010).

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Defendant Perraud

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9. *Christ Covenant Church v. Town of S.W. Ranches*, Case No. 07-60516-CIV-DIMITROULEAS/Rosenbaum (S.D. Fla.)

In this matter, the plaintiff church sued the defendant town under the Religious Land Use and Institutionalized Persons Act because the town declined to grant the plaintiff church's application for a building permit to expand its facilities. The district judge referred all discovery in this case to me. The parties actively litigated the discovery, and I held several hearings on discovery matters. The citation for one discovery order is as follows: *Christ Covenant Church v. Town of S.W. Ranches*, 2008 WL 2686860 (S.D. Fla. June 29, 2008).

Plaintiff Christ Covenant Church

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Defendant Town of Southwest Ranches

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10. *Stern v. O'Quinn*, Case No. 07-60534-CIV-DIMITROULEAS/Rosenbaum (S.D. Fla.)

In this matter, the plaintiff, Howard K. Stern, sued the defendants, John O' Quinn and his law firm, for defamation. Mr. O'Quinn had represented Anna Nicole Smith's mother in previous litigation and had commented publicly in a derogatory manner on Mr. Stern's alleged involvement in Ms. Smith's death. The district judge referred all discovery to me. I held hearings, reviewed documents *in camera*, and issued discovery orders. The citation for one such order is as follows: *Stern v. O'Quinn*, 253 F.R.D. 663 (S.D. Fla. 2008).

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Defendants John O'Quinn and John M. O'Quinn & Associates

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Neil C. McCabe
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440 Louisiana, Suite 2300
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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. *Creative Hospitality Ventures, Inc. v. U.S. Liab. Ins. Co.*, 655 F. Supp. 2d 1316 (S.D. Fla. 2009)

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Leah H. Martinez
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Joel Victor Lumer
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2. *Stern v. O'Quinn*, 253 F.R.D. 663 (S.D. Fla. 2009)

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3. *United States v. Perraud*, 672 F. Supp. 2d 1328 (S.D. Fla. 2009)

Counsel:

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Defendant Perraud

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4. *Christ Covenant Church v. Town of S.W. Ranches*, 2008 WL 2686860 (S.D. Fla. June 29, 2008)

Plaintiff Christ Covenant Church

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Fort Lauderdale, Florida 33312
954-987-7550

5. *Suncast Techs., LLC v. Patrician Prods., Inc.*, 2008 WL 179648 (S.D. Fla. Jan. 17, 2008)

Plaintiff Suncast Technologies, LLC

Brian Michael Taillon
McHale & Slavin
2855 PGA Boulevard
Palm Beach Gardens, Florida 33410
561-625-6575

Edward Fortune McHale
McHale & Slavin
2855 PGA Boulevard
Palm Beach Gardens, Florida 33410
561-625-6575

Scott Warren Dangler
Gunster Yoakley & Stewart
450 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, Florida 33301
954-468-1304

David Richard Atkinson
Gunster Yoakley & Stewart
777 South Flagler Drive, Suite 500
West Palm Beach, Florida 33401
561-650-0547

Defendant Patrician Products, Inc.

David J. Saenz
Greenberg Traurig
200 Park Avenue, 34th Floor
New York, New York 10166
212-801-6930

Gaston Kroub
Greenberg Traurig
200 Park Avenue, 34th Floor
New York, New York 10166
212-801-2126

Jerold Ira Budney
Greenberg Traurig
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, Florida 33301
954-765-0500

Julie P. Bookbinder
Greenberg Traurig
200 Park Avenue, 34th Floor
New York, New York 10166
212-801-9200

6. *200 Leslie Condo. Ass'n, Inc. v. QBE Ins. Corp.*, 2011 WL 2470344 (S.D. Fla. June 21, 2011)

Plaintiff 200 Leslie Condominium Association, Inc.

Jeffrey Golant
1000 West McNab Road, Suite 150
Pompano Beach, Florida 33069
954-942-5270

Defendant QBE Insurance Corporation

Maria Beguiristain
White & Case
200 South Biscayne Boulevard, Suite 4900
Miami, Florida 33131
305-995-5283

William Xanttopoulos
2 Alhambra Plaza, Suite 700
Coral Gables, Florida 33134
786-338-2900

7. *Calixto v. Watson Bowman Acme Corp.*, 2009 WL 3823390 (S.D. Fla. Nov. 16, 2009)

Plaintiff Calixto

Melissa Segarra Zinkil
Akerman Senterfitt & Eidson
222 Lakeview Avenue
Fourth Floor, Esperante Building
West Palm Beach, Florida 33401
561-653-5000

Richard L. Horn
Akerman Senterfitt & Eidson
222 Lakeview Avenue
Fourth Floor, Esperante Building
West Palm Beach, Florida 33401
561-671-3631

Defendant Watson Bowman Acme Corp.

Robert Mark Brochin
Morgan Lewis & Bockius
200 South Biscayne Boulevard, Suite 5300
Miami, Florida 33131
305-415-3456

8. *Jones v. Jeld-Wen, Inc.*, 250 F.R.D. 554 (S.D. Fla. 2008)

Plaintiffs Jones, *et al.*

Joel Stephen Perwin
Suite 1422
Alfred I. Dupont Building
169 East Flagler Street
Miami, Florida 33131
305-779-6090

Manuel Leon Dobrinsky
Freidin & Dobrinsky, P.A.
Two South Biscayne Boulevard, Suite 3100
Miami, Florida 33131
305-371-3666

Randy Rosenblum
Freidin & Dobrinsky, P.A.
Two South Biscayne Boulevard, Suite 3100
Miami, Florida 33131
305-371-3666

Todd Omar Malone
Freidin & Dobrinsky, P.A.
Two South Biscayne Boulevard, Suite 3100
Miami, Florida 33131
305-371-3666

Defendant Nebula Glasslam International, Inc.

Louis L. Williams
316 Banyan Boulevard
West Palm Beach, Florida 33401
561-659-3500

John David Heffling
433 Plaza Real, Suite 275
Boca Raton, Florida 33432
561-301-7500

Defendant Reichhold, Inc.

Amy Lane Hurwitz
Carlton Fields, P.A.
P.O. Box 019101
Miami, Florida 33101
305-530-0050

Benjamine Reid
Carlton Fields, P.A.
P.O. Box 019101
Miami, Florida 33101
305-530-0050

Sanford ("Sandy") Bohrer
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
305-789-7678

Christina M. Schwing
Holland & Knight LLP
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
904-353-2000

9. *Fly Brazil Grp., Inc. v. The Gov't of Gabon, Africa*, 709 F. Supp. 2d 1274 (S.D. Fla. 2010)

Plaintiff Fly Brazil Group, Inc.

Stuart A. Goldstein
Law Offices of Goldstein & Soro
9350 South Dixie Highway, Tenth Floor
Miami, Florida 33156
305-670-1222

Defendant The Government of Gabon, Africa

Joseph A. DeMaria
Tew Cardenas LLP
Four Seasons Tower
1441 Brickell Avenue, Fifteenth Floor
Miami, Florida 33131
305-536-1112

Maria N. Vernace
Tew Cardenas LLP
Four Seasons Tower
1441 Brickell Avenue, Fifteenth Floor
Miami, Florida 33131
305-536-1112

Defendant Afrijet Business Services

Bruce David Green
1313 South Andrews Avenue
Fort Lauderdale, Florida 33316
954-522-8554

10. *Bettis v. Toys R Us*, 646 F. Supp. 2d 1273 (S.D. Fla. 2009)

Plaintiffs

Loring N. Spolter (representing himself)
Loring N. Spolter, P.A.
700 South Andrews Avenue
Fort Lauderdale, Florida 33316
954-728-3494

Defendants

Christine Lynne Wilson (*Bettis v. Toys R Us*)
Jackson Lewis LLP
2 South Biscayne Boulevard, Suite 3500
One Biscayne Tower
Miami, Florida 33131

Pedro Jaime Torres-Diaz (*Bettis v. Toys R Us*)
Jackson Lewis LLP
2 South Biscayne Boulevard, Suite 3500
Miami, Florida 33131
305-577-7600

Dan Levine (*Paul v. D & B Tile of Hialeah, Inc.*)
Shapiro Blasi Wasserman & Gora, P.A.
7777 Glades Road, Suite 400
Boca Raton, Florida 33434
561-477-7800

Robin I. Frank (*Paul v. D & B Tile of Hialeah, Inc.*)
Shapiro Blasi Wasserman & Gora, P.A.
7777 Glades Road, Suite 400
Boca Raton, Florida 33434
561-477-7800

Dawn Elizabeth Siler-Nixon (*Gossard v. JP Morgan Chase & Co.*)
Ford & Harrison LLP
101 East Kennedy Boulevard, Suite 900
Tampa, Florida 33602
813-261-7800

Kelly Hagan Chanfrau (*Gossard v. JP Morgan Chase & Co.*)
Ford & Harrison LLP
101 East Kennedy Boulevard, Suite 900
Tampa, Florida 33602
813-261-7800

Jeffrey Elliot Mandel (*Sabatier v. Suntrust Bank*)
Fisher & Phillips, LLP
200 South Orange Avenue, Suite 1100
Orlando, Florida 32801
407-541-0888

Amicus

Anthony Pogorzelski
United States Attorney's Office
99 Northeast Fourth Street, Suite 335
Miami, Florida 33132
305-961-9296

Wendy A. Jacobus
United States Attorney's Office
99 Northeast Fourth Street
Miami, Florida 33132

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

I am aware of no cases in which I ruled where 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.

I am aware of no reversals or affirmances with significant criticism of any of my 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.

In nearly all cases, I have issued unpublished opinions (I have submitted fewer than ten opinions for publication). Nevertheless, a number of my opinions have been published by Westlaw and LEXIS, even though I have not submitted them for publication. I have listed all opinions published by Westlaw and LEXIS in response to Section b of this question. Besides these opinions, I have issued a number of opinions that do not appear on Westlaw or LEXIS. They are stored on the Court's CM/ECF electronic filing system under each case number in which they are docketed. I have not kept track of and do not know the percentage of my opinions that appear on Westlaw or LEXIS versus my opinions that do not.

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.

United States v. Wilson, 2010 WL 2991561 (S.D. Fla. July 27, 2010)

SEC v. Huff, 664 F. Supp. 2d 1288 (S.D. Fla. 2009)

Christ Covenant Church v. Town of S.W. Ranches, 2008 WL 2686860 (S.D. Fla. June 29, 2008)

The Set Enters., Inc. v. City of Hallandale Beach, Case No. 09-61405-CIV-ZLOCH (S.D. Fla. June 22, 2010) (opinion supplied)

The Set Enters., Inc. v. City of Hallandale Beach, Case No. 09-61405-CIV-ZLOCH (S.D. Fla. Dec. 30, 2010) (opinion supplied)

The Nat'l Youth Rights Ass'n of S.E. Fla., Inc. v. City of W. Palm Beach, Case No. 09-80944-CIV-ZLOCH (S.D. Fla. Feb. 5, 2010) (opinion supplied)

Dendy v. McNeil, Case No. 09-60025-CIV-COHN (S.D. Fla. July 20, 2009) (opinion 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 any federal courts 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.

All of my recusals have been *sua sponte*, and I do not believe that I have ever been asked to recuse myself. The judges on our court can give the Clerk's Office a list of individuals and entities in whose case we would recuse. I have provided such a list to the Clerk's Office, which provides automated conflict/recusal checks by email to ensure that no cases are missed. As a general matter, I recuse in cases where an objective, disinterested, and fully informed lay observer would entertain a significant doubt about my impartiality. *See* 28 U.S.C. §§ 145, 455.

I have recused *sua sponte* from the following cases:

(1) Cases involving the University of Miami, where I teach as an adjunct professor:

Edmond v. Univ. of Miami, Case No. 09-60946-CIV-ZLOCH (S.D. Fla.)

(2) United States Attorney's Office cases that I worked on, discussed with management in my role as a supervisor, or supervised while at the Office; for cases within one year of my resignation from the Office, those where an Assistant

United States Attorney was a defendant and I knew or had worked with that attorney while at the Office; and civil cases involving some of the same parties who were targets or subjects of criminal investigations that I worked on, discussed with management in my role as a supervisor, or supervised while at the Office:

United States v. LeClercq, Case No. 07-80050-CR-MARRA (S.D. Fla.)

Affatati v. United States, Case No. 10-60030-CIV-ZLOCH (S.D. Fla.)

Faller v. McAdams, Case No. 07-80652-CIV-RYSKAMP (S.D. Fla.)

CFTC v. Valko, Case No. 06-60001-CIV-DIMITROULEAS (S.D. Fla.)

Isler v. Adelusola, Case No. 08-60257-CIV-SELTZER (S.D. Fla.)

(3) Cases where I had a strong, personal relationship with an attorney; someone related to me or my husband, or an individual with whom I had a strong, personal relationship, was a party or an important witness; or a party was the parent of one of my children's close friends. For the most part, the individuals in whose cases I recuse for any of the reasons in this category appear on a list that I have provided to the Clerk's Office for use with the CM/ECF conflict check system:

Dorvil v. Republic Servs. of Fla., L.P., Case No. 07-60395-CIV-DIMITROULEAS (S.D. Fla.)

Orthopeadic Ctr. of S. Fla., P.A. v. Stryker Corp., Case No. 08-60742-CIV-DIMITROULEAS (S.D. Fla.)

Goodwin v. Allstate Prop. & Cas. Ins. Co., Case No. 08-61474-CIV-DIMITROULEAS (S.D. Fla.)

SEC v. 3001 AD, LLC, Case No. 09-81453-CIV-ZLOCH (S.D. Fla.)

Smith v. Ruden, McClosky, Smith, Schuster & Russel, P.A., Case No. 10-80059-CIV-HURLEY (S.D. Fla.)

Swords v. Aetna Life Ins. Co., Case No. 10-80371-CIV-ZLOCH (S.D. Fla.)

Aspex Eyewear, Inc. v. Laczay, Case No. 09-61468-CIV-ZLOCH (S.D. Fla.)

Eugene M. Cummings, P.C. v. Nissim Corp., Case No. 10-81140-CIV-RYSKAMP (S.D. Fla.)

Soper v. Am. Traffic Solutions, Inc., Case No. 10-61950-CIV-ZLOCH (S.D. Fla.)

Choice v. Denny's, Inc., Case No. 10-61723-CIV-ZLOCH (S.D. Fla.)

Swords v. Aetna Life Ins. Co., Case No. 10-81113-CIV-ZLOCH (S.D. Fla.)

Ruderman v. Washington Nat'l Ins. Corp., Case No. 08-23401-CIV-COHN (S.D. Fla.)

(4) Cases where a member of the Judicial Nominating Commission was an attorney in the matter at a time when I was applying for a district judge vacancy and cases where I had discussed my district judge application with an attorney in the case and I believed that that attorney actively supported my application for district judge:

Automated HealthCare Solutions, LLC v. Paduda, Case No. 10-61739-CIV-ZLOCH (S.D. Fla.)

C & C Int'l Computers & Consultants, Inc. v. Dell Mktg., L.P., Case No. 11-60734-CIV-ZLOCH (S.D. Fla.)

Stettin v. Gibraltar Private Bank & Trust Co., Case No. 11-60748-CIV-ZLOCH (S.D. Fla.)

Cooper v. DJSP Enters., Inc., Case No. 10-61261-CIV-ZLOCH (S.D. Fla.)

Libov v. Readix, Case No. 10-61755-CIV-ZLOCH (S.D. Fla.)

Aguiar v. Natbony, Case No. 11-61314-CIV-ZLOCH (S.D. Fla.)

Pembroke Pines Investors, LLC v. AD Pembroke Land Co., LLC, Case No. 11-61611-CIV-ZLOCH (S.D. Fla.)

Buchholz v. B.P.C. Bakery, Inc., Case No. 11-61602-CIV-ZLOCH (S.D. Fla.)

Amerisure Ins. Co. v. Walker, Case No. 11-61480-CIV-COHN (S.D. Fla.)

(5) Cases where I believed that my impartiality might reasonably be questioned:

Heilbrunn v. Toyota Motor Corp., Case No. 10-80208-CIV-ZLOCH (S.D. Fla.): The plaintiff in this case was bringing a class action against Toyota for claims relating to alleged sudden acceleration problems of certain Toyota models. Although the relevant class period slightly post-dated the purchase of my car, at the time of the lawsuit, I owned and daily drove one of the models that allegedly was experiencing the sudden acceleration problems.

USAA Life Ins. Co. v. Vincent, Case No. 08-60467-CIV-DIMITROULEAS (S.D. Fla.): At the time, I had my home, car, and property insurance with the plaintiff.

In addition, the insurance company occasionally makes a monetary distribution to policy holders.

Am. Guarantee and Liab. Ins. Co. v. Christopher J. Gertz, P.A., Case No. 09-60946-CIV-ZLOCH (S.D. Fla.): I grew up with and attended middle and high school with a party who was representing himself, as well as with his two sisters, and our families had been friends for more than 35 years.

Chapman v. United States [Cent.] Gov., Case No. 11-61969-CIV-WILLIAMS (S.D. Fla.): A second plaintiff in this case is Roanne Eye. At the time that *Chapman* was filed, I was a defendant in another case that Eye had previously filed against me and others (*see* Category (6) below).

(6) Cases where I or an immediate family member had a financial interest in a party:

Intel Corp. v. Ecointel Treasury, Case No. 06-61352-CIV-DIMITROULEAS (S.D. Fla.)

Eye v. Cohn, Case No. 11-61584-CIV-MARRA (S.D. Fla.): This case was assigned to me as the magistrate judge, and I recused because I am a defendant in the case. The plaintiff is a defendant who appeared before me in magistrate court on a criminal indictment against her. The United States Department of Justice represented me on the basis that all alleged acts were undertaken within the scope of my duties as a United States magistrate judge. The case was dismissed with prejudice on November 7, 2011.

(7) Cases in which one of the attorneys had been one of the two attorneys in a case on which I had done significant work while in private practice, and where my client had sought sanctions and had obtained a substantial judgment for those sanctions against those attorneys, and the matter was still on appeal:

Bryant v. Big T. East Coast, Case No. 06-61458-CIV-DIMITROULEAS (S.D. Fla.)

Fairclough v. Am. Express Travel Related Servs. Co., Inc., Case No. 08-61395-CIV-DIMITROULEAS (S.D. Fla.)

Calixte v. Motorola, Inc., Case No. 09-61607-CIV-ZLOCH (S.D. Fla.)

Testai v. Navix Imagining, Inc., Case No. 09-61997-CIV-ZLOCH (S.D. Fla.)

Bourne v. Sch. Bd. of Broward Cnty., Case No. 10-60942-CIV-ZLOCH (S.D. Fla.)

Johnson v. Publix Super Markets, Inc., Case No. 10-61100-CIV-ZLOCH (S.D. Fla.)

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

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

I have held no public offices. 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 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;

From January to October 1998, I served as a law clerk to the Honorable Stanley Marcus on the United States Circuit Court for the Eleventh Circuit.

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

I have never practiced law alone.

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

1991 – 1995
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20001
Trial Attorney

1995 – 1996
Office of the Independent Counsel
Independent Counsel Dan Pearson's Investigation of Former United States Secretary of Commerce Ronald H. Brown and Nolanda Hill
The office is no longer in existence.
Staff Counsel

1996 – 1997
Holland & Knight LLP
515 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Associate

1998 – 2007
United States Attorney's Office for the Southern District of Florida
500 East Broward Boulevard, Suite 700
Fort Lauderdale, Florida 33394
Assistant United States Attorney (1998 – 2007)
Chief, Economic Crimes Section, Fort Lauderdale (2002 – 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.

I have not served as a mediator or an 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 have spent nearly all of my twenty years as an attorney practicing almost exclusively in federal court. From September 1991 to August 1995, I served as a Trial Attorney at the Department of Justice. My practice was civil in nature, and I defended the constitutionality of numerous and varied federal statutes and the policies and procedures of the agencies that administered those statutes.

From September 1995 to the beginning of July 1996, I served as staff counsel to the Independent Counsel's Office on the investigation of former United States Secretary of Commerce Ronald Brown. This was a criminal investigation. As staff counsel, I participated in the criminal investigation and provided legal guidance to the other team members when they requested it.

In my capacity as an associate in private practice with Holland & Knight LLP, from July 1996 to December 1997, I engaged exclusively in civil practice. My cases had subject matter ranging from a simple replevin issue to contractual issues to a case involving charges of false and fraudulent advertising. While at Holland & Knight LLP, I also worked on several matters involving federal employment law.

At the United States Attorney's Office from October 1998 to August 2007, I served as a criminal prosecutor and specialized in matters involving complex frauds, becoming the chief of the Economic Crimes Section for the Central Division (Fort Lauderdale). As the chief, at various times, I supervised between eight and ten other Assistant United States Attorneys. Additionally, I continued to perform the functions of every other Assistant United States Attorney in the Economic Crimes Section, handling my own full caseload. As an Assistant United States Attorney, I investigated, developed, indicted, litigated, and tried criminal cases involving allegations of all types of economic crimes, such as securities fraud, bank fraud, identity theft, tax fraud, telemarketing fraud, health care fraud, Internet fraud, computer crimes, and general mail and wire fraud. In this capacity, I practiced before the grand jury, prepared and filed numerous legal memoranda in support of the positions of the United States, argued various motions before the district court, and tried several cases.

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

As a Trial Attorney at the Department of Justice, my client was the United States. I specialized in federal motions practice, often involving matters of constitutional and administrative law.

As a member of the Independent Counsel's Office, my client was the United States.

My clients at Holland & Knight LLP included individuals, small companies, and large companies. I specialized in employment law.

As an Assistant United States Attorney, my client was the United States. I specialized in prosecuting complex economic crimes.

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

At the Civil Division of the Department of Justice, 100% of my practice involved federal litigation. I regularly argued motions in federal district courts, conducted two trials in federal district courts and one in a federal administrative court, and handled three appeals in federal circuit courts.

Before we could determine whether charges should be brought, the Independent Counsel's investigation of former United States Secretary Ronald Brown came to a premature end with the tragic death of Secretary Brown. Thus, other than grand jury work, which is noted in the public report of the Independent Counsel, I did not have any court appearances during this time.

At Holland & Knight LLP, 100% of my practice involved litigation. While there, I served as associate counsel on a week-long trial in state court. Other than that, my appearances in court during that period were few.

As an Assistant United States Attorney for nine years, 100% of my practice involved litigation. I regularly and frequently appeared in federal district court, handling duty court, grand jury, motions hearings, and trials.

i. Indicate the percentage of your practice in:
   1. federal courts: 94.9%
   2. state courts of record: 5%
   3. other courts:
   4. administrative agencies: .1%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 40%
   2. criminal proceedings: 60%

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

To the best of my recollection, I have tried at least fourteen cases (defendants have entered guilty pleas following the beginning of trial and prior to verdict in other cases not included in this number). At the Department of Justice, I participated in two trials as an associate member of a litigation team, handling several of my own witnesses. Additionally, I tried one case as sole counsel. While at Holland & Knight LLP, I acted as associate counsel on a two-attorney team in trying a case to verdict. In my capacity as an Assistant United States Attorney, I tried at least twelve cases, with at least ten of those going to verdict.

In all but two of these cases, I served as sole counsel. With respect to these two cases, in a thirty trial-day (over nine weeks) securities fraud trial, I served as lead counsel, and in the other, I served as associate counsel.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury: 20%

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

I have not 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. *Adolph Coors Co. v. Bentsen* (D. Colo. 1992), *aff'd*, 2 F.3d 355 (10th Cir. 1993), *aff'd sub nom. Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995).

Coors sued the United States Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms ("ATF"), challenging the constitutionality of provisions of the Federal Alcohol Administration Act that precluded malt beverage producers from making numerical statements of alcohol content on the labels of and in the advertisements for malt beverages. As the junior member of a two-attorney team, I conducted extensive discovery, deposing numerous marketing executives at various malt beverage makers around the country, and finding and working with our expert. At trial, I presented and cross-examined some of the witnesses. The district court upheld the advertisement provision but declared the labeling aspect of the statute to be unconstitutional. Coors did not appeal, but ATF did. In a 9-0 decision (including one opinion concurring in the judgment), the United States Supreme Court affirmed the decision of the Tenth Circuit affirming the decision of the district court; I was not actively involved in the appeals. Trial in this matter

lasted for three days, in approximately November 1992, before the Honorable Zita L. Weinshienk.

Lead Counsel: Patricia Russotto Coppolino
5011 North Sixth Street
Arlington, Virginia 22203
703-525-5382

Opposing Counsel: K. Preston Oade
Holme Roberts & Owen LLP
1700 Lincoln Street, Suite 4100
Denver, Colorado 80203
303-866-0453

2. *United States v. Livdahl*, Case No. 05-60021-CR-COHN (S.D. Fla.) (criminal case); *United States v. Livdahl*, 356 F. Supp. 2d 1289 (S.D. Fla. 2005) (parallel civil case).

I litigated these related civil and criminal cases in tandem. The cases arose out of an incident at a local clinic where a doctor who attempted to create his own form of Botox using improperly diluted full-strength Botulinum Toxin Type A wound up giving botulism to himself and three others to whom he administered his concoction. Early in the investigation, we discovered that the doctor had apparently developed the idea of creating his own "Botox" when he appeared as a presenter at a seminar sponsored by two of the co-defendants, who owned a business that also created its own form of Botox. I spearheaded the investigation and the criminal litigation team. Shortly after initiating the investigation, I requested the assistance of the Civil Division of the United States Attorney's Office to help us to file a civil action seeking an injunction against the co-defendants precluding them from continuing to sell their non-FDA-approved fake "Botox" while we conducted the criminal investigation. In order to obtain the injunction, we participated in a lengthy preliminary injunction hearing where, among others, the co-defendants testified. I cross-examined the lead defendant and made closing argument to the court. Upon hearing the evidence in the case, the court entered a preliminary injunction. *See United States v. Livdahl, et al.*, 356 F. Supp. 2d 1289 (S.D. Fla. 2005).

In the meantime, we indicted four defendants in the criminal case, which was vigorously defended, resulting in extensive motion practice. *See, e.g., United States v. Livdahl*, 459 F. Supp. 2d 1255 (S.D. Fla. 2005). I served as lead counsel in this matter. Along with co-counsel, we thoroughly prepared for trial, but on the eve of trial we learned that the two remaining defendants wished to enter guilty pleas. The sentencing of the first doctor was hotly contested in an evidentiary hearing and spanned approximately nine hours. Co-counsel and I presented several witnesses, multiple exhibits, and argument before the Court imposed the maximum sentence on the doctor. The co-defendants were sentenced to terms of

imprisonment of nine years and approximately six years, respectively. Additionally, as a result of this investigation, the FDA obtained the names of approximately 200 physicians throughout the United States who had purchased the fake "Botox" from the co-defendants. Numerous United States Attorney's Offices around the country consulted with our trial team and used the indictment I had prepared as a model to conduct prosecutions against those physicians who knowingly used fake "Botox" on their patients without the patients' knowledge. I handled this matter before the Honorable James I. Cohn and the Honorable Lurana S. Snow in the United States District Court for the Southern District of Florida.

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Opposing counsel:

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Fuerst Humphrey Ittleman
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3. *United States v. Johnson*, Case No. 02-60012-CR-MIDDLEBROOKS (S.D. Fla.), *aff'd in part and rev'd in part*, 440 F.3d 1286 (11th Cir. 2006).

In this securities fraud case, the lead defendant was alleged to have started a package delivery business, solicited approximately $20 million from investors, and caused the company to implode by systematically draining millions from the company for his own personal use and benefit. I served as lead counsel over thirty days of trial during a nine-week period in 2003 before the Honorable Donald M. Middlebrooks. I presented opening statement and closing argument, as well as numerous witnesses in this matter. Mr. Johnson was convicted of every count in the indictment. A co-defendant was acquitted. On appeal, the Eleventh Circuit reversed a few of the money-laundering counts against Mr. Johnson, and he was ultimately sentenced on remand to sixteen years' imprisonment.

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Robert Adler
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4. *United States v. Thurman*, Case No. 01-6084-CR-FERGUSON (S.D. Fla.), *aff'd*, 54 F. App'x 491 (11th Cir. 2002).

This was one of a trio of cases brought against Defendant Thurman. The other two cases involved tax fraud and mail and wire fraud. The cases had to be brought separately because the subject matter of the violations alleged in each of the indictments was not interrelated. Consequently, in the interests of judicial

economy, we proceeded by trying the two smaller cases before the largest of the three matters, which involved a massive Internet affinity fraud scheme.

In this particular case, Mr. Thurman was charged with being a convicted felon in possession of firearms. While executing a search warrant that I had obtained in the fraud case, law enforcement found the firearms in a safe in Mr. Thurman's closet. During the course of the investigation, law enforcement discovered evidence that Mr. Thurman had, on occasion, threatened to use one of the firearms to commit suicide, including one incident where he had threatened to do so in a bank. As sole counsel assigned to the matter, I indicted and tried the case, making opening statement and closing argument, as well as presenting all witnesses. Mr. Thurman was convicted and, as a result of this conviction, as well as the convictions in the two related cases I handled against him, he was sentenced to eight-and-one-half years in prison. This matter was tried over approximately three trial days in October 2001 before the Honorable Wilkie D. Ferguson.

Opposing Counsel: Irwin Lichter
321 N.E. 26th Street
Miami, Florida 33137
305-573-0551

5. *United States v. Thurman*, Case No. 01-06040-CR-HURLEY (S.D. Fla.).

This was another in the trio of *Thurman* cases brought by the United States Attorney's Office for the Southern District of Florida. In this particular case, Mr. Thurman was charged with filing false tax returns for himself and six other individuals who sought and, in several cases, received fraudulent tax refunds. As sole counsel, I indicted and tried this case. Following the trial, the jury convicted Mr. Thurman. As noted above, as a result of Mr. Thurman's convictions in this case and the other two cases I prosecuted against him, Mr. Thurman was sentenced to eight-and-one-half years' imprisonment. This matter was tried over approximately seven trial days, I believe in October and November 2001, before the Honorable Daniel T.K. Hurley.

Opposing Counsel: Irwin Lichter
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6. *United States v. Miller*, Case No. 99-06115-CR-FERGUSON (S.D. Fla. 2000).

Defendant Miller had been convicted of multiple armed robberies. During the execution of an arrest warrant for Mr. Miller for yet another armed robbery, law enforcement found a stolen UZI sub-machine gun, along with a magazine and cartridges for the weapon. We charged Mr. Miller federally with being a convicted felon in possession of a firearm. As sole counsel for the United States,

I handled all aspects of the prosecution, including the trial. Following a three-day trial in December 1999 before the Honorable Wilkie D. Ferguson, Jr., the jury returned a guilty verdict on both counts of the indictment. Judge Ferguson sentenced Mr. Miller to fifteen years' imprisonment.

Opposing Counsel: Stuart Adelstein
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7. *United States v. Vanmoor*, Case No. 06-60064-CR-COOKE/BROWN (S.D. Fla.).

The defendant in this case was charged with a conspiracy to commit mail and wire fraud. He ran websites offering a purported guaranteed cure for cancer that would work within a six-week period. The websites discouraged customers who purchased the product from continuing their doctor-prescribed treatment courses, such as chemotherapy. During the course of the investigation, we obtained and executed search warrants on multiple locations.

Additionally, I enlisted the assistance of the Civil Division of the United States Attorney's Office to obtain an injunction shutting down the websites while we conducted the criminal investigation. During the course of the investigation, we obtained multiple search warrants for Mr. Vanmoor's e-mail and other electronic accounts and interviewed the family and friends of victims of Mr. Vanmoor's scheme.

After indicting the lead defendant, I obtained his extradition from the Netherlands, his native country. He arrived back in the United States shortly before I left the United States Attorney's Office to become a United States magistrate judge, and another Assistant United States Attorney tried the case in a two-week trial before the Honorable Jose Gonzalez, resulting in the defendant's conviction (other defendants pled guilty). I served as lead counsel in the matter before leaving the office.

Succeeding Counsel: Jennifer Keene
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Opposing Counsel: Sidney Fleischman
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954-523-7223

8. *Barnes v. Breeden*, 911 F. Supp. 1038 (S.D. Tex. 1996), *rev'd sub nom. Barnes v. Levitt*, 118 F.3d 404 (5th Cir. 1997).

Plaintiff Barnes was a staff attorney at the Houston Branch Office of the United States Securities and Exchange Commission ("SEC"). She filed suit against the SEC alleging violations of Title VII and the Equal Pay Act. I was a member of the trial team and presented and cross-examined witnesses at trial. Although the district court (the Honorable Kenneth Hoyt) ruled for the plaintiff following a month-long bench trial, the Fifth Circuit Court of Appeals reversed, granting summary judgment for the defense and finding that Ms. Barnes had failed to exhaust her administrative remedies by refusing to participate in good faith in the administrative process for resolving her claims.

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Civil Division, Federal Programs Branch
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Co-counsel: Gary Orseck
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Washington, DC 20006
202-775-4504

Patricia Arzuaga
Kaiser Permanente
Rockville, Maryland

Opposing Counsel: Mary L. Sinderson
Steven J. Rozan and Associates
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800-682-1529

Julius J. Larry, III
Unknown contact information

9. *Knobel v. Knobel*, Eleventh Circuit Court in and for Miami-Dade County.

In this case a wife sued her husband regarding administration and ownership of their vocational school, the National School of Technology. The husband counter-claimed. Approximately two weeks before the trial, I was asked to assist

the newly-assigned lead attorney in this matter because the previously-assigned lead counsel had a conflict during the trial period and, therefore, could not try the case. During the ensuing two weeks, we simultaneously conducted discovery and prepared for trial. Following a week-long trial in May 1997 before the Honorable David L. Tobin, the jury returned a verdict in favor of our client and awarded him in excess of $800,000, as I recall.

Lead Counsel: Marty Steinberg
Hunton & Williams
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305-810-2505

Opposing Counsel: I cannot recall the name of opposing counsel.

10. *United States v. Garrahan*, Case No. 98-6204-CR-ROETTGER (S.D. Fla.).

Defendant Garrahan obtained building contracts for schools in Broward and Dade Counties after fraudulently procuring bonds making him eligible to receive the contracts. He failed to complete the school buildings and defaulted on the bonds. He was charged with mail and wire fraud and, following an eight-day trial before the Honorable Norman Roettger, the jury returned a verdict of guilty on all counts. Defendant Garrahan was sentenced to just over five years' imprisonment. The judgment was affirmed on appeal. I served as associate counsel in this trial and conducted some of the witness examinations and cross-examinations.

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

I have not performed lobbying activities on behalf of any client(s) or organization(s).

While at the United States Department of Justice Civil Division, I handled the matter captioned, *Sarao v. NASA* (D.D.C. 1993). In this case, the plaintiff sued NASA, seeking disclosure of certain photographs of the shuttle debris recovered in the Atlantic Ocean from the *Challenger* accident, pursuant to the Freedom of Information Act. The National Air and Space Administration, which had already released several photographs of the recovered debris, opposed the plaintiff's complaint, concerned about the privacy interests of the astronauts' families. I represented NASA and conducted negotiations with the plaintiff. After ascertaining precisely the types of images for which he was searching, we were able to settle the case in a manner that was acceptable to both parties.

After leaving the Department of Justice, I worked on the Independent Counsel's Investigation of former United States Secretary of Commerce Ronald Brown and Nolanda Hill. Independent Counsel Dan Pearson was appointed by the Special Division of the United States Court of Appeals for the District of Columbia to conduct an investigation into certain matters related to former Secretary Brown's finances. The order conferring jurisdiction on Judge Pearson also authorized him to investigate the finances and operations of an associate of Secretary Brown's, Nolanda Hill, and her "organizations." Judge Pearson put together a team consisting of six attorneys to assist him in conducting the investigation. I served in one of two staff-counsel positions. My duties included conducting research and preparing legal memoranda in furtherance of the investigation, as well as participating in the investigation itself. More specifically, I provided the other attorneys on the team with legal opinions concerning issues arising during the investigation. On April 3, 1996, Secretary Brown perished in an airplane crash while on a trade mission to Croatia. As a result, Judge Pearson referred to the Department of Justice the responsibility for continuing the investigation as it pertained to allegations involving Nolanda Hill and others who were not members of the administration. Additionally, Judge Pearson submitted a final report to the Special Division of the United States Court of Appeals for the District of Columbia. The report concluded ultimately, "The unfinished state of the investigation and considerations of fairness preclude our office from drawing conclusions about the allegations regarding possible criminal conduct by the Secretary. . . ." Final Report at 19.

As an Assistant United States Attorney, I occasionally acted as counsel to the United States Attorney's Office. For example, on one occasion I researched a group of federal regulations that appeared to be insufficient to address certain serious dangers that they were meant to prevent. At the request of the United States Attorney, I prepared a memorandum containing suggestions for improvements to the regulations, which was forwarded for consideration to the secretary of the agency in question. On another occasion, I was asked to research and prepare a proposed position memorandum regarding the advisability of the Office's prosecution of a group of cases, in view of the fact that prosecution of the cases (as opposed to dismissal of the federal employees allegedly involved) might conflict with a function of one of the federal agencies. Similarly, when the Office sought to prosecute crimes under relatively new statutes or under new theories of older statutes, I prepared model indictments. In at least two such matters, I drafted either the first or one of the first such indictments in the country.

As the chief of the Economic Crimes Section for the Central Division (Fort Lauderdale) of the United States Attorney's Office for the Southern District of Florida, I supervised between eight and ten other Assistant United States Attorneys. The position involved reviewing and editing indictments and other legal documents for clarity and correctness; consulting with and advising the Assistant United States Attorneys in my section; meeting with representatives of various law enforcement agencies regarding the intake, development, and progress of the respective law enforcement agencies' cases; and consulting with the management of the United States Attorney's Office regarding cases pending in my section. Additionally, I continued to perform the functions of every other Assistant United States Attorney in the Economic Crimes Section, handling my own full caseload. Each year while I served in this position, the Fort Lauderdale office significantly increased the number of indictments returned, as compared with the prior year – particularly within the Economic Crimes Section, even though the number of Assistant United States Attorneys in Fort Lauderdale had decreased.

As a practicing attorney, I was significantly involved in the Broward Chapter of the Federal Bar Association from approximately 2002 to 2007, having served on its board of directors and as the vice president, president-elect, and president. As the president, I presided over the chapter, which presented monthly speaker luncheons, brown-bag luncheons with federal judges, and other events designed to encourage a high level of practice among federal practitioners and to facilitate communications between the federal bar and bench in Broward County. As a magistrate judge, I continue to support the activities of the Federal Bar Association heavily, attending nearly all of the Broward Chapter's functions and speaking regularly when asked.

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

I have taught as an adjunct professor at the University of Miami School of Law since 2009. In the fall of 2009 through the spring of 2010, I taught the full-year, first-year course called "Legal Research and Writing." The course sought to teach first-year law students the basics of conducting legal research and preparing legal written work product. Students prepared two drafts each of a case brief, two internal memoranda regarding a case, and an appellate brief. In addition, they presented oral argument on the appellate brief.

In the summer and fall of 2010 and the spring and fall of 2011, I also taught an upper-level legal writing class. The students learn about the federal court system and motions to dismiss. They prepare two drafts each of a memorandum in support of a motion to dismiss and an opposition to a motion to dismiss. Copies of the syllabi for all courses described in answer to this question are supplied.

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

    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 currently serve as an adjunct professor and teach a legal writing course at the University of Miami School of Law, and I have committed to teaching that course again in the spring of 2012.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If I am confirmed, I will recuse in all cases involving any of my family members. I will also recuse in any cases involving the University of Miami (where I teach), in cases involving Florida International University Law School (where my sister is employed as the director of legal research and writing), in cases involving Miami-Dade County (my brother-in-law is employed as an attorney with the County Attorney's Office), in cases where my former law clerks are listed as counsel of record and have primary responsibility for litigating the matter, and in cases involving close friends as parties or witnesses. I would also recuse in any

cases where a close friend served as counsel, and I would use the Southern District of Florida's electronic conflict system primarily to identify such cases.

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

If I am confirmed, I will apply the standards set forth in 28 U.S.C. §§ 144 and 455 to any scenario involving a potential conflict of interest or appearance of partiality.

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

As a judge, I am not allowed to practice law on behalf of others, so I have not engaged in any pro bono legal work since my confirmation in September of 2007. During most of my legal career, I have also been subject to limitations on my ability to engage in legal activities outside of my job because I have worked in government service for the vast majority of my legal career. Consequently, although I participated briefly in a program where attorneys assist victims of domestic abuse in court, I have mostly chosen to give back to the community in other ways. Among others, I participate in the Florida Bar's Justice Teaching program. The program aims to help educate every elementary, middle, and high school student about basic principles underlying our system of justice and our Constitution. I am paired with North Fork Elementary School.

Likewise, in the recent past, I have volunteered my time to assist with the Children's Ballet Theatre of Fort Lauderdale. The program allows children to put on a ballet such as *Cinderella, Sleeping Beauty,* or *Coppelia* at the Broward Center for the Performing Arts, under the directorship and leadership of dance teachers who volunteer their time for the program. In addition to directing children in the production of a professional-type production, the program aspires to foster an appreciation of dance in the community, particularly among children, by making tickets available at an affordable price and by providing inexpensive or free tickets to certain financially eligible children. My volunteer activities on behalf of the program have included assisting with costuming, addressing marketing materials, and backstage supervision of some of the younger participants during dress rehearsal and the show.

In addition, I volunteer from time to time at my children's school, and year-round, I regularly provide internship opportunities for law school students in my chambers.

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 Florida, the senators use a nominating commission. The Florida Federal Nominating Commission was appointed by Senators Bill Nelson and Marco Rubio. The Commission is comprised of members selected by both Senator Nelson (approximately 2/3 of the members) and Senator Rubio (approximately 1/3 of the members).

I submitted an application to the Florida Federal Judicial Nominating Commission in June 2011 and was interviewed by the Commission on July 25, 2011. I was selected by the Commission, along with three others, on that same date. The Commission does not recommend one candidate and does not rank the candidates. On August 3, 2011, I interviewed with Senators Nelson and Rubio in Washington, DC.

Since August 17, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 21, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. 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
Rosenbaum, Robin S.	U.S. District Court for the Southern District of Florida	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 Judge	☑ Nomination. Date 11/30/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2010 to 11/21/2011
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.**	
299 E. Broward Blvd., Room 310-A Fort Lauderdale, Florida 33301	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 9	Name of Person Reporting Rosenbaum, Robin S.	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	University of Miami School of Law (teaching Legal Research and Writing)	$8,000.00
2.	2010	University of Miami School of Law (teaching Legal Research and Writing)	$18,000.00
3.	2011	University of Miami School of Law (teaching Legal Research and Writing)	$10,000.00
4.			

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2010	United States Courts – salary
2.	2011	United State Courts -- salary
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 11/30/2017

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
Rosenbaum, Robin S.	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) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Ameritrade Money Market	A	Interest	J	T	Exempt				
2. Astropower (common)		None	J	T					
3. Ballard Power Systems (common)		None	J	T					
4. Bank of America -- checking/savings	A	Interest	J	T					
5. Buffalo Small Cap Fund		None							
6. Cisco Systems (common)	A	Dividend	J	T					
7. DiscoverBank Savings and Money Market Account	B	Interest	L	T					
8. Domini Social Equity Fund	A	Dividend	J	T					
9. Electrosource, Inc.		None							
10. Ericsson L M Tel Co ADR	A	Dividend	J	T					
11. Emagin, Inc. (common)		None	J	T					
12. Etrade Bank Money Market and Savings Account	A	Interest							
13. Fidelity Cash Reserves	A	Dividend							
14. Fidelity Contrafund	A	Interest	K	T					
15. Fidelity Municipal Money Market	A	Interest	J	T					
16. Fidelity Smart Cash acct (held at Fifth Third Bank)	A	Interest							
17. Fidelity Unique NH 2015 Portfolio	A	Int./Div.	M	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
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
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U =Book Value
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FINANCIAL DISCLOSURE REPORT Page 5 of 9	Name of Person Reporting Rosenbaum, Robin S.	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) 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 ( ) 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. Fidelity Unique NH Bank Deposit Portfolio	A	Int./Div.	L	T					
19. Intel Corp. (common)	A	Dividend	J	T					
20. Interactive Data Corp. (common)	A	Dividend							
21. J2 Global Communications, Inc. (common)	A	Dividend	J	T					
22. Janus Twenty Fund	A	Dividend	J	T					
23. Janus Worldwide Fund	A	Dividend	J	T					
24. JDS Uniphase Corp. (common)		None	J	T					
25. M&T Bank Money Market	A	Interest							
26. Nokia (common)	A	Dividend							
27. Oppenheimer Capital Appreciation Fund (Mass Mutual)		None	J	T					
28. Oppenheimer Midcap Fund (Mass Mutual)		None	J	T					
29. Parnassus Fund	A	Dividend	K	T					
30. Rhythms Netconnections (common)		None	J	T					
31. Suntech Power Holdings Co. ADR		None							
32. Thompson Plumb Growth Fund		None							
33. T. Rowe Price College Savings Plan Portfolio 2018	A	Int./Div.	M	T					
34. T. Rowe Price Blue Chip Growth 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
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
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FINANCIAL DISCLOSURE REPORT
Page 6 of 9

Name of Person Reporting	Date of Report
Rosenbaum, Robin S.	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). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. TZ Limited (common)		None	J	T					
36. Universal Display Corp. (common)		None	J	T					
37.									
38. JOINT TENANT HOLDINGS:									
39. Armour Holdings, Inc.		None							
40. Ameritrade Money Market	A	Interest	J	T					
41. AOL, Inc. (common)		None							
42. Corning	A	Dividend							
43. Green Mountain Coffee Roasters (common)		None							
44. ishares Silver Trust		None	J	T					
45. J2 Global Communications, Inc. (common)	A	Dividend	J	T					
46. Janus Twenty Fund	A	Dividend	J	T					
47. Molycorp		None	J	T					
48. Nortel Networks (common)		None	J	T					
49. Oracle (common)	A	Dividend	J	T					
50. Sanmina (common)		None							
51. Time Warner Cable, Inc.	A	Dividend							

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
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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
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FINANCIAL DISCLOSURE REPORT Page 7 of 9	Name of Person Reporting Rosenbaum, Rabin S.	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) 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 ( ) 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. Time Warner (common)	A	Dividend							
53. T. Rowe Price Science Technology Fund		None							
54.									
55.									
56.									
57.									

1 Income Gain Codes:
(See Columns B1 and D4)

A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P1 =$25,000,001 - $50,000,000

2 Value Codes
(See Columns C1 and D3)

H =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000

3 Value Method Codes
(See Column C2)

Q =Appraisal
U =Book Value

R =Cost (Real Estate Only)
V =Other

C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000

S =Assessment
W =Estimated

D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000

T =Cash Market

E =$15,001 - $50,000

FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 11/30/2011

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

Lines 39 through 53 are or were held by my mother, but I am listed as joint tenant on her account. This has been the case for several years. I derive no income or other benefits from my mother's investments. Where an investment was sold during the reporting period, nothing is reported in Column C because the value of the investment at the end of the reporting period was $0.

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Rosenbaum, Robin S.	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 Robin S. Rosenbaum

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		71	162	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		406	303	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – personal residence		706	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		49	000	Thrift Savings Plan loan		66	732
Cash value-life insurance		14	530				
Other assets itemize:							
Thrift Savings Plan		556	121				
				Total liabilities		66	732
				Net Worth	1	736	384
Total Assets	1	803	116	Total liabilities and net worth	1	803	116
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	
AstroPower stock	$ 0
Ballard Power Systems stock	203
Cisco Systems, Inc. stock	7,200
Domini Social Equity Fund	7,777
Emagin Corp. stock	274
Ericsson L.M. Tel. Co. ADR	58
Fidelity 529 Bank Deposit Portfolio	54,088
Fidelity 529 Portfolio 2015	107,871
Fidelity 529 Portfolio 2018	124,154
Fidelity Cash Reserves Money Market	231
Fidelity Contrafund	34,042
Intel Corp. stock	8,041
J2 Global Comm, Inc. stock	5,636
Janus Twenty Fund	4,003
Janus Worldwide Fund	5,896
JDS Uniphase	94
Parnassus Fund	18,393
Rhythms Netconnections stock	0
T. Rowe Price Blue Chip Growth Fund	7,673
TD Ameritrade Money Market	52
TZ Ltd. stock	745
Universal Display Corp. stock	19,872
Total Listed Securities	$406,303

AFFIDAVIT

I, Robin Stacie Rosenbaum, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12/1/11
(DATE)

Robin S. Rosenbaum
(NAME)

Susan J. Fernandez
(NOTARY)

Notary Public State of Florida
Susan J Fernandez
My Commission DD758325
Expires 04/08/2012

Senator FRANKEN. Okay. Well, you both sound tremendously qualified. I still have about 50 seconds left, but I'm going to reserve that time in case I feel I need it. I know that Senator Lee has impending responsibilities, so, Senator?

Senator LEE. Thank you, Mr. Chairman.

I've got just a couple of questions for Judge Drain, if that's okay. The first thing I'd like to ask you about is an article you wrote in March 1994 that appeared in *The Michigan Chronicle*. In that article, or that column I should say, you wrote that you "look forward to the time when a person with a gun will be viewed as a coward or a chicken with an unfair advantage, a cheater in a fight". Does that, and if so how does that, reflect in any way of your view of the Second Amendment?

Judge DRAIN. You know, I handled a lot of cases in the Criminal Division and I have looked at the Second Amendment and it does ensure that persons have the right to own, possess, and carry firearms, and the Supreme Court has made that clear in the *Heller* case and in *McDonald*. I have no problems with abiding by and following those precedents because the second amendment, the right to keep and bear firearms is an important constitutional right, and so I am prepared to follow that precedent.

Senator LEE. Okay. Thank you.

In an article that you authored in the *Detroit News* you wrote that the death penalty is "primitive punishment that is brutal and barbaric". Would that statement affect—having made that statement, would that or the sentiments underlying it affect your ability to apply the law as an Article 3 judge?

Judge DRAIN. It would not, Senator Lee. That was an article I wrote about 27 years ago and I no longer hold to that position. My views about the death penalty have been evolving and changing and I no longer believe that. I was a pretty young, zealous defense lawyer back in those days and I feel a lot older and more mature now, and I again don't subscribe to that position anymore.

Senator LEE. Your views on that issue have evolved, you could say?

Judge DRAIN. Pardon me?

Senator LEE. They have evolved? Your views have evolved?

Judge DRAIN. Yes, they have. Yes, sir.

Senator LEE. Then in 1998, you wrote a *Michigan Chronicle* article honoring a former Michigan State judge, a Judge Damon Keith. In that you wrote that Supreme Court Justice Clarence Thomas, who you should know I regard as one of the greatest jurists of our era and one of the greatest legal minds ever in the United States, had taken positions "diametrically opposed to those of Judge Keith and other legal giants" and that "Thomas has opposed almost every civil rights issue involving poor people, minorities, voting rights, the criminal justice system, and affirmative action".

Is it appropriate for a sitting judge to criticize a sitting member of the U.S. Supreme Court using such terms?

Judge DRAIN. I think that was probably inappropriate for me to say and to write about Judge Thomas, because I do have a lot of respect for him. I personally met him some time after that. In fact, he was a justice who came to Detroit and he actually presented Judge Keith with the David Award.

I don't know how familiar you are with the David Award, but that's an award that is given annually to an outstanding Federal jurist, the most outstanding Federal jurist in the country. So I went to that and I met him and it was a very pleasant meeting, and I guess ultimately I don't think it was appropriate for me to be that critical of him.

Senator LEE. Okay. Okay. Thank you very much. I appreciate that.

Judge DRAIN. All right. Thank you.

Senator FRANKEN. Thank you, Senator Lee.

Judge Thomas hadn't read the article, I assume?

Judge DRAIN. Oh, I guess not.

[Laughter.]

Judge DRAIN. I don't know.

Senator FRANKEN. Well, it was a pleasant meeting. That says a lot for him if he had.

Senator GRASSLEY Thank you, Senator Lee, by the way.

Senator GRASSLEY. Before I go to questions, Judge Drain, I want to ask Judge Rosenbaum some questions. By the way, he covered several areas I was going to cover with you, so it won't take as long as I thought.

Judge DRAIN. Okay. That's Okay.

Senator GRASSLEY. For you in *Christ Covenant Church* v. *Town of Southwest Ranches*, you ordered the church to disclose its membership information to the town, even though doing so would place a potentially significant burden on the First Amendment rights of the church and its members. I have three subquestions here: do you feel that churches should be treated as any other organization for purposes of discovery disputes?

Judge ROSENBAUM. No. Churches actually have—and as I believe I wrote in the *Christ Covenant* case, churches have special considerations that the court must consider. For example, we have to be concerned about the First Amendment rights as far as freedom of religion, the free exercise clause, and as far as the associational rights go.

And that's why, when I wrote the *Christ Covenant* case, I drafted it as narrowly as I think I possibly could have. In that particular case, what happened was, the church was suing the city to allow for an expansion of its church facilities, and the church was alleging in its complaint that it did not have enough room to be able to conduct weddings, for example, funerals, other life cycle activities, classes, things of that nature.

And under RLUIPA, the Religious Land Use and Institutionalized Persons Act, they were suing in order to be able to go forward with their expansion plans. But in order to win on that there was a factual issue, and the factual issue was whether in fact they were having their religious events, their life cycle events, their community classes, interfered with. It was a purely factual issue.

And so with respect to that one specific and narrow question, I authorized the defendant to go ahead and depose the individuals who were not able to have life cycle events, such as a wedding, if their wedding was not able to go forward, that type of thing, to have those depositions only to the extent that they could be asked questions about not being able to have the event.

They were not allowed to go into anyone's individual religious beliefs or anything beyond the actual factual issue there. I also required it to be disclosed only to the attorneys for the city. There was no disclosure allowed beyond the attorneys for the city, and I subjected it to a Protective Act. So I think that—or Protective Order, I guess I should say.

I think that that was the best way to accommodate both the concerns for allowing the defendant city to be able to test the allegations which were at the heart of the issue and the lawsuit, while still protecting the associational and free exercise rights of the individual members of the church.

Senator GRASSLEY. Recently this administration—I should say President Obama's administration, in my view, has shown a disregard for the rights of religious liberties and exercise of conscience protected by the First Amendment.

What is your understanding of the current state of law with regard to the interplay between establishment and free exercise clause of the First Amendment, and how would you approach a case where the First Amendment religious rights were an issue?

Judge ROSENBAUM. Well, with respect to—again, I'll go back to the *Christ Covenant* case. I think the law is actually pretty clear, what the Supreme Court has said in that. Those are fundamental rights under the First Amendment. Those are rights that are entitled to protection, obviously, and those are rights that there's a heightened standard for disclosure, for example, in those types of cases. There has to be a heightened showing of need.

There is a balancing test, which includes five different factors. All of them need to be examined very carefully, and in order to evaluate any particular claim the court would have to evaluate the balancing tests, whatever was appropriate for the particular issue in that case and apply them as the Supreme Court has required.

Senator GRASSLEY. My next question would be, kind of, how you approach deciding a statute. My research shows that you give some weight to legislative history. I guess that makes me feel good. You can't write the statute as perfectly as you want to. What's your approach to determining the meaning of a statute?

Judge ROSENBAUM. Well, first, I would start—and I do start—with the words of the statute. And if the words of the statute are clear and unambiguous, then we not only start there but we should end there as well. In addition, I think it's important to look at the framework of the statute.

It's important to avoid interpreting a law so that other parts of the statute would become either redundant or would have to be ignored. So we take all of those things into consideration, and if it's still not clear what the answer is, only then do we look to the legislative purpose or intent.

Senator GRASSLEY. Does the category of congressional findings carry much weight with you?

Judge ROSENBAUM. Congressional findings?

Senator GRASSLEY. Yes. You know, like a preamble to a statute or a bill that Congress is passing.

Judge ROSENBAUM. Well, I would certainly take that into consideration.

Senator GRASSLEY. Okay. This would be the last question along that line, and I guess my last question for you. Is it very easy for a judge or advocate to select only those statements—no, I'd better say—I want to make a statement. It is very easy for a judge or advocate to select only those statements in a report or legislative remarks that support a particular judge's position. How will you avoid the appearance of selectivity when using legislative history?

Judge ROSENBAUM. Well, I think that's a very important thing to avoid, obviously. One of the things about legislative intent and legislative purposes that really doesn't—where the court doesn't have to pick through particular statements is, for example, if the Supreme Court has decided an issue a particular way, and in response to a decision the Supreme Court has issued the Congress then enacts a new statute.

In that case it can be very clear what legislative intent is. I think that in order to avoid the type of problem that you have identified, it's very important for a judge who does go ahead and consider legislative purpose or legislative intent to stick only with the legislative intent that is readily discernible.

And as I said, we would get to the legislative intent only if first we went through the language of the statute, found it to be ambiguous, then we went through the statutory framework, found that still to be ambiguous, and then only as a last resort would we turn to the legislative intent or purpose.

Senator GRASSLEY. I notice you have a friend of mine, a lawyer in Des Moines, Iowa, by the name of Jeff Goodman who is——

Judge ROSENBAUM. Yes. He appeared before me in a case a few years back. A great lawyer.

Senator GRASSLEY. He seems to think you're qualified for the job.

Judge ROSENBAUM. Thank you. I appreciate that.

Senator GRASSLEY. Now I'll go to you, Mr. Drain. You've written "one of my unpleasant tasks on occasion is to impose mandatory sentences." You've been critical of so-called three strike legislation, advocating for the passage of bills by the legislature in your home State that would eliminate mandatory sentencing. So, a very simple question: why do you oppose mandatory sentences?

Judge DRAIN. Senator Grassley, having handled just hundreds of criminal cases, they vary in scope and involvement. And when you look at some of the principles that come into play, like aiding and abetting and, you know, some conspiracy cases, people who do very little toward the commission of a crime are treated just as though they were the major offender or the shooter, so to speak.

So, you know, when you start to see the big variety of cases that come, to have mandatory sentences is difficult to deal with and to handle cases in an equitable fashion. They just present some, like I said, very difficult situations. Really, judges who actually see cases and see people and situations need a little more discretion in the area of sentencing.

Senator GRASSLEY. Well, since the Booker case and the guidelines at the Federal level have been advisory rather than mandatory, if confirmed, how much deference would you afford the guidelines under the advisory-rather-than-mandatory approach?

And maybe I should ask this simultaneous with that question: what circumstances would you be willing to depart from the guide-

lines if you—I guess, how much deference do you give to guidelines, and then if you gave some deference to them what would be your point of departure or reasons for departure?

Judge DRAIN. Senator Grassley, when I became a State court judge the guidelines were extremely helpful to me because I really didn't know what sentence to impose on what kind of conduct. So, guidelines are very helpful. In the State system that I was functioning in, when you decided to go outside of the guidelines you had to give reasons that were not already factored into the guidelines and you could depart either upward or downward.

I left the Federal Defender's Office before the guidelines came into existence, and in spite of *Booker* I would really give great deference to the sentencing guidelines as a starting point because, again, I've never sat as a judge in Federal court. And again, if I was fortunate enough to become a Federal judge, I would give the guidelines a lot of deference and sentence in that fashion.

Senator GRASSLEY. Okay. A little bit along the same line, but 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?

Judge DRAIN. I agree totally with that, 100 percent. In fact, that's one of the whole purposes of the guidelines. I think that's extremely important.

Senator GRASSLEY. Are you willing to sentence an elderly person to the same amount of time as a young person for a similar crime?

Judge DRAIN. Probably. And I would—you know, there's a lot of factors to look at when you impose sentence. But the guidelines, at least the State guidelines, were not—age wasn't a factor. And I'm not sure how much of a difference I'd make in sentencing an elderly person versus a younger person.

Senator GRASSLEY. My question would be—I think it's the last one on this point—would be this: you've written articles that indicate that you believe that when an individual is no longer a threat to society they should be released from prison, even if they have not served the whole sentence mandated by law. Just a simple explanation of why you—what you mean by that.

Judge DRAIN. Senator Grassley, in my experience and in some of the things that I've read, crime—I should say age is a big factor in crime. The crime-committing years are usually between 17 and 25. As people get older, in their 30's, 40's, 50's, then that crime-committing period usually has passed. People become more mature, they become more settled, less violent, and those kind of things. I just—I think that's really what I was talking about. The older a person gets, I think the less likely they are to commit crime.

Senator GRASSLEY. Before I ask the next question, I want to preface it with the fact that there's nothing wrong with you being politically active, but I'd like to ask you some questions because, you know, the public records show your contributions. Well, I guess, just leave it at that.

What is your view of the role of politics in the judicial decision-making process?

Judge DRAIN. Senator Grassley, I don't think that politics should have any role in the decision-making process. Cases should be decided solely on the facts and the evidence and the testimony and the law that applies in the case. I don't think politics should play

any part. I would commit to not treating anyone differently, whether they're Republican or Democrat, labor, management, individual versus corporation. None of those things really would make a difference in decision-making.

Senator GRASSLEY. I think you've answered my second and third subparts of that issue.

Let's go to criminal law. I would like to have some understanding of your view on constitutional criminal law. In *People* v. *Thomas*, you granted the defendant's motion to suppress evidence of cocaine possession because of a defective search warrant. Your decision was overturned, as a higher court found that there was an obvious exception to the search warrant requirement in the case.

In *People* v. *Adams*, you dismissed charges against a defendant for assault with intent to commit murder because a witness who testified in the preliminary hearing did not testify at trial. The Court of Appeals held that the rules of evidence for your State clearly say that when a witness is unavailable, testimony from another hearing is inadmissible. Considering these reversals and some others that I didn't go into, do you consider yourself, or would others characterize you, as a pro-defendant judge?

Judge DRAIN. I don't think so, Senator Grassley. Even though I practiced criminal defense work when I was a lawyer and practicing law, once you become a judge you become pretty neutral, or you learn to become neutral pretty quickly. So I have every intention of being objective and impartial with both defendants and the prosecution and I don't think I would be labeled a pro-defense judge.

Senator GRASSLEY. I believe you've answered the second subpart of that question, so let's go on to deal with the authority that a judge has. These are the last two questions.

In one article you wrote about a time where you had to apply a sentence that you thought was inappropriate. You said, "I imposed the sentence and it was very, very unfair. But as a new judge in the Recorder's Court, I'd been there for not even 4 years yet, I felt that it was my obligation to follow the law and I went ahead and imposed the sentences in cases where I just knew in my heart that they were unfair and unjust". Do you mean by this statement that judges who have been on the bench longer would have had the authority to not impose the sentences?

Judge DRAIN. Senator, in dealing with mandatory sentences sometimes I do say that, you know, I would rather do something different. But the law says that you impose the sentence. A lot of times when I imposed a mandatory sentence I didn't do it with any type of joy or happiness. It was something that was hard to do.

But I believe that the commitment of following the law and imposing the appropriate sentence that's been given by the legislature, I believe that that's my obligation, to follow the law and so that's what I did. The fact that I wrote some side comments about it, about my personal feelings, which really, really shouldn't have anything to do with my decision-making, is really kind of irrelevant or unimportant to me.

Senator GRASSLEY. We have people that argue that a judge should have empathy for those who appear before them. My concern is that when someone suggests that a judge should have em-

pathy they're really suggesting that the judge should place their thumb on the scales of justice to tilt in favor of the proverbial little guy, or some other noun you might want to use there. In your personal opinion, is it ever the role of a judge to favor, for instance, the little guy over the big guy?

Judge DRAIN. No, Senator Grassley. I think the little guy shouldn't be given any more fairness than the big guy. They need to be treated equally and impartially. I am committed to doing that.

Senator GRASSLEY. Thank you very much.

Senator FRANKEN. Thank you, Senator Grassley.

I did retain a little bit of time so I'm really interested in this issue of sentencing and what the Ranking Member said about, should someone get different sentences for the same crime depending on what judge they're before. And it seems to me that either you have mandatory sentences or you have guidelines, and if you have guidelines there's going to be a difference between what judge you're before.

The question is, how—you know, how each judge sees the sentencing process. And obviously you have written about this. You believe that the sentencing law should be flexible enough to account for a wide range of circumstances presented in different cases, and that seems to make a tremendous amount of sense to me.

So how do you—how do you negotiate that difference, the difference of being able to—for a judge to use his or her discretion? And I'll ask you this, too, Judge Rosenbaum. Being able to use his or her discretion when there are a wide range of circumstances in any different case, and at the same time, you know, hold up the principle that a prisoner before one judge shouldn't get a wildly different sentence than he or she gets before another judge.

Why don't we go with Judge Rosenbaum, because Doctor—Doctor—Judge Drain has been—give him a break for a second.

Judge ROSENBAUM. No problem. What I would say is we, of course, start with the guidelines. Under *Booker*, that's the starting point. The guidelines have a number of considerations that we take into account, and then of course we also have to look at the factors under 18 USC 3553.

The reason that there are these factors laid out is to allow for the court to look at each case individually while still applying and remembering that we're trying to achieve sentencing parity. So I think what I would do, if I were fortunate enough to be confirmed of course, is to start, as I said, with the guidelines and then look to the 3553 factors and apply them to each case before me individually, while of course still keeping in mind that it's important to apply the guidelines as much as possible. That's basically what the Supreme Court has said.

The Eleventh Circuit has also—in cases where judges have not done that and have not been true to the guidelines, have sent those cases back to be resentenced in accordance with the guidelines and the 3553 factors. So, that's how I would do that.

Senator FRANKEN. Judge Drain, from that description it sounds as if they're—within the law there is enough guidance and that it's almost slightly mechanical, but it feels to me that when you're dealing with a human life and you're dealing with a crime and

you're dealing with all sorts of different factors, that—and you've been involved in a lot, that it just isn't quite that easy.

Judge DRAIN. No. Let me just say, first, that I would much rather deal with guidelines than mandatory sentences. Frankly speaking, I actually really liked the guidelines in Michigan. That's primarily because the guidelines, as they were formed in Michigan, were the result of taking all of the sentences all across the State and finding out what the averages were. And the guidelines in Michigan had a graph, and part of the graph dealt with the offender's criminal history, the other part dealt with the severity of the offense, and then you plot the guidelines and you figure out what they are.

Then, after you've done that, if there are some factors kind of unique to the case that aren't already figured into the guidelines, you can use those factors to go up or down, and I've done both in the past. There have been situations where there were some very aggregated facts—aggravating facts, I should say, where I went above the guidelines for one reason or another, and then there were some mitigating circumstances where I went below the guidelines. That really gave us, in Michigan, the flexibility to impose a fair sentence.

So I—I thought the guidelines were pretty effective because no matter where you are in the State of Michigan, whether you're in some very rural county or you're in an urban area, you're going to be treated pretty much the same based on the guidelines. If anybody wants to be harder or softer, they've got to give some good reasons. If you don't give those good reasons then the Court of Appeals will reverse. So, I felt pretty comfortable with them and I've never really dealt with the Federal guidelines so I really, really can't speak to them.

Senator FRANKEN. Well, thank you both. Thank you, your Honor—both your Honors. I want to again congratulate all of the nominees, including Mr. Taranto. Thanks to each of you for your testimony today.

We will hold the record open for 1 week for submission of questions for the witnesses and other materials.

This hearing is adjourned.

[Whereupon, at 3:50 p.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Gershwin A. Drain
Nominee to be United States District Judge for the Eastern District of Michigan
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

   a. **If not, please explain.**

   Response: The Constitution changes only through the amendment process that is set forth within the Constitution itself.

2. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: No.

   a. **If not, please explain.**

   Response: The Constitution does not change through social movements, historical practice or legislation. Again, it changes only through the amendment process that is set forth within the Constitution itself.

3. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

   Response: In analyzing whether any particular statute infringes upon a Constitutional right, I would look to United States Supreme Court precedent to resolve the question. If there was no controlling precedent from the Supreme Court, I would then look to case law from the Sixth Circuit.

4. **In a column entitled "I have a dream of nonviolence," you said you look "forward to a time when a person with a gun will be viewed as a coward or chicken." Senator Lee asked you about this article and your views on Second Amendment rights, but I would like to ask you some additional questions.**

   Response: My statement in that 1994 column was meant to cover a very limited situation. I had no intent to discuss the Second Amendment or the Constitutional right to bear arms. As a trial judge in the City of Detroit I saw so many situations where arguments erupted on the street and in other public places or at some other place than at home. Instead of a fist fight young people would go for a gun and there would be a senseless shooting. When I referenced "a coward or chicken" I was thinking about situations where instead of using fists young people in my city unnecessarily resorted to guns. That was the context of my statement.

a. In your opinion, why do you think our founders included this right as the second in its list of amendments?

Response: I believe that the founders included this right as the second in its list of amendments because of its significance and importance.

b. The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Leaving aside the *McDonald v. Chicago* decision, do you personally believe the right to bear arms is a fundamental right?

Response: Yes. *Heller* and *McDonald* make clear that the Second Amendment protects a fundamental right.

c. Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.

Response: Yes. With a few exceptions, the Supreme Court has held that the rights enumerated in the Bill of Rights are fundamental rights that apply against the states under the 14th Amendment.

d. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.

Response: Yes. The United States Supreme Court has held that most of the provisions of the Bill of Rights protect fundamental rights and are therefore applicable to the states through the 14th Amendment.

e. The *Heller* Court further stated that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right." Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.

Response: Yes. The Supreme Court has said that the Second Amendment codified a pre-existing right.

f. What limitations remain on the individual Second Amendment rights now that the amendment has been incorporated against the States?

Response: The Supreme Court in *District of Columbia v. Heller,* 554 U.S. 570 at

626 (2008) said "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

5. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy's analysis?**

   Response: I do not believe I can give an opinion on that question except to say that the *Roper* case is Supreme Court precedent and I, as a lower court judge, would be obligated to follow it.

   a. **When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

      Response: If confirmed as District Court Judge I would not look at either of those standards and would be bound by decisions of the United States Supreme Court and the decisions of the Sixth Circuit Court of Appeals.

      i. **If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

         Response: I do not feel it is my position to evaluate standards used by the United States Supreme Court. Whatever measure they use in evaluating and deciding a case, I must abide by it.

6. **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: As a District Court Judge it would not be appropriate for me to rely on foreign or international law in determining the meaning of the United States Constitution.

   a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

      Response: As a District Court Judge I would never use foreign law when interpreting the Constitution.

   b. **Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: Foreign nations may or may not have ideas or solutions that might be helpful to legislators, but as a judge I would not look to those sources in interpreting U.S. law.

7. **As a judge, have you ever presided over a death penalty case? If so, please provide a summary of and citations for these cases.**

Response: I have never presided over a death penalty case because we do not have the death penalty in the State of Michigan. In fact, there is a Michigan Constitutional provision that specifically prohibits the legislature from enacting any law that would impose the death penalty.

   a. **As an attorney, did you ever represent a defendant who could receive the death penalty as a sentence? If so, please provide a summary of and citations for these cases.**

   Response: When I practiced law for 12 years at the Federal Defender's Office I never represented a defendant who could have received the death penalty.

8. **You wrote, "One of my unpleasant tasks on occasion is to impose mandatory sentences." When asked about this statement at your hearing, you stated: "A lot of times when I imposed a mandatory sentence I didn't do it with any type of joy or happiness. It was something that was hard to do." And, you said, "in dealing with mandatory sentences sometimes ... I would rather do something different." You also testified, "to have mandatory sentences is difficult to deal with and to handle cases in an equitable fashion. They just present some, like I said, very difficult situations." You also have written, "[w]e need to trust our judiciary and give judges discretion to impose the sentence they feel is appropriate." Given the dozens if not hundreds of mandatory minimums in federal law and your obvious aversion to imposing those sentences, why do you want to be a federal judge?**

Response: In the 25 years of my judicial career, 13 of which were in criminal court, I have handled several thousand cases. In Michigan there are many mandatory minimum sentences and it was only in a small percentage of the cases that I heard where I felt the mandatory minimum sentence was too harsh. Most of the time I felt the mandatory sentence was appropriate. I believe that personal feelings should not be considered when sentencing and I am committed to following the mandatory sentences in federal court if I am confirmed. I enjoy serving as a judge and am deeply honored to be considered to serve on the federal bench.

   a. **You specifically noted in your testimony that, in certain cases such as "aiding and abetting" and "conspiracy" cases, "people who do very little toward the commission of a crime are treated just as though they were the major offender or the shooter." 18 U.S.C. §2 states: "Whoever commits an offence against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal." Do you believe Congress was wrong when it enacted this statute?**

Response: No. I believe that Congress was very wise in enacting that statute. Many times "drug kingpins" do very little in a major drug operation and insulate themselves from direct contact with narcotics and aiding and abetting and conspiracy are sometimes the only way that the "kingpins" can be reached.

i. **Do you believe it is the role of a judge to question the law the legislature makes?**

Response: No.

ii. **Do you believe a judge who issues a mandatory sentence as directed by the legislature is not handling a case in an "equitable fashion?"**

Response: No.

iii. **Given that you made many of the statements about your aversion to mandatory minimums as a sitting judge and your statement in one case that you were "looking for any reason to be lenient," do you believe a victim could perceive your statements as showing empathy towards defendants?**

Response: No. My sentences are based on the law and the circumstances of each case, in that sometimes there are reasons consistent with the law to impose a lesser sentence, and in other cases I have not hesitated to impose a harsh sentence. It is important for a judge to understand the impact of crime on crime victims.

iv. **If, based on your statements, a victim might believe you were empathetic towards defendants in some cases, do you believe it was appropriate to make these statements?**

Response: My statements do not reflect inappropriate empathy for defendants.

9. **When asked what you meant when you stated, "it does not make sense to keep people in prison during their later years when the crime-committing period is over," you stated, "the older a person gets, I think the less likely they are to commit crime." And, when asked whether you are willing to sentence an older person to the same amount of time as a younger person for a similar crime, you were uncertain and merely answered "probably." How much weight would you give to the age of the defendant when determining the sentence?**

Response: It would be an extremely rare situation where I would give any weight to a person's age in sentencing. There might be some cases in which the defendant's age would be relevant to the appropriate sentence under the applicable statutes and sentencing guidelines.

a. **You have also stated: "Advanced, mature societies should engage in punishment and not vengeance as a way of dealing with crime." Are the victims of crimes and their family and loved ones not entitled to see the person who committed a crime against them or their loved one punished if the perpetrator is older?**

Response: All crime victims and their families are entitled to see the perpetrators punished in accordance with the law.

10. **You were asked about sentencing under the guidelines in Michigan and you stated: "there were some mitigating circumstances where I went below the guidelines." Recently, a few federal judges have expressed concerns about mandatory minimums in child pornography laws.[1] Do you have any concerns about mandatory minimums in child pornography laws?**

Response: No.

a. **Do you believe mandatory minimums in child pornography laws allow judges to be equitable to the defendant?**

Response: Yes.

b. **Have you ever handled a child pornography case either as a judge or a lawyer?**

Response: No.

i. **If so, please provide a summary of and citations for all the cases in which you participated.**

Response: Not applicable.

ii. **If you handled these cases as a judge, please include the sentencing range called for under the Michigan guidelines, if applicable, and the sentence you issued.**

Response: Not applicable.

[1] A.G. Sulzberger, "Defiant Judge Takes on Child Pornography Law," *New York Times*, May 21, 2010, *available at* http://www.nytimes.com/2010/05/22/nyregion/22judge.html.

Responses of Gershwin A. Drain
Nominee to be United States District Judge for the Eastern District of Michigan
to the Written Responses of Senator Chuck Grassley

1. **During the hearing I asked you if you agreed that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw. You whole heartedly agreed with this statement. I then asked if you were willing to sentence an elderly person and a young person to the same amount of time and you paused and said "probably." I would like you to clarify your position on this issue.**

   a. **All other factors being equal, would you sentence an elderly individual differently than a young individual, if each committed the same offense? Why or why not?**

      Response: As a general matter, no. Age is an extremely rare sentencing consideration, but there might be some cases in which the defendant's age would be relevant to the appropriate sentence under the applicable statutes and sentencing guidelines.

2. **Do you believe the fact that taxpayers pay for a defendant's incarceration is a relevant factor when deciding on an appropriate sentence?**

   Response: No.

3. **Senator Lee asked you about some of the articles you have written regarding the death penalty. You said that you have changed your positions on the death penalty over the years.**

   a. **Is there any doubt in your mind that the death penalty is constitutional?**

      Response: No. The Supreme Court has made clear that the death penalty is constitutional.

   b. **Would you be able to apply the death penalty, if confirmed?**

      Response: Yes.

4. **You told Senator Lee that you would be able to follow the precedent established in *Heller* and *McDonald* regarding Second Amendment and the rights it affords.**

   a. **You wrote that you "envision a day when the National Rifle Association with its lobby will not be feared, and that legislators and congressmen will stand up strong against them instead of bowing to them." Do you still hold this view?**

Response: No. My statement almost 20 years ago was based on an erroneous perception of the NRA's influence. In addition, I was using an exaggerated metaphor to make a rhetorical point, but on reflection I should have chosen my words more carefully.

b. Considering you have made statements like these, do you believe you will be able to impartially handle any case that comes before you where the NRA or any of its supporters are involved?

Response: Yes. My personal beliefs, both past and present, have no bearing on the decisions I make in court.

5. I asked you a question about applying a sentence required by law even when you did not personally agree with it. You responded, "The fact that I wrote some side comments about it, about my personal feelings, which really, really shouldn't have anything to do with my decision-making, is really kind of irrelevant or unimportant to me." Can you please explain what you meant by this statement?

Response: My personal feelings about sentencing in a particular case should have no bearing on the sentence to be imposed. I am committed to following the law that governs sentencing whether there is a mandatory sentence, a mandatory minimum, or a guidelines system.

6. What is the most important attribute of a judge, and do you possess it?

Response: I believe that impartiality is the most important attribute of a judge. A judge must apply the law impartially and treat everyone equally regardless of their status and situation in life. When people see a judge acting impartially they feel that the system is fair and they have confidence in the process and in having their day in court.

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: Having a good judicial temperament is essential to being a good judge. A judge must be calm, patient and exercise self-control. The judge must be a good listener. A judge should be humble, respectful, courteous, diligent, decisive and prepared. A judge should always operate with integrity and impartiality. Essentially, judges should treat people the way they want to be treated. Judges should not lose their temper in the courtroom and they should not make fun of the parties or lawyers, nor demean or denigrate people. I believe that I meet the standard and I always try to maintain good courtroom demeanor.

8. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that 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 I was faced with a case of first impression and there were neither Supreme Court precedent nor Sixth Circuit precedent, I would first look to the other Circuits to see if there was a decision on point. If I still found none, I would look at the other District Courts to see if any had encountered the issue. If nothing could be found on point in a published opinion, I would look for federal unpublished cases. If I found nothing on point I would look for cases addressing analogous situations, starting with the Supreme Court. If faced with a question of first impression of statutory interpretation, I would begin with the plain meaning of the text, the structure of the statute as a whole and the applicable canons of statutory construction.

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: I would apply all prior decisions made by the Supreme Court or the Court of Appeals even if I thought they had eroded.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Courts are to give great deference to laws enacted by legislators. It should be an extremely rare occasion for a court to declare a law unconstitutional. In addition to that, if there is any binding precedent on the issue it must be followed.

12. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: I currently have a docket of over 900 civil cases. Shortly after a case is filed, I have a status conference where the case is put on one of three tracks,

depending on its complexity. Each track has a deadline for filing a witness list, for concluding discovery and for setting a month for case evaluation. Case evaluation is a stage where three lawyers evaluate a case and put a value on the case. Roughly six weeks after that I hold a settlement conference. If the case does not settle after exhaustive discussions I set a trial date on the case. If I were to become a District Judge I would seek to use a similar procedure, as adopted for the federal system. I would also consult with my colleagues and with other federal judges to identify ways to further improve my case management. One of the most important elements in docket management is having firm trial dates and sticking to those dates.

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 the most important part in controlling the pace and conduct of litigation. Judges must meet with the parties early and often to keep cases moving forward toward resolution. I would employ the procedure mentioned in response to question 12 in addition to fully utilizing the resources available to federal judges, like the law clerks and magistrates.

14. Please describe with particularity the process by which these questions were answered.

Response: I prepared my own answers and discussed them with the Department of Justice staff and then submitted them.

15. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Gershwin A. Drain
Nominee to be United States District Judge for the Eastern District of Michigan
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: As a trial judge my judicial philosophy is to closely follow and apply the law that is set forth in statutes, and to follow the case law found in precedents pronounced by higher courts. The judicial branch, along with the executive and legislative branches form the three equal branches of government. The judicial branch interprets and applies the law in cases and controversies, whereas the executive enforces the law and the legislature creates or modifies 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 am totally committed to treating all those who would come before me impartially and fairly and I have endeavored to do that for the 25 years I have been a judge. I believe that all political and personal beliefs must be checked at the courthouse door and that when coming onto the bench a judge must be neutral and unbiased in all matters.

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: All judges should be thoroughly committed to the principle of stare decisis. A judge must completely adhere to and abide by controlling precedent from higher courts. Stare decisis creates stability and predictability in the law for the litigants.

Responses of Gershwin A. Drain
Nominee to be United States District Judge for the Eastern District of Michigan
To the Written Questions of Senator Mike Lee

1. **During the hearing, in response to my question regarding your published statement that "the death penalty is primitive punishment that is brutal and barbaric," you said that your "views about the death penalty have been evolving and changing." Could you please articulate what your current views on the death penalty are?**

   Response: My current views on the death penalty are that it is acceptable and appropriate and the United States Supreme Court has so held. If confirmed, I will apply the death penalty in appropriate cases consistent with this precedent.

2. **During the hearing, I asked about some negative statements you made about Justice Clarence Thomas in a 1998 Michigan Chronicle article. In response, you suggested that you met Justice Thomas "some time" after writing the article, when he came to present the Devitt Award to Judge Keith, and that this meeting helped you gain a good deal of respect for him. In the Michigan Chronicle article, however, you specifically mention that meeting between Judge Keith and Justice Thomas, suggesting that the article was actually written *after* you had met Justice Thomas.**

   a. **Did the personal meeting you mentioned in your testimony occur before you wrote the article in the Michigan Chronicle?**

      Response: Yes. After looking back, I realized that the meeting did take place before I wrote the article. These events took place 14 years ago and were not fresh in my mind at the time of the hearing. I apologize for this mistake, and my intention was not to misconstrue the events.

   b. **If so, would you please explain why, after a meeting in which you claim to have gained such respect for the Justice, you would then write inappropriate remarks about him in a public forum?**

      Response: I regret my poor choice of words and I apologize for comments made about Justice Thomas. In hindsight, they were inappropriate. In meeting Justice Thomas I did gain tremendous respect for him personally. Justice Thomas is truly an American success story. He pulled himself up from very humble beginnings to become a United States Supreme Court Justice, which is an inspiration to anyone. At the time I wrote the article, my thoughts about some of his civil rights views clouded my judgment which led to those inappropriate comments. Notwithstanding any view I might have about any Supreme Court Justices, I would faithfully apply all Supreme Court precedent if I were confirmed to be a District Court Judge.

3. **How would you describe your judicial philosophy?**

Response: As a trial judge my judicial philosophy is to closely follow and apply the law that is set forth in statutes, and to follow the case law found in precedents pronounced by higher courts. My role is not to try to enforce the law or create, modify or change it. Those are things that are reserved for the executive and legislative branches.

a. To what sources would you look in deciding a case that turned on interpretation of a federal statute?

Response: In deciding a case that turned on the interpretation of a federal statute, I would first do a thorough review of the statute and try to decide what the language of the statute says and means. I would then look at cases that had previously dealt with the statute both at the Supreme Court level and the Sixth Circuit Court of Appeals. If I needed to, I would then look to see if another Circuit Court of Appeals or District Court had interpreted the statute. If there was nothing on point then I would look for analogous cases.

b. To what sources would you look in deciding a case that turned on interpretation of a constitutional provision?

Response: In deciding a case that turned on the interpretation of a constitutional provision, I would first do a thorough review of the constitutional provision and try to decide what the language of the provision meant. I would then follow the procedure outlined in question 3a.

4. In your view, what are the constitutional requirements for standing and how robustly should those requirements be applied to novel assertions of standing?

Response: The Constitutional requirements for standing are injury, causation and redressability, *Allen v. Wright*, 468 U.S. 737 (1984). The Supreme Court has made clear that these requirements should be robustly applied in all cases.

5. What role do the text and original meaning of a constitutional provision play in interpreting the Constitution?

Response: The text and original meaning of a Constitutional provision play perhaps the most important role in interpreting the Constitution. They are the starting point for any analysis of a Constitutional issue.

6. Do you believe that Congress has implied powers beyond those enumerated in the Constitution?

Response: No, although the Constitution grants Congress powers to pass unspecified laws that are "necessary and proper" for the exercise of its expressed powers, Article I, Section 8, Clause 18.

a. If so, which ones? And which provisions of the Constitution account for these implicit rights?

Response: Please see previous answer.

b. If not, how would you approach the multitude of legislation that Congress has enacted without reference to an appropriate authorizing provision of the Constitution?

Response: In any case in which Congress's power to enact a law was challenged, I would carefully review the relevant provisions of the Constitution and the applicable precedents from the Supreme Court and the Sixth Circuit to determine whether the law was within an appropriate authorizing provision of the Constitution.

i. Would you strike down laws not properly authorized by the Constitution?

Response: Yes.

7. Do you believe that the Constitution protects rights not specified in the Constitution?

Response: No.

a. Do you believe that the Constitution provides for a right of privacy?

Response: The Supreme Court has so held in a line of cases, including *Griswold v. Connecticut,* 381 U.S. 479 (1965). The Supreme Court has also held that the Fourth Amendment protects certain privacy interests in cases including *Katz v. United States,* 389 U.S. 347 (1967).

b. If so, which provision of the Constitution provides for that right?

Response: In *Katz* the Supreme Court held that the Fourth Amendment protects certain privacy interests. In *Griswold* and other cases the Court held that the right of privacy is in one of the liberty interests protected by the Due Process Clause of the Fifth and Fourteenth Amendments.

8. Do you believe there the Constitution provides for substantive due process—that is to say, that the Constitution does not allow the government to infringe certain fundamental rights regardless of the procedural guarantees that might be afforded?

Response: Yes. The Supreme Court has so held and I would be bound to apply that precedent.

a. Which do you believe are protected under substantive due process?

Response: I have not analyzed this area of constitutional law so as to form an opinion or belief as to the extent of substantive rights that are protected under the Due Process Clause.

b. If you believe such rights are protected, is it also your belief that *Lochner v. New York*, 198 U.S. 45 (1905) was correctly decided and should be the state of the law? *Lochner*, to paraphrase, was a case in which the Court held unconstitutional a New York statute that prohibited employment of bakery employees for more than 10 hours a day or 60 hours a week.

Response: I do not feel it is my position to decide whether or not *Lochner v. New York* was correctly decided. If confirmed as a District Court Judge it would be my obligation to follow and apply current Supreme Court precedent.

c. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: I have not analyzed this area of constitutional law to be able to distinguish the differences between personal rights and economic rights for constitutional purposes.

9. In the case of the Commerce Clause, apart from circumstances present in *Lopez* and *Morrison*, what are the limits on Congress's Commerce Clause power?

Response: One of the limits on Congress's Commerce Clause power is the Tenth Amendment, which provides for state sovereignty.

a. Do you believe that Congress has at any time overstepped its authority under that provision since *Wickard*, other than in *Lopez* and *Morrison*?

Response: I have not researched nor analyzed the law since *Wickard* as to whether Congress has overstepped its authority under the Commerce Clause.

10. How would you go about determining whether a group of persons is a "suspect class," such that laws affecting that group should receive strict scrutiny?

Response: The Supreme Court has held that race, alienage, and national origin are suspect classifications and that laws that discriminate based on those characteristics deserve strict scrutiny. *Loving v. Virginia*, 388 U.S. 1 (1967); *City of Cleburne v. Cleburne Living Center,*

Inc., 473 U.S. 432 (1985). The Court has also held that laws that discriminate based on gender or against non-marital children are subject to heightened scrutiny.

11. Under what circumstances do you think it proper for a court to conclude that Congress has delegated legislative power to the executive branch in violation of the Article I of the Constitution?

Response: I have not analyzed or researched this area of constitutional law to determine when it's proper for a court to conclude that Congress has delegated legislative power to the executive branch in violation of Article I of the Constitution.

12. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: The Constitution established three separate branches of government, the Legislative branch, the Executive branch and the Judicial branch. The Constitution ensures that each branch serves to check the power of the other two branches of government.

a. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: I would closely scrutinize the constitutional language and would also apply any relevant precedent from the Supreme Court and the Sixth Circuit.

b. What is your understanding of the Recess Appointments Clause?

Response: The Recess Appointments Clause of the Constitution allows the President to make temporary appointments to fill "vacancies that may happen during the recess of the Senate."

i. To what sources would you look in interpreting that clause?

Response: I would look to the same sources that I would consider in deciding any other constitutional issue, including the text of the Constitution and the applicable precedents of the Supreme Court and Sixth Circuit.

ii. Which branch should determine whether the Senate is in recess?

Response: Because there is litigation currently pending on this issue, I believe it would be inappropriate for me to express a view.

iii. In the event of a dispute, how you would you determine whether the Senate is in recess? Would you employ a functionalist approach, and if so, why?

Response: Because there is litigation currently pending on this issue, I believe it would be inappropriate for me to express a view.

13. What legal experience do you think is necessary for a person to make a good federal judge and what have you done to gain this experience?

Response: The legal experience necessary for a person to be a good United States District Court Judge is to have extensive judicial experience in both criminal and civil cases, because that's the lion's share of the work of a District Court Judge. To gain that type of experience I spent 12 years (1974-1986) at the Federal Defender's Office, where I handled probably 8-10 jury trials a year. One of those trials was a drug conspiracy trial that lasted six weeks. While in that office I also argued a number of my cases before the Sixth Circuit Court of Appeals. As a state court judge I handled criminal matters for 13 years (1987-2000) that consisted of murder, robbery, rape, drugs, assaults, thefts, weapons violations, breaking and entering, essentially the whole gamut of state crimes. In 2000 I moved from the criminal division to the civil division and have handled solely civil matters to the present. The monetary limit is $25,000 and above. In this division I have handled personal injury cases, contract cases, cases involving property disputes, malpractice (legal and medical), civil rights cases, employment cases, and a host of other types of cases that involved money or property. Over the 25 years I have conducted hundreds of jury trials and hundreds of non-jury trials and dealt with all the issues and motions that accompany them.

14. What role should empathy play in a judge's consideration of a case?

Response: A case must be decided based on the facts and the law that applies to the case. For the last 25 years as I have handled jury trials, one of the standard jury instructions that I give is to tell the jury that they are not to decide the case based on sympathy for any of the parties. The same standard applies to judges.

Responses of Gershwin A. Drain
Nominee to be United States District Judge for the Eastern District of Michigan
to the Written Questions of Senator Jeff Sessions

1. **In a 1985 Letter to the Editor of the *Detroit News* entitled "Death Penalty Brands Society," you wrote: "The death penalty is primitive punishment that is brutal and barbaric. Advanced, mature societies should engage in punishment and not vengeance as a way of dealing with crime." When asked about these statements at your hearing, you testified: "It would not affect my being a judge. The article was written over 30 years ago. I no longer hold to that position. My views about the death penalty have been evolving and changing. I no longer believe that. I was a pretty young zealous defense lawyer in those days and am now older and more mature and no longer subscribe to that." Senator Lee then asked, "So, your views have evolved?", and you answered "Yes." What are your views of the death penalty today?**

   Response: I believe that the death penalty is an acceptable and appropriate form of punishment. The United States Supreme Court has so held and I would faithfully apply that precedent.

2. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

   Response: No. Again the United States Supreme Court has held that it is not and I have no problem following and abiding by that law.

3. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

   Response: Yes. The federal government and most of the states have decided through their legislatures and constitutions that the death penalty is an acceptable form of punishment, and the Supreme Court has agreed that it is constitutional.

4. **Do you believe that the death penalty is a deterrent? Please explain your answer.**

   Response: Yes. I believe it is a deterrent. When people see the severity of the punishment inflicted and know of its existence it will serve to deter and prevent conduct that would bring the death penalty.

5. **Please describe with particularity the process by which these questions were answered.**

   Response: I first prepared my answers, then discussed them with an attorney with the Department of Justice and then submitted them.

6. **Do these answers reflect your true and personal views?**

   Response: Yes.

Responses of Robin S. Rosenbaum
Nominee to be United States District Judge for the Southern 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 principles embodied in our Constitution remain constant.

2. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: No.

   a. **If not, please explain.**

      Response: The principles embodied in our Constitution remain constant.

3. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

   Response: First, I would consider any applicable Supreme Court and Eleventh Circuit precedent. If none existed, I would look to the language of the statute and any applicable constitutional provisions to determine whether the question could be resolved by the plain language. If a question continued to exist, I would consider persuasive, non-binding precedent from other courts, as well as opinions involving analogous issues. In conducting this analysis, I would take care to avoid unnecessarily determining any constitutional questions and would ensure that any constitutional analysis required be limited to resolving the narrowest possible question.

4. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy's legal analysis?**

   Response: As a sitting United States magistrate judge, I am bound to follow Supreme Court precedent and would certainly do so in all cases, including in cases involving capital punishment. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy wrote for the majority of the Supreme Court. Consequently, his decision is binding, and I could not consider any personal opinion I might have of his analysis in determining a case involving the same legal issue.

a. **When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

Response: I believe that the United States Constitution should be interpreted in accordance with American law.

i. **If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

Response: When construing the United States Constitution, I consider American law and standards, as the United States Constitution is a uniquely American document.

5. **In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No, it is not proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution, unless binding Supreme Court or Eleventh Circuit precedent requires it.

a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: I would consider foreign law only if binding Supreme Court or Eleventh Circuit precedent required me to do so.

b. **Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: I believe that American laws should be interpreted by looking to American precedent and the United States Constitution.

Responses of Robin S. Rosenbaum
Nominee to be United States District Judge for the Southern District of Florida
to the Written Questions of Senator Chuck Grassley

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe that the most important attribute of a judge is integrity. Integrity includes fairness, intellectual honesty, and diligence. I believe that I have integrity.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should be fair, even-tempered, and patient, treating with dignity and respect all who come before the judge. I consider all of these aspects of the appropriate judicial temperament of a judge to be essential. I believe that I meet this standard.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: I am entirely committed to following faithfully the precedents of the Supreme Court and the Eleventh Circuit Court of Appeals and giving them full force and effect, even if I personally disagree with such precedents.

4. **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 involving a statute, I would first examine the language of the provision. If the language were clear, my analysis would begin and end with the language. If an ambiguity in the language existed, however, I would look to the structure and framework of the statute as a whole to interpret the provision at issue. In so doing, I would be careful to avoid a construction that would result in the redundancy or meaninglessness of any portion of the statute. If the answer were still not clear, I would consider whether precedents involving any analogous statutes were instructive. Finally, if ambiguity continued to exist, I would consider plainly ascertainable legislative intent.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: My opinion about the correctness of Supreme Court and Eleventh Circuit precedent would be irrelevant to my rendering of decisions. Regardless of my personal views, I would faithfully follow the precedents of the Supreme Court and the Eleventh Circuit Court of Appeals, giving them full force and effect --- even if I personally disagreed with them.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A statute should be declared unconstitutional only in rare circumstances where no possible fair constitutional interpretation can be discerned. Constitutional questions should be determined only if absolutely necessary and then, only in the narrowest possible way.

7. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I would manage my caseload as efficiently as possible while still ensuring that each case receives the attention it deserves. As a sitting United States magistrate judge, I have developed a familiarity with the federal caseload in my district and have learned efficient ways to handle different types of matters while still giving each matter appropriate attention. If confirmed, I would continue to make these goals a priority. More specifically, I would hold conferences early in each case to schedule firm and realistic deadlines, and I would continue to meet with the parties as necessary to ensure that the deadlines are met. To further facilitate the expeditious resolution of cases, I would continue to make use of technology, particularly telephone and video-conference capabilities for non-substantive hearings.

8. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Judges absolutely have a role in controlling the pace and conduct of litigation. As noted above, if confirmed as a district judge, I would hold conferences early in each case to schedule firm and realistic deadlines, and I would continue to meet with the parties as necessary to ensure that the deadlines are met. To further facilitate the expeditious resolution of cases, I would continue to make use of technology, particularly telephone and video-conference capabilities for non-substantive hearings.

9. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on Wednesday, March 7, 2012. After reviewing and considering them, I prepared answers to the questions and forwarded them to the Department of Justice for review, along with a letter of transmittal to the Senate Judiciary Committee.

10. **Do these answers reflect your true and personal views?**

Response: Yes.

Responses of Robin S. Rosenbaum
Nominee to be United States District Judge for the Southern 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: I believe that in determining cases, judges should diligently ascertain the applicable law and apply it faithfully to the facts of the case. In so doing, judges should be fair and impartial, treating with respect and dignity all who come before the court. In addition, in order to promote the legitimacy and fairness of the system, judges should fully explain the reasons for their decisions. Finally, judges should preside over their dockets in an efficient manner.

   I see the role of the judge in our constitutional system as a limited one. Judges do not make the law; instead, the role of judges is to apply the law as it is written, impartially and fairly, ensuring compliance with our 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: I can give my complete and unqualified assurances that litigants entering my courtroom will be treated fairly, regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff. I hope and certainly believe that my time on the bench as a United States magistrate judge demonstrates the sincerity and completeness of my commitment in this regard.

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* is an important and essential doctrine in our judicial system. Adherence to binding precedent creates predictability in and lends legitimacy to our system of justice. District courts are bound by their circuit court and the United States Supreme Court. Circuit courts are bound by the United States Supreme Court and the prior rulings of the circuit court unless the *en banc* circuit overrules its own precedent. If confirmed as a United States district judge, I would faithfully apply the binding precedent of the United States Supreme Court and the Eleventh Circuit Court of Appeals, as I have as a United States magistrate judge.

Responses of Richard Gary Taranto
Nominee to be United States Circuit Judge for the Federal Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

   a. **If not, please explain.**

      Response: The Constitution grants only the powers and protects only the rights that have been included and remain in it through its original adoption or the duly authorized processes of amendment. A court's job is to interpret and apply the Constitution's provisions, not to add new powers or rights evolved outside the constitutionally prescribed processes of constitutional creation and amendment.

2. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: No.

   a. **If not, please explain.**

      Response: The principles of the Constitution do not change unless the Constitution has been changed.

3. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

   Response: As an appellate judge, I would look to those sources that governing Supreme Court precedent deems relevant as a methodological matter to resolution of a constitutional issue. I would follow any on-point and still-good precedent on the particular issue, whether from the Supreme Court or from my own court. To the extent that precedent is not controlling on the particular point, I would examine the text of the constitutional provision at issue, what the language means by itself and in the context of the Constitution as a whole, what binding precedent prescribes about the general method of applying that provision and says about other issues bearing on the particular question, and what light is authoritatively shed on the meaning of the provision by Framers-era sources and other relevant history. I would examine what courts have said on the matter in decisions that do not serve as binding precedent for my court. And I would follow the canon favoring adoption of reasonable interpretations of statutes to avoid unconstitutionality.

4. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer**

under age 18 was unconstitutional. You filed an *amicus* brief in this case on behalf of the American Psychiatric Association. I understand that the Supreme Court has ruled on this matter and you are obliged to follow it, but do you agree with Justice Kennedy's legal analysis?

Response: As a judicial nominee, I believe that it would not be appropriate for me to express agreement or disagreement with a binding Supreme Court decision or its rationale. The amicus brief by the American Medical Association in *Roper*—a brief that was joined by my long-time client, the APA (but on which my name does not appear)—made no legal arguments about "evolving standards of decency," or foreign or state laws, but instead was focused on presenting empirical literature about adolescence. 2004 WL 1633549. The same is true of the amicus brief of the American Psychological Association in *Graham v. Florida*, 130 S. Ct. 2011 (2010) (invalidating "imposition of a life without parole sentence on a juvenile offender who did not commit homicide")—a brief that was joined by my client, the APA (and on which my name does appear). 2009 WL 2236778. Moreover, the briefs stated the positions only of my client; and my job in any case in which I represented or advised the APA, as with any client, was to advance the client's positions, not mine. If confirmed, I would follow *Roper*, *Graham*, and any other binding Supreme Court precedent under the doctrine of stare decisis.

a. **When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states, in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries. Do you believe either standard has merit when interpreting the text of the Constitution?**

   Response: The decisions of the American people, not those of foreign countries, determine the content of our Constitution, and it is not a judge's proper function to seek to bring our constitutional law into alignment with the laws or practices of other countries. The Supreme Court has held that the States' laws may be examined in determining whether a punishment is "unusual" under the Eighth Amendment. It also has cited certain foreign and international law as "confirmation" of a determination under the Eighth Amendment. *Roper v. Simmons*, 543 U.S. 551, 575, 578 (2005). As a judge, I would be bound by that and all other Supreme Court precedent.

   i. **If so, do you believe one standard more meritorious than the other? Please explain why or why not.**

      Response: Beyond what I have just stated, I do not believe that it would be appropriate for me to comment on the merits of binding Supreme Court precedents, which I would follow as a lower court judge.

5. **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: The decisions of the American people, not those of foreign countries, determine the content of our Constitution, and it is not a judge's proper function to seek to bring our constitutional law into alignment with foreign or international laws or decisions. The Supreme Court has held, however, that the Framers' understanding of English common law may be relevant to the meaning of certain constitutional provisions. *United States v. Jones*, 132 S. Ct. 945 (2012). And it has cited certain foreign and international law as "confirmation" of a determination under the Eighth Amendment. *Roper v. Simmons*, 543 U.S. 551, 575, 578 (2005). Those decisions are binding on a lower court.

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 except to the extent that Supreme Court precedent so required.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: The proper interpretation of our laws is that which gives effect to the ideas and solutions that our lawmakers enacted, not any ideas foreign nations have. Beyond that fundamental principle, there also are vital practical reasons for courts, in interpreting our laws, to resist looking at foreign ideas and solutions: inviting such inquiries can multiply costs, produce unreliable and inaccurate pictures of foreign systems that are not easily understood by outsiders, and harmfully divert attention from arrival at the proper domestic result, which is already a difficult enough task.

Responses of Richard Gary Taranto
Nominee to be United States Circuit Judge for the Federal Circuit
to the Written Questions of Senator Chuck Grassley

1. **At your confirmation hearing, I asked you about the level of scrutiny the Supreme Court has applied in due process and equal protection challenges to laws making distinctions based on sexual orientation. You responded in part by saying it would be inappropriate for you to discuss "a legal issue in advance of the adversarial process of adjudicating that issue in the concrete case." Perhaps we had a miscommunication at the hearing, but I was not asking you how you would rule in a hypothetical case. My question was regarding the current status of the law under Supreme Court precedent. You participated by way of amicus briefs in the two seminal Supreme Court cases addressing this issue in *Romer v. Evans* and *Lawrence v. Texas*. I would expect that you would be familiar with these cases and the standard the Supreme Court applied. If you need to refresh your memory, please reread these cases and any other relevant precedent and address the following questions:**

   a. **Based on current Supreme Court precedent, what is the standard of review to be applied in Due Process and Equal Protection challenges to laws making distinctions based on sexual orientation?**

      Response: The Supreme Court has not articulated a general standard of review to be applied in Due Process and Equal Protection challenges to laws making distinctions based on sexual orientation.

      In *Romer v. Evans*, 517 U.S. 620 (1996), the Court invalidated an amendment to the Colorado Constitution that, the Court concluded, "withdraws from homosexuals, but no others, specific legal protection from the injuries caused by discrimination, and it forbids reinstatement of these laws and policies." *Id.* at 627. Without addressing other kinds of laws or stating a general standard of review, the Court invalidated the amendment under the Equal Protection Clause on two grounds. First, the Court concluded that it was an "exceptional" type of law, describing it as "[a] law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government," which the Court said "is itself a denial of equal protection of the laws in the most literal sense." *Id.* at 632, 634. Second, the Court applied rational-basis review and held that the amendment failed under that standard, stating that the amendment's "sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests." *Id.* at 632.

      In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court ruled under the Fourteenth Amendment's Due Process Clause, invalidating a Texas "statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct." *Id.* at 562. The Court held that this conduct "is within the liberty of

persons to choose without being punished as criminals." *Id.* at 567; *id.* ("The liberty protected by the Constitution allows homosexual persons the right to make this choice."). Most of the opinion is a lengthy criticism of the reasoning of *Bowers v. Hardwick*, concluding with the overruling of *Bowers*. 539 U.S. at 566-78. The Court stated expressly that it was not addressing various kinds of laws involving sexual orientation other than the criminal bar before it (*id.* at 578), and it did not declare a particular standard of review. The Court stated its conclusion in these terms: "The Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual." 539 U.S. at 578.

In *Baker v. Nelson*, 409 U.S. 810 (1972), the Court dismissed for want of a substantial federal question an appeal from a Minnesota Supreme Court judgment, 191 N.W. 2d 185 (1971), that rejected a challenge to Minnesota's statute allowing issuance of a marriage license only to opposite-sex couples. The U.S. Supreme Court's order, issued without any opinion at all, does not address the question of the standard of review. The Court has said that the precedential effect of one its summary orders is limited: such an order binds a lower court in deciding a subsequent case that presents "the precise issues presented and necessarily decided by" the summary order, unless subsequent Supreme Court decisions "'instruct otherwise.'" *Mandel v. Bradley*, 432 U.S. 173, 176 (1977); *Hicks v. Miranda*, 422 U.S. 332, 344 (1975).

With the Supreme Court not having declared a general standard of review for challenges to laws based on sexual orientation, individual cases presenting such challenges in contexts different from *Romer*, *Lawrence*, and *Baker* necessarily involve arguments by the parties about what the proper standard of review should be. That is the kind of unsettled issue that I do not believe it would be appropriate for me to address in advance of a case that could come before me as a judge if I am confirmed. I also note that the amicus briefs of the American Psychological Association in *Romer* and *Lawrence*, which were joined by my client, the American Psychiatric Association, made no legal argument for a heightened standard of review, but focused on presenting empirical literature relevant to each case. *See* 1995 WL 17008445 (*Romer* brief); 2003 WL 152338 (*Lawrence* brief). Moreover, the briefs stated the positions only of my client; and my job in any case in which I represented or advised the APA, as with any client, was to advance the client's positions, not mine. If I am confirmed, I would follow *Romer*, *Lawrence*, *Baker*, and any other Supreme Court precedent.

b. The Administration has an announced policy that it will not defend the Defense of Marriage Act or similar laws in the context of suits brought by veterans or government employees. In justifying its refusal to defend against these suits, the Administration has asserted that "classifications based on sexual orientation should be subject to a heightened standard of constitutional scrutiny."

i. **Are you aware of any Supreme Court precedent that would support the Administration's position that classifications based on sexual orientation are subject to heightened scrutiny? Please review any applicable precedent in addressing this question.**

Response: Having reviewed the Administration's written submissions on the issue for purposes of answering this question, I am aware that the Administration has pointed to a number of Supreme Court precedents that consider whether certain classifications not involving sexual orientation warrant heightened scrutiny (*e.g.*, *Bowen v. Gilliard*, 483 U.S. 587, 602-03 (1987); *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 441-47 (1985)) and argued that the reasoning of those precedents should lead to heightened scrutiny of classifications based on sexual orientation. That is the kind of argument about the application and extension of precedents from different contexts that I do not believe it would be appropriate for me to address in advance of a case that could come before me as a judge if I am confirmed.

ii. **Do you agree that it would be improper for a district or circuit court to apply any level of scrutiny other than a rational basis standard, absent further guidance from the Supreme Court?**

Response: I am not aware of any Supreme Court case that establishes what level of scrutiny should generally apply to classifications based on sexual orientation. In the absence of such a precedent, a lower court should consider the specifics of the case before it, and if it had to decide on a particular level of scrutiny for the classification at issue, it should fully consider all arguments about the most faithful reading and application of the indirectly relevant precedents of the Supreme Court about how to settle on a level of scrutiny, recognizing that any heightened scrutiny must be affirmatively justified against the background of "[t]he general rule ... that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Cleburne*, 473 U.S. at 440.

2. **At your confirmation hearing I asked several questions pertaining to the Whistleblower Protection Act (WPA). I appreciated your taking the time to familiarize yourself with some of these issues prior to the hearing. As you mentioned, the Federal Circuit appears to have backed off of the "irrefragable proof" standard annunciated in *LeChance v. White*, 174 F.3d 1378 (1999), in its opinion in *White v. Department of Air Force*, 391 F.3d 1377 (2004). However, I have concerns that the irrefragable proof standard has not been completely extinguished.**

   a. **In *White*, the Federal Circuit used a formulation of gross mismanagement that could cause confusion. The Court held that "for a lawful agency policy to constitute 'gross mismanagement,' an employee must disclose such serious errors by the agency that a conclusion the agency erred is not debatable**

among reasonable people."[1] In your understanding of *White*, are disclosures of "gross mismanagement" subject to a higher standard than the reasonable belief standard applied to other disclosures? Please review any applicable precedent in addressing this question.

Response: The WPA, 5 U.S.C. § 2302(b)(8), prohibits certain employment action against an employee or applicant because of disclosure of information that the employee or applicant "reasonably believes evidences" certain kinds of wrongdoing, namely, a violation of law, rule, or regulation or "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety" (with exceptions for certain disclosures). *See also* 5 U.S.C. § 1221(e) (corrective action required if prohibited action "was a contributing factor" unless the agency "demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of [the] disclosure"). Section 2302(b)(8) thus has a two-part structure—first, a "reasonable belief" requirement and, second, a requirement of certain statutorily identified wrongdoing that is the subject of the protected disclosure. In my understanding, the first requirement is common to all the types of wrongdoing, but each such type of wrongdoing has its own meaning.

The *White* cases involved an employee's disclosure of what he alleged he "reasonably believed" was "gross mismanagement" (not "a gross waste of funds, an abuse of authority, or a violation of law," 391 F.3d at 1382 n.1). Stating that the statute "does not require that whistleblowers establish gross mismanagement by irrefragable proof," the Court reiterated that "the proper test" was whether "a disinterested observed with knowledge of the essential facts known to and readily ascertainable by the employee [could] reasonably conclude that the actions of the government evidence gross mismanagement." *Id.* at 1381. And "gross mismanagement" meant "such serious errors by the agency that a conclusion the agency erred is not debatable among reasonable people." *Id.* at 1382.

White elaborated on what the "gross mismanagement" standard does and does not require. It requires agency errors that were not reasonably debatable "on the information 'known to and readily ascertainable by the employee.'" *Id.* at 1382, 1383. But gross mismanagement need not be "'blatant'" and can include "policy disputes," policies that some actually thought were a good idea (but unreasonably), and errors in "adoption *or* continuation" of a policy. *Id.* at 1381, 1382, 1383. *See id.* at 1382 ("Many government policies, desirable or at least debatable at their inception, remain in place as the result of inertia or because those responsible do not wish to admit that the policy is no longer useful. The WPA is designed to protect those employees who call attention to such instances through a disclosure. There is again no requirement that there be a unanimous view that the continuation of the policy is a mistake.").

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[1] 391 F.3d. at 1382

On the other hand, while the "reasonable belief" component remains the same across the different types of wrongdoing, the specific definition of "gross mismanagement" does not apply across the board to all the listed types of wrongdoing. *White* itself said that "[t]his non-debatable requirement does not, of course, apply to alleged violations of statutes or regulations." *Id.* at 1382 n.2 (employee must simply show a reasonable belief as to legal violation). Elsewhere, the Federal Circuit has explained that "substantial and specific danger to public health or safety" contains no concept of non-debatable errors. *Chambers v. Department of the Interior*, 515 F.3d 1362, 1369 (Fed. Cir. 2008) (discussing factors of likelihood, timing, and nature of harm). As to the other two listed types of wrongdoing, *see, e.g., id.* at 1366 (noting Board "standard that a gross waste of funds requires 'more than debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government'"); *Doyle v. Department of Veterans Affairs*, 273 Fed. Appx. 961, 964 (Fed. Cir. 2008) (non-precedential) ("The Board has defined an 'abuse of authority' as 'an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.'").

b. In your understanding of Federal Circuit precedent, is there any context where a whistleblower would be required to rebut by "irrefragable proof" the "presumption that public officers perform their duties correctly, fairly, in good faith, and in accordance with the law and governing regulations"?[2]

Response: I am not aware of such a context. According to my computer search for "irrefragable," the word has not appeared in a Federal Circuit WPA case since 1999.

i. Do you believe "substantial evidence" would be a more appropriate standard in this context for whistleblower cases?

Response: I do not have a basis for assessing the appropriateness of such a standard. If confirmed, I would follow precedent on the governing standards, and I would give effect to the WPA's provisions in accordance with its evident function of serving the high value our democratic system places on transparency in government, including revelation of misconduct involving the government. Respecting burdens of proof, I note that the Federal Circuit has stated: "To prevail on the merits of a WPA claim, an employee must prove by a preponderance of the evidence that she made a protected disclosure," *Chambers v. Department of the Interior*, 602 F.3d 1370, 1376-77 (Fed. Cir. 2010), and, "by a preponderance of the evidence, that a protected disclosure was a contributing factor in an adverse personnel action," *Johnston v. MSPB*, 518 F.3d 905, 909 (Fed. Cir. 2008).

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[2] 174 F.3d at 1381

3. **At your hearing, I asked you about your understanding of the "irrefragable proof" standard. You responded saying that based on your brief research you believed this standard was comparable to a "clear and convincing evidence" standard, though the case in which the Federal Circuit states this was not in the whistleblower context. Indeed, the Federal Circuit has sometimes equated "irrefragable proof" with "clear and convincing evidence"[3] although at times it appears irrefragable proof requires something more.[4] Could you please elaborate on the answer provided at the hearing? In addressing this question, please also articulate whether you believe any formulation of the "irrefragable proof standard" has any role in the context of cases brought under Whistleblower Protection Act.**

   Response: In using the "irrefragable proof" language, the 1999 *Lachance* opinion was quoting a decision from outside the context of the 1989 WPA, *Alaska Airlines v. Johnson*, 8 F.3d 791 (Fed. Cir.1993), which itself reached back to pre-WPA cases, some of which found the requisite "almost [or well-nigh] irrefragable proof" of government bad faith. Subsequent to *Lachance*, the Federal Circuit in a 2002 decision in *Am-Pro Protective Agency v. United States*, 281 F.3d 1234, a non-WPA case, acknowledged "some confusion" about the "irrefragable proof" phrase and ruled that the phrase meant "clear and convincing evidence." Also, in the non-WPA context, the Federal Circuit has said: "In the cases where the courts has considered allegations of [governmental] bad faith, the necessary 'irrefragable proof' has been equated with evidence of some specific intent to injure the plaintiff." *Galen Med. Assocs., Inc. v. United States*, 369 F.3d 1324, 1330 (Fed. Cir. 2004), quoted in *Savantage Financial Services, Inc. v. United States*, 595 F.3d 1282, 1288 (Fed. Cir. 2010). Those decisions reflect my understanding of the meaning of the standard where it applies.

   As noted, the Federal Circuit has not used "irrefragable" in a WPA case since 1999, despite deciding many WPA cases. I am not aware of any WPA context where the "irrefragable proof" standard currently has a role to play. Moreover, the Federal Circuit has stated: "To prevail on the merits of a WPA claim, an employee must prove by a preponderance of the evidence that she made a protected disclosure," *Chambers v. Department of the Interior*, 602 F.3d 1370, 1376-77 (Fed. Cir. 2010), and "by a preponderance of the evidence, that a protected disclosure was a contributing factor in an adverse personnel action," *Johnston v. MSPB*, 518 F.3d 905, 909 (Fed. Cir. 2008).

4. **You have served as a law clerk at each level of the federal judicial system. This includes clerking for District Judge Abraham Sofaer, Circuit Judge Bork, and Justice O'Connor at the Supreme Court. Could you share with the Committee what you learned about being a judge from these three well respected judges?**

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[3] Committee on Homeland Security and Governmental Affairs, Whistleblower Protection Enhancement Act of 2009, Senate Committee Report 111-101, December 3, 2009.

[4] *Galen Medical Associates, Inc. v. U.S*, 369 F.3d 1324, 1330 (2004) ("In order to overcome the presumption of good faith [on behalf of the government], the proof must be *almost irrefragable*. *Almost irrefragable* proof amounts to "clear and convincing evidence.") (internal quotations and citations omitted) *See* also, *Long Lane Ltd. V. Bibb*, 159 Fed.Appx. 189, 192 (2005) ("well-nigh irrefragable proof is high, as it refers to evidence that cannot be refuted or disproved" (internal quotations and citations omitted)

Response: I prized and learned a great deal from all three of my clerkships. Judges Sofaer and Bork, and Justice O'Connor, each exemplified the core required commitments of judges: to hard work to meet the demands of parties and colleagues; to neutral, incisive, faithful application of the law to the facts attentively discerned from the record; and to civil, good-humored, and collegial discourse and interactions, with parties, colleagues, and staff. And because they are uniquely themselves, in personality and overall outlook and background, and got along well with other judges with other characters and approaches, I saw first-hand how first-class judging can readily encompass a range of differences and disagreements. Collectively, they showed me the challenges and satisfactions of a life engaged with the law through the judicial process.

a. At your hearing, you discussed attributes of Justice O'Connor you admired, and lessons you learned during your Supreme Court clerkship. Would you please provide a similar response regarding the lessons learned during your other clerkships?

Response: Judge Sofaer showed me how a busy district court could function at its best. He taught me the need in that forum for quick study to enable non-stop management of a large docket, patient and concentrated listening to evidence and careful, record-based finding of facts, efficient and civil interaction with lawyers and witnesses, dealing with jurors to inspire them to fulfill their vital roles, and filtering out from the welter of matters that demand quick decisions those matters which warrant fuller dress opinions. Judge Sofaer showed how all these needs could be met at the highest level. He brought exceptional intellectual talents, knowledge, and practical skills, reflecting his background as prosecutor and scholar, and his personality traits, including vigor, warmth, and life-loving humor and realism, inspired his law clerks, and all in his court, to function at their best.

Judge Bork showed me one ideal for appellate judging. The D.C. Circuit as a forum required dispassionate, collegial review at a remove from the heat of battle at trial, or (as often in that court) from the great complexity of agency proceedings, to ensure compliance with governing law. This required wide learning about numerous areas of government, as well as scrupulous respect for the standards of proper judicial review (its limits, its necessity) and an incisive mind to sift through the mountain of material and argument to separate facts, policies, and law. Judge Bork, with his background as Solicitor General and scholar, was a model of how to do this, bringing to bear his deep learning, piercing mind, great curiosity, and talent for clear and elegant writing. He also was a model of the collegiality necessary in an appellate court, through his wit, civility, love of debate, valuing of consensus when possible, and respect for disagreement when not.

I hope, and believe, that I learned many valuable lessons about judging, law, and life from Judges Sofaer and Bork, as well as from Justice O'Connor.

5. **In 1993, you wrote an editorial in support of the nomination of Ruth Bader Ginsburg to the Supreme Court saying, "Ruth Ginsburg is a judge's judge, like Henry Friendly and Learned Hand: She believes in the rule of law. She should be supported by liberals and conservatives alike." Do you believe Justice Ginsburg has lived up to your expectations as a Supreme Court Justice?**

   Response: As indicated by the title and the comparison to Judges Henry Friendly and Learned Hand—both of whom were renowned as epitomes of appellate judging according to neutral professional standards—the op-ed piece celebrated then-Judge Ginsburg for her similar commitment to sober reasoning and other aspects of legal craft. This assessment was based on the experience of my co-author as a clerk for then-Judge Ginsburg and on my simultaneous experience clerking for Judge Bork next door. I remain a great admirer of Justice Ginsburg's, but I do not think that it would be appropriate for me to comment further on her work as a Supreme Court Justice.

6. **What is the most important attribute of a judge, and do you possess it?**

   Response: A commitment to treating the parties with respect and complete impartiality in applying the law to the facts. My career in the law rests on prizing that bedrock commitment in judges.

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, in temperament, should embody the ideal of neutrality in adjudication while conveying full appreciation for the real-world interests of the litigants. That means treating all parties with respect, striving to understand their positions thoroughly, paying scrupulous attention to the record, faithfully understanding and applying the relevant precedents and sources of law, and explaining decisions clearly. For a court of appeals judge, it also means being collegial and efficient in working with fellow judges. I believe that I meet these standards.

8. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that 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 no precedent is controlling on a specific issue, my task would be to examine the governing law—whether it is a constitutional provision, a statutory provision, a regulation, or otherwise—and, with the assistance of the parties' analyses and arguments, to give that source the interpretation that most faithfully captures its meaning. In that process, I would carefully consider what other courts, in decisions not binding on the Federal Circuit, have said about the issue. I also would carefully consider precedents on closely related issues to determine what those precedents may fairly imply about the best answer to the new, first-impression issue. And I would apply approaches to interpretation prescribed by the Supreme Court, including a central focus on text, canons of constitutional avoidance, and the like.

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: I would be bound by a Supreme Court precedent even if I believed it to be seriously in error.

11. 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 federal statute unconstitutional only when it must—when a case or controversy requires the constitutionality to be decided and the statute cannot fairly be read to avoid inconsistency with the Constitution.

12. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community," in determining the meaning of the Constitution?

Response: The decisions of the American people, not those of foreign countries, determine the content of our Constitution, and it is not a judge's proper function to seek to bring our constitutional law into alignment with the laws or practices of other countries or of the world community. The Supreme Court has held, however, that the Framers' understanding of English common law may be relevant to the meaning of certain constitutional provisions. *United States v. Jones*, 132 S. Ct. 945 (2012). And it has cited certain foreign and international law as "confirmation" of a determination under the Eighth Amendment. *Roper v. Simmons*, 543 U.S. 551, 575, 578 (2005). Those decisions are binding on a lower court.

13. 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: A Federal Circuit precedent governs future panels unless it has been superseded by contrary precedents of the Supreme Court or of the *en banc* Federal Circuit. *En banc* consideration to overturn a prior precedent is justified only in exceptional circumstances, such as when panel decisions conflict with one another, there

is seriously harmful confusion or lack of clarity on the issue, or a panel decision has become prohibitively unworkable.

14. Please describe with particularity the process by which these questions were answered.

Response: I thought about each question, did research where necessary, and drafted answers. I reviewed my draft answers with attorneys from the Office of Legal Policy of the Department of Justice, made some revisions, and then submitted my answers.

15. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Richard Gary Taranto
Nominee to be United States Circuit Judge for the Federal Circuit
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: I would characterize my judicial philosophy as a thorough commitment to the rule of law. The role of the judge, as I see it, is to respect record facts and, within the limits of jurisdiction that authorize adjudication, to interpret and to apply all governing law, whether constitutional, statutory, regulatory, or otherwise, with impartiality, neutrality, fidelity, reason, appreciation for complexities, clarity of explanation, and all possible expedition.

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: Such fairness, entailing impartiality and neutrality in adherence to law and respect for the record, is the bedrock of the rule of law to which I am committed. I take the oath of office as a solemn, unwavering commitment to such fairness. In addition, my career has been apolitical—spent in the judicial system, representing a broad spectrum of clients. I have not served in political positions in government or in any political organization or engaged in political campaigning or advocacy.

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 maximizing stability, consistency, and predictability in our system of law. All judges should adhere completely to that doctrine, which treats precedent as controlling in all but limited, exceptional circumstances. One particular aspect of the doctrine is that a lower court must strictly follow a superior court's precedents until the superior court has instructed otherwise. Thus, a circuit court is bound to apply a Supreme Court precedent that is on point and has not been overturned and, more generally, to resolve all cases by giving all pertinent Supreme Court precedents a faithful reading.

Responses of Richard Gary Taranto
Nominee to be United States Circuit Judge for the Federal Circuit
to the Written Questions of Senator Mike Lee

1. How would you describe your judicial philosophy?

Response: I would characterize my judicial philosophy as a thorough commitment to the rule of law. This requires scrupulous attention to record facts, respect for jurisdictional limits and the role of the particular court within the judicial system as a whole and within the overall constitutional system, and adherence to the duty to apply and interpret all governing law, whether constitutional, statutory, regulatory, or otherwise, with impartiality, neutrality, fidelity, reason, appreciation for complexities, clarity of explanation, and all possible expedition.

a. To what sources would you look in deciding a case that turned on interpretation of a federal statute?

Response: As an appellate judge, I would look to those sources that governing Supreme Court precedent deems relevant as a methodological matter to resolution of a statutory issue. I would follow any on-point and still-good precedent on the particular issue, whether from the Supreme Court or from my own court. To the extent that precedent is not controlling, I would look first and foremost to the text of the statute—starting with the words of the particular provision at issue and then widening the inquiry to understand how that particular language fits within the enacted law as a whole, bearing in mind that broad invocations of policy are no substitute for close adherence to the text. Under Supreme Court decisions, legislative history, carefully and cautiously understood, may provide insight into the proper understanding of the text. In examining text and context, I would examine what controlling precedent says about issues or language related to those directly involved in the case. And I would examine any pertinent non-binding judicial decisions (*e.g.*, from other circuits).

b. To what sources would you look in deciding a case that turned on interpretation of a constitutional provision?

Response: As an appellate judge, I would look to those sources that governing Supreme Court precedent deems relevant as a methodological matter to resolution of a constitutional issue. I would follow any on-point and still-good precedent on the particular issue, whether from the Supreme Court or from my own court. To the extent that precedent is not controlling on the particular point, I would examine the text of the particular constitutional provision at issue, what the language means by itself and in the context of the Constitution as a whole, what binding precedent prescribes about the general method of applying that provision and says about other issues bearing on the particular question, and what

light is authoritatively shed on the meaning of the provision by Framers-era sources and other relevant history. I would examine what courts have said on the matter in decisions that do not serve as binding precedent for my court. And I would follow the canon favoring adoption of reasonable interpretations of statutes to avoid unconstitutionality.

2. In your view, what are the constitutional requirements for standing and how robustly should those requirements be applied to novel assertions of standing?

Response: Under Supreme Court precedent, Article III requires that, to have standing, a plaintiff must have a concrete and particular injury in fact, traceable to the alleged wrong, and redressable by a judgment in the case. *E.g.*, *Bond v. United States*, 131 S. Ct. 2355, 2366 (2011); *Arizona Christian School Tuition Org. v. Winn*, 131 S. Ct. 1436, 1442 (2011). Such standing requirements should be enforced robustly to ensure, as the Court has said, that federal courts do not overstep the limits on their role in the constitutional system. *E.g.*, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006).

3. What role do the text and original meaning of a constitutional provision play in interpreting the Constitution?

Response: The text and original meaning of a constitutional provision supply the proper standard for interpreting the Constitution.

4. Do you believe that Congress has implied powers beyond those enumerated in the Constitution?

Response: Congress has only such powers as are enumerated in the Constitution, including under the Necessary and Proper Clause's authorization of laws that are "necessary and proper for carrying into execution" more specifically enumerated powers.

a. If so, which ones? And which provisions of the Constitution account for these implicit rights?

Response: The Necessary and Proper Clause is an express authorization of powers, but if one viewed it as authorizing "implicit" powers, it does so by reference to the more specifically enumerated powers under a standard of being "necessary and proper for carrying [them] into execution." How to elaborate on that standard more specifically has been the subject of differing opinions within the Supreme Court, *see United States v. Comstock*, 130 S. Ct. 1949 (2010) (several opinions), and is the subject of pending litigation, including in the cases involving the Affordable Care Act. I do not believe that it would be appropriate for me to address the matter in advance of a case that could come before me as a judge if I am

confirmed. In such a case I would faithfully follow Supreme Court precedent on the subject.

b. If not, how would you approach the multitude of legislation that Congress has enacted without reference to an appropriate authorizing provision of the Constitution?

Response: The Supreme Court has said: "The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." *Woods v. Lloyd W. Miller Co.*, 333 U.S. 138, 144 (1948). I am not aware of Supreme Court precedent holding that legislation that in fact comes within a power the Constitution grants to Congress is invalid just because Congress has not referred to the authorizing power. If there is such precedent, I would follow it.

i. Would you strike down laws not properly authorized by the Constitution?

Response: In a case where the issue had to be reached, I would strike down laws that are not properly authorized by the Constitution.

5. Do you believe that the Constitution protects rights not specified in the Constitution?

Response: The Constitution does not protect rights that it does not specify.

a. Do you believe that the Constitution provides for a right of privacy?

Response: The Constitution does not use the term "privacy" and does not guarantee a "right of privacy." The Fourth Amendment protects certain privacy interests through its guarantee regarding "searches and seizures." And the Supreme Court has found in other provisions, such as the First Amendment and the Due Process Clauses, protection for certain interests that it has sometimes described as privacy interests. *E.g.*, *NAACP v. Alabama*, 357 U.S. 449, 462 (1958) ("privacy in group association" sometimes protected by First Amendment); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (due process decision describing *Griswold v. Connecticut*, 381 U.S. 479 (1965), as protecting "marital privacy").

b. If so, which provision of the Constitution provides for that right?

Response: As noted, the Constitution does not provide for a "right of privacy," but other provisions protect certain interests that are "privacy" interests.

6. **Do you believe there the Constitution provides for substantive due process—that is to say, that the Constitution does not allow the government to infringe certain fundamental rights regardless of the procedural guarantees that might be afforded?**

Response: The Supreme Court has held that the Due Process Clauses, in addition to implicitly incorporating certain Bill of Rights protections (in the case of the Fourteenth Amendment) and equal-protection principles (in the case of the Fifth Amendment), "protect[] individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them.'" *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992). It has held, too, that this principle "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 719-21 (1997).

a. **Which do you believe are protected under substantive due process?**

Response: The Supreme Court has recited a number of "fundamental rights and liberty interests" subject to protection under substantive due process. *Washington v. Glucksberg*, 521 U.S. 702, 719-20 (1997) ("rights to marry; to have children; to direct the education and upbringing of one's children; to marital privacy; to use contraception; to bodily integrity; and to abortion"; Court has "also assumed, and strongly suggested," protection for "the traditional right to refuse unwanted life saving medical treatment") (citations omitted). More recently, the Supreme Court applied a substantive due process rationale to invalidate a "statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct." *Lawrence v. Texas*, 539 U.S. 558, 562 (2003).

b. **If you believe such rights are protected, is it also your belief that *Lochner v. New York*, 198 U.S. 45 (1905) was correctly decided and should be the state of the law? *Lochner*, to paraphrase, was a case in which the Court held unconstitutional a New York statute that prohibited employment of bakery employees for more than 10 hours a day or 60 hours a week.**

Response: As a judicial nominee, I believe that it would not be appropriate for me to opine on the correctness of *Lochner* or of other Supreme Court decisions. I do note that, as to *Lochner*, the Court has referred to "the discredited substantive-due-process case of *Lochner*" (*College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Fund*, 527 U.S. 666, 690 (1999)) and said that "[t]he doctrine that prevailed in *Lochner* ... and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963); *see also Day-Brite Lighting Inc. v. Missouri*, 342 U.S. 421, 423 (1952); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505

U.S. 833, 861 (1992) ("*West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), signaled the demise of *Lochner* by overruling *Adkins [v. Children's Hospital of District of Columbia*, 261 U.S. 525 (1923)].").

c. If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner*, on what basis do you distinguish these types of rights for constitutional purposes?

Response: My role as a judge would be to follow Supreme Court precedents on substantive due process as well as other matters.

7. In the case of the Commerce Clause, apart from circumstances present in *Lopez* and *Morrison*, what are the limits on Congress's Commerce Clause power?

Response: The Supreme Court has repeatedly declared that the federal government is a government of limited powers, *see New York v. United States*, 505 U.S. 144, 155 (1992), quoted Madison's statement that the powers are "'few and defined,'" *United States v. Lopez*, 514 U.S. 549, 552 (1995) (quoting Federalist No. 45), and stated that the powers do not include "a plenary police power," *id.* at 566; *United States v. Morrison*, 529 U.S. 598, 618 (2000). As to the Commerce Clause in particular, the Court found an overstepping of the bounds of that authority in *Lopez* and *Morrison*. The Supreme Court may speak further to explain those bounds in the pending cases involving the Affordable Care Act. I do not believe that it would be appropriate for me to address the matter in advance of a case that could come before me as a judge if I am confirmed. In such a case I would faithfully follow Supreme Court precedent on the subject, giving effect to the Court's explanations as they apply to the particular issue presented.

a. Do you believe that Congress has at any time overstepped its authority under that provision since *Wickard*, other than in *Lopez* and *Morrison*?

Response: I am unaware of such Supreme Court decisions other than *Lopez* and *Morrison*, but if there is such a decision, I would follow it. As for other congressional enactments that have not been the subject of a Supreme Court decision, I do not believe that it would be appropriate for me to address the matter in advance of a case that could come before me as a judge if I am confirmed. In such a case I would faithfully follow Supreme Court precedent on the subject.

8. How would you go about determining whether a group of persons is a "suspect class," such that laws affecting that group should receive strict scrutiny?

Response: I would examine Supreme Court precedents for whether they answer the question for the particular class and, more generally, for what they teach about the proper method of analysis for a court to use in deciding in the first instance whether a particular class is "suspect," recognizing that any such determination must be affirmatively justified against the background of "[t]he general rule ... that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985).

9. Under what circumstances do you think it proper for a court to conclude that Congress has delegated legislative power to the executive branch in violation of the Article I of the Constitution?

Response: The Supreme Court has stated that there is no such delegation of legislative power when, "according to common sense and the inherent necessities of the governmental co-ordination," Congress has laid down an "intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform." *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 406 (1928); *see Mistretta v. United States*, 488 U.S. 361, 372 (1989); *id.* at 415-16 (Scalia, J., dissenting). That precedent, and any that might elaborate on or modify it, would govern how to answer the improper-delegation question in any particular case.

10. How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?

Response: The Supreme Court has often enforced the system of separation of powers and checks and balances that the Framers built into the Constitution (before the addition of the Bill of Rights), recognizing that the provisions that define that system provide "structural protections against abuse of power [that are] critical to preserving liberty." *Bowsher v. Synar*, 478 U.S. 714, 730 (1986); *see Free Enterprise Fund v. Public Company Account Oversight Bd.*, 130 S. Ct. 3138, 3157 (2010); *Stern v. Marshall*, 131 S. Ct. 2594, 2608-09 (2011).

a. How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?

Response: I would determine whether there was a proper case or controversy that required decision of whether a branch assumed an ungranted authority and then apply the precedents of the Supreme Court to determine whether such an impermissible assumption had occurred.

b. What is your understanding of the Recess Appointments Clause?

Response: The scope of authority under the Recess Appointments Clause is a matter currently in litigation. I do not believe that it would be

appropriate for me to address the matter in advance of a case that could come before me as a judge if I am confirmed.

i. **To what sources would you look in interpreting that clause?**

Response: Focusing on the specific question presented in a case, I would examine precedents from the Supreme Court and other courts for what they teach about whether a court can and should adjudicate the question and for what they teach about the sources for answering the question, including about the meaning of the constitutional text—both the Clause itself and its role within the Constitution as a whole—and the weight to be accorded to the history of practices and pronouncements of the Article I and II Branches.

ii. **Which branch should determine whether the Senate is in recess?**

Response: This is an aspect of disputes currently in litigation. I do not believe that it would be appropriate for me to address the matter in advance of a case that could come before me as a judge if I am confirmed.

iii. **In the event of a dispute, how you would you determine whether the Senate is in recess? Would you employ a functionalist approach, and if so, why?**

Response: This is an aspect of disputes currently in litigation. Beyond what I have said above about how I would go about approaching such a question in a case, I do not believe that it would be appropriate for me to address the matter in advance of a case that could come before me as a judge if I am confirmed.

11. What legal experience do you think is necessary for a person to make a good federal judge and what have you done to gain this experience?

Response: Many kinds of legal experience can prepare a person to be a good federal judge. My own experience has been a quarter century of litigating cases in the federal courts, overwhelmingly at the appellate level, and centrally for the last decade in the Federal Circuit. That experience, together with having clerked at three levels of the federal courts, served in the Solicitor General's office, and taught patent law, has prepared me to serve on the Federal Circuit.

12. What role should empathy play in a judge's consideration of a case?

Response: If "empathy" means a personal, emotional, political, or similar sympathy for a party, it should play no role in the judge's decision, which must be a faithful application of the law to the facts, with the judge taking constant care to

avoid influence of any personal views. If "empathy" means simply a full and respectful appreciation for the real-world interests of all of the parties before the court, the attitude is an appropriate part of the fairness and thoroughness of the judicial process.

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VIA EMAIL AND FIRST CLASS MAIL

November 17, 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 Gershwin Drain
To the United States District Court
for the Eastern District of Michigan

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Gershwin Drain who has been nominated for a position on the United States District Court for the Eastern District of Michigan. As a result of our investigation, the Committee is of the unanimous opinion that Judge Drain is "Qualified" for this position.

A copy of this letter has been provided to Gershwin Drain.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Gershwin Drain
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 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 Magistrate Judge Robin S. Rosenbaum
To the United District Court for the District of Florida

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Robin S. Rosenbaum who has been nominated for a position on the United District Court for the District of Florida. As a result of our investigation, the Committee is of the unanimous opinion that Judge Rosenbaum is "Well Qualified" for this position.

A copy of this letter has been provided to Judge Rosenbaum.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Robin S. Rosenbaum
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

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 Richard G. Taranto
To the United States Court of Appeals for the Federal Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Richard G. Taranto who has been nominated for a position on the United States Court of Appeals for the Federal Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Taranto is "Well Qualified" for this position.

A copy of this letter has been provided to Mr. Taranto.

Sincerely,

Allan J. Joseph
Chair

cc: Richard G. Taranto
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

1150 18th Street, N.W.
Washington, D.C. 20036

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February 23, 2012

The Honorable Patrick J. Leahy,
Chair

The Honorable Chuck Grassley,
Ranking Member

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Richard Gary Taranto as Circuit Judge, U.S. Court of Appeals for the Federal Circuit

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to support the nomination of Richard G. Taranto to the United States Court of Appeals for the Federal Circuit. He is an extraordinarily fine lawyer and person, and, if confirmed, will be an excellent judge.

I have worked with Richard closely for nearly 30 years, the majority of them in a two-person firm. During that time I have developed great respect for his intelligence, his judgment, and his intellectual and personal fairness. He is able to consider other views without rancor, and he has the kind of courteous manner that, as a judge, would serve him well with his colleagues and with the attorneys that appear before him. I have been fortunate to practice with him, and I think that he would be a wonderful addition to the Federal Circuit.

I urge the Senate to confirm him to be a Circuit Judge.

Sincerely,

H. Bartow Farr, III

Statement of Senator Chuck Grassley

Before the Committee on the Judiciary

On the Nominations of:

Richard Gary Taranto, to be United States Circuit Judge for the Federal Circuit

Gershwin A. Drain, to be United States District Judge for the Eastern District of Michigan

Robin S. Rosenbaum, to be United States District Judge for the Southern District of Florida

February 29, 2012

Mr. Chairman:

Today we continue to make real progress on President Obama's judicial nominees. Since convening the 2nd Session of the 112th Congress last month, the Senate has been in Session about 18 days, including today. During that time we have held three nominations hearings, receiving testimony from 12 judicial nominees. All in all, more than 85% of President Obama's judicial nominees have received a hearing.

We have confirmed five nominees in those 18 days. In total, we have confirmed 131 of President Obama's judicial nominees, over 71 percent.

We continue to hear concerns about the judicial vacancy rate. But let me emphasize again, that for more than half of the vacancies, including those designated as "judicial emergencies," the President has failed to submit a nomination. So critics need to look at the beginning of the process when commenting on vacancies.

I welcome the nominees who are appearing before us today, their friends and families. I look forward to the testimony and will have questions for the nominees.

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
February 29, 2012

Today we welcome three of President Obama's superbly qualified judicial nominees to the Committee. I thank Senator Franken for chairing this important hearing and I thank our Ranking Member, Senator Grassley, for continuing to work with me to schedule these hearings.

However, as I noted in my statement for the first confirmation hearing of the year, the Committee is now proceeding less efficiently than I would like. I have accommodated Senator Grassley's preferred schedule now for several months, holding a hearing for only one nominee in all of December and moving our last hearing back a week at his request. Regrettably today's hearing is another with less than a full slate of nominees. This is true of both of our February hearings because the minority did not review background paperwork of the nominees I wanted to include. With vacancies on Federal courts across the country remaining extremely high, as they have throughout the term of the Obama administration, we cannot afford to slow down our consideration of nominations in this manner.

We remain well behind the pace set by the Senate during President Bush's first term. By the end of President Bush's first term, the Senate had confirmed 205 district and circuit nominees. To date now in the fourth year of President Obama's first term, the Senate has confirmed only 129 district and circuit nominees. By this date in 2004, the Senate had confirmed 170 district and circuit nominees. Today the total is more than 40 confirmations shy of the mark. During President Bush's first term the Senate confirmed the 130th nominee to our circuit and district courts in early June of his third year in office. Here we are approaching the spring of President Obama's fourth year, nearly nine months later, and we still have not reached that milestone. That is why the judicial vacancy rate remains nearly double what it was at this point in the Bush administration.

Senate Republicans continue to use a strategy of across-the-board delays that has led to a shamefully high number of judicial vacancies. In 2009, the Senate was able to confirm only 12 Federal circuit and district court judges, the lowest total in 50 years. In 2010, the Senate was able to confirm 48 Federal circuit and district judges. That has led to the lowest confirmation total for the first two years of a new presidency in 35 years. As a result, judicial vacancies rose again over 110 and stayed near 90 for the longest period of historically high vacancies in 35 years.

Still today, nearly one out of every 10 Federal judgeships is vacant. Judicial emergency vacancies remain unfilled because of Republicans' refusal to consider and confirm consensus nominations that were on the calendar to fill those vacancies at the end of last year. Fourteen of the 19 nominees currently ready for final Senate action have been stalled since last year despite significant bipartisan support. There has been no explanation. There is no excuse.

I had hoped that the New Year would bring greater cooperation from Republican Senators. That has not been the case. Instead, we have lost opportunities with hearings that have not had a full

slate of nominees and Republican refusal to consent to Senate votes on nominees this Committee reviewed and reported with the support of every member of the Committee.

In January I urged that the Committee expedite consideration of Arizona Supreme Court Justice Andrew Hurwitz to the U.S. Court of Appeals for the Ninth Circuit. Despite the strong support of this home state Senators, Senator Kyl and Senator McCain, that has not happened. Instead, Justice Hurwitz, who had been nominated to fill one of four judicial emergency vacancies on the Ninth Circuit, is yet to be reported by the Committee. The Ninth Circuit serves more than 61 million Americans, and handles double the caseload of the other Federal circuit courts. The Chief Judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, have written to the Senate emphasizing the Ninth Circuit's "desperate need for judges," urging the Senate to "act on judicial nominees without delay," and concluding that they "fear that the public will suffer unless our vacancies are filled very promptly." Their pleas have been for naught, as well.

The Committee needs to pick up the pace. We have been able to report only four of the nine nominees considered at previous hearings. The Senate has an even worse backlog. Fourteen judicial nominees remain pending from last year creating a bottleneck and delay for the nominees we need to consider this year to make real progress.

I thank Senators Durbin, Schumer, Feinstein, Klobuchar, Franken and Coons for their powerful statements on judicial nominations to the Senate and the American people last Tuesday. I know that the Majority Leader is working hard to make real progress. With cooperation from the minority, the Senate should be able to vote to confirm all of the judicial nominees being delayed and fill longstanding judicial vacancies affecting 130 million Americans.

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February 16, 2012

The Honorable Patrick J. Leahy
Chairman

The Honorable Chuck Grassley
Ranking Member

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Richard Gary Taranto as Circuit Judge,
United States Court of Appeals for the Federal Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We write in enthusiastic support of the nomination of Richard Taranto to the U.S. Court of Appeals for the Federal Circuit, and urge his prompt hearing and confirmation. We are lawyers who are familiar both with the docket of the Federal Circuit and with Richard's own work and character. We know Richard, as a lawyer and a person, in different ways: he has been co-counsel to some of us, opposing counsel to others, a colleague to still others, but an asset to all. We come from diverse backgrounds and varying affiliations, but we are united in our admiration for Richard's skills as a lawyer and our respect for his integrity, his civility, his judgment, and his sense of fair play.

We believe that Richard is ideally suited to carry out the tasks assigned to the Federal Circuit, which include deciding cases involving international trade, government contracts, patents, trademarks, certain money claims against the United States government, federal personnel, veterans' benefits, and public safety officers' benefits claims. Richard's intelligence, independence, judgment, and temperament would make him a welcome addition to any court. But Richard is especially experienced in appellate work and the particular legal issues that dominate the docket of the Federal Circuit. He clerked on the U.S. Supreme Court for Associate Justice Sandra Day O'Connor. He served the United States for several years as an Assistant to the Solicitor General. In private practice, he has represented a wide range of clients before the U.S. Supreme Court and in the U.S. Courts of Appeals, including arguing 20 times in the Federal Circuit. He has served, since 2009, as a member of the Appellate Rules Advisory Committee for the United States Judicial Conference.

Richard also has deep substantive knowledge of patent law. As anyone can attest who has engaged Richard on a question of patent law – whether in conversation or in court – Richard has devoted extraordinary attention to understanding the manner in which our patent laws function. That is why Harvard Law School invited him to teach a course there in patent law,

which he did with distinction. Such expertise in patent law would be important for any nominee to the court of appeals exclusively charged with superintending patent litigation, but all the more so now, when patent law is receiving heightened attention from both the Supreme Court and from the political branches. Richard's combination of substantive knowledge and intellect suits him perfectly to the position for which he has been nominated.

These qualifications themselves make Richard rare, but it is his other attributes that make Richard a superlative choice for the Federal Circuit. He is judicious in temperament, analyzing issues with the greatest care and thoughtfulness. He is precise, both in his written advocacy and in his oral presentation, avoiding hyperbole and ensuring accuracy. He is also a complete master of the issues he confronts. His 25 years of appellate practice have made him highly accomplished in the kind of writing required of appellate judges. He knows the importance of fidelity to law, clarity, candor, vigor, and responsiveness.

Richard is, moreover – and notwithstanding his experience and talents – exceptionally modest with a deeply ingrained habit of civility; he solicits the views of others, and hears them out with patience and respect before offering his own views. Not only in court, but in private interactions, with co-counsel, colleagues, and lawyers who are adverse to his clients, Richard maintains his equanimity and politeness and engages in calm, reason-based discussion. As an illustration, for many years Richard has participated in scores of moot court sessions at the Georgetown University Law Center Supreme Court Institute. This is a forum where advocates practice their arguments prior to a Supreme Court oral argument before a panel of lawyers who volunteer their time for the sole purpose of serving the Court by improving the quality of advocacy before it. Because Richard is held in such high regard by members of the Supreme Court Bar, no one is more frequently requested to serve on a Supreme Court Institute moot court panel than Richard. His ability to identify vulnerabilities in legal arguments and his willingness to offer constructive advice to counsel are legend and the Supreme Court Institute has repeatedly singled him out for his extraordinary service. His appointment will serve the collegiality of the Federal Circuit bench and add to the quality of the oral arguments before that Court.

We expect that the Senate, after full inquiry, will see the virtues we know from first-hand experience. Richard Taranto has exceptional legal ability and personal character, and we urge the Senate to confirm him promptly to be a Circuit Judge.*

* Although we list our affiliations below, all of us are signing this letter in our personal capacities.

Sincerely,

Richard Lazarus Harvard Law School	Michael Kellogg Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC	Carter Phillips Sidley Austin LLP

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Meredith Martin Addy, Steptoe & Johnson LLP
Kenneth Anderson, Washington College of Law, American University
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J. Scott Ballenger, Latham & Watkins LLP
Rebecca A. Beynon, Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
Lisa S. Blatt, Arnold & Porter LLP
The Honorable Robert H. Bork
Theodore J. Boutrous Jr., Gibson, Dunn & Crutcher LLP
Henk Brands, Paul Weiss
Richard P. Bress, Latham & Watkins LLP
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Iain Campbell, W.L. Gore & Associates, Inc.
J. Robert Chambers, Wood Herron & Evans LLP
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Rebecca Troth, Sidley Austin LLP
Daniel E. Troy, SVP and General Counsel, GlaxoSmithKline plc
Alan Untereiner, Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP
Helgi Walker, Wiley Rein LLP
Donald Ware, Foley Hoag LLP
Amy L. Wax, University of Pennsylvania Law School
Seth Waxman, WilmerHale
Dan K. Webb, Winston & Strawn LLP
William K. West, Jr., Pillsbury Winthrop Shaw Pittman LLP
Paul R.Q. Wolfson, WilmerHale
Christopher J. Wright, Wiltshire & Grannis LLP
Paul Zegger, Sidley Austin LLP
Matt Zinn, TiVo

THE PRPARED STATEMENT OF HON. MARCO RUBIO, A U.S. SENATOR FROM THE STATE OF FLORIDA

PREPARED REMARKS BEFORE THE JUDICIARY COMMITTEE

Thank you very much, Mr. Chairman.

Thank you for allowing me to testify today.

Mr. Chairman, I wish to speak for a few minutes in support of the nomination of Magistrate Judge Robin Rosenbaum, to serve as a judge on the United States District Court for the Southern District of Florida.

Joining us here today, in support of Magistrate Judge Rosenbaum, are members of her family; her husband, Phil Rothschild; her daughters, Evin Rothschild and Rosie Rothschild; her farther, Jerry Rosenbaum; her mother, Hedy Rosenbaum; and her sisters, Jodi Fiedler and Marci Rosenthal. Her 12-year-old-daughter, Evin, is especially excited to attend because she is taking American Government in school; her class may be watching this hearing via the webcast.

Mr. Chairman, the Judiciary Committee plays the critical role of diligently evaluating each nominee. I know this committee will thoroughly examine the record and career of Magistrate Judge Rosenbaum. This committee is tasked with examining the record of each nominee to ensure that they have been properly vetted, that they respect the rule of law and the constitution.

I know each of you will have questions for Magistrate Judge Rosenbaum and will give her nomination to the U.S. District Court for the Southern District of Florida the attention and consideration it deserves. Magistrate Judge Rosenbaum certainly has extensive experience as an attorney and a magistrate judge in the U.S. District Court for the Southern District of Florida, so she is well versed in the issues she will likely face should she be confirmed.

Magistrate Judge Rosenbaum's educational background speaks for itself. She obtained her undergraduate degree from

Cornell University and her law degree from the University of Miami College of Law, where she graduated *magna cum laude* and Order of the Coif.

Magistrate Judge Rosenbaum has served as a United States magistrate judge in Fort Lauderdale, in the Southern District of Florida, since her appointment on September 4, 2007. Since her appointment to the bench, she has garnered a solid reputation with attorneys in the community for her intellect and abiding sense of fairness.

Magistrate Judge Rosenbaum also remains an active and involved member of the Florida legal community. Since 2009, she has taught as an adjunct professor at the University of Miami School of Law. In addition, she served as the president of the Broward County Chapter of the Federal Bar Association.

Magistrate Judge Rosenbaum's knowledge of the law is demonstrated, in part, by her extensive legal experience.

Immediately prior to becoming a magistrate judge, Magistrate Judge Rosenbaum served nine years as an Assistant United States Attorney in the United States Attorney's Office for the Southern District of Florida. During that period, from September 2002 through May 2007, she was the Chief of the Economic Crimes Section of the Fort Lauderdale branch of the United States Attorney's Office for the Southern District of Florida. Magistrate Judge Rosenbaum has also clerked for the Honorable Stanley Marcus, United States Circuit Judge for the Eleventh Circuit Court of Appeals; worked in private practice for Holland & Knight LLP; and served as staff counsel for Independent Counsel Daniel Pearson on the investigation of former United States Secretary of Commerce Ronal Brown. Magistrate Judge Rosenbaum began her legal career in the Attorney General's Honors Program, where she served for four years as a Trial Attorney at the Federal Programs Branch of the Civil Division of the United States Department of Justice.

I am honored to introduce Magistrate Judge Robin Rosenbaum today. Mr. Chairman, thank you for giving this nomination full consideration.

THE PRPARED STATEMENT OF HON. DEBBIE STABENOW, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Judge Gershwin Drain

Thank you, Chairman Leahy, and Ranking Member Grassley, for holding this hearing today.

I, too, am honored to introduced Judge Gershwin Drain today. I have known Judge Drain for many years, and I can tell you he is an impressive individual with a long record of excellent public service.

As Senator Levin mentioned, he's served in the District Court, Detroit Recorder's Court, and the Wayne County Circuit Court. He's active in the community – I see him all the time at events and meetings back home. And he's dedicated to his family, who are here to support him today.

But don't take my word for it. The American Bar Association Standing Committee on the Federal Judiciary unanimously rated Judge Drain qualified to serve on the District Court.

He was named a "Man of Excellence" by the Michigan Chronicle, and the Detroit News named him "Michiganian of the Year."

This is an important judgeship that has been vacant for more than two years now. Judge Drain has the qualifications, the experience, and the temperament for this position.

Once again, I thank the Judiciary Committee for holding this hearing, and I urge you to move forward on Judge Drain's nomination.

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