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S. HRG. 112–72, Pt. 8

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

JUNE 6, JUNE 27, AND JULY 11, 2012

Serial No. J–112–4

PART 8

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U.S. GOVERNMENT PRINTING OFFICE

77–421 WASHINGTON : 2013

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NOMINATION OF TERRENCE G. BERG, OF MICHIGAN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN; JESUS G. BERNAL, OF CALIFORNIA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; LORNA G. SCHOFIELD, OF NEW YORK, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; AND GRANDE LUM, OF CALIFORNIA, TO BE DIRECTOR, COMMUNITY RELATIONS SERVICE

WEDNESDAY, JUNE 6, 2012

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

The Committee met, pursuant to notice, at 2:30 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Richard Blumenthal, presiding.

Present: Senators Blumenthal, Grassley, and Lee.

OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator BLUMENTHAL. I am very pleased to call this hearing to order and to welcome Senators Levin and Boxer to introduce nominees from their States.

I am grateful to the Judiciary Committee and to Chairman Leahy, who could not be here today, for the opportunity to chair this meeting. I regard it as a privilege and an honor to preside at a hearing that has such a consequential role in our justice system. Nothing is more important than the face and voice of justice in the person of district court judges and other nominees whom we have today, and my hope is that it will be truly a bipartisan process for you and for all the nominees to these very, very profoundly significant positions. My hope is that Republicans and Democrats will work together, vote together, and assess together the merits of each of the nominees as dispassionately and objectively as possible.

I want to welcome each of the nominees today and particularly their families. They probably know what is in store better than you do, than they have told you, but your being here, your families,

means a tremendous amount to you and to the Committee for this historic hearing.

I would also like to welcome Senate colleagues who are here and others who may be arriving. I know Senator Grassley, the Ranking Minority Member, may well be here shortly.

And with that, I would like to ask first, Senator Boxer, if you would introduce the nominee from California.

PRESENTATION OF JESUS G. BERNAL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, AND GRANDE LUM, NOMINEE TO BE DIRECTOR, COMMUNITY RELATIONS SERVICE, BY HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Thank you so much, Mr. Chairman, and it is very nice to see you up there. It suits you very well.

Senator BLUMENTHAL. Thank you.

Senator BOXER. I am honored to be here today to welcome and introduce Jesus Bernal, who has been nominated to the Central District Court of California. Mr. Bernal is very well respected by colleagues in the Riverside legal community and will make an outstanding addition to the Federal bench. He also has the support of my colleague and your colleague on the Committee, Senator Feinstein, who could not be here today, and I would ask unanimous consent to submit her statement for the record.

Senator BLUMENTHAL. Without objection.

Senator BOXER. Thank you.

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

Senator BOXER. I would also like to welcome Mr. Bernal's wife, Patricia, who is here with us today.

I would also like to welcome another Californian who is coming before the Committee, Professor Grande Lum, from the University of California, Hastings, who has been nominated as Director of the Justice Department's Office of Community Relations. He is currently a clinical professor of law and director of the Center for Negotiations and Dispute Resolution. His wife, Nan Santiago, is here with him.

Back to Mr. Bernal, because this is a story. He was born the eldest son of two humble factory workers, Gilberto and Martha, who aspired for their sons and daughters to attend college and not to have to work in a factory. Gilberto and Martha would tell young Jesus and his siblings, "You study. We work."

Their aspirations were realized as all five of their children attended college, and today Mr. Bernal stands on the edge of writing another chapter in his family's history as he seeks to become a Federal district court judge.

To his mother, Martha, and his brothers and sisters who are watching today via Webcast, I share in your pride on this momentous day.

Mr. Bernal is a graduate of Yale University with honors and Stanford Law School. After law school, he clerked for Judge David Kenyon on the same court to which he has been nominated, the Central District of California. Mr. Bernal began his practice and career as an associate with the Heller Ehrman law firm, where he

worked on complex commercial litigation cases. In 1996, he joined the Los Angeles office of the Federal Public Defender for the Central District of California, where he began handling Federal criminal cases representing indigent defendants.

In 2006, he became the directing attorney for the Riverside branch office, where he supervises a team of attorneys, investigators, paralegals, and administrative staff.

In addition to his work in court, Mr. Bernal has served on the Board of Directors for the Federal Bar Association Inland Empire chapter since 2006. The Federal Bar Association is a group that works toward improving the education skills for lawyers practicing in Federal courts. He has also dedicated his time to working with at-risk Latino youth.

It is important that we confirm Mr. Bernal to the bench in Riverside as soon as possible. Riverside County has 23 percent of the Central District's population; however, out of the 25 active judges in the Central District, there is only one judge currently sitting in Riverside. We need to send the people of Riverside another judge, and quickly. And what a fine nominee we have here.

I close by congratulating Mr. Bernal and his family on this very important day. He is an excellent candidate who brings diverse experience in the Federal courts, having handled criminal and civil cases there. And I urge my colleagues in the Senate to move swiftly to confirm these nominees to the Federal bench.

I thank you so very much, and it is nice to see Senator Grassley arriving. Thank you very much.

Senator BLUMENTHAL. Thank you, Senator Boxer.

We have been joined by Senator Grassley, the Ranking Member of the Judiciary Committee. I am going to ask him to make some opening remarks, but first if I may turn to Senator Levin, and knowing how busy both of you are, both Senators Boxer and Levin, you should feel free at any point—and people should understand that you have full schedules, and the Committee certainly will understand if you decide to leave before the end of these proceedings.

Senator Levin, if you would make some introductory remarks, please.

PRESENTATION OF TERRENCE G. BERG, 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. Well, first let me thank you, Senator Blumenthal and Senator Grassley. Thank you both and the entire Committee for calling the hearing and for the consideration of these nominees.

Today I am delighted to be introducing Terry Berg, whom the President has nominated to the Federal bench for the Eastern District Court in Michigan. He is here today with his wife, Anita; his daughters, Helen Marie and Colette; his son, Teddy; and his sister, Mary Helen. He has had quite a week, this family, not just him but his whole family, because apparently each of the children is a graduate this week. Now, if they were a little older, that would be a great relief in terms of no additional costs of college, but only one of them has graduated college. The other two are high school and middle school. Helen Marie has graduated, I believe, Catholic Uni-

versity in May; Colette has graduated Mercy High School; and Teddy has, I believe, graduated middle school. So it has been an exciting week, and I know this will add a little bit of excitement to it.

Mr. Berg has a truly impressive legal career. He is a truly superb candidate for the Eastern District Court, and I say that with some real feeling because my uncle was a chief judge of this court, and so I have a very keen sense of the qualities that are required of not just judges but judges that in this particular district—all districts have judges that are required to do justice, but each district also has some differences in terms of the background and culture of the people who live there, and he is very sensitive to that, and he will make a terrific judge.

He graduated from Georgetown University Law Center, went to work then for a district judge. Since 2003, he has been an Assistant United States Attorney in the Eastern District of Michigan. He has worked on various issues, including cyber crime, which I know is of particular interest to this panel. He has supervised criminal, civil, and administrative divisions. He has handled a full fraud case docket, including the theft of trade secrets, mortgage fraud, health care fraud, corporate fraud, and other white-collar crime cases. And during this time, he received the Assistant Attorney General's Award for Distinguished Service and the Director's Award for Superior Performance in a Managerial or Supervisory Role.

Prior to that service, Mr. Berg worked for the Attorney General of Michigan where he established and supervised the State's first computer crime prosecution unit. He has also served here in Washington with the Department of Justice as a computer crime fellow. He has also taught at the University of Detroit-Mercy School of Law and the Wayne State University of Law. He is on the State Bar of Michigan's Committee on Judicial and Professional Ethics. He has published numerous articles on cyber crime. He has served on the Catholic Lawyers Society Board of Directors. He really has a distinguished legal career, and I would not only ask that this Committee not just have a hearing, which we are grateful for, but speedily recommend his confirmation.

I know that Senator Stabenow was trying to get here and could not, and she will have a statement for the record, which I would ask be made part of the record.

Senator BLUMENTHAL. Without objection. I know that Senator Stabenow is very busy with the farm bill on the floor, so we certainly understand her absence.

Thank you very much, Senator Levin.

Senator LEVIN. Thank you both.

Senator BLUMENTHAL. Thank you. I would ask Senator Grassley if he has any opening remarks.

Senator LEVIN. Could I interrupt you just for 1 second? There is another judge who is here to support Mr. Berg, an Eastern District judge, Judge Murphy, who is here, whom I should have introduced as well. He has been confirmed by this body, and I know him well. So the fact that he has come from Detroit to support Mr. Berg is quite a tribute to Mr. Berg.

Senator BLUMENTHAL. Well, we welcome him and thank him for making the trip. Thank you very much, Senator Levin.

Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Like the Chairman and the Committee as a whole, we welcome all of the nominees, their families and friends. I know it is a very important day for each of you.

After today, we will have had a hearing on 34 nominees so far just this year, and I also note that we will have a vote this afternoon on the Senate floor on a district court nominee. If the nominee is confirmed—and I presume he will be—he will be the 148th judicial nominee confirmed during President Obama's term so far. This is very good progress.

Again, I welcome the nominees, and for each of you, I have the rest of the statement, biographical, professional, and academic information, and I will not go through reading that, but I have got it and it will be in the record for each one of you.

Thank you, Mr. Chairman.

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

Senator BLUMENTHAL. Thank you, Senator Grassley.

I am going to introduce Lorna Schofield. I am really honored and pleased to introduce her to the Committee. She has been nominated to serve as a district court judge on the District Court for the Southern District of New York. Ms. Schofield is currently Of Counsel at the New York firm of Debevoise & Plimpton. She was born in Fort Wayne, Indiana, and received a B.A. magna cum laude from Indiana University and received a J.D. from New York University School of Law, where she was staff editor and note and comment editor on the NYU Law Review.

Ms. Schofield has been a litigator for nearly 30 years, spending the balance of her career at two major law firms, the first as an associate at Cleary, Gottlieb, Steen & Hamilton, and later at Debevoise & Plimpton, where she served both as an associate and as a partner. She has extensive civil practice experience, having worked on complex commercial disputes, including class actions, corporate bankruptcies, business fraud, contract disputes, and other commercial matters. She also has extensive criminal law experience in the white-collar practice at Debevoise & Plimpton. She worked on the defense of companies and individuals in regulatory and white-collar criminal investigations as well as internal and independent investigations.

In between her stints at the law firms, Ms. Schofield spent 4 years working as an Assistant United States Attorney in the Southern District of New York, handling a variety of cases ranging from domestic terrorism to arms smuggling to tax fraud. She began in the General Crimes Unit and subsequently worked in the Major Crimes Unit. Ms. Schofield is a member of the American Bar Association where she has held numerous prominent positions, including chair of the Special Litigation Section.

If confirmed, Ms. Schofield will be the first Filipino American in the history of the United States to serve as a Federal judge. She is extremely well qualified, and I look forward to her swift confirmation.

Finally, I am pleased to introduce Grande Lum, a renowned expert in conflict mediation, who has been nominated to serve as Director of the Community Relations Service of the Department of Justice. This office is the only Federal agency dedicated to assisting State and local governments, private and public organizations, and community groups with preventing and resolving racial and ethnic tensions, incidents, and civil disorders, and in restoring stability and harmony. This office also works to prevent and respond to alleged violent hate crimes committed on the basis of actual or perceived race, national origin, gender, sexual orientation, religion, or disability.

Mr. Lum was born in San Francisco and earned his B.A. from the University of California at Berkeley and his J.D. from the Harvard Law School. He has served as an adjunct lecturer at the Dominican University School of Business, co-manager of the Alternative Dispute Resolution Externship Program at Stanford Law School, and adjunct law professor at UC-Berkeley, an adjunct professor at Stanford University, and a clinical professor at the UC-Hastings College of Law and Director of its Center of Negotiation and Dispute Resolution.

In 2005, Mr. Lum formed Accordence, Inc., a dispute resolution training firm focused on the corporate sector. He currently serves as a managing director of Accordence where he recently returned from a 2-year stint as director of the Historically Underutilized Business Zone Program with the Small Business Administration. At the SBA he oversaw a Federal Government contracting program that assists small businesses in distressed areas.

Mr. Lum is experienced in consulting on complex transactions, equipping individuals, teams, and institutions with negotiating methods and skills. His clients included private sector entities such as the American Express Company, HP, Eli Lilly, and also public entities like the San Diego Public Schools. His broad experience in conflict resolution makes him an ideal nominee for this position.

I would like to ask all the nominees to please take your places at the witness table, and I am going to ask you to please stand and be sworn. If you would come forward, please.

If you would please, raise your right hand. Do you solemnly swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BERG. I do.

Mr. BERNAL. I do.

Ms. SCHOFIELD. I do.

Mr. LUM. I do.

Senator BLUMENTHAL. Thank you. Please be seated.

Before we begin the questioning, I am going to give each of you an opportunity to make a brief opening statement, if you wish to do so. You should feel free to acknowledge anyone who is with you today or state any points that you would wish the Committee to know that may not be included in the papers that have already been filed, which are extensive. So anything you would like to say, please go forward. Why don't we go from Mr. Berg down the table.

STATEMENT OF TERRENCE BERG, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Mr. BERG. Thank you very much, Senator. And I would like to thank Senator Leahy and also Ranking Member Grassley for scheduling this hearing, giving us the opportunity to be heard.

I would like to also thank Senator Levin for his kind remarks and especially for his support in recommending me to the President, as well as Senator Stabenow.

I also wish to thank the President, President Obama, for showing me the confidence in this high honor of this nomination.

I do have some family members that I would like to introduce at this time. My wife, Anita Sevier, is here. She is a constant inspiration of my life. Helen Marie Berg is here as well. She is one of the graduates that Senator Levin referred to, and she will be going on a Fulbright next year. I am very proud of her. My other daughter, Colette, is also here. She will be going on to Fordham University next fall. My son, Teddy, who is 13, getting out of eighth grade, is happy that he was able to get excused from his exams today.

[Laughter.]

Mr. BERG. My sister, Mary Helen, is here from California, Mary Helen Berg. My sister-in-law, Loretta Sevier, is here. Some friends that I have from the Justice Department, I have Mona Sedkey from the Computer Crime and Intellectual Property Section. And then also, as the Senator mentioned, U.S. District Judge Stephen Murphy is also here.

I have no other opening statement. Thank you.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Terrence George Berg

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.

   United States Attorney's Office
   211 West Fort Street
   Suite 2001
   Detroit, Michigan 48226

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

   1959; 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.

   1983 – 1986, Georgetown University Law Center; J.D. (*cum laude*), 1986
   1982 – 1983, Georgetown University, graduate courses in History; no degree awarded
   1978 – 1981, Georgetown University; B.S. (*magna cum laude*), 1981
   1977 – 1978, University of Michigan; no degree awarded

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

   2011 – present
   U.S. Department of Justice, Office of Deputy Attorney General
   Professional Misconduct Review Unit

United States Attorney's Office for the Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Attorney (detail)

2003 – 2011
United States Attorney's Office for the Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Assistant United States Attorney (2003 – 2005, 2010 – 2011)
First Assistant United States Attorney (2005 – 2008)
Interim United States Attorney (2008 – 2010)

2010
United States Attorney's Office for the Middle District of Georgia
355 Mulberry Street, 6th Floor
Macon, Georgia 31201
Acting First Assistant United States Attorney (detail)

1999 – 2003
Michigan Department of Attorney General
High Tech Crime Unit
18050 Deering
Livonia, Michigan 48152
Assistant Attorney General
Chief, High Tech Crime Unit

1999 – 2000
United States Department of Justice
Criminal Division
Computer Crime and Intellectual Property Section
1301 New York Avenue, NW, Suite 600
Washington, D.C. 20005
Computer Crime Fellow for the National Association of Attorneys General

1995 – 1999, 2001, 2003, 2008, 2012
University of Detroit Mercy School of Law
651 East Jefferson Avenue
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Adjunct Professor

1989 – 1999
United States Attorney's Office for the Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Assistant United States Attorney

1987 – 1989
Debevoise and Plimpton
555 13th Street, NW
Washington. D.C. 20004
Associate

1986 – 1987
United States District Court for the Southern District of Georgia
360 Frank M. Scarlett Federal Building
801 Gloucester Street
Brunswick, Georgia 31520
Law Clerk to the Honorable Anthony A. Alaimo

Summer 1985
Anderson, Hibey, Nauheim and Blair
1708 New Hampshire Avenue, NW
Washington, D.C. 20009
Summer Law Clerk

Summer 1984, Academic years 1985, 1986
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001
Research Assistant for Professor Robert F. Drinan, S.J.

1984
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001
Security ID Checker, Law Library

1982 – 1984
Georgetown University
Central American Historical Institute
Washington, D.C. 20007
Research Assistant

1981 – 1982
Jesuits of Central America
University of Central America
Managua, Nicaragua
Volunteer Development Worker

Summer 1981
The World Bank

Europe, Middle East and North Africa Section
1818 H Street, NW
Washington, D.C. 20433
Research Assistant

Other Affiliations (uncompensated):

2011 – present
Historical Society for the U.S. District Court for the Eastern District of Michigan
219 Theodore Levin U.S. Courthouse
231 West Lafayette
Detroit, Michigan 48226
Board of Directors

2010 – present
Caritas Welcome Center
1555 Butternut
Detroit, Michigan 48206
President, Board of Directors

2003 – present
Catholic Lawyers Society of Detroit, Michigan
No physical address
Member, Board of Directors (2003 – present)
Vice President (2005 – 2007)
President (2008)

1992 – 1998
Gesu Catholic School
17139 Oak Drive
Detroit, Michigan 48221
Board Member (1992 – 1998)
President (1995 – 1998)

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

   I have not served in the United States military. I did not register for selective service 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.

Certificate of Appreciation for Contribution to Legal Scholarship, United States Department of Justice (2010)

Director's Award for Superior Service in a Managerial or Supervisory Role, Executive Office for United States Attorneys, United States Department of Justice (2010)

United States Environmental Protection Agency's Bronze Medal for Commendable Service (2010)

Assistant Attorney General's Award for Distinguished Service, Criminal Division, United States Department of Justice (2009)

Michigan Super Lawyers (2008, 2009)

Certificate of Appreciation for Serving on the Magistrate Judge Merit Selection Panel, United States District Court for the Eastern District of Michigan (2008)

Award for Outstanding Service as a Computer Crime Fellow for the National Association of Attorneys General (2000)

"Great Work" Award, Computer Crime and Intellectual Property Section, Criminal Division, United States Department of Justice (2000)

Selected for Computer Crime Fellowship, National Association of Attorneys General (1999 – 2000)

Award for "Outstanding Efforts and Contributions to Law Enforcement Mission of U.S. Customs Service," United States Customs Service (1999)

Award for Outstanding Contribution to Law Enforcement, Bureau of Alcohol, Tobacco and Firearms (1999)

Letter of Commendation from Attorney General Janet Reno regarding the prosecution of a complex fraud case (1999)

Letter of Commendation from Donna A. Bucella, Director of the Executive Office for United States Attorneys, for the prosecution of a multi-million dollar fraud case (1999)

Special Act Performance Award, United States Department of Justice (1998)

Employee Volunteer Service Award from Attorney General Janet Reno (1997, 1998)

Special Achievement Awards for Sustained Superior Performance, United States Department of Justice (1991, 1995, 1998)

Letter of Commendation from Attorney General Janet Reno regarding the prosecution of a complex aviation insurance fraud case (1997)

Letter of Commendation from FBI Director Louis J. Freeh regarding the prosecution of a complex aviation insurance fraud case (1997)

Letter of Commendation from Attorney General Janet Reno for the prosecution of a heroin trafficking organization (1995)

Letter of Commendation from FBI Director Louis J. Freeh regarding the prosecution of a heroin trafficking organization (1995)

Letter of Commendation from Donna A. Bucella, Director of the Executive Office for United States Attorneys, for an environmental crimes prosecution (1995)

Letter of Commendation from the United States Environmental Protection Agency, Office of Enforcement, Criminal Investigation Division Special Agent in Charge, for an environmental crimes prosecution (1995)

Appreciation Award for Dedication and Commitment, Federal Bureau of Investigation (1994)

Certificate of Appreciation for Outstanding Contributions in the Field of Drug Law Enforcement, United States Drug Enforcement Administration (1994)

Editor in Chief, Law and Policy in International Business, Georgetown University Law Center (1985 – 1986)

Branstrom Prize for Academic Excellence, University of Michigan (1978)

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 Constitution Society (2006 – present)
Catholic Lawyers Society of Detroit (2003 – present)
    Vice President (2005 – 2007)
    President (2008)
Detroit Metropolitan Bar Association (2011 – present)
District of Columbia Bar (1988 – present)
Federal Bar Association, Eastern District of Michigan Chapter (approx. 1999 – 2008, 2009 – present)
Federal Bar Association (National) (2008 – 2009; 2011 – present)
Fellows of the Michigan State Bar Foundation (2006 – present)
State Bar of Michigan (1986 – present)
    Member, Ethics Committee (2003 – 2007)

United States District Court for the Eastern District of Michigan Merit Selection Panel for Magistrate Judge (2008)

10. **Bar and Court Admission**:

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

Michigan, 1986
District of Columbia, 1988 (inactive since 1989)

There have been no lapses in membership.

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

Supreme Court of the United States, 2006
United States Court of Appeals for the Sixth Circuit, 1989
United States District Court for the Eastern District of Michigan, 1989
United States District Court for the Western District of Michigan, 1999 – 2003
Michigan Court of Appeals, 1999
Circuit Courts of Wayne, Oakland, Macomb, Livingston, Genesee, and Berry Counties, 1999

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.

Caritas Welcome Center (2010 – present)
President, Board of Directors (2010 – present)
Georgetown University Alumni Admission Program (2003 – present)
Gesu Church (1989 – present)
Lector (1989 – present)
Gesu Catholic School Board (1992 – 1998)
President (1995 – 1998)

Historical Society of the U.S. District Court for the Eastern District of Michigan (2011 – present)
Member, Board of Directors (2011 – present)
Society of St. Vincent de Paul (approx. 2003 – present)

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

To the best of my knowledge, none of the organizations listed above currently 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.

A Caritas Christmas, Caritas Welcome Center Newsletter, Winter 2012. Copy supplied.

Full Disclosure: Belief and the Bench, America, Mar. 14, 2011. Copy supplied.

Why I Became Involved with the Caritas Welcome Center, Caritas Welcome Center Newsletter, Spring 2010. Copy supplied.

The Changing Face of Cybercrime: New Internet Threats Create Challenges to Law Enforcement, 86 Mich. B.J. 18 (June 2007). Copy supplied.

Faith on the Mesa: Colorado's Way of the Cross Shrine, St. Anthony Messenger, July 2004. Copy supplied.

Practical Issues in Searching and Seizing Computers, 7 T.M. Cooley J. Prac. & Clinical L. 27 (2004). Copy supplied.

Letter to the Editor, *Opinion and Dissent: The Case of the Internet Pedophile*, 80 Mich. B.J. 10 (Sept. 2001). Copy supplied.

Confronting Evil on the Internet: The Challenge of Taming the Electronic Frontier, America, June 18, 2001. Copy supplied.

With Patrick Corbett, *Attacking Unlawful Activity on the Internet: Michigan's New Arsenal to Combat Cybercrime*, Michigan Trooper, Mar./Apr. 2001. Copy supplied.

Fighting Identity Theft: New State Statutes Target Information Crimes, Vol. 17, No. 4 Michigan Defense Quarterly 11 (Spring 2001). Copy supplied.

Fighting Identity Theft: New State Statutes Target Information Crimes, State Bar of Michigan Consumer Law Section Newsletter, Mar. 2001. Copy supplied.

State Criminal Jurisdiction in Cyberspace: Is There a Sheriff on the Electronic Frontier?, 79 Mich. B.J. 659 (June 2000). Copy supplied.

Attorney General Reno Announces 10-Point Cybercrime Plan; Calls for 'Round-the-Clock Computer Crime Coverage in All Fifty States, Vol. II, Issue 1 National Cybercrime Training Partnership, Apr. 2000. Copy supplied.

www.wildwest.gov: The Impact of the Internet on State Power to Enforce the Law, 2000 B.Y.U.L. Rev. 1305 (2000). Copy supplied.

Human Rights for Terrorists beyond the Water's Edge, America, Jan. 16, 1999. Copy supplied.

Bang! Bang! Bang! There Goes Hope for New Year, Detroit Free Press, Jan. 9, 1990. Copy supplied.

Trade in Services: Toward a "Development Round" of GATT Negotiations Benefiting Both Developing and Industrialized States, 28 Harv. Int'l L.J. 1 (1987). Copy supplied.

A Tribute to Debbie Posner, Georgetown University Law Center Law Weekly, Sept. 8, 1986. Copy supplied.

Letter to the Editor, *Sleep and Protest*, Washington Post, July 10, 1984. Copy supplied.

Letter to the Editor, *Soviet Clients?*, Washington Post, Aug. 23, 1983. Copy supplied.

Letter to the Editor, *News is 'Misinformed' on Nicaragua*, Detroit News, Aug. 9, 1982. 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 drafted an introductory message for the 2008 Annual Report of the U.S. Attorney's Office for the Eastern District of Michigan. I also drafted the "Dedicated to Alan Gershel" tribute to retiring Criminal Chief Alan Gershel. Copy supplied.

I drafted the Mission Statement used in the 2005, 2006, and 2007 Annual Reports of the U.S. Attorney's Office for the Eastern District of Michigan as well as paragraphs on significant cases that I handled. The Mission Statement is supplied and the case excerpts are listed below:

> 2007: "Dedicated to Mike Wicks" tribute to retiring Civil Chief L. Michael Wicks. Operator of "Bot-Net" Sentenced to 12 Months in Federal Prison; Former Computer Contractor Sentenced for Hacking Daimler Chrysler Parts Distribution Wireless Network. Copies supplied.
>
> 2006: Comment on retiring AUSA Ross Parker; First Person Charged Under "CAN-SPAM" Law Sentenced to 36 Months; Three Indicted for Economic Espionage – Trade Secrets Theft. Copies supplied.
>
> 2005: Two Arrested for Economic Espionage – Trade Secrets Theft. Copy supplied.

Michigan State Bar Committee on Ethics, Annual Report, 2005 – 2006. A copy of the report is supplied.

Michigan State Bar Committee on Ethics, Ethics Opinion RI-334, May 7, 2004. A copy of the opinion is supplied.

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

On March 19, 2002, I testified before the Michigan House of Representatives, Committee on Criminal Justice in favor of House Bills 5296 and 5297 to amend the child pornography statute. No record was made of the testimony except the minutes of the meeting, which are supplied.

On February 26, 2002, I testified before the Michigan House of Representatives, Committee on Criminal Justice in favor of Senate Bills 803 and 806, which were proposals to create state authority for wiretap approvals. No record was made of the testimony except the minutes of the meeting, which are supplied.

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

October 7, 2011: *IC3 Mission and Cooperation with Law Enforcement: New Ways to Access IC3 Information and Latest Threats. How Law Enforcement Can Work with the ICAC to Protect Children*, Michigan Cyber Summit 2011, Office of the Governor, Panelist, Eastern Michigan University, Ypsilanti, Michigan. I discussed the types of federal cases that address Internet child exploitation. I have no notes, transcript, or recording. The address of the Office of the Governor is P.O. Box 30013, Lansing, Michigan 48909.

September 13, 2011: *Cyber-Terrorism in Perspective*, Infragard Fall Conference, Keynote Address, Eastern Michigan University, Ypsilanti, Michigan. A copy of the PowerPoint slides is supplied.

June 14, 2011: *Cyber-Terrorism in Perspective*, National Association of Attorneys General, National Center for Justice and the Rule of Law, University of Mississippi, Oxford, Mississippi. A copy of the PowerPoint slides is supplied.

December 13, 2010: *Theft of Trade Secrets – A Case Study*, University of Michigan, Steven M. Ross School of Business, Ann Arbor, Michigan. A copy of the PowerPoint slides is supplied.

March 24, 2010: Remarks at Reunion Dinner for Young Attorneys, Detroit, Michigan. A copy of the remarks is supplied.

December 1, 2009: *Trade Secrets Case Study*, University of Michigan, Steven M. Ross School of Business, Ann Arbor, Michigan. I used the same slides as supplied for the December 13, 2010 event.

November 19, 2009: Introduction of Attorney General Eric H. Holder, Jr., Advocates and Leaders for Police and Community Trust (ALPACT) Dinner, Detroit, Michigan. A copy of the remarks is supplied.

November 16, 2009: Remarks to visiting Ukrainian prosecutors about the U.S. Attorney's Office, Open World, Detroit, Michigan. I have no notes, transcript, or recording, but press coverage is supplied. The address of the U.S. Attorney's Office is 211 West Fort Street, Suite 2001, Detroit, Michigan 48226.

October 20, 2009: *To Catch (and Prosecute) a Spammer: A Case Study of U.S. v. Ralsky*, University of Michigan Cyber Summit 09, Rackham Auditorium, University of Michigan, Ann Arbor, Michigan. A copy of the PowerPoint slides is supplied and video is available at http://safecomputing.umich.edu/events/sumit09.

September 25, 2009: Address to Hate Crimes Conference, Michigan Alliance Against Hate Crimes (MIAAHC), Lansing, Michigan. A copy of the remarks is supplied.

September 22, 2009: Introductory Remarks, Great Lakes International Anti-Money Laundering and Bank Secrecy Act Conference, location unknown. A copy of the remarks is supplied.

August 3, 2009: Introductory Remarks, 16th Annual Great Lakes Native American Conference, Green Bay, Wisconsin. A copy of the remarks is supplied.

July 7, 2009: *Trade Secrets Case Study*, Cooley School of Law, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

June 25, 2009: *Prosecution Priorities in the Wake of the Collapse*, First Tri-Continental Conference on Global Advancement in Business Communications, Eastern Michigan University, Ypsilanti, Michigan. A copy of the PowerPoint slides is supplied.

June 24, 2009: *Prosecution Priorities in the Wake of the Collapse*, Oakland County Bar Association, Real Estate Section, Birmingham, Michigan. I used the same slides as those supplied in response to the June 25, 2009 event.

May 26, 2009: Introduction of Panel, *Child Exploitation, Prevention and Enforcement*, Gesu School, Detroit, Michigan. I have no notes, transcript or recording. The address of the Gesu School is 17139 Oak Drive, Detroit, Michigan 48221.

May 9, 2009: *Theft of Trade Secrets – A Case Study*, Intellectual Property Conference, Grand Rapids Bar Association, Intellectual Property Section, Grand Rapids, Michigan. A copy of the PowerPoint slides is supplied.

April 30, 2009: Participant in roundtable discussion at Congress of Arab-American Organizations, Lebanese-American Heritage Club, addressing issues affecting Arab- and Muslim-American community members, including recent

allegations concerning "spying" in Mosques, Dearborn, Michigan. I have no notes, transcript, or recording, but press coverage is supplied. The Congress of Arab-American Organizations does not have a physical address.

April 29, 2009: Introductory Remarks, Project Safe Childhood Town Hall Meeting, Macomb County Community College, Clinton Township, Michigan. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 211 West Fort Street, Suite 2001, Detroit, Michigan 48226.

April 29, 2009: Remarks in Memoriam for Katie Alcorn, ICE General Counsel, Plymouth, Michigan. A copy of the remarks is supplied.

April 2, 2009: Remarks, Detroit Police Department 12th Precinct Community Relations Meeting, Detroit, Michigan. A copy of the remarks is supplied.

March 19, 2009: Member of Panel, Brightmoor Alliance Neighborhood Safety Summit, Detroit, Michigan. I have no notes, transcript, or recording. The address of the Brightmoor Alliance is 17421 Telegraph, Suite 138, Detroit, Michigan 48219.

March 16, 2009: *Theft of Trade Secrets – A Case Study*, Intellectual Property Spring Seminar, Michigan State Bar, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

March 6, 2009: Remarks, Presentation of U.S. Attorney's Office plaque to Weusi Olusola, Pioneers for Peace, Southfield, Michigan. A copy of the remarks is supplied.

March 4, 2009: Remarks, United States Attorney's Office for the Eastern District of Michigan, History Project, Portrait Ceremony, Detroit, Michigan. A copy of the remarks is supplied.

February 19, 2009: *Theft of Trade Secrets Case Study*, Cooley School of Law, Lansing, Michigan. A copy of the PowerPoint slides and a video recording are supplied.

February 13, 2009: Remarks, Catholic Lawyers Society Third Thursday Speakers Series, Detroit, Michigan. A copy of the remarks is supplied.

January 21, 2009: Remarks at Tribute Dinner, Detroit, Michigan. A copy of the remarks is supplied.

December 9, 2008: *Enforcement Priorities in the Wake of the Financial Crisis: Insights from Acting U.S. Attorney Terrence Berg*, Foley Executive Briefing Series, Foley & Lardner, LLP, Detroit, Michigan. I used the same slides as those supplied in response to the June 25, 2009 event and press coverage is supplied.

November 20, 2008: Introductory Remarks, Gesu Neighborhoods United Meeting, Discussion of Crime Sweep by Law Enforcement, Detroit, Michigan. I have no notes, transcript, or recording. Gesu Neighborhoods United does not have a physical address.

November 11, 2008: *Trade Secrets Case Study*, University of Michigan, Steven M. Ross School of Business, Ann Arbor, Michigan. I used the same slides as supplied for the December 13, 2010 event.

November 9, 2008: *Trade Secrets and Federal Criminal Law*, Cooley Law School, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

November 7, 2008: Introductory remarks, Project Safe Neighborhoods Project Sentry Program, Hamtramck, Michigan. I have no notes, transcript, or recording. The address of Project Sentry is United States Attorney's Office, 211 West Fort Street, Suite 2001, Detroit, Michigan 48226.

June 3, 2008: *So You Want to Be a SPAM Prosecutor: Perspectives from DOJ's CAN-SPAM Pioneers*, U.S. Department of Justice, Computer Hacking and Intellectual Property Conference, Atlanta, Georgia. A copy of the PowerPoint slides is supplied.

September 4, 2007: *Forum on Charitable Giving*, co-hosted forum on charitable giving rules and designated terrorist organizations, with speaker from Department of Treasury, Dearborn, Michigan. I have no notes, transcript, or recording. The address of the U.S. Attorney's Office is 211 West Fort Street, Suite 2001, Detroit, Michigan 48226.

June 21, 2007: *Investigating and Prosecuting Botnets*, U.S. Department of Justice, Computer Hacking and Intellectual Property Conference, Orlando, Florida. A copy of the PowerPoint slides is supplied.

December 5, 2006: *Federal Day*, New Lawyers Seminar, sponsored by the Eastern District of Michigan Chapter of the Federal Bar Association. I have no notes, transcript, or recording. The address of the Eastern District of Michigan Chapter of the FBA is P.O. Box 20759, Ferndale, Michigan 48220.

June 24, 2006: *Recent Trends in Identity Theft: Understanding the Scope of the Problem and Considering Solutions*, Ohio Prosecuting Attorneys Association, Cedar Point, Ohio. A copy of the PowerPoint slides is supplied.

April 5, 2006: *The Decision to Prosecute*, Prosecutorial Responses to Internet Victimization Conference, sponsored by the National Association of Attorneys General and the National Center for Justice and the Rule of Law at the University of Mississippi School of Law, Oxford, Mississippi. I participated in a panel of

federal and state computer crime prosecutors discussing the factors considered in exercising prosecutorial discretion in cybercrime cases. Transcript supplied.

March 23, 2006: *Theft of Trade Secrets Case*, Intellectual Property Conference, National Advocacy Center, Columbia, South Carolina. I have no notes, transcript, or recording. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 18, 2005: *Corporate Fraud Sentencing*, GM World Headquarters, Detroit, Michigan. A copy of the PowerPoint slides is supplied.

September 30, 2005: *Identity Theft*, State Bar of Michigan Computer Law Section, Walled Lake, Michigan. A copy of the PowerPoint slides is supplied.

September 7, 2005: *Identity Theft and the Internet: Crime or Crisis?* and *Identity Theft and the Internet: Managing the Crisis and Fighting the Crime*, Utah Prosecution Council, Park City, Utah. Copies of the PowerPoint slides are supplied.

May 5 – 6, 2005: Six Computer Crime Presentations: *Overview of U.S. Legal System*; *Crime on Networks*; *Need for International Cooperation*; *Lowes Bombing*; *Searching and Seizing Computers*; *U.S. Processes for Obtaining Electronic Evidence*, International Law Enforcement Academy (FBI), Bangkok, Thailand. Copies of the PowerPoint slides are supplied.

April 27, 2005: *Searching and Seizing Computers*, Cyber Coalition Meeting, Detroit, Michigan. A copy of the PowerPoint slides is supplied.

December 1, 2004: *Cyber Coalition Plan*, Federal Law Enforcement Council Meeting, Detroit, Michigan. A copy of the PowerPoint slides is supplied.

September 29, 2004: *Sys Admin Legal Brief*, University of Michigan Security Roundtable, Ann Arbor, Michigan. A copy of the PowerPoint slides is supplied.

July 28, 2004: *Cybersecurity Threats v. Cyberterrorism*, Cooley Law School, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

June 25, 2004: *Search and Seizure of Computers*, *Presenting Electronic Evidence*, and *Federal Cybercrimes Overview*, Michigan Electronic Crimes Task Force, Detroit, Michigan. Copies of the PowerPoint slides are supplied.

June 9 – 10, 2004: *Computer Evidence: Court and Trial Issues*, *Search and Seizure of Computers*, *Presenting Electronic Evidence*, and *Cybersecurity v. Cyberterrorism*, American Bar Association training, Plovdiv, Bulgaria. Copies of the PowerPoint slides are supplied.

March 22, 2004: *Cyberterrorism and National Security in Perspective*, Youth Law Conference, Troy, Michigan. A copy of the PowerPoint slides is supplied.

March 8, 2004: *Cybercrime, ID Theft, and Cyberterrorism*, University of Windsor, Windsor, Ontario. A copy of the PowerPoint slides is supplied.

March 5, 2004: *Cybercrime and Cybersecurity*, Microsoft Conference, Southfield, Michigan. A copy of the PowerPoint slides is supplied.

March 3, 2004: *Cybersecurity Threats in Perspective*, National Association of Attorneys General, National Center for Justice and the Rule of Law, University of Mississippi, Oxford, Mississippi. A copy of the PowerPoint slides is supplied.

February 20, 2004: *ID Theft and the Internet: A Law Enforcement Response to Fighting Online ID Theft*, Association of Government Accountants, Institute of Internal Auditors Conference, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

January 23, 2004: *Searching and Seizing Computers*, FBI Training, Detroit, Michigan. A copy of the PowerPoint slides is supplied.

September 4, 2003: *Identity Theft and the Internet*, State Bar of Michigan Computer Law Section, Walled Lake, Michigan. A copy of the PowerPoint slides is supplied.

June 13, 2003: *Computer Search and Seizure*, Ingham County Prosecuting Attorney's Annual Retreat Conference. I have no notes, transcript, or recording. The address of Ingham County Prosecuting Attorney is Grady Porter Building, Veterans Memorial Courthouse Complex, 303 West Kalamazoo, 4R, Lansing, Michigan 48933.

May 13, 2003: *Identity Theft and the Internet*, Detroit Police Cybercrime Training, Detroit, Michigan. A copy of the PowerPoint slides is supplied.

May 9, 2003: *Identity Theft and the Internet*, PAAM Crime Victims Rights Training Conference, Lansing, Michigan. I used the same slides as those supplied for the May 13, 2003 event.

April 23, 2003: *State Laws Relating to Computer Crime*, Detroit Police Department training, Detroit, Michigan. A copy of the PowerPoint slides is supplied.

April 16, 2003: *Identity Theft and the Internet*, Michigan Safety Conference, Lansing, Michigan. I used the same slides as those supplied for the May 13, 2003 event.

April 14, 2003: *Confronting Cyberfraud* and *Understanding High Tech Crime*, Oakland University, Auburn Hills, Michigan. A copy of the PowerPoint slides is supplied.

February 3, 2003: *Practical Legal Issues Regarding the Search and Seizure of Computers; Operation NOLITA*, National Association of Attorneys General, National Center for Justice and the Rule of Law, University of Mississippi, Oxford, Mississippi. A copy of the PowerPoint slides is supplied.

December 13, 2002: Panel Discussion, *What Civil Lawyers Need to Know About Criminal Law*, Washtenaw County Bar Association, Ann Arbor, Michigan. A copy of the notes is supplied.

November 12, 2002: *High Tech Crime*, Institute of Internal Auditors, Certified Fraud Examiners, Ford Motor Company Conference Center, Dearborn, Michigan. A copy of the PowerPoint slides is supplied.

October 15, 2002: *Identity Theft and the Internet*, Michigan Sheriff's Association, Annual Fall Conference, Ann Arbor, Michigan. A copy of the PowerPoint slides is supplied.

September 25, 2002: *Identity Theft and the Internet*, International Association of Financial Crimes Investigators, Dearborn, Michigan. I used the same slides as those supplied for the October 15, 2002 event.

September 14, 2002: *Search and Seizure for Computers and the Internet*, Michigan State Police Training, location unknown. A copy of the PowerPoint slides is supplied.

September 10, 2002: *Operation NOLITA*, State of the States Computer Crime Consortium, Sioux Falls, South Dakota. I used the same slides as those supplied in response to the February 3, 2003 event.

June 24, 2002: *Supervising Computer Crime Investigations: What Every Prosecutor Needs to Know*, Prosecuting Attorney's Association of Michigan, Frankenmuth, Michigan. This presentation would have been substantially similar to the slides presented on July 19, 2001, below.

June 13, 2002: *Countering the Criminal Threat to the Net*, Michigan Victims' Academy, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

June 5, 2002: *Information Systems Security: Forging an Effective Legal Response to Internal and External Threats*, Spring Lecture Series, Eastern Michigan University, Ypsilanti, Michigan. A copy of the PowerPoint slides is supplied.

May 23, 2002: *Jurisdiction in Cyberspace*, Cooley Law School, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

May 9, 2002: *Identity Theft and the Internet: A Law Enforcement Response*, Annual Victims Rights Training Conference, Thompsonville, Michigan. Copies of the PowerPoint slides are supplied.

May 8, 2002: *ID Theft and the Internet: A Law Enforcement Response to Fighting Online ID Theft*, Michigan State Police Detective Sergeants' Conference, location unknown. A copy of the PowerPoint slides is supplied.

March 20, 2002: Panel Discussion on Computer Security Threats, Lawrence Tech University, Southfield, Michigan. A copy of the notes is supplied.

February 11, 2002: *Snapshot Look at Criminal Enforcement of ID Theft on the Internet*, Michigan Association of Chiefs of Police, 2002 Mid-Winter Conference, Grand Rapids, Michigan. A copy of the PowerPoint slides and press coverage are supplied.

January 30, 2002: *Cyberterrorist Attack on an Electric Power Facility*, Information Technology Management Association, Walsh College, Troy, Michigan. A copy of the PowerPoint slides is supplied.

January 10, 2002: *Making the Computer Crime Case: The Challenge and How to Meet It*, Information Systems Audit & Control Association. I have no notes, transcript, or recording, however, the contents of this presentation would have been substantially similar to the PowerPoint slides that have been supplied for the events described on October 2, 2001 and September 18, 2001 below. The address of the Detroit Chapter of the ISACA is P.O. Box 4297, Troy, Michigan 48099.

November 15, 2001: *What Every Prosecutor Needs to Know About How to Supervise an Internet or Computer Crime Investigation*, North Carolina Conference of District Attorneys, Boone, North Carolina. A copy of the PowerPoint slides is supplied.

November 13, 2001: *Criminal Jurisdiction in Cyberspace*, Prosecuting Attorneys' Coordinating Council, Computer Crime Training, location unknown. A copy of the PowerPoint slides is supplied.

October 22, 2001: *The Michigan Model for Confronting the Challenge of Computer Crime*, State of the States Conference, Computer Crime Consortium, Columbus, Ohio. A copy of the PowerPoint slides is supplied.

October 11, 2001: *Where in the World is the World Wide Web*, Administrative Support Staff Conference, Michigan State Police, Livonia, Michigan. A copy of the PowerPoint slides is supplied.

October 11, 2001: *Computer Crime Trends*, University of Michigan Security Roundtable, Ann Arbor, Michigan. A copy of the PowerPoint slides is supplied.

October 2, 2001: *Making the Computer Crime Case: The Challenge and How to Meet It*, Comerica Bank Investigators' Training, Livonia, Michigan. A copy of the PowerPoint slides is supplied.

September 18, 2001: *Making the Computer Crime Case*, CITA Security Sub Group, Midland, Michigan. A copy of the PowerPoint slides is supplied.

August 31, 2001: *Jurisdiction in Cyberspace*, National Association of Attorneys General Conference, University of Michigan, Ann Arbor, Michigan. I used the same slides as those supplied for the May 23, 2002 event.

August 2, 2001: *The Law of Obtaining Electronic Evidence*, Innocent Images Conference, Macomb County, Michigan. A copy of the PowerPoint slides is supplied.

July 19, 2001: *What Every Prosecutor Needs to Know About How to Supervise an Internet or Computer Crime Investigation*, 74th Annual Prosecuting Attorneys Association of Michigan Conference, Mackinac Island, Michigan. A copy of the PowerPoint slides is supplied.

July 16, 2001: *Countering the Criminal Threat to the Net*, Michigan Victims' Academy, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

May 24, 2001: *Snap Shot of Recent Computer Crime Developments*, Prosecuting Attorneys Association of Michigan, location unknown. A copy of the PowerPoint slides is supplied.

May 7 – 9, 2001: *Snap Shot of Recent Computer Crime Developments*, Michigan State Police Field Detective Conference, Lansing, Michigan. I have no notes, transcript, or recording, but the contents of this presentation would have been substantially similar to the PowerPoint slides supplied for the event on May 24, 2001 above. The address of the Michigan State Police is 333 South Grand Avenue, P.O. Box 30634, Lansing, Michigan 48909.

April 24, 2001: *Computer Crime Scenario: Auction Fraud*, National Association of Attorneys General, Second Annual Internet Law Institute, Berkman Center for Internet and Society, Harvard Law School, Cambridge, Massachusetts. A copy of the PowerPoint slides is supplied.

April 20, 2001: Panel Discussion, *Cyber Terrorism*, Michigan Conference on Terrorism and Domestic Preparedness, Michigan State Police, Lansing, Michigan. A copy of the PowerPoint slides and a video recording are supplied.

April 17, 2001: *Making the Computer Crime Case: The Challenge and How to Meet It*, Michigan Safety Conference, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

April 10, 2001: *Confronting the Challenge of Computer Crime*, ASIS, Belle Isle, Michigan. A copy of the PowerPoint slides is supplied.

April 9, 2001: *Countering the Criminal Threat to the Net*, Association of Government Accountants, Institute of Internal Auditors Spring Conference, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

February 28, 2001: *Online Principles for Federal Law Enforcement Agents, Information Technology in Litigation and Investigation Seminar*, National Advocacy Center, Columbia, South Carolina. A copy of the PowerPoint slides is supplied.

January 23, 2001: *Sheriffs on the Electronic Frontier: Meeting the Challenges of Law Enforcement in Cyberspace*, Prosecuting Attorneys Association of Michigan, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

January 22, 2001: *Confronting the Challenge of Computer Crime, Introduction to Crime Involving the Computers, Networks, and the Internet, and A Review of Federal Computer Crime Statutes*, Federal-State Task Force Meeting, Livonia, Michigan. A copy of the PowerPoint slides is supplied.

December 6, 2000: *Cybercrime Training Class for Law Enforcement Officers*, Eastern Michigan University, Ypsilanti, Michigan. Presentations included: *A Review of Federal Computer Crime Statutes*; *Jurisdiction in Cyberspace*; *Obtaining and Using Electronic Evidence in Criminal Investigations*; and *Online Investigative Principles for Federal Law Enforcement Agents.* Copies of the PowerPoint slides are supplied.

November 30 – December 1, 2000: *Computer Crimes*, Prosecuting Attorneys Coordinating Council of the Prosecuting Attorneys Association of Michigan, Appellate Specialists Seminar, location unknown. I have no notes, transcript, or recording. The address of the PAAM is 116 West Ottawa Street, Suite 200, Lansing, Michigan 48913.

November 13, 2000: *Attacking Unlawful Activity on the Internet*, U.S. Department of Justice, Computer and Telecommunications Conference VI, Colorado Springs, Colorado. A copy of the PowerPoint slides is supplied.

October 17, 2000: *Jurisdiction in Cyberspace*, National Association of Attorneys General – NASCO Conference, San Diego, California. A copy of the PowerPoint slides is supplied.

October 4 – 6, 2000: *Jurisdiction in Cyberspace*, Michigan Supreme Court Annual Judicial Conference, Traverse City, Michigan. I have been unable to obtain a copy of the exact PowerPoint slides I used, but they would have been very similar to the slides supplied for the October 17, 2000 event.

September 7, 2000: *Attacking Unlawful Activity on the Internet*, Certified Fraud Examiners Conference, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

August 31, 2000: *Online Investigative Principles*, Information Technology in Litigation and Investigations, National Advocacy Center, Columbia, South Carolina. I used the same slides as those supplied in response to the February 28, 2001 event.

July 18, 2000: *Making the Computer Crime Case: Advice for Bringing High Tech Prosecutions*, Mid-Michigan Information Security Special Interest Group, Ann Arbor, Michigan. A copy of the PowerPoint slides is supplied.

July 10, 2000: *Making the Computer Crime Case: Advice for Bringing High Tech Prosecutions*, ABA Conference, Business Law Section, New York, New York. A copy of the PowerPoint slides is supplied.

June 7, 2000: *Jurisdiction in Cyberspace*, Michigan Judicial Institute, Lansing, Michigan. A copy of the PowerPoint slides is supplied.

June 5, 2000: *Online Investigative Principles*, Information Technology in Litigation and Investigations, National Advocacy Center, Columbia, South Carolina. I used the same slides as those supplied in response to the February 28, 2001 event.

May 17, 2000: *Jurisdiction in Cyberspace*, Internet Law Conference, National Association of Attorneys General, Ann Arbor, Michigan. I used the same slides as those supplied in response to the June 7, 2000 event.

May 1, 2000: *Making the Computer Crime Case*, Deputy Chiefs' Conference, National Association of Attorneys General, Washington, D.C. I have no notes, transcript, or recording, however, the contents of this presentation would have been similar to the PowerPoint slides presented on July 10, 2000, noted above. The address of the NAAG is 2030 M Street NW, 8th Floor, Washington, DC 20036.

March 1, 2000: *Attacking Unlawful Activity on the Internet*, Presentation to the Attorney General's Office of Texas on Michigan's High Tech Crime Unit, Austin, Texas. A copy of the PowerPoint slides is supplied.

February 7, 2000: *Electronic Search and Seizure: How Not to Let the Case Blow Up in Your Face*, FBI National Academy, Quantico, Virginia. A copy of the PowerPoint slides is supplied.

November 15, 1999: *Electronic Search and Seizure: How Not to Let the Case Blow Up in Your Face; Obtaining Electronic Evidence*, FBI National Academy, Quantico, Virginia. I used the same slides as those supplied in response to the February 7, 2000 event.

July 29, 1999: Introduction of High Tech Crime Unit, Prosecuting Attorneys Association of Michigan Annual Conference, Mackinac Island, Michigan. I have no notes, transcript, or recording. The address of the PAAM is 116 West Ottawa Street, Suite 200, Lansing, Michigan 48913.

May 26, 1999: Presentation to Michigan State Bar Computer Law Section, Dearborn, Michigan. I have no notes, transcript, or recording. The address of the Michigan State Bar is Michael Franck Building, 306 Townsend Street, Lansing, Michigan 48933.

May 25, 1999: Panelist in panel discussion regarding Internet safety and state and local cybercrime enforcement programs, Computer Crime Teleconference, Wayne RESA, Wayne, Michigan. I have no notes, transcript, or recording. The address of Wayne RESA is 33500 Van Born Road, Wayne, Michigan 48184.

May 11 – 13, 1999: One-Day Cyber Crime Course, with the U.S. Attorney's Office for the Western District of Michigan, offered in three cities in Northern Michigan to law enforcement officers. I have no notes, transcript, or recording. The address of the U.S. Attorney's Office for the Western District of Michigan is 315 West Allegan, Room 252, Lansing, Michigan 48933.

April 29, 1993: *Calculating the Guidelines*, Sentencing Guidelines: Basics, Eastern District of Michigan Chapter of the Federal Bar Association. I have no notes, transcript, or recording. The address of the Eastern District of Michigan Chapter of the FBA is P.O. Box 20759, Ferndale, Michigan 48220.

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 tried to locate any items responsive to this question by reviewing my personal and office files and conducting data searches on the Internet. During my tenure as interim United States Attorney, from August 2008 through January 2010, I occasionally gave interviews to local radio, television or print media reporters. I do not recall all the interviews I have given or the dates I have given interviews. My office also issued press releases several times per week reporting

on cases, and these press releases often contained a quote. I am providing copies of all press releases in which I was quoted, as well as all articles, videos, and recordings that I could find in which I was interviewed.

John Sitkiewicz, *In the Shadows*, DBusiness Magazine, Nov./Dec. 2010. Copy supplied.

Joe Fantauzzi, *Richmond Hill Trucker to Serve 37 Months in U.S. Prison*, Richmond Hill/Thornhill Liberal, July 8, 2010. Copy supplied.

Jay Greene, *VPA to Pay $9.5 Million to Settle Whistle-Blower Lawsuits*, Crain's Detroit Business, Jan. 11, 2010. Copy supplied.

Naomi R. Patton & Ben Schmitt, *FBI Probes Account of Mich. Couple*, Detroit Free Press, Dec. 30, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Michigan Health Care Provider to Pay United States $669,413 to Settle False Claims Allegations*, U.S. Department of Justice's Civil Division, Dec. 28, 2009 (reprinted in multiple outlets). Copy supplied.

Detroit Flight Terrorism Suspect Arraigned in Detroit Hospital, Xinhua General News Service, Dec. 26, 2009. Copy supplied.

Press release, *Visiting Physicians Association to Pay $9.5 Million to Resolve False Claims Act Allegations*, U.S. Department of Justice's Civil Division, Dec. 23, 2009. Copy supplied.

Press release, *U.S. Customs and Border Patrol Officer Indicted for Receipt of Child Pornography*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 22, 2009. Copy supplied.

Press release, *Trinity Health Pays $205,000 to Settle False Claims Suit Alleging Health Care Fraud*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 21, 2009. Copy supplied.

Press release, *Local Business Owner Pleads Guilty to Bribery of Ecorse Mayor and Controller*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 18, 2009. Copy supplied.

Press release, *Bloomfield Hills Investment Planner Pleads Guilty to Ponzi Scheme Fraud*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 18, 2009. Copy supplied.

Press release, *Owner of Health Care Agency Sentenced to 18 Months Prison in Medicare Kickback Scheme*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 16, 2009. Copy supplied.

Press release, *Bloomfield Hills Resident Convicted on Multi-Million Dollar Lender – "Ponzi" Scheme*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 16, 2009. Copy supplied.

Press release, *Former Brighton Pizza Shop Owner Sentenced to Four Years in Prison on Child Pornography Charges*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 15, 2009. Copy supplied.

Press release, *Detroit Public Schools Employee Indicted for Theft*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 15, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Redford Return Preparer Pleads Guilty to Tax Charges*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 15, 2009. Copy supplied.

Ben Schmitt, *Cooperation Leads to Drug Charges*, Detroit Free Press, Dec. 12, 2009 (reprinted in multiple outlets). Copy supplied.

9 Drug Indictments Set, Grand Rapids Press, Dec. 12, 2009. Copy supplied.

Paul Egan, *Ex-Mayor Aide Milton Pleads Guilty to Bribery*, Detroit News, Dec. 11, 2009. Copy supplied.

Ben Schmitt & Joe Swickard, *No Telling Where Plea Will Lead*, Detroit Free Press, Dec. 11, 2009. Copy supplied.

Press release, *Department of Justice Honors Local Assistant United States Attorneys at the Department of Justice's Awards Ceremony*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 9, 2009. Copy supplied.

Press release, *Detroit Police Officer Pleads Guilty to Bribery Scheme Related to Sale of Camp Brighton*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 4, 2009. Copy supplied.

Press release, *Former City Official Pleads Guilty to Bribery Scheme Related to Sale of Camp Brighton*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 4, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Saline Resident Charged with Stealing Trade Secrets from Quicken Loans, Inc.*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 3, 2009. Copy supplied.

Press release, *U.S. Attorney Resolves Lawsuit Alleging Overbilling at Long Term Acute Care Hospital*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 2, 2009. Copy supplied.

Press release, *Detroit Man Sentenced to 30 Years in Prison on Carjacking and Other Related Offenses*, U.S. Attorney's Office for the Eastern District of Michigan, Dec. 1, 2009. Copy supplied.

Joe Swickard, *Families Told Few Details of Tapings*, Detroit Free Press, Dec. 1, 2009. Copy supplied.

Ben Schmitt & M.L. Elrick, *Cooperation Cuts Exec's Sentence*, Detroit Free Press, Dec. 1, 2009. Copy supplied.

Press release, *Former Synagro Executive Sentenced in Bribery Scheme Related to Detroit Sludge Contract*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 30, 2009. Copy supplied.

Joe Swickard & Ben Schmitt, *Synagro Sentence Sought*, Detroit Free Press, Nov. 26, 2009. Copy supplied.

Press release, *7 Detroit Area Residents Were Indicted in Large-Scale Food Stamp Fraud Operations in Detroit*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 25, 2009. Copy supplied.

Press release, *Bloomfield Businessman's Second Tax Conviction Draws Jail Time*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 25, 2009. Copy supplied.

Press release, *Lincoln Park Businessman Goes to Jail for Tax Evasion*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 25, 2009. Copy supplied.

Press release, *Metamora Businessman Pleads Guilty to Tax Charge*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 24, 2009. Copy supplied.

Paul Egan, *'Spam King' Sent to Prison*, Detroit News, Nov. 24, 2009. Copy supplied.

Press release, *Detroit Spammer and Three Co-Conspirators Sentenced for Multi-Million Dollar E-Mail Stock Fraud Scheme*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 23, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Suburban Detroit Man Convicted of Kilo Quantity Cocaine Conspiracy Charges*, U.S. Justice Department's Drug Enforcement Administration's Detroit Field Office, Nov. 20, 2009. Copy supplied.

Press release, *Former Cobo Hall Director Sentenced in Bribery Investigation*, Detroit Field Office of the Federal Bureau of Investigation, Nov. 19, 2009. Copy supplied.

Niraj Warikoo, *Arab Americans, Feds Build Bridges*, Detroit Free Press, Nov. 19, 2009. Copy supplied.

Niraj Warikoo, *Holder's Detroit Visit to Spotlight Communication*, Detroit Free Press, Nov. 19, 2009. Copy supplied.

Press release, *Former City of Dearborn Employee Pleads Guilty to Accepting Bribes*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 17, 2009. Copy supplied.

Leonard N. Fleming, *Synagro Figure Gets Five Years in Prison*, Detroit News, Nov. 14, 2009. Copy supplied.

Press release, *Detroit Consultant Sentenced in Bribery Scheme Related to Synagro Contract*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 13, 2009. Copy supplied.

Press release, *Fifteen Indicted in Drug Trafficking Investigation*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 9, 2009. Copy supplied.

Press release, *Fifteen Current and Former Detroit Area Residents Charged in International Drug Trafficking Investigation*, U.S. Justice Department's Drug Enforcement Administration's Detroit Field Office, Nov. 6, 2009. Copy supplied.

Press release, *Cement City Pub Owner Pleads Guilty to Tax Charge*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 5, 2009. Copy supplied.

Susan Saulny, *Prayers and Criticism in Wake of Detroit Imam's Killing by F.B.I.*, New York Times, Oct. 31, 2009. Copy supplied.

October 29, 2009: Press conference on the shooting of Luqman Ameen Abdullah by the FBI. Press coverage of the conference is listed below:

> Ben Schmitt and Robin Erb, *Just Who Are the Suspects in Raids?*, Detroit Free Press, Oct. 30, 2009. Copy supplied.

Ben Schmitt, Robin Erb, & Tammy Stables Battaglia, *1 of 3 Fugitives Nabbed in FBI Probe of Radical Mich. Group*, Gannett News Service, Oct. 29, 2009 (quotes reprinted in multiple outlets). Copy supplied.

Ben Schmitt, Niraj Warikoo, & Robin Erb, *Mosque Leader Saw Duty to Fight*, Detroit Free Press, Oct. 29, 2009. Copy supplied.

Paul Egan, *Suspect, Dog Killed in FBI Raid, Sources Say*, Detroit News, Oct. 29, 2009. Copy supplied.

Ed White, *Feds Investigating Detroit Islamic Group's Motives*, Associated Press, Oct. 29, 2009 (reprinted in multiple outlets). Copy supplied.

Interview with Tom Ricks; Hostages Plea for Help; Somali Group Terror; Schwarzenegger and the F-Bomb; Anniversary of Historic Election Nears, The Situation Room (CNN), Oct. 29, 2009. Copy supplied.

Imams Meet with FBI, US Atty Over Fatal Shooting, Associated Press, Oct. 29, 2009. Copy supplied.

Detroit-Based Task Force Targets Crime Spilling Over U.S. Border, Detroit News, Oct. 28, 2009.

Press release, *Harrison Businessman Sentenced on Conspiracy and Tax Evasion Charges*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 26, 2009. Copy supplied.

LaNia Coleman, *$366,000 in Loans and No Degree*, Bay City Times, Oct. 23, 2009. Copy supplied.

Press release, *Lake Orion Man Indicted on Tax Evasion*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 22, 2009. Copy supplied.

Press release, *General Counsel of Auburn Hills Employment Firm Sentenced to Prison in $50 Million Tax Fraud*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 22, 2009. Copy supplied.

Press release, *Local Business Owner Pleads Guilty in Ecorse Corruption Investigation*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 16, 2009. Copy supplied.

Ben Schmitt & Brent Snavely, *Ex-Ford Worker Held in Theft of Data*, Detroit Free Press, Oct. 16, 2009. Copy supplied.

Ben Schmitt & Brent Snavely, *U.S.: He Swiped Ford's Secrets*, Detroit Free Press, Oct. 16, 2009. Copy supplied.

Press release, *Chinese National Charged with Stealing Ford Trade Secrets*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 15, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Former Flint Police Chief Pleads Guilty to Fraud*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 14, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Minnesota Man Sentenced to 24 Months for Aggravated Identity Theft*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 8, 2009. Copy supplied.

Press release, *Mortgage Broker Sentenced to 20 Months in Prison for 16-Property, $1.9 Million Mortgage Fraud Scheme*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 5, 2009. Copy supplied.

Press release, *Detroit Man Given First Federal Sentence for Failing to Register as Sex Offender*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 5, 2009. Copy supplied.

Press release, *Edward P. May Indicted in $200 Million Ponzi Scheme*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 2, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Ecorse Officials and Local Business Owner Indicted for Conspiracy, Bribery, and Fraud*, U.S. Attorney's Office for the Eastern District of Michigan, Oct. 2, 2009. Copy supplied.

Press release, *Mayor, Controller of Ecorse Are Charged with Conspiracy, Bribery, and Fraud*, U.S. Department of Justice's Federal Bureau of Investigation Detroit Field Office, Sept. 25, 2009. Copy supplied.

Court Briefs, Saginaw News, Sept. 25, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Flint Man Recruits Homeless to File False Tax Returns*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 21, 2009. Copy supplied.

Press release, *Serial Bank Robber Convicted*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 17, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Owner of Highland Gun Barn Sentenced for Dealing Firearms without a License*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 16, 2009. Copy supplied.

Press release, *Sixteen Members of Violent Armed Drug Trafficking Organization Indicted in Drug Case*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 15, 2009. Copy supplied.

Press release, *Three Indicted for Mortgage Fraud Scam*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 8, 2009. Copy supplied.

Jay Greene, *Expanded Team Gets Tougher on Health Care Cheats*, Crain's Detroit Business, Sept. 7, 2009. Copy supplied.

Tammy Stables Battaglia, *Sham Marriage Broker Gets Jail*, Detroit Free Press, Sept. 5, 2009. Copy supplied.

Press release, *Three Men Plead Guilty in Dog Fighting Venture*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 3, 2009. Copy supplied.

Press release, *Mortgage Fraud Ring Faces Years in Prison, $1.2 Million in Restitution*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 3, 2009. Copy supplied.

Press release, *Ann Arbor Businessman Pleads Guilty to Obstructing IRS*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 3, 2009. Copy supplied.

Press release, *Oakland County Doctor Pleads to Conspiracy*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 3, 2009. Copy supplied.

Press release, *City Lead Inspector Charged with Abusing Office*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 2, 2009 (reprinted in multiple outlets). Copy supplied.

Leonard Fleming, *U.S. Attorney Terrence Berg on Federal Corruption Probe of City Hall*, Detroit News, Sept. 2, 2009, video available at http://tinyurl.com/6qgskf3 (quotes reprinted in multiple outlets).

Press release, *Former Orchard Lake Resident Pleads Guilty to Bankruptcy Fraud*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 25, 2009. Copy supplied.

Ben Schmitt, David Ashenfelter, Jim Schaefer, & Christina Hall, *Unclear Reporting Prompts Complaints*, Detroit Free Press, Aug. 21, 2009. Copy supplied.

Press release, *West Bloomfield Psychiatrist Sentenced to Prison in Citizenship Fraud Conspiracy*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 18, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Novi Man Sentenced to 150 Months for Transporting Minors in Child Sexual Enterprise*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 18, 2009 (reprinted in multiple outlets). Copy supplied.

Ben Schmitt, *Woman Pleads Guilty in CIA Case*, Detroit Free Press, Aug. 12, 2009. Copy supplied.

Ben Schmitt, *Sentencing Set for Detroit Man in Cross-Border Carjacking*, Detroit Free Press, Aug. 7, 2009. Copy supplied.

Press release, *Southfield City Councilman William Lattimore Pleads Guilty to Accepting a Bribe from Samuel L. Riddle, Jr. and Mary Waters*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 6, 2009 (reprinted in multiple outlets). Copy supplied.

August 2009: Interview for Police Journal, Warren Police Department. Video recording supplied.

Naomi R. Patton & Ben Schmitt, *Conyers Quiet on Missing Office Equipment*, Detroit Free Press, July 31, 2009. Copy supplied.

Press release, *Fourteen Motorcycle Gang Leaders and Members Plead Guilty in Detroit to Violent Crime, Drug and Firearms Charges*, U.S. Department of Justice's Federal Bureau of Investigation Detroit Field Office, July 30, 2009. Copy supplied.

Press release, *Columbiaville Man Sentenced to 9 Years for Sending Child Pornography to Undercover Agent Posing as 13 Year-Old Girl*, U.S. Attorney's Office for the Eastern District of Michigan, July 29, 2009. Copy supplied.

David Josar, David Shepardson & Leonard N. Fleming, *Texts Reveal Relationship of Fed Monitor, Kilpatrick*, Detroit News, July 28, 2009. Copy supplied.

Press release, *Edenville Businessman Pleads Guilty to Filing False Tax Return*, U.S. Attorney's Office for the Eastern District of Michigan, July 24, 2009. Copy supplied.

Joe Swickard and Ben Schmitt, *Riddle and Lawyer Ask: Where are the Payers?*, Detroit Free Press, July 17, 2009. Copy supplied.

Press release, *Former Social Security Employee Sentenced*, U.S. Attorney's Office for the Eastern District of Michigan, July 16, 2009. Copy supplied.

Joe Swickard, Ben Schmitt, David Ashenfelter & Gina Damron, *Feds: Conyers, Riddle Teamed Up to Extort at Least $65,000*, Detroit Free Press, July 15, 2009. Copy supplied.

Press release, *Grand Jury Charges Samuel L. Riddle, Jr. and Mary Waters for Conspiring to Bribe and Bribing Southfield City Councilman William Lattimore in Connection with Pawn Shop Relocation*, U.S. Attorney's Office for the Eastern District of Michigan, July 15, 2009. Copy supplied.

Press release, *Grand Jury Indicts Samuel L. Riddle, Jr. for Conspiracy, Extortion, Bribery, and Making False Statements to FBI*, U.S. Attorney's Office for the Eastern District of Michigan, July 15, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Former City of Dearborn Employee Pleads Guilty to Accepting Bribes*, U.S. Attorney's Office for the Eastern District of Michigan, July 14, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Florida Resident Sentenced on Health Care Fraud Charges*, U.S. Attorney's Office for the Eastern District of Michigan, July 10, 2009. Copy supplied.

Press release, *Ann Arbor Man Sentenced to 180 Months for Transporting Child Pornography Via Now Defunct "Google Hello" Program*, U.S. Attorney's Office for the Eastern District of Michigan, July 10, 2009. Copy supplied.

Press release, *Saginaw Man Convicted on Federal Child Pornography Charges*, U.S. Attorney's Office for the Eastern District of Michigan, July 10, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Detroit Businessman and Restauranteur Sentenced for Failure to Pay Over Employment (Payroll) Taxes*, U.S. Attorney's Office for the Eastern District of Michigan, July 9, 2009. Copy supplied.

Press release, *Redford Return Preparer Indicted on Tax Charges*, U.S. Attorney's Office for the Eastern District of Michigan, July 9, 2009. Copy supplied.

Press release, *Highland Park Police Officer Indicted for Using Excessive Force, Injuring Person*, U.S. Attorney's Office for the Eastern District of Michigan, July 9, 2009. Copy supplied.

Cecil Angel, *7 Law Agencies Split $1.6 Million from Drug Case*, Detroit Free Press, July 9, 2009. Copy supplied.

Press release, *Seven Metropolitan Detroit Area Law Enforcement Departments Receive $1.6 Million from the U.S. Government for Their Role in National Drug Investigation*, U.S. Attorney's Office for the Eastern District of Michigan, July 8, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Seven Charged in Two Separate Mortgage Fraud Schemes*, U.S. Attorney's Office for the Eastern District of Michigan, July 8, 2009. Copy supplied.

Press release, *South Lyon Man Arrested in Connection with Series of Pipe Bombings*, U.S. Attorney's Office for the Eastern District of Michigan, July 8, 2009. Copy supplied.

Gina Damron & Joe Swickard, *Bribery Charge Specifics Are Under Wraps*, Detroit Free Press, July 7, 2009. Copy supplied.

Press release, *Virginia Software Writer Pleads Guilty to Aiding and Abetting Detroit Spam Conspiracy*, U.S. Attorney's Office for the Eastern District of Michigan, July 7, 2009. Copy supplied.

Press release, *Loan Officer Pleads Guilty to Stealing Data on Reverse Mortgages in Wire Fraud Scheme*, U.S. Attorney's Office for the Eastern District of Michigan, July 6, 2009. Copy supplied.

Carrie Johnson & Alice Crites, *Wife's Guilty Plea Raises Question of What Conyers Knew*, Washington Post, July 5, 2009. Copy supplied.

Doug Guthrie, Santiago Esparza & Darren A. Nichols, *Bing Says Shootings Call for Outrage*, Detroit News, July 3, 2009. Copy supplied.

Peggy Walksh-Sarnecki, Amber Hunt & Joe Swickard, *Feds Tell Bing They'll Help Battle Crime*, Detroit Free Press, July 2, 2009. Copy supplied.

Amber Hunt, Peggy Walksh-Sarnecki & Joe Swickard, *Prosecutor: Shooting Suspect to be Released*, Detroit Free Press, July 2, 2009. Copy supplied.

Press release, *Texas Hit Man Sentenced to Life in Prison for Troy Murders*, U.S. Attorney's Office for the Eastern District of Michigan, July 2, 2009. Copy supplied.

Press release, *Three Men Arrested in Dog Fighting Venture*, U.S. Attorney's Office for the Eastern District of Michigan, June 29, 2009 (reprinted in multiple outlets). Copy supplied.

Press release, *Warren Man Sentenced to 20 Years' Imprisonment on Child Pornography Charges*, U.S. Attorney's Office for the Eastern District of Michigan, June 29, 2009. Copy supplied.

Press release, *Bloomfield Business Owner Pleads Guilty to Tax Evasion Charges*, U.S. Attorney's Office for the Eastern District of Michigan, June 29, 2009. Copy supplied.

M.L. Elrick & Jim Schaefer, *Ex-Aide: Conyers Took Cash, Jewelry*, Detroit Free Press, June 29, 2009 (reprinted in multiple outlets). Copy supplied.

June 26, 2009: Press conference on Detroit City Council President Pro Tem Monica Conyers' guilty plea to bribery conspiracy charges. A Fox News video story with an excerpt of my remarks is supplied and additional press coverage of the conference is listed below:

> Paul Egan, *Conyers Admits Trading Synagro Vote for Cash*, Detroit News, June 27, 2009. Copy supplied.
>
> Paul Egan, *U.S. Attorney Defends Handling of Conyers Case*, Detroit News, June 27, 2009. Copy supplied.
>
> Christine MacDonald & David Josar, *Council Fate Hinges on Conviction*, Detroit News, June 27, 2009. Copy supplied.
>
> Nick Bunkley, *Detroit Council Member Pleads Guilty to Accepting Bribes for Vote*, New York Times, June 27, 2009. Copy supplied.

Edmund DeMarche, *Detroit Politician Admits Bribery*, CNN.com, June 26, 2009. Copy supplied.

Press release, *Detroit Man Pleads Guilty to Shooting at DEA Agent*, U.S. Attorney's Office for the Eastern District of Michigan, June 26, 2009. Copy supplied.

Jeff Karoub, *Detroit Councilwoman Admits Trading Vote for Cash*, Associated Press, June 26, 2009. Copy supplied.

Press release, *Detroit City Council President Pro Tem Monica Conyers Pleads Guilty to Conspiracy to Commit Bribery*, U.S. Attorney's Office for the Eastern District of Michigan, June 26, 2009. Copy supplied.

Press release, *Statement of United States Attorney Terrence Berg Regarding Guilty Plea of Monica Ann Conyers*, U.S. Attorney's Office for the Eastern District of Michigan, June 26, 2009. Copy supplied.

Press release, *Two Metro-Area Men Sentenced in Car-Theft and Counterfeit Cashier's Check Ring*, U.S. Attorney's Office for the Eastern District of Michigan, June 26, 2009. Copy supplied.

Press release, *Medicare Fraud Strike Force Operations Lead to Charges Against 58 Doctors, Health Care Executives and Beneficiaries for More than $50 Million in Alleged False Billing in Detroit*, U.S. Attorney's Office for the Eastern District of Michigan, June 24, 2009. Copy supplied.

Press release, *Local Detroit Businessman Sentenced*, U.S. Attorney's Office for the Eastern District of Michigan, June 24, 2009. Copy supplied.

Ed White, *Man Who Led Spam Scam Pleads Guilty in Detroit*, Associated Press, June 22, 2009. Copy supplied.

Press release, *Alan Ralsky, "King of Spam," Pleads Guilty with Four Co-Defendants in Multi-Million Dollar E-Mail Stock Fraud Scheme*, U.S. Attorney's Office for the Eastern District of Michigan, June 22, 2009 (quote reprinted in multiple outlets). Copy supplied.

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Press release, *Two "Detroit Thug Lordz" Sentenced to 20 Years' and 18 Years' Imprisonment*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 5, 2008. Copy supplied.

Press release, *Three Indicted in Mortgage Fraud Scam*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 5, 2008 (reprinted in multiple outlets). Copy supplied.

Press release, *Dearborn Wastewater Treatment Facility Pleads Guilty and Pays $750,000 in Fines for the Illegal Discharge of Untreated Waste in Detroit Sewer System*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 4, 2008. Copy supplied.

Press release, *Ortonville Man Sentenced for Signing False Internal Revenue Service Forms on Casino Winnings*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 3, 2008. Copy supplied.

Press release, *Former Pontiac Police Officer Sentenced for Embezzling Union Assets*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 3, 2008. Copy supplied.

Press release, *Man Sentenced on Health Care Fraud Related Charges of Conspiracy*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 2, 2008. Copy supplied.

Press release, *One Defendant Pleads Guilty, Another Receives 12 Years in Car Jacking and Robbery Spree*, U.S. Attorney's Office for the Eastern District of Michigan, Sept. 2, 2008. Copy supplied.

Press release, *Sunnyside Gang Members Plead Guilty*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 28, 2008. Copy supplied.

Press release, *Former Detroit Police Officer Sentenced for Extortion*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 26, 2008. Copy supplied.

Press release, *Oakland County Lawyer Indicted for Making False Statements*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 26, 2008. Copy supplied.

Press release, *Royal Oak Woman Arraigned on Tax Charges*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 26, 2008. Copy supplied.

Press release, *Eight Indicted by Federal Grand Jury on Drug, Gun Charges*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 26, 2008. Copy supplied.

Press release, *Ohio Man Sentenced for Trafficking in Children, Conspiracy*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 26, 2008. Copy supplied.

Press release, *Revenue Agent Sentenced to Prison for Money Laundering*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 25, 2008. Copy supplied.

Press release, *Ohio Man Found Guilty of Trafficking in Children for Sexual Exploitation*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 22, 2008. Copy supplied.

Press release, *Four Indicted by Federal Grand Jury for Mortgage Fraud*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 20, 2008 (reprinted in multiple outlets). Copy supplied.

Paul Egan, *Newest Federal Judge Not Allowed to Handle Criminal Cases – for a Year*, Detroit News, Aug. 15, 2008. Copy supplied.

Naomi R. Patton & David Ashenfelter, *Assistant Attorney Grew Up in City*, Detroit Free Press, Aug. 15, 2008. Copy supplied.

George Hunter, *Longtime Assistant to Step into U.S. Attorney Post*, Detroit News, Aug. 12, 2008. Copy supplied.

David Ashenfelter, *Berg Named Acting U.S. Attorney for Detroit*, Detroit Free Press, Aug. 11, 2008. Copy supplied.

Press release, *Former Federal Employee Pleads Guilty to False Statements*, U.S. Attorney's Office for the Eastern District of Michigan, Aug. 11, 2008. Copy supplied.

Paul Egan, *Gov Sought Scandal Settlements*, Detroit News, July 18, 2008. Copy supplied.

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Sharon Gaudin, *Follow Up – Auto Insider Pleads Guilty*, Information Week, June 11, 2007. Copy supplied.

Former IT Contractor Pleads Guilty to Chrysler Sabotage, CommWeb News, June 6, 2007. Copy supplied.

Mark Rechtin, *Hyundai vs. Toyota, Complete with Espionage*, Automotive News, Nov. 27, 2006. Copy supplied.

From Staff and Wire Reports, Plain Dealer (Cleveland), July 6, 2006. Copy supplied.

Jeffrey T. Rogg, *Terrence Berg – First Assistant U.S. Attorney*, FBA Newsletter, Federal Bar Association – Eastern District of Michigan Chapter, Summer 2006. Copy supplied.

Press release, *Two Charged with Providing U.S. Auto Supplier's Trade Secrets to Chinese Manufacturer*, U.S. Attorney's Office for the Eastern District of Michigan, Feb. 1, 2005. Copy supplied.

Cassandra Spratling, *'The First Step is the Hardest'*, Detroit Free Press, Oct. 19, 2004. Copy supplied.

Mike Wendland, *Don't Get Taken Hook, Line and Sinker*, Detroit Free Press, Oct. 14, 2004. Copy supplied.

Saul Hansell, *Junk E-Mail and Fraud are Focus of Crackdown*, New York Times, Aug. 25, 2004. Copy supplied.

David Shepardson, *Feds Charge 4 Under Spam Law*, Detroit News, Apr. 29, 2004. Copy supplied.

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Mike Wendland, *Mike's Mailbag*, Detroit Free Press, Dec. 19, 2003. Copy supplied.

Laura Berman, *Attorney General's Office Shifts Forces Away from Its Civil Crime Fight Role*, Detroit News, Oct. 19, 2003. Copy supplied.

Mike Wendland, *Identity Theft Epidemic Consumes Money, Time*, Detroit Free Press, Sept. 8, 2003. Copy supplied.

Antonio Robinson, *Wireless Camera Security Issues: 'War Spying'*, Detroit Regional Chamber of Commerce, date unknown (est. 2003). Copy supplied.

Kim Norris, *Get-Rich-Quick Ads Are Scams*, Detroit Free Press, Dec. 30, 2002. Copy supplied.

Michael Rose, *Oregon Firm Tied to Internet Child Porn*, Statesman Journal, Sept. 7, 2002. Copy supplied.

Nicole Jacques, *Stolen Identity: Authorities Warn Consumers to Protect Personal Information*, Lansing State Journal, Aug. 5, 2002. Copy supplied.

Crime: States Seek Federal Help in Combating Cyber Crime, National Journal's Technology Daily, June 1, 2001. Copy supplied.

Interview on local television program, "Due Process," *Child Pornography on the Internet*, with then-Attorney General Jennifer Granholm, WDIV, Channel 4, May 22, 2001. Video recording supplied.

Sally Farhat, *High-Tech Investigators Catch Computer-Aided Suspects*, Detroit Free Press, Mar. 9, 2001. Copy supplied.

Liza Porteus, *Fraud: States Join Forces to Fend Off Fraud*, National Journal's Technology Daily, Feb. 9, 2001. Copy supplied.

Deb Price, *Did Web Affair End in E-Murder, Suicide?*, Detroit News, Dec. 5, 2000. Copy supplied.

Gina Hamadey, *Internet Gambling Illegal, Popular at U. Michigan*, University Wire, Nov. 28, 2000. Copy supplied.

Dennis Niemiec, *High-Tech Prankster Finds Trouble Under Michigan Hacker Law*, Detroit Free Press, Oct. 2, 2000. Copy supplied.

Daniel Keegan, *Hotline Lets You Report Crimes Against Children on the Internet*, CNN.com, Aug. 14, 2000. Copy supplied.

Matt Roush, *SEC Issues Sanction Related to Lease Equities*, Crain's Detroit Business, May 18, 1998. Copy supplied.

Late News; Exec Pleads Guilty to Mail Fraud, Crain's Detroit Business, Dec. 1, 1997. Copy supplied.

Charlotte W. Craig, *Fund Exec Pleads Guilty to Fraud*, Detroit Free Press, Aug. 20, 1996. Copy supplied.

Charlotte W. Craig, *Seller of Lease Shares Faces Charges of U.S. Mail Fraud*, Detroit Free Press, July 18, 1996. Copy supplied.

Matt Roush, *Odds-N-Ends Operator Awaits Fraud Sentencing*, Crain's Detroit Business, Nov. 6, 1995. Copy supplied.

Singer Sings His Swan Song, Automotive News, Dec. 12, 1994 (reprinted in multiple outlets). Copy supplied.

Matt Roush, *Odds-N-Ends Judge to Be Asked to Add Defendants*, Crain's Detroit Business, Sept. 26, 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 any judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? None.

   i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

    I have not held any judicial office.

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

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

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

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

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

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

    I have never held any public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

    I worked as a volunteer distributing literature for Jennifer Granholm for Attorney General in the fall of 1998. I also provided advice on computer crime issues and distributed literature for Jennifer Granholm for Governor of Michigan in 2002. Otherwise, I have never held any office in or rendered any services to any political party or election committee, 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;

From 1986 to 1987, I served as a law clerk to the Honorable Anthony A. Alaimo, Chief Judge of the United States District Court for the Southern District of Georgia.

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

I have never practiced law alone.

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

1987 – 1989
Debevoise and Plimpton
555 13th Street, NW
Washington, D.C. 20004
Associate

1989 – 1999
United States Attorney's Office for the Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Assistant United States Attorney

1999 – 2003
Michigan Department of Attorney General
High Tech Crime Unit
18050 Deering
Livonia, Michigan 48152
Assistant Attorney General
First Assistant, Criminal Division (2002 – 2003)
Chief, High Tech Crime Unit (1999 – 2003)

1999 – 2000
U.S. Department of Justice
Criminal Division
Computer Crime and Intellectual Property Section
1301 New York Avenue, NW, Suite 600

Washington, D.C. 20005
Computer Crime Fellow for the National Association of Attorneys General

2003 – 2011
United States Attorney's Office for the Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Assistant United States Attorney (2003 – 2005, 2010 – 2011)
First Assistant United States Attorney (2005 – 2008)
Interim United States Attorney (2008 – 2010)

2010
United States Attorney's Office for the Middle District of Georgia
355 Mulberry Street, 6th Floor
Macon, Georgia
Acting First Assistant United States Attorney (Detail)

2011 – Present
U.S. Department of Justice, Office of Deputy Attorney General
Professional Misconduct Review Unit
United States Attorney's Office for the Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Attorney (Detail)

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

From October 1987 until June 1989, I worked as an associate in the Washington, D.C. office of Debevoise and Plimpton. At Debevoise, I was assigned to the litigation department and worked primarily on cases involving general civil litigation, defense of shareholder derivative actions, Securities and Exchange Commission investigations, and corporate internal investigations involving federal criminal or regulatory issues. I was also involved in a comprehensive corporate governance writing project.

In July 1989, I was appointed as an Assistant U.S. Attorney for the Eastern District of Michigan. I served in several of the units of the Criminal Division, including General Crimes, Controlled Substances, and Economic Crimes. In General Crimes, I handled smaller cases, mostly felon-in-possession-of-firearm cases, drug trafficking and gun violations, bank robberies, kidnappings, and some fraud cases. In around 1991, I joined the Controlled Substances Unit, focusing on larger-scale multi-defendant drug trafficking conspiracies. I tried one international heroin trafficking case that involved a drug-related murder while working in this unit. In around 1994, I joined the Economic Crimes Unit. In that unit, I handled complex white collar crime prosecutions, including investment fraud, bank fraud, and also handled a complex environmental crimes trial.

In May 1999, I was appointed by then-Attorney General (later Governor) Jennifer M. Granholm as Chief of the High Tech Crime Unit of the Michigan Department of Attorney General. I served in that capacity for four years, during which time I created and directed Michigan's first state-wide computer crime unit, which brought a large number of cases of first impression, and conducted training for prosecutors, law enforcement officers, and judges throughout the state. I handled a caseload as well as supervised a unit consisting of four other attorneys and three investigators.

I returned to the U.S. Attorney's Office in 2003. From July 2003 until May 2005, I handled white collar crime prosecutions with a specialization in computer crime. I organized a "Cyber Coalition" which was a computer crime working group made up of federal and state law enforcement agencies which shared information, expertise, and training on cyber crime investigations. I was appointed First Assistant U.S. Attorney in May 2005. In this position I managed the day-to-day operations of the U.S. Attorney's Office and directly supervised the Criminal Chief, Civil Chief, Appellate Chief, and Administrative Officer. Upon the departure of the U.S. Attorney in August 2008, I became the Interim United States Attorney and was responsible managing and setting the priorities of the office, interacting with all of the Federal law enforcement agencies, the Court and the public as the representative of the office. I served in that capacity until January 2010.

In May 2010, I began serving as the acting First Assistant U.S. Attorney for the Middle District of Georgia, in Macon, Georgia, on a temporary detail appointment by the Executive Office of U.S. Attorneys. During this assignment, I helped develop a strategic plan to assist this office in addressing a number of personnel, productivity, and morale problems that had been identified in a recent office evaluation, and also assisted in managing the office generally with the Acting U.S. Attorney. I received a

Director's Award from the Executive Office of U.S. Attorneys in December 2010 based on my work in the Middle District of Georgia.

In October 2010, I returned to my duties as an Assistant U.S. Attorney in Detroit, and resumed carrying a full caseload of white collar and computer crime cases. In March 2011, I was appointed to serve on a detail as an attorney in the newly created Professional Misconduct Review Unit (PMRU), which is part of the Office of the Deputy Attorney General. As an attorney with the PMRU, I am charged with reviewing reports from the Office of Professional Responsibility (OPR), making an independent determination regarding the report's findings, and if professional misconduct is found, proposing discipline for the misconduct.

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

In private practice, my typical clients were large corporations, insurance companies, and public utilities. As a prosecutor, early in my career I handled illegal firearms, narcotics, and violent crimes including bank robberies and kidnappings. I also did complex drug trafficking cases involving wiretaps and multiple defendants and organizations. Most of my career I have specialized in white collar crime and fraud prosecutions, and more particularly in computer crime and intellectual property 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.

Some 80-90 percent of my practice has been in litigation. As a prosecutor from 1989 to 1999, I appeared very frequently in court to handle all manner of proceedings, from ministerial matters such as arraignments and supervised release violation hearings, to complex trials involving multiple defendants and several weeks of trial. I was a supervisor from 1999 to 2003 in the Michigan Attorney General's High Tech Crime Unit, and later as the First Assistant and Interim U.S. Attorney of the U.S. Attorney's Office for the Eastern District of Michigan, from 2005 to 2010, and during those years I appeared less frequently in court, although I continued to carry a reduced caseload and to be involved in litigation. In the last two years, serving in one management detail in Georgia, and a second detail dealing with professional misconduct, I have been involved in litigation less often.

i. Indicate the percentage of your practice in:

1. federal courts: 85%
2. state courts of record: 15%
3. other courts: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 10%
2. criminal proceedings: 90%

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

I estimate that I have tried 27 cases to verdict, judgment, or final decision. I served as sole counsel in approximately 20 of those cases and as co-counsel in approximately seven of those cases.

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

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

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

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

a. the date of representation;

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

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

1. *United States v. Ralsky*, Crim No. 07-20627 (E.D. Michigan), Hon. Marianne Battani, 2006 – 2011. The case is a nationally significant prosecution involving a complex scheme to use bulk commercial e-mail or "spam" to carry out an international "pump and dump" stock manipulation scheme. The main defendant, Ralsky, was one of the most prolific illegal spammers in the world, and had an international organization. The case involved several years of

investigation and grand jury work, and resulted in 12 convictions. I was the lead prosecutor on this case, directed the investigation and the prosecution in all of its stages, from the Grand Jury investigation through the sentencings. Two attorneys from the Computer Crime and Intellectual Property Section also became full-fledged team members in preparing the case for indictment, possible trial, and during the pleas and sentences. All defendants with the exception of one Russian national, who has not been arrested, have pleaded guilty and been sentenced.

Co-counsel:
Thomas Dukes, Esq.
Mona Sedkey. Esq.
United States Department of Justice
Criminal Division, Computer Crime and Intellectual Property Section
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Counsel for Defendant Patton:
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Bloomfield Hills, Michigan 48302
(248) 335-5000

Counsel for Defendant Berger:
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Kirsch and Satawa, P.C.
3000 Town Center, Suite 1800
Southfield, Michigan 48075
(248) 356-8320

2. *United States v. Lockwood*, Crim. No. 06-20331 (E.D. Michigan), Honorable Denise Page Hood, 2005 – 2009. This was a complex theft of trade secrets case involving theft of cutting edge competitive manufacturing information from Metaldyne Corporation, a Plymouth, Michigan-based auto suppler of parts made from powdered metal. The defendants were former high-level Metaldyne executives. All three defendants pleaded guilty and were sentenced to prison. I was the lead prosecutor on this case and was involved in all of its stages, from Grand Jury through sentencing. Co-counsel were involved in assisting with drafting motion responses, witness preparation, and sentencing.

Co-counsel (2008 – 2009):
Assistant U.S. Attorney Cynthia Oberg
U.S. Attorney's Office for the Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
(313) 226-9701

Co-counsel (2007 – 2008):
Assistant U.S. Attorney Scott Garland
U.S. Attorney's Office for the District of Massachusetts
1 Courthouse Way
John Joseph Moakley Courthouse
Boston, Massachusetts 02210
(617) 718-3100

Counsel for Defendant Lockwood:
Mark Kriger, Esq.
Deday LaRene, Esq.
645 Griswold Street, Suite 1717
Detroit, Michigan 48226
(313) 967-0100

Counsel for Defendant Liu:
Michael Gordner, Esq.
Thomas Cranmer, Esq.
Miller Canfield Paddock & Stone, PLC
150 West Jefferson Avenue, Suite 2500
Detroit, Michigan 48226
(313) 496-7963

Counsel for Defendant Haehnel:
Edward Wishnow, Esq.
240 Daines Street
Birmingham, Michigan 48009
(248) 258-1991

3. *United States v. Lin*, Crim. No. 04-80863 (E.D. Michigan), Honorable John Corbett O'Meara, 2005 – 2009. This case was the first prosecution in the nation under the CAN-SPAM Act, making fraud in connection with bulk commercial e-mail a federal crime. The investigation involved tracing the origin of the illegal spam and gathering evidence in Germany and Canada. Lin was the leader of a small group of individuals who were marketing "diet patches" and other items through websites advertised by means of illegal spam e-mail that was sent through "open proxy" computers without the authorization of the computers' owners. The lead defendant, Lin, was indicted, pleaded guilty and was sentenced to three years in prison. Of three other defendants charged along with Lin in the original criminal complaint, one pleaded guilty to a felony information, another to a misdemeanor, and a third entered into pre-trial diversion. I conducted all of the Grand Jury work, pretrial motion litigation, plea negotiations, and sentencing in this case.

Counsel for Defendant D. Lin:
Juan Mateo, Esq.
535 Griswold Street, Suite 1030
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(313) 962-3500

Counsel for Defendant J. Lin:
Harold Z. Gurewitz, Esq.
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Counsel for Defendant Sadek:
Gerald K. Evelyn, Esq.
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(313) 962-3500

Counsel for Defendant Chung:
David S. Steingold, Esq.
400 Monroe Street, Suite 280
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(313) 962-0000

4. *United States v. Ollison*, Crim. No. 04-81032 (E.D. Michigan), Honorable Avern Cohn, 2004 – 2005. The defendant operated an identity theft and bank fraud crew that diverted over a million dollars in victim funds to the ten co-conspirators. The two main defendants persuaded several bank tellers to provide customer account and personal identity information to the defendants, who would then have fake IDs manufactured in the account holders' names, and then employ

a number of drug addicts to pose as the real account holders and make multiple withdrawals, draining the accounts. All defendants were convicted, nine by guilty plea and one following a jury trial. I conducted all of the Grand Jury work, pretrial motion litigation, plea negotiations, jury trial, and sentencing in this case.

Counsel for Defendant Ollison:
Sanford Schulman, Esq.
500 Griswold Street, Suite 2340
Detroit, Michigan 48226
(313) 963-4740

Counsel for Defendant Murphy:
Corbett O'Meara, Esq.
500 Griswold Street, Suite 2340
Detroit, Michigan 48226
(313) 882-7450

Counsel for Defendant Ross:
Allison Folmar-Givens, Esq.
65 Cadillac Square, Suite 2605
Detroit, Michigan 48226
(313) 930-2500

Counsel for Defendant Robinson:
Rita Chastang, Esq.
Federal Defender Office
613 Abbott Street, 5th Floor
Detroit, Michigan 48226
(313) 967-5853

Counsel for Defendant Taylor:
Samual J. Churikian, Esq.
43550 Elizabeth Road
Clinton Township, Michigan 48036
(586) 465-8647

Counsel for Defendant Hickey:
Lisa L. Dwyer, Esq.
710 North Crooks Road
Clawson, Michigan 48036
(248) 435-8549

Counsel for Defendant Collins:
Robert Lech, Esq.
P.O. Box 36781

Grosse Pointe Farms, Michigan 48236
(313) 886-6777

Counsel for Defendant Baker:
Christopher Seikaly, Esq.
24359 Northwestern Highway, Suite 200
Southfield, Michigan 48075
(248) 948-1900

Counsel for Defendant Drake:
Fred B. Walker, Esq.
306 South Washington Avenue, Suite 223
Royal Oak, Michigan 48067
(248) 546-6271

Counsel for Defendant Drummy:
David Braxton, Esq.
243 West Congress Street, Suite 350
Detroit, Michigan 48226
(313) 965-4445

5. *United States v. Downey*, Crim. No. 07-20284 (E.D. Michigan), Honorable Nancy G. Edmunds, 2004 – 2007. This case was one of the first prosecutions in the nation for the operation of a "bot-net," or a network of infected computers, to cause damage to other computers. The defendant was charged with a violation of 18 U.S.C. § 1030, the Computer Fraud and Abuse Act, for creating and sending a virus that, when downloaded onto a victim's computer, would cause that computer to be controlled by a command server operated by the defendant. Defendant had infected a large number of computers, which he controlled as a network of "robot computers," called a bot-net. He used the network to send denial of service attacks (streams of data sent to target computers) in order to knock competitor chat rooms off-line. The defendant pleaded guilty and was sentenced to a one-year prison term. I conducted all of the Grand Jury work, pretrial motion litigation, plea negotiations, and sentencing in this case.

Counsel for Defendant Downey:
Jill Leslie Price, Esq.
Andrew Wise, Esq.
Federal Defender Office
613 Abbott Street, 5th Floor
Detroit, Michigan 48226

6. *United States v. Chilingirian*, Crim. No. 96-80670 (E.D. Michigan), Honorable John Corbett O'Meara, 1998 – 1999. This was a major white collar fraud trial involving an investment scheme in which the defendants were soliciting investments in a radar-braking technology company based on false

statements, and an attorney, Chilingirian, was allowing his trust account to be used to launder the proceeds of the scheme. The Rashid brothers created forged documents making it appear that the technology had been purchased by major auto manufacturers in order to get investors to provide funds. The attorney received investor funds into his client trust account to help the Rashids hide its existence. Although I was co-counsel, not lead counsel, on this case, it was one of the more significant fraud trials I handled. I was primarily responsible for handling the money laundering witnesses and proofs regarding the defendant attorney Chilingirian. I did the closing argument and many of the witnesses. The defendants were convicted and sentenced to prison. This was tried to a jury and to the court simultaneously, with Chilingirian's case decided by the judge and the Rashid brothers by the jury. I did not handle the direct appeal, but it is reported at *United States v. Chilingirian*, 280 F.3d 704 (6th Cir. 2002).

Co-counsel:
Former Assistant U.S. Attorney, Professor Patrick E. Corbett
Thomas M. Cooley Law School
300 South Capitol Avenue
Lansing, Michigan 48933
(517) 371-5140

Counsel for Defendant Chilingirian:
Thomas Cranmer, Esq.
Miller Canfield Paddock & Stone, PLC
840 West Long Lake Road, Suite 200
Troy, Michigan 48098
(248) 267-3381

Counsel for Defendant Rashid:
Edward Wishnow, Esq.
240 Daines Street
Birmingham, Michigan 48009
(248) 258-1991

Counsel for Defendant Rashid:
Kenneth Karam, Esq.
31760 Harper Avenue
Saint Clair Shores, Michigan 48082
(586) 294-8800

7. *United States v. Farrell*, Crim. No. 95-80237 (E.D. Michigan), Honorable Denise Page Hood, 1995 – 1997. This case was a complex insurance fraud trial against a vice president of AIG aviation insurance division in Chicago. The defendant had created phony claims files that declared damaged aircraft to be "totaled," allowing him to pay the owner the full value of the plane and declaring it to be "salvage." The defendant would then rig the bidding process for the

salvage so that it would be awarded to his co-defendant, an airplane mechanic, who would take possession of the slightly damaged plane, then repair and re-sell it. I conducted all of the Grand Jury work, pretrial motion litigation, plea negotiations, jury trial, and sentencing in this case. The defendants were convicted after a jury trial and sentenced to prison.

Counsel for Defendant Farrell:
James Feinberg, Esq.
535 Griswold Street, Suite 2500
Detroit, Michigan 48226
(313) 962-8280

Counsel for Defendant Boorom:
John D. Baker, Esq.
402 North Main Street
Adrian, Michigan 49221
(517) 263-1033

8. *United States v. Rapanos*, Crim. No. 93-20023 (E.D. Michigan), Honorable Lawrence P. Zatkoff, 1994 – 1995. This trial was an extremely hard fought environmental crimes case involving the destruction of approximately 50 acres of wetlands. The defendant was a very wealthy property developer who attempted to destroy evidence and intimidate the witnesses. The violation was also pursued as civil enforcement, and the civil side of the case resulted in litigation that reached the U.S. Supreme Court. The defendant was convicted, but the judge departed below the guidelines and imposed a sentence of probation. I was co-counsel but not lead counsel in this matter. This case was tried twice, the first time resulting in a mistrial. I participated in both jury trials, conducting many direct examinations and cross-examinations, and presenting the government's closing argument. The trial lasted approximately five weeks. The conviction was affirmed. *United States v. Rapanos*, 339 F.3d 447 (6th Cir. 2003).

Co-counsel:
Assistant U.S. Attorney Janet L. Parker
United States Attorney's Office for the Eastern District of Michigan
101 First Street, Suite 200
Bay City, Michigan 48708
(989) 891-0371

Counsel for Defendant Rapanos:
Daniel Skinner, Esq.
101 First Street, Suite 105
Bay City, Michigan 48708
(989) 893-5547

John Wildeboer, Esq.
3906 North Euclid Avenue
P.O. Box 430
Bay City, Michigan 48707
(989) 684-3313

David Haywood, Esq.
618 South Creyts Street, Suite B
Lansing, Michigan 48917
(517) 886-1410

9. *United States v. Scarborough*, Crim. No. 93-80218 (E.D. Michigan), Honorable Nancy G. Edmunds, 1991 – 1994. The defendants were part of a conspiracy to place an incendiary device in the U.S. mail at the Royal Oak Post Office on "Tax Day," April 15, 1990. The defendants had testified falsely before the grand jury in order to hide their own role and the roles of their co-conspirators and were charged with perjury. Both defendants were convicted and sentenced to prison. I was the lead prosecutor in this case, handling many of the witnesses as well as the opening statement and rebuttal argument. The conviction was affirmed. *United States v. Scarborough*, 43 F.3d 1021 (6th Cir. 1994).

Co-counsel:
Assistant U.S. Attorney John Roth
Judiciary Center Building
555 Fourth Street, NW, 5th Floor
Washington, D.C. 20530
(202) 353-9460

Counsel for Defendant S. Scarborough:
Ralph Musilli, Esq.
24001 Greater Mack Avenue
Saint Clair Shores, Michigan 48080
(586) 778-0900

Counsel for Defendant K. Scarborough:
Tom Wilhelm, Esq. (deceased)

10. *United States v. Hofstatter*, Crim. No. 91-80542 (E.D. Michigan), Honorable Patrick J. Duggan, 1993 – 1994. This case was one of the first trials in the country involving charges of manufacturing a designer drug called methylcathinone, also known as "cat," under the Controlled Substance Analogue statute, a federal law that made certain kinds of designer drugs illegal if they are chemically similar to, and have the same effects on the central nervous system as, controlled substances. The main defendant, Hofstatter, was a "cook" who had figured out how to synthesize methylcathinone or "cat." The two main defendants were convicted after a jury trial, and the statute was upheld against a

constitutional attack on appeal. One defendant, who had a minor role, was acquitted by the court. Subsequent investigation led to the conviction of McPhee as well. McPhee had worked at Parke-Davis pharmaceutical company in Ann Arbor, and had stolen the formula for methylcathinone, which had been developed as an experimental drug, and given it to Hofstatter. I conducted all of the Grand Jury work, pretrial motion litigation, plea negotiations, jury trial, and sentencing in this case. I handled the direct appeal, and the conviction was affirmed. *United States v. Hofstatter*, 8 F.3d 316 (6th Cir. 1993).

Counsel for Defendant Hofstatter (at trial):
James Hoare, Esq.
28545 Orchard Lake Road, Suite B
Farmington Hills, Michigan 48334
(248) 553-7777

Counsel for Defendant Hofstatter (on appeal):
Randall F. Karfonta, Esq.
115 North Main Street
P.O. Box 565
Leland, Michigan 49654
(231) 256-2200

Counsel for Defendant Griffor (at trial):
Howard Wittenberg (no longer in practice)

Counsel for Defendant Griffor (on appeal):
Douglas R. Mulkoff, Esq.
402 West Liberty Street
Ann Arbor, Michigan 48103
(734) 761-8585

Counsel for Defendant Roe (at trial):
Sanford Plotkin
615 Griswold Street, Suite 1300
Detroit, Michigan 48226
(313) 963-3377

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.)

Addressing Management Challenges in Two U.S. Attorney's Offices

As First Assistant and as interim U.S. Attorney for the Eastern District of Michigan, and later as the Justice Department-appointed Acting First Assistant for the Middle District of Georgia, I have grappled with and resolved numerous difficult management challenges in ways that have resulted in positive improvements for the people working in those offices. When I became part of top management of the EDMI U.S. Attorney's Office in 2005, the office was still recovering from a morale destroying episode involving the collapse of one of the nation's first post-9/11 terrorism trials, which was voluntarily dismissed by our office after serious prosecutorial misconduct was discovered. We also had lost several high profile cases. We worked hard to restore morale by stressing professionalism, teamwork, and values. I was the primary drafter of a Mission Statement for our office that encapsulated our vision of what a U.S. Attorney's Office should strive to be, which was: "Our mission is to serve justice by prosecuting federal crimes and representing the United States of America in federal court with diligence, fairness, and integrity. For us, doing right and upholding the letter and spirit of the Constitution and the laws of the land are not only more important than prevailing in any single case, they are the standards by which we measure the success of every case." I am proud of this articulation of our mission. By appointing strong managers, developing a training and mentoring program, and exercising close supervision over charging decisions, we helped to restore the reputation of our office. We also enhanced our productivity by establishing task forces to deal with mortgage fraud, health care fraud, and violent crime, as well as aggressively pursuing a serious public corruption problem in the City of Detroit.

I also worked to restore morale and productivity in the U.S. Attorney's Office for the Middle District of Georgia. I was asked by the Executive Office of U.S. Attorneys to serve as the acting First Assistant U.S. Attorney for that office after they had experienced a number of difficult personnel and management problems, and the Department was seeking an experienced management attorney to assist them. I served six months in this position in 2010, and helped to develop and implement a strategic plan for the improvement of the management structure of the office. This included revising the Criminal Division's management plan; improving case intake, assignment and review procedures; overseeing an increase in productivity in criminal cases indicted; working with the management team to significantly improve relationships with client agencies and the judiciary; initiating a mentoring program that paired less experienced AUSAs with senior AUSAs to provide counsel and guidance; participating in the development of a "Back to Basics" training program for all criminal AUSAs; and establishing a program to improve morale and promote a sense of camaraderie and teamwork among the staff.

Michigan Attorney General's High Tech Crime Unit and Operation "Nolita"

In 1999, I was appointed by then-Attorney General (later Governor) Jennifer M. Granholm to establish Michigan's first state-wide computer crime prosecution unit. We faced many challenges as we tried to set up a team of attorneys and investigators charged with bringing cases in a new area of law: criminal activity on the Internet. We brought cases of first impression, increased the state's expertise in this area by conducting training across the state, and assisted many local agencies with developing their cases. In

order to attack the financial side of the Internet child pornography business, we developed an operation designed to prevent the ability of pay-for-view child porn websites to accept credit card payments. We called this investigation "Operation Nolita." Although no criminal charges were brought, we used undercover methods to identify approximately 100 websites that appeared to contain sexually explicit images of children under the age of 17, and also determined which credit card processing companies they used. We employed the Attorney General's civil authority by issuing "cease and desist" letters to the four or five credit card processing companies that we had identified. As to each credit processing company, we identified the child porn websites that they were supporting and notified them that, if they did not stop accepting credit card transactions for these websites, we would bring charges for facilitating the distribution of child pornography. Within two weeks, almost all of the child porn websites' credit card processing facilities were disconnected, as our undercover officers determined by attempting to access them. This meant that some 100 child porn websites were suddenly unable to accept new customers, and their exploitation of children was stopped.

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 Fall of 1997, I taught a 2-credit course on negotiations at the Wayne State School of Law. I no longer have a syllabus for this course.

    I have also served periodically as an adjunct professor at the University of Detroit – Mercy School of Law since 1995, and have taught the following courses:

    Legal Issues in Computer Crime
    Winter 2012, Winter 2008, Fall 2003, Winter 2001

    This 2-credit course is a criminal law survey covering the federal and state statutes on computer crime, searching and seizing computers, the law of electronic surveillance and gathering electronic evidence. Syllabi supplied.

    Trial Practice
    Winter 1995 – Winter 1999

    This is a 3-credit evening course in trial advocacy covering law of evidence, admissibility of exhibits, direct and cross examination, opening statements and closing arguments. The final consisted of a mock trial. I did not retain any syllabi.

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.

If my work schedule permits, I would like to continue teaching at the University of Detroit – Mercy School of Law. If it is permissible under the judicial code of ethics, I would like to remain involved as a member of governing boards of non-profit organizations or bar-related organizations such as the Caritas Welcome Center and the Historical Society for the U.S. District Court for the Eastern District of Michigan.

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 would recuse myself from any case in which my brother, Frederick A. Berg, Jr., an attorney practicing before the U.S. District Court for the Eastern District of Michigan, is representing a party. I would also be prepared to recuse myself from any criminal cases that I directly supervised or handled while in the United States Attorney's Office.

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

If confirmed, I would consult the applicable canons of the Code of Judicial Conduct for United States Judges, and seek the advice of fellow judges in assessing any real or potential conflicts of interest.

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

Because the vast majority of my career has been in public service and as a prosecutor, I have not provided any *pro bono* legal services. However, I have devoted time serving the disadvantaged in other non-legal ways.

For example, in the summer of 1998, I traveled to Honduras on a one-week medical mission with my brother-in-law, who is an eye surgeon. Because I had proficiency in Spanish, I served as a translator for the patients who came to receive eye exams, and surgery in an impoverished and remote town in the mountains of Honduras.

I have also regularly participated two times per year packing food boxes for the poor for Focus Hope. I have been doing this for approximately five years, with my entire family. This is an activity sponsored by the Catholic Lawyer's Society and the Irish-American Lawyer's Society. In connection with the Catholic Lawyer's Society, I organized a charitable event at St. Al's Community Center, where volunteers feed breakfast to the homeless. This event was conducted in 2008 and 2009. I also organized a similar event, where the attorneys served food to the guests of the Caritas Welcome Center, in 2012.

In addition, my parish hosts the homeless once a year, and parishioners prepare and serve food, organize activities, and provide security. I have participated in this activity for several years, usually by serving one of the meals and also taking a shift as "security" during the evening or night.

In 2001, my wife raised funds to build a children's park and playground in Detroit. Over the next several years, and continuing until the present time, I have spent many volunteer hours working on this park, building the equipment, moving and spreading wood chips, cleaning, gardening, and doing maintenance work.

I have also served as a member of Gesu's St. Vincent de Paul Society for several years, and assisted in assembling and handing out Thanksgiving and Christmas food boxes to poor families over the years, approximately from 2003 – 2009.

Finally, since January 2010 I have been the President of the Board of Directors of the Caritas Welcome Center, a homeless persons' care center that currently operates out of space provided by the Deliverance Temple. This Center provides a safe, welcoming environment for street people who suffer from addiction, mental illness,

alcoholism and poverty. The Center provides daily refreshments, a hospitality area, and a quiet area, one hot meal a week, a shaving room, phone access, a men's group and women's group, and periodic distribution of socks and hygiene items. Although I sometimes assist in direct provision of services, my work with the Center consists of serving as the President of the Board, scheduling and managing the meetings of the Board, communicating with the Director about the needs of the Center and conveying them to the Board, and similar activities.

26. **Selection Process**:

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

I submitted a Judicial Advisory Committee Questionnaire to Senator Levin's Committee on January 24, 2011. I was notified that I was selected to be interviewed on February 15, 2011. I was interviewed by the Judicial Advisory Committee on March 8, 2011. On March 14, 2011, I received a letter from Senators Levin and Stabenow indicating that I had been recommended by the Committee, and that the Senators were forwarding my name along with four others to President Obama for his consideration to fill one of the two then-existing vacancies on the U.S. District Court for the Eastern District of Michigan. Since January 27, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 28, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On April 25, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2012

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
Berg, Terrence G.	U.S.District Court, Eastern District of Michigan	04/25/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. District Judge	☑ Nomination Date 04/25/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 03/31/2012
7. Chambers or Office Address		
Theodore Levin U.S. Courthouse 231 W. Lafayette Detroit, Michigan 48226		

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. Insert signature on last page.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	President, Board of Directors	Caritas Welcome Center
2.	Member, Board of Directors	Catholic Lawyers' Society of Detroit
3.	Member, Board of Directors	Historical Society for the United States District Court for the Eastern District of Michigan
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting	Date of Report
	Berg, Terrence G.	04/25/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2012	University of Detroit-Mercy, Adjunct Professor salary	$1,500.00
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2012	Gesu Catholic School Salary
2.	2011	Gesu Catholic School Salary
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting	Date of Report
	Berg, Terrence G.	04/25/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Berg, Terrence G.	04/25/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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		None	M	T	Exempt				
2. - American Funds Europacific Growth Fund									
3. - ING Small Cap Growth Equity									
4. - RidgeWorth Small Cap Value Equity Fund									
5. - SSgA S&P 500 Index Fund									
6. - SSgA S&P MidCap Index Fund									
7. - SSgA Target Retirement 2025									
8. - SSgA Yield Enhanced Short-Term Investment Fund									
9. Calvert Tax Free Municipal Bond Fund	A	Int./Div.	K	T					
10. First Eagle Global Fund Class A	A	Dividend	J	T					
11. Virtus Growth and Income Fund-C		None	J	T					
12. Coca Cola Enterprises, Inc.	A	Dividend	J	T					
13. Michigan 529-Aggressive Age-Based Option Age 18+		None	J	T					
14. Michigan 529-Moderate Age-Based Option Age 15-17		None	K	T					
15. Michigan 529-Moderate Age-Based Option Age 12-14		None	K	T					
16. Peoples Trust Credit Union Accounts	A	Int./Div.	L	T					
17. Phoenix Life Insurance Company Whole Life Policy		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)
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

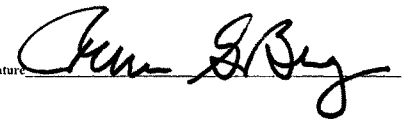
3. Value Method Codes (See Column C2)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Berg, Terrence G.	Date of Report 04/25/2012

IX. CERTIFICATION.

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

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

Signature 

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		74	121	Notes payable to banks-secured			
U.S. Government securities – Series EE		2	450	Notes payable to banks-unsecured			
Listed securities – see schedule		237	299	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – see schedule		171	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		15	500				
Cash value-life insurance		35	853				
Other assets itemize:							
Thrift Savings Plan		522	403				
				Total liabilities			0
				Net Worth	1	058	626
Total Assets	1	058	626	Total liabilities and net worth	1	058	626
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds EuroPacific Growth Fund	$ 24,600
Calvert Tax Free Reserves Money Market	18,077
Coca Cola stock	80
First Eagle Global Fund Class A	13,423
ING Small Cap Growth Equity	8,755
Michigan 529 Aggressive Age-Based Option Age 18	1,668
Michigan 529 Moderate Age-Based Option Age 15-17	23,670
Michigan 529 Moderate Age-Based Option Age 12-14	33,560
RidgeWorth Small Cap Value Equity Fund	8,511
SSgA S&P 500 Index Fund	10,991
SSgA S&P MidCap Index Fund	17,763
SSgA Target Retirement 2025	65,285
SSgA Yield Enhanced Short-Term Investment Fund	1,758
Virtus Growth and Income Fund-C	9,158
Total Listed Securities	$ 237,299

Real Estate Owned	
Personal residence	$ 156,000
Vacation home (20% interest)	15,000
Total Real Estate Owned	$ 171,000

AFFIDAVIT

I, Terrence G. Berg, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4-23-12
(DATE)

(NAME)

Beryl A. Robbins
(NOTARY)

BERYL A. ROBBINS
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Jan 11, 2015
ACTING IN COUNTY OF WAYNE

Senator BLUMENTHAL. Thank you, Mr. Berg, and congratulations to the graduates.

Mr. Bernal.

STATEMENT OF JESUS BERNAL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Mr. BERNAL. Yes, thank you, Your Honor—I mean, thank you, Senator. I would like to acknowledge the presence of my lovely wife, Patricia, my wife of 13 years, who is present with me here today. And even though she is the only one here physically present, I do have a lot of support back home in California. Watching by Webcast are my family members, including my son, Jesus, and a recent graduate, Natalia, who graduated from kindergarten yesterday.

[Laughter.]

Mr. BERNAL. She might have a few words for us for missing that graduation when we get back to California.

Also watching by Webcast is my brothers and sisters, my two brothers and my two sisters, and my in-laws, and my mother, who, given Senator Boxer's words, is probably already beaming and enjoying what I am sure is her first Webcast.

I would like to, of course, thank the Committee for convening this hearing and Senator Boxer, of course, for her kind words in introducing me, for the statement provided by Senator Feinstein, and, of course, to President Obama for granting me the honor of being nominated.

Thank you.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jesus Gilberto Bernal

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

   United States District Judge for the Central District of California

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

   Office of the Federal Public Defender
   3801 University Avenue, Suite 700
   Riverside, California 92501

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

   1963; Culiacan, Sinaloa, Mexico

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

   1986 – 1989, Stanford Law School; J.D., 1989
   1982 – 1986, Yale University; B.A. (*cum laude*), 1986

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

1996 – present
Office of the Federal Public Defender
3801 University Avenue, Suite 700
Riverside, California 92501
Chief of Trials, Los Angeles Office (scheduled to begin May 14, 2012)
Directing Attorney, Riverside Branch Office (2006 – present)
Deputy Federal Public Defender (1996 – 2006)

1991 – 1996
Heller, Ehrman, White & McAuliffe (no longer in existence)
601 South Figueroa Street, 40th Floor
Los Angeles, California 90017
Litigation Associate

1989 – 1991
The Honorable David V. Kenyon
United States District Judge (Retired)
United States District Court for the Central District of California
3676 East Yorkshire Avenue
Pasadena, California 91107
Law Clerk

Summer 1988
Hufstedler, Miller, Kaus & Beardsley (no longer in existence)
255 South Grand Avenue
Los Angeles, California 90012
Summer Associate

Summer 1987
McKenna, Conner & Cuneo (no longer in existence)
3435 Wilshire Boulevard
Los Angeles, California 90010
Summer Associate

Other Affiliations (uncompensated):

2006 – present
Federal Bar Association Inland Empire Chapter
Contact: Hon. Sheri N. Pym (Current President)
United States District Court
George E. Brown, Jr. United States Courthouse
3470 Twelfth Street
Riverside, California 92501
Member, Board of Directors (2006 – present)
Secretary of the Chapter (2009)

1998 – 2001
Mexican American Bar Foundation
P.O. Box 862127
Los Angeles, California 90086
Member, Board of Directors

1996 – 1998
Proyecto Pastoral at Dolores Mission
135 North Mission Road
Los Angeles, California 90033
Member, Board of Directors

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

   I have not served in the military. I 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.

   R. Hunter Summers Trial Practice Award, Stanford University School of Law (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.

   Federal Bar Association, Inland Empire Chapter
   Member, Board of Directors (2006 – present)
   Secretary (2009)

   Mexican American Bar Foundation
   Member, Board of Directors (1998 – 2001)

10. **Bar and Court Admission**:

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

       California, 1990

       There has been no lapse in membership.

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

United States Court of Appeals for the Ninth Circuit, 2003
United States District Court for the Central District of California, 1990
California State Courts, 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.

Proyecto Pastoral at Dolores Mission
Member, Board of Directors (1996 – 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.

To the best of my knowledge, the organization listed above does not currently discriminate and did not formerly discriminate on the basis of race, sex, religion or national origin.

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

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

A Ruling for Access to Justice, RIVERSIDE LAWYER, Sept. 2007. 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 in the preparation of any such report, memorandum or policy statement.

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

I have not provided any such testimony, statements or other communications.

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

July 20, 2011: I made a presentation to members of the CJA indigent defense panel entitled "Recurring Issues in Ethics." This presentation was part of the training provided by the Federal Public Defender to members of the panel. A copy of the PowerPoint presentation is supplied.

October 6, 2007: I gave a speech to the California Court Interpreters Association (CCIA). I spoke about the Office of the Federal Public Defender and ways to optimize interpreter-attorney relations. I have no notes, transcript or recording. The address of CCIA is 1005 State Street, El Centro, California 92243.

July 11, 2007: I participated in a panel presentation sponsored by the Federal Bar Association Inland Empire Chapter. The panel presentation was entitled "A Comparison of State and Federal Criminal Sentencing." I have no notes, transcript or recording. The address of U.S. Magistrate Judge Sheri N. Pym, the current president of the Federal Bar Association Inland Empire Chapter, is George E. Brown, Jr. United States Courthouse, 3470 Twelfth Street, Riverside, California 92501.

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

None.

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 been a judge.

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

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

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

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

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

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

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

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in 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;

From 1989 to 1991, I clerked for the Honorable David V. Kenyon (since retired), who was then a judge on the United States District Court for the Central District of California.

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.

1991 – 1996
Heller, Ehrman, White &McAuliffe (no longer in existence)
601 South Figueroa Street, 40th Floor
Los Angeles, California 90017
Litigation Associate

1996 – present
Office of the Federal Public Defender
3801 University Avenue, Suite 700
Riverside, California 92501
Deputy Federal Public Defender (1996 – 2006)
Directing Attorney, Riverside Branch Office (2006 – present)
Chief of Trials, Los Angeles Office (scheduled to begin May 14, 2012)

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 1991 to 1996, I practiced complex civil litigation in which most of my clients were corporations or other business entities. Most of my cases during this period involved business torts or contractual disputes among corporate entities.

Since 1996, I have been employed by the Office of the Federal Public Defender for the Central District of California. I serve as the Directing Attorney of the Riverside Branch Office, a position I have held since July 2006. As Directing Attorney, I supervise and manage five trial attorneys, two investigators, one paralegal, and administrative personnel. Our office represents indigent defendants in federal felony and misdemeanor cases at trial and on appeal. We also represent individuals with pending petitions for a writ of habeas corpus filed in the federal courts where a sentence of death has been imposed, as well as individuals in non-capital habeas cases. In addition to my training and supervisory duties, I carry a caseload.

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

From 1991 to 1996, I practiced complex civil litigation, in which most of my clients were corporations or other business entities.

Since 1996, my practice has consisted of representing indigent criminal defendants in federal court, primarily at the trial level. I consult with clients regarding the charges and the evidence, advise them of their constitutional rights, file and argue any applicable motions, and represent them at trial if necessary. If convicted, whether by plea or verdict, I represent my clients at sentencing proceedings and, on occasion, on appeal to the Court of Appeals for the Ninth Circuit. Many of my clients are members of minority groups with scarce economic resources and most come from troubled family backgrounds. A substantial portion of them suffer from mental illness or impaired judgment.

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 always involved litigation. Since 1996, when I began as a Deputy Federal Public Defender, I have appeared in court frequently. From 1991

to 1996, I practiced complex business litigation and appeared infrequently in 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.

I have tried eight federal felony cases. I was sole counsel in six of the eight cases. In the other two, I was chief counsel in one and associate counsel in the other. I have also tried two misdemeanor cases. In addition, I have supervised approximately three to four felony trials and three to four misdemeanor trials. I have also participated in two civil trials, one as associate counsel and the other as sole counsel.

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 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. Riblet, 08-MISC-21-OP (C.D. Cal.)

Mr. Riblet is suspected of murdering his cell mate at the U.S. Penitentiary at Victorville in August 2008. Mr. Riblet has not yet been formally charged, but the Department of Justice considered seeking the death penalty against him. I have represented Mr. Riblet since the fall of 2008. I have drafted and argued motions before the magistrate judge assigned to the case. In March 2011, I prepared, along with co-counsel Judy Clarke, a written submission in anticipation of an in-person presentation before the U.S. Department of Justice's Capital Review Committee. I spoke on Mr. Riblet's behalf to the Capital Review Committee on March 28, 2011. On October 4, 2011, government counsel informed me that the government will not seek the death penalty against Mr. Riblet.

Judge: Honorable Oswald Parada
United States Magistrate Judge
Central District of California

Co-Counsel: Judy C. Clarke
Clarke & Rice, APC
1010 Second Avenue, Suite 1800
San Diego, California 92101
619-308-8484

Opposing Counsel: Joseph Widman, Assistant United States Attorney
United States Attorney's Office
3880 East Lemon Street, Suite 210
Riverside, California 92501
951-276-6945

2. United States v. Biggs, CR 03-1182-LGB (C.D. Cal.)

Mr. Biggs was charged with attempted murder and aggravated assault of an inmate at the U.S. Penitentiary in Lompoc. I represented Mr. Biggs from pre-trial proceedings through sentencing. I drafted and argued motions before the district court. In addition, I prepared a sentencing memorandum and argued for Mr. Biggs at the sentencing hearing. Mr. Biggs appealed after pleading guilty to assault with a dangerous weapon and possession of contraband in prison, and after the government dismissed the attempted murder charge. The Ninth Circuit reversed Mr. Biggs' convictions and remanded (I did not participate in the

appeal). *United States v. Biggs*, 441 F.3d 1069 (9th Cir. 2006). After the case was remanded, the government dismissed the charges.

Judge: Honorable Lourdes G. Baird
United States District Judge (Ret.)
Central District of California

Opposing Counsel: Jason DeBretteville
Sullivan & Cromwell LLP
1870 Embarcadero Road
Palo Alto, California 94303
650-461-5600

3. United States v. Scott, CR 05-858-DDP (C.D. Cal.)

Mr. Scott was charged with assaulting a federal officer after he became involved in an altercation outside of the Roybal Federal Building in Los Angeles. I represented Mr. Scott from pretrial proceedings through trial. I prepared and argued pre-trial motions and conducted all aspects of his jury trial. The jury found Mr. Scott not guilty.

Judge: Honorable Dean D. Pregerson
United States District Judge
Central District of California

Opposing Counsel: Frank J. Jerich, Jr.
United States Marine Corps
Office of the Staff Judge Advocate
P.O. Box 110120
Barstow, California 92311
760-282-6874

4. United States v. Austin, CR 04-281(A)-SVW (C.D. Cal.)

Mr. Austin was charged with attempting to evade the collection of personal and payroll taxes, failing to account for and pay payroll taxes, and bankruptcy fraud. The charges stemmed from Mr. Austin's operation of several businesses over many years and from his alleged failure to disclose a related previously filed bankruptcy petition. I represented Mr. Austin from pre-trial proceedings through trial. I handled every portion of the trial, including opening statement, direct and cross examination of witnesses, and closing argument. After a bench trial, Judge Stephen Wilson acquitted Mr. Austin of all charges.

Judge: Honorable Stephen V. Wilson
United States District Judge
Central District of California

Opposing Counsel: Darwin Thomas, Assistant United States Attorney
Tax Division – United States Attorney's Office
300 North Los Angeles Street, Room 7211
Los Angeles, California 90012
213-894-2740

5. United States v. Ruffin-Thompson, CR 04-48-GAF (C.D. Cal.)

Ms. Ruffin-Thompson was charged with possession of stolen mail and bank fraud. The government alleged that Ms. Ruffin-Thompson participated in obtaining and cashing checks, some in Belize, that were drawn on the credit card accounts of others. I filed and argued pretrial motions for Ms. Ruffin-Thompson and handled every portion of the trial, including opening statement, direct and cross examination of witnesses, and closing argument. After a trial that lasted several days, the jury found Ms. Ruffin-Thompson guilty on both counts.

Judge: Honorable Gary A. Feess
United States District Judge
Central District of California

Opposing Counsel: Honorable Elaine Lu
Los Angeles Superior Court Judge
Metropolitan Courthouse
Department 68
1945 South Hill Street
Los Angeles, California 90007
213-744-4073

6. United States v. McDanel, CR 01-638-LGB (C.D. Cal.)

Mr. McDanel was charged with computer intrusion and causing damage to the computer server of his former employer. Mr. McDanel caused an email to be sent to his former employer's customers detailing a potential security flaw in the former employer's computer server. I handled most aspects of the trial, including direct and cross examination of the principal witnesses, and closing argument. After a 10-day bench trial, Mr. McDanel was found guilty. After Mr. McDanel appealed, the government dismissed all charges.

Judge: Honorable Lourdes G. Baird
United States District Judge (Ret.)
Central District of California

Co-Counsel: Gerald C. Salseda
Deputy Federal Public Defender
321 East Second Street

Los Angeles, California 90012
213-894-4406

Opposing Counsel: Jeremy D. Matz, Assistant United States Attorney
United States Attorney's Office
312 North Spring Street, Room 1113
Los Angeles, California 90012
213-894-2434

Pamela L. Johnston
Foley and Lardner LLP
555 South Flower Street, Suite 3500
Los Angeles, California 90071
213-972-4632

7. United States v. Yabut, et al., CR 99-34(A)-CAS (C.D. Cal.)

Mr. Yabut was accused of conspiracy to submit false claims to the United States. The government claimed that Mr. Yabut and his co-defendant participated in a scheme to fraudulently obtain tax refunds from the IRS by submitting tax returns in the name of real persons but without their knowledge or consent. I handled every portion of the trial, including opening statement, direct and cross examination of witnesses, and closing argument. The jury found Mr. Yabut guilty of all charges.

Judge: Honorable Christina A. Snyder
United States District Judge
Central District of California

Opposing Counsel: Jeffrey M. Rawitz (Deceased)

Lawrence S. Middleton, Assistant United States Attorney
United States Attorney's Office
312 North Spring Street, Room 1316
Los Angeles, California 90012
213-894-2434

8. United States v. Alcala-Navarro, et al., CR 98-509(B)-LGB (C.D. Cal.)

Mr. Alcala, three Mexican banks, and 37 other individuals were charged in a 182-count indictment with money laundering and conspiracy to commit money laundering. I represented Mr. Alcala as associate counsel from pre-trial proceedings through trial. I drafted and argued pretrial motions, drafted the sentencing memorandum, and met repeatedly with Mr. Alcala, the government, and lead counsel. Mr. Alcala pled guilty and was sentenced on the charges.

Judge: Honorable Lourdes G. Baird
United States District Judge (Ret.)
Central District of California

Lead Counsel: Michael Garcia
Los Angeles County Superior Court Commissioner
Clara Shortridge Foltz Criminal Justice Center
Department 53
210 West Temple Street
Los Angeles, California 90012
213-974-7823

Opposing Counsel: Duane Lyons
Quinn Emmanuel Urquhart & Sullivan, LLP
865 South Figueroa Street
Los Angeles, California 90017
213-624-7707

Robert Dugdale
United States Attorney's Office
312 North Spring Street
Los Angeles, California 90012
213-894-3756

9. United States v. Ceja-Garibay, CR 96-1029-RMT (C.D. Cal.)

The government charged Mr. Ceja-Garibay with dealing in firearms without a license and with the sale of a stolen firearm. The government alleged that Mr. Ceja-Garibay transferred the firearms without the required documentation and that he was not a licensed firearms dealer. I handled every portion of the trial, including opening statement, direct and cross examination of witnesses, and closing argument. The jury convicted Mr. Ceja-Garibay of selling a stolen firearm but could not reach a decision on the other count.

Judge: Honorable Robert M. Takasugi
United States District Judge (Deceased)
Central District of California

Opposing Counsel: Honorable Charlaine Olmedo
Los Angeles Superior Court Judge
San Fernando Courthouse
Department N
900 Third Street
San Fernando, California 91340
818-898-2422

10. United States v. Robertson, CR 96-695-WDK (C.D. Cal.)

Mr. Robertson was charged with possession of forged securities. The government alleged that Mr. Robertson stole and forged checks belonging to his employer. I handled every portion of the trial, including opening statement, direct and cross examination of witnesses, and closing argument. He was convicted after a jury trial.

Judge: Honorable William D. Keller
United States District Judge
Central District of California

Opposing Counsel: Jerome H. Friedberg, Esq.
Theodora Oringher Miller & Richman PC
10880 Wilshire Boulevard, Suite 1700
Los Angeles, California 90024
310-557-2009

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 personally represented hundreds of indigent defendants in federal court and, as Directing Attorney of the Riverside Branch Office during the last five years, have overseen hundreds of additional representations. As Directing Attorney, I have management responsibilities which include hiring and retaining personnel, training planning and implementation, and case management.

In addition to my duties as Directing Attorney in Riverside, I currently serve as chairperson of the Ethics Committee for the entire office, which includes the Los Angeles main office, the Santa Ana Branch Office, and the Riverside Branch Office. Together, these offices comprise the largest public defender organization in the country. The Ethics Committee researches and resolves ethical issues that arise in all areas of the office's representation, including trials, appeals and our Capital Habeas practice. We also draft internal policies and opinions on recurring ethical issues which guide the practice of our approximately 92 attorneys and 64 supporting professionals. I have also conducted MCLE training on ethics for members of the CJA panel.

I have also served on the Training Committee in my office. As a member of that committee, I prepared training materials and conducted training sessions for our newer lawyers. My work on that committee also included leading a team of lawyers from our office in the preparation of a practice guide for all our trial attorneys in cases involving

illegal reentry after deportation. In addition, I have served as faculty in a national training seminar for CJA panel members sponsored by the Office of Defender Services.

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

    I have not taught any courses.

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

    I have no such sources of income.

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

    No, I have no such plans, commitments or agreements.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

If I am confirmed, conflicts of interest may temporarily stem from my current employment as a Deputy Federal Public Defender. I would recuse myself from any cases involving any client or former client, and from any cases involving persons represented by the Office of the Federal Public Defender during my tenure as Deputy Federal Public Defender. Aside from these potential conflicts, there are no family members, other persons, parties, categories of litigation, or financial arrangements which are likely to present conflicts of interest.

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

The clerk of the court can implement procedures to avoid any conflict of interest which may stem from my current employment. Moreover, if confirmed, I would resolve all potential or actual conflicts of interests by carefully applying Canon 3 of the Code of Conduct for United States Judges, as well as any other relevant authority.

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 dedicated most of my professional career to serving the disadvantaged as a Deputy Federal Public Defender. Although I have been compensated for my services, I believe my work fulfills the responsibilities stated in Canon 2. In addition, I served as a board member of the Mexican American Board Foundation, an organization dedicated to awarding monetary scholarships to local Latino law students who establish academic promise and financial need. As a board member, I helped identify, interview and select the scholarship recipients. I also served as a board member for Proyecto Pastoral at Dolores Mission, a non-profit organization whose mission is to develop grassroots projects in education, leadership and service in the community of Boyle Heights, an economically disadvantaged area of Los Angeles.

26. **Selection Process**:

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

I submitted an application to the committee convened by Senator Barbara Boxer to evaluate candidates for federal judgeships in late June 2011. I was interviewed by the committee in Los Angeles, California, on July 14, 2011. Since September 23, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 12, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On April 25, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2012

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
Bernal, Jesus G.	Central District of California	4/25/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination Date 4/25/2012 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	1/1/2011 to 3/31/2012
7. Chambers or Office Address		
3801 University Avenue Suite 700 Riverside, CA 92501		

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. Insert signature on last page.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Board Member	Federal Bar Association, Inland Empire Chapter
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting	Date of Report
	Bernal, Jesus G.	4/25/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
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.	2012	State of California, wages
2.	2011	State of California, wages
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 Bernal, Jesus G.	Date of Report 4/25/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Chase	Residential Mortgage	N
2.	Suntrust Bank	Second Mortgage	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Bernal, Jesus G.	Date of Report 4/25/2012

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

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		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)
1. Rental Property, Whittier, CA	C	Rent	N	W					
2. Royalty Interest, Whittier, CA	C	Royalty	J	W					
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting	Date of Report
	Bernal, Jesus G.	4/25/2012

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting	Date of Report
	Bernal, Jesus G.	4/25/2012

IX. CERTIFICATION.

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

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

Signature

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		3	033	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others		5	938
Accounts and notes receivable:				Accounts and bills due		11	380
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		454	300
Real estate owned – personal residence		603	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		45	000				
Cash value-life insurance							
Other assets itemize:							
Time share (estimated value)		5	000				
Thrift Savings Plan		65	662				
				Total liabilities		471	618
				Net Worth		250	077
Total Assets		721	695	Total liabilities and net worth		721	695
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 Mortgages Payable	
Personal residence – primary mortgage	$404,900
Personal residence – second mortgage	49,400
Total Real Estate Mortgages Payable	$454,300

AFFIDAVIT

I, Jesus G. Bernal, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/26/2012
(DATE)

(NAME)

KRISTINA MARIE BECK
Commission # 1846783
Notary Public - California
Riverside County
My Comm. Expires Apr 27, 2013

(NOTARY)

affidavit attached to oath/warranty

Senator BLUMENTHAL. Thank you.
Ms. Schofield.

STATEMENT OF LORNA G. SCHOFIELD, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Ms. SCHOFIELD. Thank you. I do not have any formal statement, but I, too, have many thanks. I want to thank President Obama for the great honor and privilege of the nomination and for being here. I want to thank Senator Schumer for the recommendation and Senator Gillibrand for her support.

Thank you, Senator Blumenthal, for the introduction and for presiding here, and Senator Grassley for participating and conducting this hearing, and thank you to all the members of the Committee.

I also have a few introductions to make. I have here wonderful friends and family. First of all, the person who came the longest distance I have to introduce first, Patricia Refo, another former Chair of the Litigation Section who has come from Arizona for this.

Also, Robert Rothman from Atlanta, another former Chair of the ABA Litigation Section.

Two of my colleagues from Debevoise & Plimpton, Anne Cohen and Gary Kubek, my assistant of many years who makes my professional possible.

And then also my significant other, Stephan Landsman, and my daughter Sarah Zatlin, both of whom are right behind me offering their support, as they always do.

Thank you.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Lorna Gail Schofield

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

   United States District Judge for the Southern District of New York

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

   Debevoise & Plimpton, LLP
   919 Third Avenue
   New York, New York 10022

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

   1956; Fort Wayne, Indiana

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

   1978 – 1981, New York University School of Law; J.D., 1981

   1977 – 1978, Brown University, Graduate Study in Comparative Literature in German, French and English; no degree

   1974 – 1977, Indiana University; B.A. (*magna cum laude*), 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.

   1988 – Present
   Debevoise & Plimpton, LLP

919 Third Avenue
New York, New York 10022
Of Counsel (2012 – Present)
Partner (1991 – 2011)
Associate (1988 – 1991)

1984 – 1988
United States Attorney's Office
Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
Assistant United States Attorney

1981 – 1984, Summer 1980
Cleary, Gottlieb, Steen & Hamilton
One Liberty Plaza
New York, New York 10006
Associate (1981 – 1984)
Law Clerk (Summer 1980)

1979 – 1981
Professor Andreas Lowenfeld
New York University School of Law
40 Washington Square South
New York, New York 10012
Research Assistant

Summer 1979
Cohen, Weiss and Simon
330 West 42nd Street, #25
New York, New York 10036
Law Clerk

Other Affiliations (Uncompensated):

2006 – 2011
Rosie's for All Kids Foundation
1500 Broadway
New York, New York 10036
Director

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

I have not served in the military. I was not required to register for selective service.

8. **Honors and Awards**:

American Bar Association, First Asian-American to be elected Chair of the ABA Section of Litigation (2009)

National Law Journal, one of the Fifty Most Influential Minority Lawyers in America (2008)

N.Y.U. Law Review, Staff Editor and Note and Comment Editor (1980 – 1981)

Rubin Law Review Prize, most outstanding note in international, commercial or public law (1981)

John Norton Pomeroy Scholar, one of the top 15 students in the first year class (1979)

American Jurisprudence Award for best section exam in constitutional law (1979)

Brown University, University Fellowship, merit-based full tuition scholarship and stipend

Indiana University – Phi Beta Kappa, Della Evans Scholarship, merit-based full tuition scholarship, all 3 years

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
- Section of Litigation
  - Executive Committee (2002 – Present)
  - Chair (2009 – 2010)
  - Chair-Elect (2008 – 2009)
  - Vice Chair (2007 – 2008)
  - ABA Resource Committee (2006 – 2007)
  - Budget Officer (2002 – 2007)
  - *Litigation Docket* Co-Editor-in-Chief (2001 – 2002)
  - Liaison to the Federal Judicial Center Advisory Committee for Civil Rules (2001 – 2002)
  - Task Force on Ethical Guidelines for Settlement Negotiations (2000 – 2002)
  - Co-Director of Divisions (Co-Chief of Staff) (2000 – 2001)
  - Task Force on Discovery, Co-Chair (1997 – 2000)
  - Council Member (1997 – Present, except 2000 – 2002)
  - Class Actions and Derivative Suits Committee, Co-Chair (1994 – 1997)

Woman Advocate Conference, Co-Chair (1993 – 1994)
Woman Advocate Conference Planning Committee (1992 – 1993)
Council for Ethnic and Racial Diversity in the Educational Pipeline (2011 – 2012)
ABA Presidential Task Force on the Preservation of the Justice System (2010 – 2011)
ABA Presidential Task Force on Federal Pleading Standards, Chair (2009 – 2010)
ABA Diversity Center, Chair of the Task Force on Sections (2006 – 2007)
ABA Standing Committee on the Federal Judiciary, Second Circuit representative (2003 – 2006)
Section Officers' Conference
Strategic Planning Committee (2006 – 2007)
Finance Committee (2005 – 2007)
Chair of the Diversity Committee (2005 – 2006)
Executive Committee (2005 – 2006)

American Law Institute

Asian American Bar Association of New York

Association of the Bar of the City of New York

Federal Bar Council

Federal Judicial Conference Advisory Committee Conference on Civil Litigation (the "Duke Conference"), Planning Committee (2009 – 2010)

Judicial Improvements Committee of the Southern District of New York Advisory Committee (2011)

National Asian Pacific American Bar Association

New York Council of Defense Lawyers

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

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, 1996
United States Court of Appeals for the Second Circuit, 1985
United States Court of Appeals for the Third Circuit, 1997
United States Court of Appeals for the Sixth Circuit, 1995
United States Court of Appeals for the Tenth Circuit, 1993
United States Court of Appeals for the Eleventh Circuit, 1983
United States District Court for the Southern District of New York, 1982
United States District Court for the Eastern District of New York, 1982
United States District Court of Federal Claims, 1992
United States Tax Court, 1991

I allowed my membership in the Eleventh Circuit to lapse in 1988 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.

Endowment Committee of the Kent, Connecticut Public Library (2007 – Present)
Grace Choral Society (2005 – 2006)
Rosie's for All Kids Foundation
Board of Directors (2006 – 2011)
Spiritus et Anima, the former adult chorus of Saint Ann's School in Brooklyn (1999 – 2005)
United States Eventing Association, formerly United States Combined Training Association (approximately 1998 – 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 11(a) above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

With Jeffrey S. Jacobson, Michael B. Mukasey & John S. Kiernan, *Sippy Cup Case Shows the Downside of Defeating Multi-State Class Certification: The Beast Just Grows Multiple Heads*, D&P CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), July 6, 2011. Copy supplied.

With Jeffrey S. Jacobson, John S. Kiernan & David W. Rivkin, *Supreme Court Upholds Arbitration Clauses in Consumer Adhesion Contracts, Including Clauses Prohibiting Class Arbitration*, D&P CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), Apr. 27, 2011. Copy supplied.

With Donald Francis Donovan, David W. Rivkin, Christopher K. Tahbaz, Mark W. Friedman, Jeffrey S. Jacobson & Steven S. Michaels, *Recent Second Circuit Decision Calls Into Question the Enforceability of Class-Action Waiver Clauses*, D&P CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), Mar. 23, 2011. Copy supplied.

With Jeffrey S. Jacobson, *Federal Judicial Center Issues "Problematic" Class Action Notice Checklist*, 12 CLASS ACTION LITIG. REP. (BNA) 212, (Mar. 11, 2011), reprinted in 26 TOXICS L. REP. (BNA) 506 (Apr. 28, 2011). Copy supplied.

With Jeffrey S. Jacobson, *Federal Judicial Center Issues "Class Action Notice Checklist" with Problematic Positions*, D&P CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), Jan. 13, 2011. Copy supplied.

Portia's Place: Thirty-Six Years Of Women Partners At Debevoise & Plimpton (2011). Copy supplied (children's personal information redacted).

I Don't Pay You to Agree with Me, *in* RANTINGS OF A PARTNER, AND PUSHBACK FROM THE ASSOCIATE, 59 (Bart L. Greenwald ed., 2011). Copy supplied.

With Jeffrey S. Jacobson, *The Times They Are A Changin': Bringing Litigation Into the Twenty-First Century (Part II)*, D&P CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), Aug. 2, 2010, *reprinted in* CORP. CONNECTION, vol. 12, no. 4, Fourth Quarter 2010. Copy supplied.

With Jeffrey S. Jacobson *The Times They Are A Changin': Bringing Litigation Into the Twenty-First Century (Part I)*, D&P CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), July 8, 2010. Copy supplied.

Opening Statement: Greater Efficiency in Civil Procedure, LITIGATION, J. OF THE SEC. OF LITIG. (ABA), Spring 2010, at 1; *reprinted in* LITIGATION NEWS ONLINE, June 15, 2010. Copy supplied.

Opening Statement: The Rules of Lawlessness, LITIGATION, J. OF THE SEC. OF LITIG. (ABA), Winter 2010, at 1. Copy supplied.

Issues for Women at Depositions, *in* EFFECTIVE DEPOSITIONS, 423 (2d ed. 2010) (first edition originally co-authored with Giuliana Dunham). Copy supplied.

Opening Statement: Slow and Steady Wins the Race, LITIGATION, J. OF THE SEC. OF LITIG. (ABA), Fall 2009, at 1. Copy supplied.

Drafting a New Agenda for Litigation Reform and More, NAT'L L.J., July 27, 2009. Copy supplied.

Opening Statement: Fast Forward from 1938, LITIGATION, J. OF THE SEC. OF LITIG. (ABA), Summer 2009, at 1. Copy supplied.

With Jeffrey S. Jacobson & Colby A. Smith, *Second Circuit Tightens Class Certification Requirements: New Case Inches Closer to Other Courts' Holdings That Some Weighing of Merits is Permissible*, D&P CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), Feb. 24, 2006. Copy supplied.

Some Thoughts about Courtroom Technology, THE PRACTICAL LITIGATOR, Nov. 2001, at 7. Copy supplied.

With Jeffrey S. Jacobson, *Circuits Split on Factual Disputes in Class Actions*, N.Y. L.J., Oct. 23, 2001. Copy supplied.

73 Ways to Win: A Treasury of Litigation Tactics & Strategies (Study Guide) (2001). This is a study guide and DVD consisting of brief audio/video clips by many lawyers, including me. Copies of the relevant pages of the study guide and DVD supplied. My remarks begin at 1:14:48.

Tips for Technology in the Courtroom, PRACTICAL LITIGATOR, Nov. 2000. Copy supplied.

Wired to Win in the Courtroom, N.Y. L.J., Sept. 13, 1999. Copy supplied.

With John Beaglehole, *Class Action Analysis After* Amchem Products, REV. OF SEC. & COMMODITIES REG., Apr. 15, 1998, at 89. Copy supplied.

Amchem*: The Supreme Court Speaks on Certification for Settlement*, CLASS ACTIONS & DERIVATIVE SUITS (ABA Sec. of Litig.), Fall 1997 (printed Feb. 1998), at 6. Copy supplied.

The Impact of Amchem *on Certification of Settlement Classes*, CONSUMER FIN. SERVICES L. REP., July 25, 1997, at 11. Copy supplied.

Least Controversial of Proposed Rule 23 Changes Move Forward, CONSUMER FIN. SERVICES L. REP., June 27, 1997, at 5. Copy supplied.

Recent Developments in Class Actions, CONSUMER FIN. SERVICES LITIG. (Practicing Law Institute, New York, N.Y.), May 1997, at 221. Copy supplied.

With Elizabeth M. McGeever, *Co-Chairs' Corner*, CLASS ACTIONS & DERIVATIVE SUITS (ABA Sec. of Litig.), Winter 1997. Copy supplied.

With Giuliana H. Dunham, *Issues for Women at Depositions*, *in* EFFECTIVE DEPOSITIONS, 423 (1st ed. 1997). Copy supplied.

Proposed Amendments Offer an Efficient Next Step in Class Action Management, LITIGATION NEWS (ABA), Nov. 1996. Copy supplied.

With Elizabeth M. McGeever, *Co-Chairs' Corner*, *in* CLASS ACTIONS & DERIVATIVE SUITS (ABA), Fall 1996. Copy supplied.

With Elizabeth M. McGeever, *Co-Chairs' Corner*, *in* CLASS ACTIONS & DERIVATIVE SUITS (ABA), Summer 1996. Copy supplied.

With Elizabeth M. McGeever, *Co-Chairs' Corner*, *in* CLASS ACTIONS & DERIVATIVE SUITS (ABA), Spring 1996. Copy supplied.

With Elizabeth M. McGeever, *Co-Chairs' Corner*, *in* CLASS ACTIONS & DERIVATIVE SUITS (ABA), Winter 1996. Copy supplied.

The Gorilla Adversary, CAL. LITIG., J. OF THE LITIG. SEC., STATE BAR OF CAL., Winter 1996, at 39. Copy supplied.

With Elizabeth M. McGeever, *Co-Chairs' Corner*, *in* CLASS ACTIONS & DERIVATIVE SUITS (ABA), Oct. 1995. Copy supplied.

With Colby A. Smith, *Class Actions: Efficiency or Exploitation*, INT'L COM. LITIG. (ABA), Sept. 1995. Copy supplied.

With Terry Rose Saunders, *Report from the Co-Chairs*, *in* CLASS ACTIONS & DERIVATIVE SUITS (ABA), Apr. 1995. Copy supplied.

With Terry Rose Saunders, *Report from the Co-Chairs*, *in* CLASS ACTIONS & DERIVATIVE SUITS (ABA), 1995. Copy supplied.

With Jill A. Lesser, *Depositions and the Gorilla Adversary*, *in* THE WOMAN ADVOCATE, EXCELLING IN THE 90S, 171 (Jean Maclean Snyder & Andra Barmash Greene eds., 1995). Copy supplied.

With Bruce E. Yannett & Jeffrey Oestericher, *United States: Client-Attorney Confidentiality*, 13 INT'L FIN. L. REV. 39, Feb. 1994. Copy supplied.

With Bruce E. Yannett, *United States: Disclosure of Private Papers*, 12 INT'L FIN. L. REV. 37, Nov. 1993. Copy supplied.

With Judah Best & Robert N. Shwartz, CORPORATE SENTENCING GUIDELINES (1992). Copy supplied.

Note, *Effects Jurisdiction under the Foreign Sovereign Immunities Act and Due Process Clause*, 55 N.Y.U. L. REV. 474 (1980). 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.

October 2011: Judicial Improvements Committee report, entitled Pilot Project Regarding Case Management Techniques for Complex Civil Cases. When I was a member, the committee submitted the report to the United States District Court for the Southern District of New York. Copy supplied.

August 8-9, 2011: ABA Section of Litigation, resolution and Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. When I was a Council member, the Section submitted the resolution and model act to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 8-9, 2011: ABA Section of Litigation, resolution and Protocol on Court-to-Court Communications in Canada-U.S. Cross-Border Class Actions and Notice Protocol: Coordinating Notice(s) to the Class(es) in Multijurisdictional Class Proceedings. When I was a Council member, the Section submitted the resolution and protocols to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

February 23, 2011: Letter signed by individual members of the ABA Section of Litigation Council of which I was a member, and the Section Federal Practice Task Force. The letter contains comments on possible amendments to Rule 45 of the Federal Rules of Civil Procedure. The letter was submitted to the Federal Judicial Conference Advisory Committee for Civil Rules. Copy supplied.

January 2011: Draft recommendation of the ABA Task Force on Federal Pleading Standards. I chaired a task force that created draft resolutions related to clarifying pleading standards after the *Twombly* and *Iqbal* decisions. There was no final report issued as the Supreme Court seemed to address the issue. A copy of the draft resolutions is supplied.

August 9-10, 2010. ABA Section of Litigation, resolution and ABA Model Access Act. I signed the report as Section Chair. The Section submitted the resolution and model act to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

April 24, 2010: Report of the ABA Section of Litigation Special Committee on the Future of Civil Litigation, which I co-chaired, and the ABA Section of Litigation Council, of which I was a member. The report is entitled, "Civil Procedure in the 21st Century – Some Proposals," and was submitted to the Federal Judicial Conference Advisory Committee for Civil Rules for the Duke Conference. Copy supplied.

March 3, 2010: Letter signed by individual members of the ABA Section of Litigation Council, of which I was a member, and others, submitting comments on the proposed restyling of the Federal Rules of Evidence. The letter was submitted to the Federal Judicial Conference Standing Committee for Rules of Practice and Procedure. Copy supplied.

February 8-9, 2010: ABA Section of Litigation, resolution and report concerning COLA adjustments to judicial salaries. I signed the report as Section Chair. The Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

February 8-9, 2010: ABA Section of Litigation, resolution and report concerning the protections of the Vienna Convention on Consular Relations. I signed the report as Section Chair. The Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

December 11, 2009: ABA Section of Litigation report, entitled "ABA Section of Litigation Member Survey on Civil Practice: Detailed Report." I wrote the Introduction and Summary as Chair of the Section. The report was submitted to the Federal Judicial Conference Advisory Committee for Civil Rules for the Duke Conference. Copy supplied.

March 27, 2009: Letter of the ABA Section of Litigation containing comments to possible revisions to Rule 45 of the Federal Rules of Civil Procedure. The letter was submitted to Federal Judicial Conference Advisory Committee on Civil

Rules. This letter was not signed by me but expresses the unofficial position of the Section when I was Chair-Elect. Copy supplied.

February 16, 2009: ABA Section of Litigation, resolution and report concerning appeals on rulings rejecting assertion of attorney-client privilege. When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

January 29, 2009: Letter signed by individual members of the ABA Section of Litigation Council of which I was a member, and the Section Federal Practice Task Force, containing comments on the proposed amendments to Rule 56 of the Federal Rules of Civil Procedure. The letter was submitted to the Federal Judicial Conference Standing Committee for Rules of Practice and Procedure. Copy supplied.

January 16, 2009: Letter of the ABA Section of Litigation containing comments to possible revisions to the portion of Rule 26 of the Federal Rules of Civil Procedure relating to expert witnesses. The letter was submitted to Federal Judicial Conference Standing Committee on Rules of Practice and Procedure. This letter was not signed by me but expresses the unofficial position of the Section when I was a member of the Council. Copy supplied.

August 11-12, 2008: ABA Section of Litigation, resolution and Standards for Final Pretrial Submissions and Orders. When I was a Council member, the Section submitted the resolution and standards to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

February 11, 2008: ABA Section of Litigation, resolution and report regarding legal services for veterans and members of the Armed Forces. When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 13-14, 2007: ABA Section of Litigation, resolution and Updated Civil Trial Practice Standards. When I was a Council member, the Section submitted the resolution and standards to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 13-14, 2007: ABA Section of Litigation, resolution and report regarding continuation of the justice system in times of disaster. When I was a Council member, the Section submitted the resolution and principles to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 7-8, 2006: ABA Section of Litigation, resolution and report regarding inadvertent disclosure of privileged material. When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 7-8, 2006: ABA Section of Litigation, Resolution and Report regarding law firm billing and compensation. When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 7-8, 2006: ABA Section of Litigation, resolution and report regarding the Darfur peace accord. When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 7-8, 2006: ABA Section of Litigation, resolution and report regarding draft expert reports. When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 8-9, 2005: ABA Section of Litigation, resolution and report regarding a federal shield law for journalists. When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 8-9, 2005: ABA Section of Litigation, resolution and Model Standards of Conduct for Mediators. When I was a Council member, the Section submitted the resolution and standards to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

February 14, 2005: ABA Section of Litigation, resolution and report concerning proposed legislation entitled "Lawsuit Abuse Reduction Act." When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

February 2005: Informational Report of the Standing Committee on Federal Judiciary, submitted to the ABA House of Delegates. Copy supplied.

August 9-10, 2004: ABA Section of Litigation, resolution and Amendments to Civil Discovery Standards. When I was a Council member, the Section submitted the resolution and amendments to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 9-10, 2004: ABA Section of Litigation, resolution and report concerning funding for lawsuit data. When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 2004: Informational Report of the Standing Committee on Federal Judiciary, submitted to the ABA House of Delegates. Copy supplied.

February 2004: ABA Section of Litigation, resolution and report concerning federal jurisdiction over civil immigration matters. When I was a Council member, the Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 2002: ABA Section of Litigation, Task Force for Ethical Guidelines for Settlement Negotiations, when I was a Task Force member. Copy supplied.

August 1999: ABA Section of Litigation, resolution and Civil Discovery Standards. I chaired the Section task force that initially drafted the resolution and standards. When I was a Council member, the Section submitted the resolution and standards to the ABA House of Delegates, which adopted the resolution as ABA policy, and then to the Federal Judicial Conference Advisory Committee for Civil Rules. Copy supplied.

August 3-4, 1998: ABA Section of Litigation, resolution and Guidelines for Litigation Conduct. When I was a Council member, the Section submitted the resolution and guidelines to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

February 2, 1998: ABA Section of Litigation, resolution and Civil Trial Practice Standards. When I was a Council member, the Section submitted the resolution and standards to the ABA House of Delegates, which adopted the resolution as ABA policy. Copy supplied.

August 18, 1997: Comments of the Task Force on Discovery of the ABA Litigation Section Concerning Issues Being Considered by the Advisory Committee on Civil Rules, submitted to the Federal Judicial Conference Advisory Committee for Civil Rules. I co-chaired the Task Force. Copy supplied.

February 1997: ABA Section of Litigation, resolution and report regarding proposed amendments to Rule 23 of the Federal Rules of Civil Procedure. I chaired the Class Actions and Derivatives Suits Committee of the ABA Section of Litigation when it initially drafted the report. The Section submitted the resolution and report to the ABA House of Delegates, which adopted the resolution as ABA policy. The resolution and report were submitted to the Federal Judicial Conference Standing Committee on Rules of Practice and Procedure. 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.

April 20-21, 2009: I attended the Federal Civil Rules Advisory Committee meeting in my capacity as Chair of the American Bar Association Section of Litigation. Minutes supplied.

March 21, 2008: This letter to the United States House of Representatives, Committee on the Judiciary was not signed by me but expresses the position of the ABA Section of Litigation when I was a member of the Council. The letter supports proposed amendments to Rule 502 of the Federal Rules of Evidence. 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 list that follows represents my best efforts, through searches of my and my firm's 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. When I engage in public speaking, I sometimes do so without outlines or prepared remarks, but have supplied all materials I have been able to identify and obtain.

January 24, 2012: Finding the Keys to the Courtroom, Keynote Address at the Eighth Annual Edith I. Spivack Symposium: The Secrets to Her Success: Trials, Tribulations and Tips of Women Trial and Appellate Lawyers, New York, New York. PowerPoint supplied.

January 24, 2012: Tips from the Top: Taking Charge and Becoming a Leading Litigator, Panel at the Eighth Annual Edith I. Spivack Symposium: The Secrets to Her Success: Trials, Tribulations and Tips of Women Trial and Appellate Lawyers, New York, New York. I have no notes, transcript or recording. The symposium was sponsored by the New York State Bar Association Committee on Women in the Law, located at One Elk Street, Albany, New York 12207.

December 10, 2011: I was a participant in the Overcriminalization and Excessive Punishment: Uncoupling Pipelines to Prison Symposium, co-sponsored by the ABA Section of Litigation, John Jay College of Criminal Justice, and the Liman Public Interest program at Yale Law School. I did not give a formal presentation, but recall making a comment at some point during the discussion. I have no notes, transcript or recording. The address of Yale Law School is 127 Wall Street, New Haven, Connecticut 06511.

August 5, 2011: Expert Life after Changes to Rule 26: Should Experts be Required to Comply with ABA Ethical Standards for Experts? Panelist at the ABA Annual Meeting in Toronto, Canada. Outline supplied.

April 14, 2011: Anatomy of a Trial – Young Lawyer Trial Skills Training at the ABA Section of Litigation Annual CLE Conference, Miami, Florida. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

March 31, 2011: How to Be an Outstanding Trial Lawyer, presentation at the AABNY Litigation Meeting in New York, New York. PowerPoint supplied.

February 24, 2011: Costs of Litigation/Future of the Profession, panel remarks at the Federal Bar Council 2011 Winter Bench and Bar Conference in Los Cabos, Mexico. I have no notes, transcript or recording. The address of the Federal Bar Council is 123 Main Street, Suite L100, White Plains, New York 10601.

February 12, 2011: Open forum on draft resolutions of the ABA Task Force on Federal Pleading Standards, at the ABA Mid-Year Meeting in Atlanta, Georgia. I moderated the public comment session about the resolutions. I have no notes, transcript or recording, but a copy of the draft resolutions is supplied.

August 6, 2010: Litigation in the Internet Age – Making Litigation Rules and Procedures Responsive to Today's Changed Landscape, CLE Program at the ABA Annual Meeting in San Francisco, California. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

August 6, 2010: Chair's Passing the Gavel Remarks at the ABA Annual Meeting in San Francisco, California. Outline supplied.

August 6, 2010: Brief status report on the work of the Task Force on Federal Pleading Standards at the ABA Board of Governors' Annual Meeting in San Francisco, California. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

July 21, 2010: Rainmaking for Women, Training Session via teleconference for Debevoise & Plimpton LLP Women in London, England. PowerPoint supplied.

July 9, 2010: Litigation Institute of Trial Training Seminar in Chicago, Illinois. I have no notes, transcript or recording. The Litigation Institute of Trial Training is a seminar offered by the ABA, which is located at 321 North Clark Street, Chicago, Illinois 60654.

June 20, 2010: Mediation Opening Statements: Strategies for Success, recorded by the ABA Section of Litigation for the "Sound Advice" Audio Library. Audio recording supplied.

June 19, 2010: Bar Proposals from the 2010 Civil Litigation Conference, Presentation of the Special Committee on the Future of Civil Litigation at the ABA Section of Litigation Spring Leadership Meeting in Whistler, British Columbia, Canada. Notes supplied.

June 18, 2010: The State of the Section: Report from the Chair, Presentation at the ABA Section of Litigation Spring Leadership Meeting in Whistler, British Columbia, Canada. PowerPoint supplied.

June 10, 2010: Advocate's Preparation: Opening Statements at the ABA National Institute on Mediation with the Masters: Contemporary Strategies for Effective Advocacy in Mediation in Chicago, Illinois. I have no notes, transcript or recording. The content was similar to the June 20, 2010 recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

May 11, 2010: Bar Association Proposals: ACTL, ABA Litigation Section, NYCBA, AAJ, LCJ, DRI, Federal Judicial Conference, Advisory Committee for Civil Rules at the 2010 Civil Litigation Conference at Duke University Law School, Durham, North Carolina. Notes, outline and video recording supplied.

May 10, 2010: The Empirical Research: Overview of Satisfaction or Dissatisfaction with the Current System, and Suggestion for Change Raised by the Data, Federal Judicial Conference, Advisory Committee for Civil Rules, 2010 Civil Litigation Conference, Duke University Law School, Durham, North Carolina. PowerPoint and video recording supplied.

April 29, 2010: Navigating to Partnership, Rainmaking & Succession Planning, Women in Law Leadership Academy, presented by the ABA Commission on Women and held in Philadelphia, Pennsylvania. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

April 23, 2010: Introduction of Retired Chief Judge of the State of New York, Judith Kaye, at the ABA Section of Litigation Annual CLE Conference in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

April 23, 2010: Presentation of John Minor Wisdom Award at the ABA Section of Litigation Annual CLE Conference in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

April 22, 2010: *Iqbal/Twombly* Fallout: Are General Federal Rules Passé?, at the ABA Section of Litigation Annual CLE Conference in New York, New York. Notes supplied.

April 22, 2010: Presentation of Recognition Award to the Honorable Joseph A. Greenaway at the ABA Section of Litigation Annual CLE Conference in New York, New York. Notes supplied.

April 22, 2010: Welcome Address and Presentation of Subcommittee Chair Awards at the ABA Section of Litigation Annual CLE Conference in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

April 21, 2010: Presentation of Diversity Leadership Award at the ABA Section of Litigation Annual CLE Conference in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

March 26, 2010: The Future of Anti-Foreign Bribery Enforcement in the Asia Pacific Region, and its Relevance for Australian Companies, Presentation at the Queensland Law Society in Brisbane, Queensland, Australia. PowerPoint supplied.

March 23, 2010: Internal Investigations: The United States and Globally, Presentation at the Law Society of Tasmania, Hobart, Tasmania, Australia. PowerPoint supplied.

January 15, 2010: The State of the Section: Report from the Chair, Presentation at the ABA Section of Litigation Winter Leadership Meeting in New Orleans, Louisiana. PowerPoint supplied.

October 31, 2009: Roundtable Discussion on the Impact of Recent Supreme Court Decisions on Federal Pleading Standards at the ABA Standing Committee on Federal Judicial Improvements in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

October 23, 2009: Welcome Remarks for Raising Our Hands: Creating a National Strategy for Children's Right to Education and Counsel, American Bar Association, Chicago, Illinois. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

October 2, 2009: Chair's Kick-Off: Down the Road to the Future, Presentation at the ABA Section of Litigation Fall Leadership Meeting in Chicago, Illinois. PowerPoint included.

September 25, 2009: Moderator for It Takes a Village to Raise a Lawyer: The Educational Pipeline at the ABA National Conference for the Minority Lawyer in Philadelphia, Pennsylvania. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

September 25, 2009: Call to Action, Presentation at the ABA National Conference for the Minority Lawyer in Philadelphia, Pennsylvania. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

July 31, 2009: Pass the Gavel Chair's Acceptance Speech at the ABA Annual Meeting in Chicago, Illinois. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

July 9, 2009: Litigation Institute of Trial Training Seminar in Chicago, Illinois. I have no notes, transcript or recording. The Litigation Institute of Trial Training is a seminar offered by the ABA, which is located at 321 North Clark Street, Chicago, Illinois 60654.

June 20, 2009: Moderator for An Insider's Guide to Federal Rule Making, Presentation at the ABA Section of Litigation Spring Leadership Meeting in Hot Springs, Virginia. PowerPoint and outlines supplied.

June 19, 2009: Chair-Elect's Preview of the Coming Year at the ABA Section of Litigation Spring Leadership Meeting in Hot Springs, Virginia. PowerPoint supplied.

June 4, 2009: Introductory Remarks at the ABA Section of Litigation Aviation on Trial CLE Seminar in New York, New York. PowerPoint supplied.

March 20, 2009: Address at the Civil Justice Resource Group / Lawyers for Civil Justice E-Discovery Conference in New York, New York. I have no notes, transcript or recording. The Civil Justice Resource Group is a project of the Center for Justice & Democracy, which is located at 185 West Broadway, New York, New York 10013.

March 6, 2009: Opening Remarks at the ABA Insurance Coverage Litigation Committee Seminar in Tucson, Arizona. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

March 2, 2009: Participant at the Institute for the Advancement of the American Legal System Symposium: 21st Century Rules Initiative in Denver, Colorado. I have no notes, transcript or recording. The address of the Institute for the

Advancement of the American Legal System is John Moye Hall, 2060 South Gaylord Way, Denver, Colorado 80208.

February 12, 2009: Moderator at the General Counsel Forum at the ABA Section of Litigation, 2009 Corporate Counsel CLE Seminar in Buena Vista, Florida. Outline supplied.

January 23, 2009: Opening Remarks at the ABA Products Liability, Environmental & Mass Torts Seminar in Vail, Colorado. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

April 4, 2008: Outside the Tribunal: Corporate Internal Investigations as Dispute Resolution, Presentation at the 14th Annual Clifford Symposium on Tort Law and Social Policy in Chicago, Illinois. PowerPoint supplied.

November 3, 2007: Affirmative Action in the United States, Presentation in connection with session entitled "Women's Rights – Law as an Expression of Culture and Power," at the UIA (International Association of Lawyers) 51st Congress in Paris, France. PowerPoint supplied.

August 10, 2007: Point Counterpoint: Practical Advice from Practical Lawyers, panel remarks at the ABA Annual CLE Conference in San Francisco, California. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

May 11, 2007: Address at the ABA Section of Litigation Symposium: Elevating Your Game: Lawyers of Color Accessing Power, presented by the ABA Section of Litigation in Chicago, Illinois. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

March 22, 2007: Expert and Opinion Testimony, Trial Evidence in the Federal Courts: Problems and Solutions, at the American Law Institute-American Bar Association Course of Study in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654, and the address of the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

May 24, 2006: Beyond No Comment: Legal Issues & Public Perception in the Media Age, at the Association of the Bar of the City of New York in New York, New York. I have no notes, transcript or recording. The address of the Association of the Bar of the City of New York, now known as the New York City Bar Association, is 42 West 44th Street, New York, New York 10036.

April 20, 2006: Electronic Discovery / Spoliation: Will the Changes to the Federal Rules of Civil Procedure Solve the E-Discovery Crisis?, at the ABA Section of Litigation Annual Conference in Los Angeles, California. I have no notes, transcript or recording. The address of the Association of the Bar of the City of New York, now known as the New York City Bar Association, is 42 West 44th Street, New York, New York 10036.

September 14, 2005: Lorna G. Schofield, Wolcott D. Dunham, Robert Goodman & Steven Ostner, Fourth Annual Insurance Seminar – Regulatory Activity and Insurance M&A, Debevoise & Plimpton LLP Training Session in New York, New York. I have no notes, transcript or recording. The address of Debevoise & Plimpton LLP is 919 Third Avenue, New York, New York 10022.

July 20, 2005: What It's (Really) Like to Practice Law in NYC as a Woman, presented by the New York Women's Bar Association in New York, New York. I have no notes, transcript or recording. The address of the New York Women's Bar Association is 132 East 43rd Street, #716, New York, New York 10017.

June 23, 2005: Cross Examination of an Expert Witness, Demonstration at the ABA Section of Litigation Leadership Meeting in Quebec City, Canada. Outline supplied.

April 21, 2005: Old Dogs, New Tricks: Cross Examination Techniques, at the ABA Section of Litigation Annual Conference in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

November 6, 2004: The Most Challenging Part of a High Profile Case, presented by the Federal Bar Council in Old Saybrook, Connecticut. I have no notes, transcript or recording. The address of the Federal Bar Council is 123 Main Street, Suite L100, White Plains, New York 10601.

September 23, 2004: High Profile Legal Cases, at the 92nd Street Y, Fall 2004 Jeffrey Toobin Series on the Law in New York, New York. I have no notes, transcript or recording, but press coverage is supplied. The address of the 92nd Street Y is 1395 Lexington Avenue, New York, New York 10128.

May 7, 2004: Making the Case by Making the News, panel remarks at the 2004 ABA Section of Litigation Annual Conference in Scottsdale, Arizona. I have no notes, transcript or recording, but press coverage is supplied. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

May 7, 2004: Judges are from Mars, Lawyers are from Venus and Journalists are from Pluto: A Workshop to Enhance News Coverage and Public Perceptions of the Justice System, at the ABA Section of Litigation Annual Conference in

Scottsdale, Arizona. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

March 11, 2003: Taking Initiative in Your Career, to the Committee on Women in the Profession, presented by the Association of the Bar of the City of New York in New York, New York. I have no notes, transcript or recording. The address of the Association of the Bar of the City of New York, now known as the New York City Bar Association, is 42 West 44th Street, New York, New York 10036.

December 5, 2002: Sarbanes-Oxley Act: Impact on Civil Litigation under the Federal Securities Law, at the American Law Institute-American Bar Association Course of Study in New York, New York. Outline supplied.

2001: 73 Ways to Win: A Treasury of Litigation Tactics and Strategies (ABA 2001). DVD supplied in response to Question 12a.

October 4, 2000: Civil Rules Advisory Committee Miniconference on Computer Based Discovery, in Brooklyn, New York. I have no notes, transcript or recording. The address of the Administrative Office of the Courts is 1 Columbus Circle NE, Washington, DC 20544.

July 12-14, 2000: Mock Trial – Trial Practice Seminar, Sponsored by the ABA Section of Litigation and English bar associations at Oxford University, Oxford, England. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

July 1-2, 2000: 21st Century Litigation: Trial and Pretrial, at the American Law Institute – American Bar Association Course of Study in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654, and the address of the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

June 8, 1999: High Tech Courtroom Presentations, at the Litigation Technology Summit Sponsored by the ABA Section of Litigation and Glasser LegalWorks in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654. Glasser LegalWorks was acquired by FindLaw, whose address is 610 Opperman Drive, Eagan, Minnesota 55123.

August 3, 1998: Discovery Reform in the Federal Courts, at the ABA Annual Meeting in Toronto, Canada. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

June 12, 1998: Taking and Opposing Discovery in Class Litigation, at the ABA National Institute on Class Actions in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

May 28, 1998: Motion Practice: Succeeding as a Woman Advocate, an ABA Satellite Seminar. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

April 25, 1998: The Art of Cross Examination – Asking the Question Without Knowing the Answer, at the ABA Section of Litigation Annual Meeting in New York, New York. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

December 11, 1997: Recent Developments in Class Actions, at the Practicing Law Institute, San Francisco, California. Outline supplied.

November 14, 1997: Recent Developments in Federal Class Actions, at Cumberland Law School in Birmingham, Alabama. I have no notes, transcript or recording, but the substance was similar to that of the December 11, 1997 event. The address of Cumberland Law School is 800 Lakeshore Drive, Birmingham, Alabama 35229.

June 27, 1997: Moderator for Discussion on Proposed Changes to Federal Discovery Rules at the ABA Section of Litigation Leadership Meeting in Aspen, Colorado. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

May 1, 1997: Recent Developments in Class Actions, presented by the Practicing Law Institute in New York, New York. I have no notes, transcript or recording. The New York address of the Practicing Law Institute is 810 Seventh Avenue, 21st Floor, New York, New York 10019.

March 6, 1997: Mock Trial of an Inter-American Dispute, Sponsored by the ABA and Inter-American Bar Association in Buenos Aires, Argentina. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654, and the address of the Inter-American Bar Association is 1211 Connecticut Avenue, NW, Suite 202, Washington, DC 20036.

February 18, 1997: Class Actions and Securities Litigation Reform Act, panel remarks at the Second Circuit Federal Bar Council meeting in Kona, Hawaii. I have no notes, transcript or recording. The address of the Federal Bar Council is 123 Main Street, Suite L100, White Plains, New York 10601.

August 5, 1996: Law School to Practice: Training and Educating New and Experienced Lawyers, for the ABA Section of Business Law in Orlando, Florida. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

August 8, 1995: Winning a Securities Class Action, panelist remarks during the ABA Annual Meeting, Chicago, Illinois. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

June 7, 1995: Alternatives to Traditional Litigation: International Arbitration and ADR, Seminar at Debevoise & Plimpton LLP. I have no notes, transcript or recording, but press coverage is supplied. The address of Debevoise & Plimpton LLP is 919 Third Avenue, New York, New York 10022.

February 21, 1995: Mock Trial of a Commercial Dispute, sponsored by the American Bar Association and Inter-Pacific Bar Association, Hong Kong. I have no notes, transcript or recording. The address of the ABA headquarters is 321 North Clark Street, Chicago, Illinois 60654.

January 18, 1995: How Female Attorneys Market Themselves and Their Firms, Speaker for a lunch program of the New York Chapter of the National Law Firm Marketing Association, New York, New York. I have no notes, transcript or recording. The NLFMA is now known as the Legal Marketing Association and the New York Chapter does not have a physical address.

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

The Super Lawyer: A Profile of Lorna Schofield, C. MAG. (publication of Indiana University, College of Arts & Sciences), Spring 2011. Copy supplied.

Erin Coe, *Confirmation Delays Wreak Havoc on Civil Litigation*, LAW360, July 21, 2010. Copy supplied.

Press release, *Summer Law Clerk Program Celebrates 10 Years of Opportunity for Minority and Disadvantaged Law Students*, AMERICAN BAR ASSOCIATION, June 18, 2010. Copy supplied.

Brian Josias, *Interview with Lorna Schofield, 2009-2010 Section of Litigation Chair*, A.B.A. SECTION OF LITIG. MINORITY TRIAL LAW. NEWSL. (ABA Section of Litigation, N.Y.), Summer 2010. Copy supplied.

Mark A. Drummond, *Jury Selection 2010: Bloggers, Bailouts & the Economy*, 35 LITIG. NEWS 14, Summer 2010. Copy supplied.

ABA, *Secrets of Success from Women at the Top: Women in the Law Leadership Academy Schools Attendees on Career Advancement*, ABANOW, Apr. 30, 2010. Video available at http://tinyurl.com/schofieldaba.

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

I have not 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:	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.

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 any public office and 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 offices in or rendered services in a political party or election committee, nor have I ever held a position in or played a role in a political campaign.

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

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

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

I have not served as a clerk to a judge.

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

I have not practiced law alone.

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

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Associate

1984 – 1988
United States Attorney's Office
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Assistant United States Attorney

1988 – Present
Debevoise & Plimpton LLP
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New York, NY 10022
Of Counsel (2012 – Present)
Partner (1991 – 2011)
Associate (1988 – 1991)

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 a volunteer mediator in the Southern District of New York mediation program. I have been able to locate files relating only to the following cases:

Silver v. Princess Hotels International, Inc., 93 Civ. 5768 (S.D.N.Y., Cedarbaum, J.). This claim arose out of the plaintiff's slip and fall in the shower at the defendant's hotel in Bermuda, where the plaintiff and his wife were honeymooning. I met and conferred with the parties in the summer and fall of 1994. The mediation resulted in a settlement.

Mediation of Int'l Fruit v. Plaintains, 93 Civ. 2308 (S.D.N.Y., Preska, J.). This matter involved non-payment of $106,147 for the purchase of 12 truckloads of bananas from Ecuador. I met and conferred with the parties in the fall of 1993 and the first half of 1994. The matter resulted in a settlement by consent order and judgment.

Mawn v. Scandinavian Airlines of North America, Inc., 92 Civ. 7968 (S.D.N.Y., Sprizzo, J.). Seven airline employees asserted age discrimination claims under the Age Discrimination in Employment Act of 1967 (ADEA) and common law fraud claims, alleging that they had been induced to retire under terms less favorable than terms later agreed upon with their union. From around June 1993 to April 1994 I met and conferred with the parties. Six of the seven employees agreed to settle. As to the seventh, the matter was referred back to the court to address his objection to the settlement.

b. Describe:

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

As an associate at Cleary Gottlieb (1981 – 1984), I worked as both a litigator and a transactional lawyer. At the start of my time at Cleary Gottlieb, I did more transactional work. My practice shifted towards general commercial litigation toward the end of my time there.

As an Assistant U.S. Attorney (1984 – 1988), I worked as a prosecutor, first in the General Crimes Unit and then in the Major Crimes Unit. My significant cases involved domestic terrorism, arms smuggling and tax fraud.

At Debevoise, from 1988 until roughly 2002, I worked almost exclusively on civil cases involving complex commercial disputes on behalf of both defendants and plaintiffs. Areas of practice included class actions, corporate bankruptcies, business fraud, professional liability, contract and other commercial matters. From around 2003 to approximately 2009, I worked primarily in the firm's white collar crime practice, including the defense of companies and individuals in regulatory and white collar criminal investigations, as well as internal and independent investigations on behalf of companies, their Boards of Directors and Audit Committees. From approximately 2010 through 2011, I worked primarily on a civil litigation styled as an adversary proceeding in bankruptcy court. I also handled several investigations and other smaller matters during this time.

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

My typical clients in civil litigation practice have been businesses and individuals involved in business disputes in state and federal court. My typical clients in white collar matters have been business entities and individuals who are involved in government investigations, either as a witness in or subject of the investigation, or are corporations, their Boards of Directors or committees of the Board who want a matter investigated.

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

Since 1984, 100% of my practice has been in litigation. As an Assistant U.S. Attorney, I appeared in court frequently. Throughout my years at Debevoise, I continued to litigate in state and federal courts, but appeared in court less frequently than I did as an AUSA. In addition, from 2002 through 2009, my focus shifted to white collar work, and I made many more regulatory than court appearances.

i. Indicate the percentage of your practice in:

1. federal courts: 55%
2. state courts of record: 35%
3. other courts:
4. administrative agencies: 10%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 60%
2. criminal proceedings: 40%

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

I have tried 10 cases in court to verdict or judgment (not including 2 arbitrations conducted as trials). I was chief counsel in 5 cases, co-chief counsel in 2 cases, and sole counsel in 3 cases. (A senior attorney sat with me in 2 of these 3 cases as they were my first trials.)

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

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

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

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

a. the date of representation;

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

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

1. *In re Lyondell Chemical Company, et al.*, Case No. 09-10023; *Weisfelner, as Litigation Trustee of the LB Litigation Trust v. Blavatnik, et al.*, Adv. Pro. No. 09-01375 (Bankr. S.D.N.Y.), Hon. Robert E. Gerber.

From August 2009 to January 2012, I defended a former director of Lyondell Chemical Company and the current President and CEO of Occidental Petroleum Corporation, in a bankruptcy adversary proceeding involving claims under

Delaware law and the Bankruptcy Code. The action arose from the alleged overleveraged and failed $12 billion merger between Lyondell and Basell AF S.C.A. When the combined company, renamed LyondellBasell Industries AF S.C.A., filed for chapter 11 bankruptcy protection in 2009, the company's unsecured creditors filed suit against various parties involved with the merger transaction. The claims against my client and the other former directors who approved the transaction included: (i) breach of fiduciary duty, (ii) illegal dividends and redemption under Delaware law, (iii) intentional fraudulent transfer, and (iv) constructive fraudulent transfer.

I served as lead counsel to my client, and I worked closely with counsel for other former directors and officers of Lyondell to develop a joint defense strategy and joint submissions to the court. The case is currently pending. Discovery is complete and motions to dismiss and a limited number of summary judgment motions are pending.

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James Dittmar
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2. *Gruner + Jahr Printing and Publishing Company v. Rosie O'Donnell et al.*, No. 603581-02 (Sup. Ct. N.Y.), Hon. Ira Gammerman.

In 2002 and 2003, I represented Rosie O'Donnell in a contractual dispute with Gruner + Jahr USA, the publisher of *Rosie* magazine. After a struggle over editorial control, O'Donnell exercised her right to terminate the joint venture. G+J sued her for $100 million, alleging wrongful termination. She counterclaimed, alleging that G+J had breached their joint venture agreement, which justified her closing down the magazine. I advised O'Donnell, with my partner Mary Jo White, during the dispute leading to the termination. I assumed primary responsibility in the litigation that followed. In November 2003, I tried the case with several colleagues who assisted me. The judge declined to award either side any damages or attorneys' fees.

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3. *Re Reliance Group Holdings et al.*, 01-13404 (AJG), (Bankr. S.D.N.Y.), Hon. Arthur J. Gonzalez; *Re Reliance Group Holdings, Inc.*, 273 B.R. 374 (Bankr. E.D. Pa. 2002), Hon. Kevin J. Carey.

From 2000 to 2003, I led our litigation team in what became a dispute in five separate courts between our client, Reliance Group Holdings ("RGH") and its main operating subsidiary, Reliance Insurance Company ("RIC"). The Pennsylvania Department of Insurance, as Liquidator for RIC, launched a litigation offensive to seize the assets of the RGH bankruptcy estate for the estate of the insurance company. We litigated the issues in the federal District Court and Bankruptcy Courts in Pennsylvania and New York, and in the Commonwealth Court of Pennsylvania. The parties ultimately settled.

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4. *Valuefinder Group, Inc. v. American Industrial Partners*, 603847-98 (Sup. Ct. N.Y.), Hon. Herman Cahn.

In 2001, after the close of discovery, I was asked to try a case on behalf of the plaintiff alleging breach of a "finder's agreement." Our client, a closely held company, had facilitated a merger between two companies, but was not paid its fee. The dispute involved the meaning of a letter agreement. I was assisted by a junior colleague who had conducted the pretrial work. After a bench trial, the court ruled in favor of our client, awarding damages, attorneys fees' and interest for a total in excess of $10 million.

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5. *Ackerman et al. v. Price Waterhouse*, 015639/90 (Sup. Ct. N.Y.), Hon. Ira Gammerman.

In 1999, I tried a class action case with one of my partners, David Rivkin, on behalf of what was then Price Waterhouse. This case involved the sale of real estate tax shelters in the early 1980s and the role of Price Waterhouse in preparing income projections for the investments. Price Waterhouse had concluded that taxpayers could properly use a device known as the Rule of 78's to calculate deductions for amortization, resulting in significant up front tax benefits. After the tax shelters were sold, the IRS decided to the contrary. The case focused on whether Price Waterhouse had been negligent in its projections, given the state of the tax law at the time.

My partner had managed the matter in pretrial proceedings for nine years. From 1993 to 1995, I occasionally assisted by taking a deposition or reviewing a brief. As the trial date neared, I became fully involved. At the trial, I conducted the *voir*

dire, the direct testimony of our expert, all of the cross examination, and delivered the summation. The jury returned a defense verdict for our client in 30 minutes.

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6. *In re Zenith Electronics Corp.*, 241 B.R. 92 (Bankr. Del. 1999), Hon. Mary F. Walrath.

From 1997 to 1999, I led our litigation team in representing LG Electronics ("LG"), a part of the LG Group, which is one of Korea's largest multinational corporations. LG was the majority shareholder and largest creditor of Zenith Electronics Corporation, with an 80% equity interest and $375 million in debt. Zenith was insolvent and incurring mounting operating losses that LG was forced to fund. We conducted a year-long internal investigation into LG's investment and involvement in Zenith's business. Thereafter, Zenith commenced bankruptcy proceedings that ultimately resulted in LG successfully taking the company private. At the contested confirmation hearing, the central issue was the economic valuation of Zenith's business based on projected future revenues, which in turn were based on predictions about the development and success of digital television. After the hearing, Zenith's plan of reorganization, which left LG with all of the equity, was confirmed.

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7. *First Bank of the Americas v. Motor Car Funding, Inc.*, 600600/97 (Sup. Ct. N.Y.), Hon. Ira Gammerman, Special Referee Kenneth R. McGrail, *aff'd as modified*, 257 A.D.2d 287, 690 N.Y.S.2d 17 (A.D. 1 Dep't 1999).

In 1997, I tried a plaintiff's case on behalf of our client, a foreign bank, which had been defrauded in the purchase of over $30 million in used car loans. After several discovery disputes, but before we were able to obtain any meaningful discovery, the court *sua sponte* struck the Answer, entered judgment for our client and directed us to a court-employed Referee to litigate damages. The court also dismissed our fraud claim, which gave rise to the lion's share of our client's damages. We essentially had to try our case on the merits (without the benefit of discovery) in order to prove damages. The Referee recommended an award of $2.6 million, the full amount that we had sought on the contract claim. The judge approved the recommendation. The appeal (argued by my associate) resulted in reinstatement of our fraud claim and reinstatement of the Answer. The case subsequently settled.

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Robert M. Calica
John S. Ciulla
Rosenberg Calica & Birney LLP
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Garden City, NY 11530
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8. *TBG, Inc. v. Bendis*, 811 F. Supp. 596 (D. Kan. 1992); *denying reconsideration*, 813 F. Supp. 766 (D. Kan. 1993); *dismissing appeal*, 36 F.3d 916 (10th Cir. 1994). Hon. Earl E. O'Connor, U.S.D.J.

From 1991 to 1995, I participated in the defense of the law firm Shook Hardy & Bacon LLP ("SHB") in a multi-defendant securities fraud action. The claim against SHB arose from that firm's representation of the seller in a corporate acquisition and issuance of a legal opinion. I was the senior associate, then junior partner, then sole partner, on the case. In this matter, among other things, I took many depositions, drafted briefs, prepared witnesses, and conducted settlement negotiations. Our client settled before the conclusion of discovery.

Co-counsel:

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9. *United States v. Evans*, SSS 86 Cr. 384 (LBS), 667 F. Supp. 974 (S.D.N.Y. 1987); *affirming a separate opinion*, 844 F.2d 36 (2d Cir. 1988). Hon. Leonard B. Sand

In 1987 and 1988, I led an investigation on behalf of the U.S. Government of an apparent conspiracy to sell U.S. arms to Iran using false end user certificates. The FBI arrested eight defendants, including an American lawyer and an Israeli general. With the indictment pending, news broke of Oliver North and Iran Contra. The defense asserted that the U.S. Government had sanctioned the defendants' activities, although no evidence substantiated this claim. We dismissed the indictment after our cooperating witness mysteriously died in London, another witness refused to cooperate, and the national security issues touching on Iran Contra became too sensitive.

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Larry Silverman
26 Broadway, 18th Floor
New York, NY 10004
(212) 425-1616

Hon. Shira A. Scheindlin (formerly in private practice)
United States District Court for the Southern District of New York
1950 Daniel P. Moynihan United States Courthouse
500 Pearl Street, New York, NY 10007
(212) 805-0246

William M. Kunstler (deceased)
Ronald L. Kuby
Law Office of Ronald L. Kuby
119 West 23rd Street, Suite 900
New York, NY 10011
(212) 529-0223

Richard B. Lind
488 Madison Avenue, 19th Floor

New York, NY 10022
(212) 888-7725

Lawrence V. Carra
114 Old Country Road, Suite 212
Mineola, NY 11501
(516) 742-1135

Louis R. Aidala
Baratta Baratta & Aidala LLP
546 Fifth Avenue, Sixth Floor
New York, NY 10036
(212) 750-9700

10. *U.S. v. Chimurenga, et al.*, 84 Cr. 818 (RLC), 1985 WL 546, 1985 WL 545, 1985 WL 559, 609 F. Supp. 1070 (S.D.N.Y. 1985); 609 F. Supp. 1066 (S.D.N.Y. 1985). Hon. Robert L. Carter

In 1985, as an Assistant United States Attorney, I was assigned to a three-month trial in a case involving eight domestic terrorists, who had plotted to hold up armored cars and free from prison certain inmates who had been convicted of killing police officers. I tried the case with a colleague, Kenneth Roth, and questioned approximately 35 witnesses and delivered the main Government summation. The jury returned a verdict of guilty on the weapons charges but not guilty on the conspiracy charges.

Co-Counsel:

Kenneth T. Roth (former AUSA)
Human Rights Watch
350 Fifth Avenue
New York, NY 10118
(212) 290-4700

Opposing counsel:

Lenox Hinds, contact information unknown

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University of Florida Levin College of Law
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(352) 273-0940

Hon. William Mogulescu (formerly in private practice)
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Criminal Division
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Bronx, NY 10451
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James Silver, contact information unknown

Judith Holmes
University of Massachusetts Amherst
108 Gordon Hall
Amherst, MA 01002
(413) 545-2305

Michael Hurwitz, contact information unknown

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.)

Defense of Government Official. In 2010, my partner Mary Jo White and I represented a senior government official in connection with proposed charges by the Department of Justice, Office of Professional Responsibility, involving an admitted personal relationship and alleged lack of candor. I investigated the facts, drafted a written submission, and led the oral argument. The lack of candor charge was dropped. The relationship was found to be a violation and resulted in a 15-day suspension.

Re the Arbitration Hearing between Van Eck Associates Corp. v. Greylock Capital Assocs., LLC and Willem Johannes Humes, American Arbitration Association, Hon.

William G. Bassler (former U.S.D.J. D.N.J.). In 2009, I stepped in at the 11th hour to conduct an arbitration on behalf of the Respondents in a dispute between business partners in a hedge fund. Judge Bassler, a former federal district court judge who conducted the proceedings like a federal trial, denied all claims against our client.

Investigation Concerning Harassment of Minority Presidential Candidate for the Republic of Georgia. In late 2007 and early 2008, with my London partner, Lord Peter Goldsmith, Q.C., former Attorney General for the United Kingdom, and junior colleagues, I participated in the investigation of the harassment of Badri Patarkatshishvili and his business associates, after he had announced his candidacy for President of the Republic of Georgia in the 2008 elections. The investigation ceased after our client died suddenly in London after the election, which he lost.

Deloitte Securities and Exchange Commission Investigation. From 2007 to 2010, I represented Deloitte LLP and several of its partners in an investigation by the Securities and Exchange Commission concerning the firm's auditing of Navistar International Corporation. In the end, the SEC determined not to charge Deloitte or any of its partners.

Internal Investigation Concerning Corporate Intelligence Gathering. In 2007, we were retained to conduct a confidential investigation of competitive intelligence work that had been undertaken by one of the client's employees and an outside investigator. We also reviewed generally the scope of the client's competitive intelligence activities to identify potential legal or ethical issues. I oversaw and participated in all aspects of the investigation.

Re Verizon Wireless, Attorney General of the State of New York, Internet Bureau, and Federal Trade Commission. In late 2006 and 2007, I represented Verizon Wireless ("VZW"), in state and federal investigations of the disclosure and advertising of VZW's "unlimited" internet access plans. I oversaw all aspects of the investigations and their resolution. The Federal Trade Commissioned determined to take no action. VZW and the Attorney General entered into a settlement, which included new policies and procedures and restitution.

General Motors Company Independent Investigation. In 2006, I conducted a six-month investigation for the Audit Committee of General Motors involving "roundtrip" transactions in the sale and repurchase of precious metals. In addition to reporting to the Audit Committee and senior management, we reported the results of our investigation to the Securities and Exchange Commission, which also was reviewing the transactions.

ACE Limited Government Investigations. Beginning in late 2004, I represented Ace Limited, a Bermuda based property and casualty insurer, in investigations by the Securities and Exchange Commission and the United States Attorney's Office involving so-called finite insurance. I also led an internal investigation concerning the same subject. Based on the investigation, the company restated its financial statements. The matter has been largely dormant since 2007.

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

    I have not taught any courses.

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

    I have retired from my firm, Debevoise & Plimpton LLP, and receive pension 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.

    As a past Chair of the ABA Litigation Section, I am slated to continue to serve on the governing Council and the Executive Committee of the Section until August 2013. This would require travel for one or two working days approximately four to five times a year. I also have been asked to serve as a special consultant to an ABA presidential task force to combat human trafficking in the United States. That commitment would officially begin August 2012 and conclude August 2013. I would like to continue this work if possible, and would conduct this work within the ethical rules applicable to judges.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest

when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Cases in which my law firm, Debevoise & Plimpton LLP, represented a party or appeared as a party would present a potential conflict of interest. I would recuse myself in such cases. In addition, cases involving my former clients as parties may present a potential conflict of interest. I would follow the guidance of the recusal statutes and the Code of Conduct for United States Judges to recuse myself where appropriate to avoid even an appearance of conflict of interest.

I do not believe any family members are likely to have cases in the United States District Court for the Southern District of New York, either as a party or as counsel. I would, of course, recuse myself from such cases to avoid an appearance of a conflict of interest.

I have investments in Vanguard and Fidelity mutual funds, and Rochester Fund Municipals. If I were to be assigned a case involving any of these entities or other entities in which I am then invested or have a financial interest, or a case of which I have personal knowledge, I would follow the guidance of the recusal statutes and the Code of Conduct for United States Judges to recuse myself where appropriate to avoid even an appearance of conflict of interest

I cannot think of a 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 will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges and all relevant canons and statutes.

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

As Chair of the Litigation Section (and before that as Chair Elect and Vice Chair), I have actively promoted the pro bono activities of the Section, which include a programs for: (1) pre-trial and trial advocacy training for legal services lawyers; (2) children's rights programs including efforts to secure representation for children in abuse and neglect proceedings; (3) litigation assistance to military personnel; and (4) obtaining pro bono legal services for inmates on death row.

I was the principle lawyer responsible for an internal investigation my firm conducted in 2007 for the Women's Prison Association, which assists women in the criminal justice

system. The issue was whether any malfeasance had contributed to a large (over a million and half dollars) and unforeseen deficit.

Stoner v. George Washington University Hospital, 88-5433 (Super. Ct. D.C.), Hon. Richard S. Salzman. From 1989 to 1991, as an associate at Debevoise & Plimpton LLP, I was one of several lawyers representing the estate of a woman who had died while a patient at the defendant hospital. The woman was 26 weeks pregnant and terminally ill when she was forced to undergo a cesarean section, pursuant to a court order obtained by the hospital. The child died shortly after delivery, and the mother died two days later. The case ultimately settled in exchange for a financial payment and an agreement by the hospital to revise its policies on informed consent.

I regularly oversaw and consulted with associates in their conduct of pro bono cases. For example, in 2009-2010 I oversaw an associate with respect to an immigration case involving a young man who is gay and Jamaican, seeking asylum in the United States because of the likelihood that he would be persecuted in Jamaica. The judge ordered a "withholding of removal," which meant that the client was released from jail and eventually can apply for legal permanent resident status and citizenship.

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 July 29, 2010, I submitted an application to Senator Charles E. Schumer's Judicial Screening Committee for a position as a United States District Judge. I met with the committee on August 30, 2010. I met with Senator Schumer on September 12, 2010, and again on September 19, 2011. In the interim and since then, I have been in contact with Senator Schumer's staff. On January 11, 2012, Senator Schumer's staff informed me that he wished to submit my name to the White House for consideration. I understand that he did so on January 23, 2012.

Since January 24, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 23, 2012, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On April 25, 2012, the President submitted my nomination to the Senate.

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

No.

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		24	064	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	8	409	348	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	1	650	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		18	500				
Cash value-life insurance							
Other assets itemize:							
Debevoise & Plimpton Capital Account		33	282				
				Total liabilities			0
				Net Worth	10	135	194
Total Assets	10	135	194	Total liabilities and net worth	10	135	194
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		

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Blackrock S&P 500 Index Fund A	$ 7,102
Fidelity Magellan Fund	67,805
Merrill Lynch Bank Deposit Program	4,050
New York 529 College Savings Plan	48
Rochester Fund Municipals	39,499
Vanguard 500 Index Fund Adm	175,196
Vanguard 500 Index Fund Signal	477,222
Vanguard Capital Opportunity Fund Adm	126,598
Vanguard Emerging Markets Stock Index Fund Adm	215,292
Vanguard Explorer Fund Adm	92,537
Vanguard Explorer Fund Inv	60,694
Vanguard Global Equity Fund	505,954
Vanguard Growth & Income Fund Adm	81,780
Vanguard Growth & Income Fund Inv	28,305
Vanguard Growth Index Fund Adm	552,589
Vanguard Health Care Fund Adm	176,853
Vanguard Health Care Fund Inv	75,089
Vanguard High-Yield Corporate Fund Inv	288,921
Vanguard High-Yield Tax-Exempt Fund Adm	164,646
Vanguard International Growth Fund Adm	98,389
Vanguard Intermediate-Term Tax-Exempt Fund Adm	547,074
Vanguard Mid-Cap Index Fund Adm	331,579
Vanguard New York Long-Term Tax-Exempt Fund Adm	920,948
Vanguard Prime Money Market Fund	6,441
Vanguard PRIMECAP Fund Inv	83,919
Vanguard Selected Value Fund	685,801
Vanguard Short-Term Investment Grade Fund Adm	208,206
Vanguard Tax-Exempt Money Market Fund	2,194,882
Vanguard Windsor Fund Inv	57,844
Vanguard Windsor II Fund Adm	134,085
Total Listed Securities	$ 8,409,348

Real Estate Owned	
Personal residence #1	$ 1,000,000
Personal residence #2	650,000
Total Real Estate Owned	$ 1,650,000

AO 10
Rev. 1/2012

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
Schofield, Lorna G.	SDNY	4/25/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination Date 4/25/2012 ☐ Initial ☐ Annual ☐ Final	1/1/2011 to 3/31/2012
	5b. ☐ Amended Report	
7. Chambers or Office Address		
Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022		

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. Insert signature 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	Debevoise & Plimpton LLP
2	Custodian	Vanguard Uniform Gifts for Minors Account
3		
4		
5		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1	2011	Debevoise & Plimpton LLP, retirement payments in a fixed annual amount, payable monthly for life, with COLA
2	2011	Debevoise & Plimpton LLP, payment (or set-off for 2011 expenses) of remaining capital in my capital account
3	1988	Retirement Plan for Lawyers of Debevoise & Plimpton LLP, self-directed account
4	1991	Debevoise & Plimpton LLP Cash or Deferred Plan for Partners & Staff, self-directed account

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Schofield, Lorna G.	Date of Report 4/25/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2012	Debevoise & Plimpton LLP pension	$75,033.00
2.	2011	Debevoise & Plimpton LLP partnership income	$2,234,189.00
3.	2010	Debevoise & Plimpton LLP partnership income	$2,145,517.00
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 8	Name of Person Reporting	Date of Report
	Schofield, Lorna G.	4/25/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting Schofield, Lorna G.	Date of Report 4/25/2012

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

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

A	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)
1. Citibank Accounts	A	Interest	K	T	Exempt				
2. Debevoise & Plimpton LLP Capital Account		None	K	T					
3. Fidelity Magellan	A	Dividend	L	T					
4. Rochester Fund Municipals	C	Dividend	K	T					
5. Vanguard 500 Index Fund Adm	C	Dividend	M	T					
6. Vanguard Capital Opportunity Adm	C	Dividend	M	T					
7. Vanguard Emerging Markets Stock Index Adm	D	Dividend	M	T					
8. Vanguard Explorer Fund Adm	A	Dividend	L	T					
9. Vanguard Global Equity Fund	D	Dividend	O	T					
10. Vanguard Growth Index Fund Adm	D	Dividend	O	T					
11. Vanguard Health Care Fund Adm	D	Dividend	M	T					
12. Vanguard High-Yield Tax-Exempt Adm	C	Dividend	M	T					
13. Vanguard High-Yield Tax-Exempt Inv	A	Dividend							
14. Vanguard International Explorer	D	Dividend							
15. Vanguard International Growth Adm		None	L	T					
16. Vanguard Inter-Term Tax-Exempt Adm	E	Dividend	O	T					
17. Vanguard Mid-Cap Index Fund Adm	C	Dividend	N	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
E =$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
IM =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 8	Name of Person Reporting Schofield, Lorna G.	Date of Report 4/25/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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 Vanguard NY LT Tax-Exempt Adm	E	Dividend	O	T					
19 Vanguard Primecap Fund Adm	B	Dividend	L	T					
20 Vanguard Selected Value Fund	C	Dividend	N	T					
21 Vanguard Short-Term Invest-Grade Adm	D	Dividend	M	T					
22 Vanguard Tax-Exempt MM	B	Dividend	P1	T					
23 Vanguard Windsor II Fund Adm	C	Dividend	M	T					
24 D&P Retirement Plan for Lawyers									
25 - Vanguard Explorer Fund Inv	A	Dividend	K	T					
26 - Vanguard Selected Value Fund	C	Dividend	N	T					
27 - Vanguard 500 Index Fund Signal	E	Dividend	M	T					
28 - Vanguard Windsor Fund Inv	C	Dividend							
29 - Vanguard High-Yield Corp Fund Inv		None	N	T					
30 D&P Cash or Deferred Plan									
31 - Vanguard 500 Index Fund Signal	D	Dividend	N	T					
32 - Vanguard Windsor Fund Inv	A	Dividend	L	T					
33 - Vanguard Selected Value Fund	B	Dividend	M	T					
34 - Vanguard Explorer Fund Inv	A	Dividend	K	T					

1 Income Gain Codes (See Columns B1 and D4)
A = $1,000 or less
B = $1,001 - $2,500
C = $2,501 - $5,000
D = $5,001 - $15,000
E = $15,001 - $50,000
F = $50,001 - $100,000
G = $100,001 - $1,000,000
H1 = $1,000,001 - $5,000,000
H2 = More than $5,000,000
I = $13,000 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

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 6 of 8	Name of Person Reporting Schofield, Lorna G.	Date of Report 4/25/2012

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

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	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. - Vanguard Health Care Fund Inv	C	Dividend	L	T					
36. Traditional IRA									
37 - Vanguard Growth & Income Fund Adm	B	Dividend	L	T					
38. Vanguard Prime Money Market Fund	A	Dividend	I	T					
39. Uniform Gifts for Minors Account									
40. - Vanguard Growth & Income Fund Inv	A	Dividend	K	T					
41 - Vanguard Prime Money Market Fund	A	Dividend	J	T					
42. Health Savings Plan									
43. - ML Bank Deposit Program		None	J	T					
44. - Blackrock S&P 500 Index Fund A	A	Dividend	J	T					

1 Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000

2 Value Codes (See Columns C1 and D3)
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

3 Value Method Codes (See Column C2)
Q =Appraisal
U =Book Value

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Schofield, Lorna G.	Date of Report 4/25/2012

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Schofield, Lorna G.	Date of Report 4/25/2012

IX. CERTIFICATION.

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

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

Signature

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

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

AFFIDAVIT

I, Lorna G. Schofield, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 24, 2012
(DATE)

(NAME)

SWORN TO BEFORE ME THIS 24th day of April 2012

(NOTARY)

MAURENA L. HOLDER
Notary Public, State of New York
No. 01HO5082541
Qualified in Kings County
Certificate Filed in New York County
Commission Expires July 28, 2013

Senator BLUMENTHAL. Thank you, Ms. Schofield.
Mr. Lum.

STATEMENT OF GRANDE LUM, NOMINEE TO BE U.S. DIRECTOR, COMMUNITY RELATIONS SERVICE

Mr. LUM. I would like to thank the members of the Committee for holding this hearing. I would certainly like to thank Senator Boxer for her generous introduction and for Senator Blumenthal's introduction as well.

I would like to introduce a few family members who are here today. Behind me is my wife, Nan Santiago, and I very much appreciate her presence. And behind her are my parents, Hampson and Evangeline Lum. And behind them is my friend, Eric Collins.

My children, Gianna and Garen, could not make it today, but they were my hearing prep coaches, so they did help out there. My son is graduating from elementary school this year as well.

I would like to thank—convey my deepest thanks to the President and to the Attorney General for their confidence in me in nominating me to this position. I would like to express my gratitude to my colleagues at the University of California, Hastings College of Law. And I would like to acknowledge my brother, Jordan Lum, and other family and friends who are watching the Committee Webcast from the San Francisco Bay area. And I look forward to the Committee's questions. Thank you.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Grande Hamilton Lum

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

   Director, Community Relations Service, Department of Justice

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.

   409 3rd Street SW, Washington DC 20416; Hillsborough, CA

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

   1964; San Francisco, CA

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.

   Harvard Law School
   Attended: August 1988 to June 1991
   Degree: Juris Doctorate, June 1991

   University of California
   Attended: August 1982 to December 1986
   Degree: Bachelor of Arts, December 1986

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

   The following are paid unless otherwise noted.

   Director, HUBZone Program (August 2010 to present)
   United States Small Business Administration
   409 3rd Street SW
   Washington, DC 20416

   Board of Overseers (2010 to present-Unpaid)

Baldrige National Quality Program
100 Bureau Drive M/S 1020, Gaithersburg, MD 20899

Clinical Professor and Director (July 2008 to August 2010, On Leave of Absence 2010-2012)
University of California Hastings School of the Law
200 McAllister Street
San Francisco, CA 94102

Managing Director (January 2005 to August 2010)
Accordence
533 Airport Boulevard #400
Burlingame, CA 94010

Vice-Chair, Board of Directors (2006 to August 2010-Unpaid)
Peninsula Conflict Resolution Center
South Amphlett Boulevard
San Mateo, CA 94402

President (2008 to 2010-unpaid)
Hillsborough Democratic Club
Hillsborough, CA 94010

Adjunct Professor (July 2007 to February 2009)
Stanford University Continuing Studies
482 Galvez Mall
Stanford, A 94305

Adjunct Professor (January 2008 to April 2008)
University of California, Berkeley School of the Law
215 Boalt Hall
Berkeley, CA 94720

Alternative Dispute Resolution Externship Program Co-Manager (January 2008 to May 2008)
Stanford Law School
595 Nathan Abbott Way
Stanford, CA 94305

Assistant Adjunct Professor of Law (August 2007 to November 2007)
University of California Hastings School of the Law
200 McAllister Street
San Francisco, CA 94102

Adjunct Lecturer (April 2006 to April 2007)
Dominican University School of Business
50 Acacia Avenue
San Rafael, CA 94901

Board of Directors (2004 to 2005-Unpaid)
Teacher's Path

3536 Broderick Avenue
San Francisco, CA 94123

Principal (September 1997 to December 2004)
ThoughtBridge
3 Bow Street
Cambridge, MA 02138

Chair and Member, Board of Directors (1998 to 2003-Unpaid)
Center for Asian American Media
145 9th Street Suite 350
San Francisco, CA 94103

Partner, Senior Consultant and Consultant (October 1991 to August 1997)
Conflict Management Inc.
1030 Massachusetts Avenue
Cambridge, MA 92138

Teaching Fellow (January 1991 - June 1991)
Harvard Negotiation Project
513 Pound Hall
Cambridge, MA 02138

Legal Intern (June 1990 to August 1990)
U.S. Senate Labor and Human Resources Committee
428 Senate Dirksen Building
Washington, DC 20510

Teaching Fellow (January 1990 to June 1990)
Harvard Sociology Department
33 Kirkland Street, Cambridge, MA 02138

Summer Associate (June 1989 to August 1989)
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105

Reporter (May 1987 to May 1988)
East West News
838 Grant Avenue
San Francisco, CA 94108

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.

Yes, I have registered for selective service. I have never served in the military.

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

   US News and World Report-Best Law School Dispute Resolution Programs – University of California Hastings College of the Law: Number 10 (2011) and Number 12 (2010)
   GM-Saturn Labor-Management Award-2nd Place -Recognition of San Diego Schools collective bargaining approach in which I served as mediator & facilitator (1997)
   Andres Fellowship (1990)
   Phi Beta Kappa (1986)
   UC Berkeley Psychology Department Distinguished Service Award (1986)
   Golden Key National Honor Society (1986)
   Psi Chi National Honor Society in Psychology (1986)

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

   California State Bar Association Standing Committee on Alternative Dispute Resolution (2007 to 2008)

   American Bar Association (2009 to present)

   American Bar Association Dispute Resolution Section (2008 to 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.

       Admitted: California State Bar June 2004. I have 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.

       None

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.

       Association for Dispute Resolution of Northern California 2005-2009
       Association for Conflict Resolution 2008-present
       Hillsborough Democratic Club 2008-2010

National Democratic Club July 2011-present
Primetime Athletic Club (Burlingame, CA) 2006-present
The Sports Club LA (Washington DC) 2010-present

I have made financial contributions to charitable organizations over the years. I have not included in the list above any organizations to which I gave funds and did not otherwise participate in programmatic activities, although the organization may label me a member.

b. 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, they do not.

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

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

I have done my best to identify published materials, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Negotiation Fieldbook: Simple Strategies for Every Negotiation. McGraw-Hill. First Edition 2005; Second Edition 2010. Copies of both editions supplied.

"How to be Your Own Mediator: A Relationship Goal is Necessary for Aim," Huffington Post, October 20, 2009. Available at http://www.huffingtonpost.com/grande-lum/how-to-be-your-own-mediat_b_327259.html. Copy of post supplied.

"How to Be Your Own Mediator: Disconnect the Reaction from the Person," Huffington Post, August 7, 2009. Available at http://www.huffingtonpost.com/grande-lum/how-to-be-your-own-mediat_b_253614.html. Copy of post supplied.

"How to be Your Own Mediator: Raise the Issue Swept Under the Rug," Huffington Post, August 1, 2009. Available at http://www.huffingtonpost.com/grande-lum/how-to-be-your-own-mediat_b_248310.html. Copy of post supplied.

"How to Be Your Own Mediator: Lower Your Boiling Point," Huffington Post, July 23, 2009. Available at http://www.huffingtonpost.com/grande-lum/how-to-

be-your-own-mediat_b_243570.html. Copy of post supplied.

" How To Be Your Own Mediator: Tell the Third Story," Huffington Post, July 9, 2009. Available at http://www.huffingtonpost.com/grande-lum/how-to-be-your-own-mediat_b_228505.html. Copy of post supplied.

"How to be Your Own Mediator: Tell the Story Twice," Huffington Post, July 7, 2009. Available at http://www.huffingtonpost.com/grande-lum/how-to-be-your-own-mediat_b_227164.html. Copy of post supplied.

"How to Be Your Own Mediator: Empathize and Assert at the Same Time," Huffington Post, July 6, 2009. Available at http://www.huffingtonpost.com/grande-lum/how-to-be-your-own-mediat_b_225421.html. Copy of post supplied.

"How to be Your Own Mediator: It's Me Not You," Huffington Post, July 1, 2009. Available at http://www.huffingtonpost.com/grande-lum/how-to-be-your-own-mediat_b_224056.html. Copy of post supplied.

"Tear Down the Walls: How to Move to Their Side," Huffington Post, July 1, 2009. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-how-t_b_223291.html. Copy of post supplied.

"Tear Down the Walls: Imagine a Video Camera is Only Capturing You," Huffington Post, June 29, 2009. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-imagi_b_221765.html. Copy of post supplied.

"Create a Comfort Zone for the Other Person," Huffington Post, June 19, 2009 Available at http://www.huffingtonpost.com/grande-lum/create-a-comfort-zone-for_b_217508.html. Copy of post supplied.

"Tear Down the Walls By Becoming More Comfortable First," Huffington Post, May 14, 2009. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-by-be_b_203307.html. Copy of post supplied.

"Tear Down the Walls: How to Imagine Their Internal Conflict Story," Huffington Post, April 24, 2009. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-how-t_b_191258.html. Copy of post supplied.

"Tear Down the Walls: How to Find Your Internal Conflict," Huffington Post, April 22, 2009. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-how-t_b_189229.html. Copy of post supplied.

"How to Seek Heroism in Demands," Huffington Post, March 10, 2009. Available

at http://www.huffingtonpost.com/grande-lum/how-to-seek-heroism-in-de_b_169653.html. Copy of post supplied.

"Tear Down The Walls - How to Use Demands as Clues," Huffington Post, December 29, 2008. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls----ho_b_153907.html. Copy of post supplied.

"Tear Down the Walls: How to Separate the Position From the Person," Huffington Post, November 23, 2008. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-how-t_b_145659.html. Copy of post supplied.

"Tear Down the Walls: How to Ease Into the Tough Topics," Huffington Post November 14, 2008 Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-how-t_b_143712.html. Copy of post supplied.

"Tear Down the Walls: How to See Everyday Conflicts as Cross-Cultural," Huffington Post, November 10, 2008. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-how-t_b_142478.html. Copy of post supplied.

"Tear Down the Walls: How to Bring Curiosity into the Mix," Huffington Post, October 31, 2008. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-how-t_b_139084.html. Copy of post supplied.

"How Obama is Mediating His Way Toward the Presidency," Huffington Post, October 29, 2008. Available at http://www.huffingtonpost.com/grande-lum/how-obama-is-mediating-hi_b_138867.html. Copy of post supplied.

"Tear Down the Walls: How to Approach Conversation as a Craft," Huffington Post, October 24, 2008. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-how-t_b_137043.html. Copy of post supplied.

"Tear Down the Walls: How to Change Conflict to Collaboration," Huffington Post, October 14, 2008. Available at http://www.huffingtonpost.com/grande-lum/tear-down-the-walls-how-t_b_134609.html. Copy of post supplied.

"What One Obama Supporter Can Do" Huffington Post, September 17, 2008. Available at http://www.huffingtonpost.com/grande-lum/what-one-obama-supporter_b_127238.html. Copy of post supplied.

"Raising Your Money Where Your Belief Is," Huffington Post, August 13, 2008, available at http://www.huffingtonpost.com/grande-lum/raising-money-where-your_b_118777.html. Copy of post supplied.

"Which Presidential Candidate Would be Best at Conflict Resolution," Mediate.com, February 2008, available at www.mediate.com//articles/lumG5.cfm. Copy of article supplied.

"Primary Views: Grande Lum Candidate: Barack Obama" San Francisco Chronicle February 3, 2008. Available at http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/03/INI9UPPT1.DTL. Copy of article supplied.

Contributed to "A Local Official's Guides to Intergovernmental Conflict Resolution" published by Institute for Local Government, 2008. Copy of guide supplied.

Contributed short excerpt on negotiation to The Mind of the Customer: How the World's Leading Sales Forces Accelerate Their Customer's Success, by Richard Hodge and Lou Schacter. Published by McGraw-Hill, 2006. Copy of excerpt supplied.

I signed an open letter to San Francisco Chronicle raising concerns on a series titled "Diary of a Sex Slave" on October 24, 2006. Copy of letter supplied.

"A New ICON – Use This Win-Win Model," Executive Excellence, February 2004 (Co-authored with Anthony Wanis-St. John). Copy of article supplied.

Letter to the Editor, Harvard Business Review, February 2004. Copy of letter supplied.

Letter to the editor, San Francisco Chronicle, February 1, 2004, available at http://articles.sfgate.com/2004-02-01/sports/17411671_1_asian-americans-steroid-matt-gonzalez. Copy of letter supplied.

Expand the Pie: How to Create More Value in Any Negotiation. Castle Pacific Publishing 2003 (co-authored with Irma Tyler-Wood and Anthony Wanis-St. John (earlier version of Negotiation Fieldbook). Copy of book supplied.

"Adversaries to Allies: Lessons from the San Diego City Schools Contract Negotiations," Mediate.com, 2001 (co-authored with Monica Christie). Copy of article supplied.

Monster.com – Served as negotiation expert and contributed numerous blog entries on negotiation and other executive issues. 2000. Copies supplied where available. Please note that published dates are estimated and that copy supplied may not be final version.

"What the Other Side is Really Telling You," Monster.com 2001. Copy of post supplied.

"Persuasion Without Coercion," Monster.com 2001. Copy of post supplied.

"Negotiating a Flexible Work Schedule," Monster.com 2001. Copy supplied.

"Managing Conflict," Monster.com 2001. Copy of post supplied.

"How do I Walk Away From a Negotiation," Monster.com 2001. Copy of post supplied.

"Negotiating Across Gender," Monster.com February 20, 2001. Copy of post supplied.

"Negotiating With Your Manager," Monster.com February 14, 2001. Copy of post supplied.

"Persuasion - More Asking," Monster.com February 6, 2001. Copy of post supplied.

"Getting into the Negotiator Zone," Monster.com February 4, 2001. Copy of post supplied.

"Tips for Negotiation Improvement: Get an Attitude! " Monster.com January 23, 2001. Copy o post supplied.

"Difficult Negotiation Styles," Monster.com January 17, 2001. Copy supplied.

"Negotiating Inside Out," Monster.com January 17, 2001. Copy supplied.

"Negotiating Change," Monster.com December 18, 2000. Copy of post supplied.

"Repairing Bad Relationships," Monster.com December 12, 2000. Copy of post supplied.

"When Others Negotiate For You," Monster.com December 4, 2000. Copy of post supplied.

"What to Do if Other Side Refuses to Negotiate," Monster.com November 22, 2000. Copy of post supplied.

"Negotiating in a Multicultural Environment," Monster.com November 14, 2000. Copy of post supplied.

"Raising Difficult Issues," Monster.com November 7, 2000. Copy of post supplied.

"Interpersonal Skills," Monster.com October 31, 2000. Copy of post supplied.

"Traits of Successful Negotiators," Monster.com October 24, 2000. Copy of post supplied.

"Assess Trust and Improve," Monster.com October 15, 2000. Copy of post supplied.

"Are You Ready to Negotiate Salary? " Monster.com October 10, 2000. Copy of post supplied.

"Improving Executive Team Performance," Monster.com October 2, 2000. Copy of post supplied.

"Countering Hardball Tactics," Monster.com September 21, 2000. Copy of post supplied.

"I Hate to Negotiate," Monster.com August 28, 2000. Copy of post supplied.

"When Not to Come to an Agreement," Monster.com August 24, 2000. Copy of post supplied.

"Appeal to Fairness," Monster.com August 12, 2000. Copy of post supplied.

"Rethinking Conflict Resolution," Monster.com August 11, 2000. Copy of post supplied.

"Creating Visibility," Monster.com August 7, 2000. Copy of post supplied.

"Cutting the Pie in Negotiation," Monster.com August 3, 2000. Copy of post supplied.

"Maximizing the Value of Business Relationships," Monster.com August 3, 2000. Copy of post supplied.

"Negotiate with Yourself," Monster.com August 3, 2000. Copy of post supplied.

"Terrific Team Negotiating," Monster.com July 24, 2000. Copy of post supplied.

"Persuasion," Monster.com June 28, 2000. Copy of post supplied.

"Trust," Monster.com June 28, 2000. Copy of post supplied.

"Rethinking the Role of the Strategic Account Manager," Velocity, the Strategic Account Management Association Journal. Fall 1999 (co-authored with Andrew Ayers). Copy of article supplied.

"Integrating Sales Force Negotiation Skills" Newspost, the Official Journal of the National Society of Pharmaceutical Sales Trainers. Summer 1999 (co-authored with Eric Collins). Copy of article supplied.

"Transforming Difficult Customer Relationships to Valuable Ones," Velocity, the Strategic Account Management Association Journal. Summer 1999 (co-authored with Andrew Ayers). Copy of article supplied.

"Interest-Based Negotiations in Education Collective Bargaining: The Nuts and Bolts of Getting Started," The North American Association of Educational Negotiators Bulletin, October/November 1996. Copy of article supplied.

Letter to the Editor, Black Entrepreneur, Bank Business, December 1992. Copy supplied.

I was a reporter for East West News from May 1987 to May 1988. Copies supplied where available.

"Critical Need for AIDS Education in Asian American Communities," East West News, March 31, 1998. Copy of article supplied.

"Makers of Vincent Chin Documentary Fight Off Ghosts, Animals and CPB," East West News, March 31, 1988. Copy of article supplied.

"Young Entrepreneurs Cash in on Baseball Cards," East West News, September 10, 1987. Copy of article supplied.

"SF Supervisors Must Confront Issue of Cathay Mortuary vs. New Chinatown Park," East West News, August 6, 1987. Copy of article supplied.

"South Bay Groups Demand Apology for Milpitas Police Actions," East West News, June, 1987. Copy of article supplied.

"East/West Survey Summer Activities for Youth," East West News, May 28, 1987. Copy of article 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 done my best to identify any reports, memoranda or policy statements I prepared or contributed in, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember.

I was on California State Bar Standing Committee on Alternative Dispute Resolution. Copies of Committee reports supplied where available.

"Comments on CDRC's Proposed Mediation Training Guidelines," Comments to California Dispute Resolution Council, November 15, 2007. Copy of report supplied.

"2008 Resolutions," Comments to Conference of Delegates of California Bar Associations, May 28, 2008. Copy of report supplied.

"Procedures for Addressing Complaints About Court-Program Mediators for Civil Cases – SPR08-10," Comments to Judicial Council of California, June 20, 2008. Copy of report supplied.

"Development of Qualification Standards for Mediators Serving in Court-Connected Mediation Programs for Civil Cases," Comments to Office of the General Counsel, Judicial Council of California, July 21, 2008. Copy of report supplied.

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

I have done my best to identify testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that I have issued or provided or that others presented on my behalf to public bodies or public officials. I have found none. Despite my searches, there may be materials I have been unable to identify, find or remember.

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

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

As part of my current job as SBA HUBZone Program Director, I continue to give speeches and appear on panels, which include question and answer sessions.

DC Entrepreneurship Week, Being an Entrepreneur in DC, Panel discussion, Washington DC Economic Partnership, 1495 F Street NW, Washington DC 20004 November 16, 2011. Copy of powerpoint supplied.

3rd Annual 8th District Federal Contracting Symposium, *Creating HUBZone Jobs in North Carolina*, Panel and Presentation, Stanly County Agri-Civic Center, 26032 Newt Road #B, Albemarle, North Carolina 28001 November 9, 2011. Copy of powerpoint supplied.

Minority Enterprise Development Week: *Small Business Town Hall: Growth Opportunities for the Underserved Markets*, Marriott Wardman Park, 2660 Woodley Road NW Washington DC 20008 September 29, 2011. Copy of agenda supplied.

Minority Enterprise Development Week : *Access to Contracts: SBA – Updates in Small Business Contracting*, Marriott Wardman Park, 2660 Woodley Road NW Washington DC 20008 September 28, 2011. Copy of agenda supplied.

HUBZone Council National Meeting, *HUBZone Program Update and Impact of 2010 Census*, Liaison Capitol Hill Hotel, 415 New Jersey Avenue NW Washington DC 20001 September 8, 2011. Copy of powerpoint supplied.

White House Business Summit, *HUBZONE PROGRAM: Benefits, Opportunities and Fit* KOIN Center, 222 SW Columbia Street, Portland, OR 97201 August 29, 2011. Copy of powerpoint supplied.

Mississippi Development Authority & Mississippi Procurement Technical Assistance Program, *Government Contracting and Business Development Update*, Biloxi Convention Center, Biloxi, MS, May 17, 2011. Copy of speech notes supplied.

United States Pan Asian American Chamber of Commerce, *HUBZone Program: Benefits, Opportunities and Fit*, Hyatt Regency, 5 Embarcadero Center, San Francisco, CA 94111 March 9, 2011. Copy of powerpoint supplied.

NASA & Small Business Administration, *HUBZone Program: Benefits, Opportunities and Fit*, Michoud Assembly Facility New Orleans, January 27, 2011. Copy of powerpoint supplied.

White House Asian American Pacific Islander Initiative, *Government Contracting Panel: Opportunities for Businesses*, Microsoft, 1065 La Avenida Street, Mountain View, CA 94043 January 7, 2011, available at http://www.youtube.com/watch?v=7trOiwKud-c (45:20). Copy of coverage supplied.

HUBZone Council Annual Conference, *HUBZone Update*, DuPont Hotel, 1500 New Hampshire NW, Washington DC 20036 September 16, 2010. Copy of powerpoint supplied.

Peninsula Conflict Resolution Center, Breakfast Fundraiser *Closing Remarks*, Crowne Plaza Hotel, Foster City, CA 94404, May 19, 2010. Video available at http://www.youtube.com/watch?v=07MWwV4MyKs. Copy of speech notes supplied.

Joe Fernandez for Rhode Island Attorney General Fundraiser, *Introductory Remarks*, Kerr & Wagstaffe, 100 Spear Street, San Francisco, CA 94105 June 21, 2010. Copy of speech notes supplied.

UC Hastings Alumni Event, *Panel on Mediation Representation*, Stradling Yocca Carlson & Rauth, 660 Newport Center Drive Suite 1600, Newport Beach, CA 92660 April 29, 2010. Copy of speakers' bios, agenda and powerpoint supplied.

ABA Dispute Resolution Conference, *Innovations in Teaching Negotiation*, Hyatt Regency, 5 Embarcadero Center, San Francisco, CA 94111 April 10, 2010. Copy of speech outline supplied.

Project Sentinel, *Negotiation for Mediators*, 298 S. Sunnyvale Avenue, Sunnyvale, CA 94086 March 2010. I have not been able to locate notes.

California Dispute Resolution Council, *Introductory Remarks*, 200 McAllister Street, San Francisco, CA 94102 October 17, 2009. Copy of speech notes supplied.

Center for Transnational Law and the German Institute of Arbitration, 4th Cologne Summer Academy on Business Negotiation and Mediation, *Negotiation Track*, University of Cologne, Germany. September 7, 2009. Copy of agenda and powerpoint supplied.

David Mineta for San Mateo County Supervisor, *Introductory Remarks*, The Virginia City Waterfront Rail Park, 675 Seaport Blvd., Redwood City, CA 94061 July 18, 2009. Copy of speech notes supplied.

Institute of Local Government, League of California Cities' Mayors & Council Members Executive Forum, *Negotiating and Resolving Problems Collaboratively*, Paradise Point Resort & Spa, 1404 Vacation Road, San Diego, CA 92109 May 29-30, 2009. Copy of speech notes supplied.

UC Hastings, *Mediation Advoc*acy
White and Case, 3000 El Camino Real, 5 Palo Alto Square, Palo Alto, CA 94306 November 17, 2009. Copy of powerpoint supplied.

Peninsula Conflict Resolution Center, *Why Community Dispute Resolution Matters*, Foster City Community Library, 1000 East Hillsdale Blvd., Foster City, CA 94404 March 27, 2008. Copy of speech notes supplied.

Goldman School of Public Policy, University of California at Berkeley, *Education Negotiations*, 2607 Hearst Avenue, Berkeley, CA 94720 April 1, 2008. Copy of agenda and speech notes supplied.

Hastings Law School, *Teaching Integrative Bargaining*, 100 McAllister Blvd., San Francisco, CA 94102 January 16, 2008. Copy of teach notes and powerpoint supplied.

Association for Dispute Resolution of Northern California and Asian American Bar Association, *Growing Your Mediation Practice*, 301 Battery Street, San Francisco, CA 94111 October 16, 2008. Copy of flyer supplied.

Association for Dispute Resolution of Northern California, *An Evening with Mediator Grande Lum*, 1660 South Amphlett Blvd., #219 San Mateo, CA February 26, 2008. I have not been able to locate notes.

EMCOR, *ICON Negotiation Concepts*, Scottsdale, AZ September 28, 2005. Copy of powerpoint supplied.

Asia-Pacific Student Entrepreneurship Society at Stanford University, Entrepreneurship Summit, *Entrepreneur as Negotiator*, Stanford University, Stanford, CA April 8, 2005. Copy of powerpoint supplied.

The Real Learning Company, 5th Annual Symposium, *Power of 3 Persuasion*, Tempe, Arizona. April 5 & 6, 2005. Copy of description and powerpoint supplied.

Sino-American Pharmaceutical Professionals Association-West, Symposium, *An Introduction to The Power of 3*, Palo Alto, CA. March 26, 2005. Copy of speech notes supplied.

Haas School of Business, University of California at Berkeley. MBA Negotiation Course. *Case Studies*, Haas School of Business Berkeley, CA 94720 2005 & 1999. Copy of case studies supplied.

San Francisco Bar Association Mediation Committee. *Mediating Educational Disputes*, 301 Battery Street, San Francisco, CA 94111 February 3, 2005. Copy of speech notes supplied.

United States Department of Justice, *Mediation Advocacy for US Attorneys*, Columbia, South Carolina 29201 2004. Copy of cases supplied (differs slightly from ones used).

Partners for Democratic Change. Negotiation, *Conflict Management and Facilitation*, San Francisco, CA August 24, 2001, August 17-18 2000 and June 2, 2000. Copy of table of contents, case and teaching notes supplied.

Strategic Account Management Association. National Conference. *Advanced Negotiation Skills*, San Antonio, TX May 21-24, 2000. Copy of agenda and description supplied.

National Education Association. Regional Conference. *Negotiation Skills for Leaders*, 1999. I have not been able to locate notes.

McLaren School of Business, University of San Francisco. MBA Course on Negotiation, *Principled Negotiation*, San Francisco, CA 1998. I have not been able to locate notes.

Linkage Incorporated, Global Human Resources Institute, *Beyond Win-Win Negotiating*. San Diego, CA 1997-1998. I have not been able to locate notes.

San Jose Rotary Club, *Let's Make a Deal: The Art of Negotiating at Work, Home and Play*, 1690 Senter Road, San Jose, CA 95112 May 28, 1997. Copy of thank-you note supplied.

Smith College. Management Program for Executives. *Negotiation and Conflict Management Skills*. Northampton, MA 01063 1994-1996. I have not been able to locate notes.

Northeastern University Law School, Alternative Careers for Lawyers Forum, *A Career in Dispute Resolu*tion, 400 Huntington Avenue, Boston, MA 02115 February 2, 1995. Copy of speech notes supplied.

University of Massachusetts, class presentation, 1993. Copy of speech notes supplied.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

"Asian Americans Rally Community for Vote," Asian Week, October 19, 2008, available at http://www.asianweek.com/2008/10/19/asian-americans-rally-community-to-vote/. Copy of article supplied.

"Obama's Sister a Second Face of Diversity: Maya Soetoro-Ng greets Obama supporters during S.F. visit," Asian Week, June 27, 2008, available at http://www.asianweek.com/2008/06/27/obama-sister-a-second-face-of-diversity-maya-soetoro-ng-greets-obama-supporters-during-sf-visit/. Copy of article supplied.

Television Interview, KRON-TV Maya Soetoro-Ng Fundraiser, San Francisco, CA June 11, 2008. I have not been able to locate a transcript or video.

"Learning to Love the Deal," Redmond Channel Partner, October 2006. Copy of article supplied.

"Getting the Vote Out Across the Pacific: In a first, APAs lobby Guam voters through extensive phone banking," Asian Week, June 11, 2008, available at http://www.asianweek.com/2008/06/11/%ef%bb%bfgetting-the-vote-out-across-the-pacific-in-a-first-apas-lobby-guam-voters-through-extensive-phone-banking/. Copy of article supplied.

Television Interview, KGO-TV Obama Fundraiser San Francisco, CA April 6, 2008. I have not been able to locate a transcript or video.

Radio Interview, It's Your Money, June 22, 2003.

"Mediator and Father Grande Lum," The Family Culture, Vol. 3.6, December 1997. Copy of article supplied.

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

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

None.

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

Candidate: Barack Obama for President
Title: National Asian Pacific American Leadership Council

Date: 2007 to 2008

Candidate: David Mineta for San Mateo Supervisor
Title: Treasurer
Date: 2009-2010

14. **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;

No, I have never clerked.

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

No, 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.

Director, HUBZone Program (August 2010 to present)
United States Small Business Administration
409 3rd Street SW
Washington DC 20416

Clinical Professor and Director (July 2008 to August 2010, On Leave of Absence 2010-2012)
University of California Hastings School of the Law
200 McAllister Street
San Francisco, CA 94102

Managing Director (January 2005 to August 2010)
Accordence
533 Airport Boulevard #400
Burlingame, CA 94010

Adjunct Professor (July 2007 to February 2009)
Stanford University Continuing Studies
482 Galvez Mall

Adjunct Professor (January to April 2008)
University of California, Berkeley School of the Law
215 Boalt Hall
Berkeley, CA 94720

Alternative Dispute Resolution Externship Program Co-Manager (January 2008 to May 2008)

Stanford Law School
595 Nathan Abbott Way
Stanford, CA 94305

Assistant Adjunct Professor of Law (August 2007 to November 2007)
University of California, Hastings School of the Law
200 McAllister Street
San Francisco, CA 94102

Adjunct Lecturer (April 2006 to April 2007)
Dominican University School of Business
50 Acacia Avenue
San Rafael, CA 94901

Principal (September 1997 to December 2004)
ThoughtBridge
3 Bow Street
Cambridge, MA 02138

Partner, Senior Consultant and Consultant (October 1991 to August 1996)
Conflict Management Inc.
1030 Massachusetts Avenue
Cambridge, MA 92138

Teaching Fellow (June 1991)
Harvard Negotiation Project
513 Pound Hall
Cambridge, MA 02138

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.

1. San Diego Educator's Association Collective Bargaining:
I led a mediation between the management and union around collective bargaining. The engagement included training and utilized an interest-based approach. I co-wrote an article on the work with the San Diego School which is included in my answer to Question 12. The negotiation and its outcome received the GM Saturn 2nd Place Award for Labor-Management Cooperation. 1997-1998

2. NEA-AFT PartneringTalks:
I was part of a ThoughtBridge team that facilitated structured dialogue and conversations between National Education Association and American Federation of Teachers to build closer ties between the organizations including relooking at merging the two organizations. We worked with senior management, middle management and the state associations. 1999-2001

3. Georgia Association of Educators Dispute:

The mediation involved current and former members of the union and other stakeholders. I was co-leader of a ThoughtBridge team. We interviewed individuals prior to the mediation, presented findings and then mediated a group of approximately 50 people. December 1998

4. Boston Public Schools Peer Grievance Mediation:
I was part of a CMI team that designed and implemented an additional step within the Boston Public School employee's grievance procedure. We trained union and management to be co-mediators. We launched the mediation step and provided ongoing support to the mediators. 1994-1996

5. San Francisco School Site Committee Dispute
The mediation involved a dispute between and among parents, teachers and community members regarding a decision not to rehire a group of Japanese language teaching aides. I led a ThoughtBridge team that interviewed individuals and groups, designed the engagement, presented findings and implemented a mediation approach. April-June 2000

6. Hayward Schools
I led a ThoughtBridge team that facilitated and mediated a collaboration agreement between Hayward Unified School District and Hayward Education Association focused on shared goals, norms and values of the relationship. March-April1999

7. Cambridge Public Schools Collective Bargaining:
As a member of CMI team, we trained and mediated the parties for their collective bargaining. It involved both a more traditional positional approach and a collaborative approach. 1994

8.Black Hawk College Collective Bargaining:
This engagement primarily involved training of the parties in a new approach to collective bargaining, specifically a more collaborative interest-based approach. As a co-leader of a CMI team, we trained two people to be the primary mediators and supported them in their management of the process. 1993 and January – October 2001.

9. Amgen:
This was a mediation of a product development team in which there were differences on issues of business development, research and regulatory concerns. I worked with a team on their internal concerns, strategized how to present to senior management and how to approach the regulatory body involved. March-June 2001

10. San Francisco School Board
I was brought in to help the School Board address internal and external challenges related to Board and school district personnel. I interviewed each of the School Board members and mediated the group and worked on a few challenging issues they were working through. July - August 2005

b. Describe:

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

I graduated from law school in 1991. I joined Conflict Management Inc. (CMI), a consulting firm co-founded by Harvard Law School Professor Roger Fisher. I provided consulting mediation and training services to a variety of clients. My practice evolved from corporate clients initially to education and other public sector clients toward the end of my tenure at CMI in 1997.

Along with a number of principals and consultants from CMI, we formed ThoughtBridge in late 1997 and focused more on mediation and facilitation. I built a practice in labor-management collective bargaining training and mediation as well as in the life sciences. I did a variety of other work for the firm including business development as well as internal hiring and training.

In 2005, I started Accordence, a dispute resolution training firm focused on the corporate sector. Here I focused on methodology development, leveraging technology, licensing and channel partners. I also trained consultants who taught courses for Accordence.

I joined University of California Hastings College of the Law as a clinical professor and Director of its Center for Negotiation and Dispute Resolution in 2008. My primary duties included teaching classes plus organizing, recruiting and managing the adjunct professors who taught courses in the Center. I was also responsible for overseeing conferences, the student negotiation and mediation team and representing the Center.

In 2010, I took a leave of absence from Hastings to join the U.S. Small Business Administration as its Historically Underutilized Business Zone (HUBZone) Director where I oversee a federal government contracting program that provides benefits to small businesses in distressed areas. The work involves implementing and following HUBZone regulatory language found in the Code of Federal Regulations.

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

While at CMI, I worked with large institutional clients like IBM and Kodak. I worked with educational clients such as Cambridge Public Schools and Boston Public Schools.

While at ThoughtBridge, I worked with public clients such as the National Education Association and San Diego Public Schools. Large institutional clients included Eli Lilly and Amgen.

At Accordence, my clients included Hewlett-Packard and American Express.

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

I have never had a practice in litigation.

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

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

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 no cases of record.

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

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.

15. **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.

As stated above, I have no litigation matters; however, I am providing the following list of ten professional reputation references:

Eric Collins, Chief Operating Officer, Mobile Posse, 700 New Hampshire NW #1509, Washington DC 20037 (617) 230-6008

Timothy Dayonot, Senior Lecturer, University of California Berkeley School of Business, Haas Management of Organizations Group, 140A Purdue Avenue, Kensington, CA 94708 (510) 621-8412

Jonathan Greenberg, Counsel, Heenan Blaikie LLP and Chair, International Dispute Resolution HB Global, 1304 Bellair Way, Menlo Park, CA 94025 (650) 575-4727

Helena Gweon, Judge, Sacramento Superior Court, 720 9th Street, Department 27, Sacramento, CA 95814 (916) 335-4057

Shauna Marshall, Professor of Law and Academic Dean, University of California Hasings School of the Law, 200 McAllister Street, San Francisco, CA 94102 (415) 565-4682

Janet Martinez, Senior Lecturer-in-Law and Director, Gould Negotiation and Mediation Program at Stanford Law School, 559 Nathan Abbott Way, Stanford, CA 94305 (650)723-4457

Melissa Nelken, Professor of Law, University of California Hastings School of the Law and Faculty Chair, Center for Negotiation and Dispute Resolution, 200 McAllister Street, San Francisco, CA 94102 (415) 565-4662

Alan Price, Manager Organizational Effectiveness, Northeast Utilities, 275 West Rock Avenue, New Haven, CT 06515 (617) 407-2300

Irma Tyler-Wood, Principal, Ki-Thoughtbridge, 3 Walden Mews, Cambridge, MA 02140 (617) 868-8641

Anthony Wanis-St. John, Assistant Professor, International Peace and Conflict Resolution program at American University's School of International Service, 3 Gorsuch Street, Timonium, MD 21093 (973) 818-2392

16. **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 do not have significant traditional legal activities such as litigation. My experience has been in dispute resolution where I have played the role of mediator, facilitator, trainer and professor. See 14. iv. I have never been a registered lobbyist.

17. **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.

    University of California, Berkeley School of Law, Adjunct Professor. Taught Negotiation in Spring 2008. Copy of course syllabus supplied.

    Stanford Law School, Palo Alto, CA. Alternative Dispute Resolution Externship Program Manager (Co-managed), Spring 2008. Copy of course syllabus supplied.

    Stanford University Continuing Studies, Palo Alto, CA. Adjunct Professor. Taught Mastering Negotiations, 2007-2009. Copy of course syllabus supplied.

    Hastings Law School, San Francisco, CA. Taught Negotiation and Settlement class, 2007-2010. Copy of course syllabus supplied.

    Dominican College Of Business, San Rafael, CA. Adjunct Lecturer. Taught MBA course on Business Communication and Negotiation, 2006-2007. Copy of course syllabus supplied.

18. **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 sole owner of Accordence, Inc. I previously held positions as President and Managing Director of Accordence, Inc. In August 2010, I resigned from these positions and turned management of the company over to another Managing Director. Following these resignations, I remained a Director of Accordence, Inc. I will resign from my position as Director upon confirmation. Following my resignation, I will be a passive investor and will not manage Accordence, Inc., or provide any services to it. As long as I retains a financial interest in Accordence, Inc., I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Accordence, Inc., unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption pursuant to Section 208(b)(2).

    I will continue to hold my Accordence 401(k) PS Plan through Morgan Stanley Smith Barney. No contributions will be made by Accordence following my resignation as director.

    I will also continue to be enrolled in the University of California Retirement Savings Program. Neither Hastings nor I will contribute following my resignation.

    Lastly, I expect to continue to receive royalties from McGraw-Hill for the book "The Negotiation Fieldbook."

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

    I have no plans, commitments, or agreements pursuant to outside employment.

20. **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 SF-278 Financial Disclosure Report.

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

    See attached Net Worth Statement.

22. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

       In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

       I own a company Accordence that provides training. I also serve on the Board of the Directors. I currently neither have operational responsibilities nor do I provide service to any clients. However to prevent any potential conflicts of interest I would resign from the Accordence Board of Directors prior to assuming the position if I am confirmed.

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

       In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Peninsula Conflict Resolution Center (PCRC): PCRC fosters collaborative engagement by bringing people together, facilitating conversation and building these skills in the community. I initially served as a volunteer, and conducted mediations. Each mediation would last approximately 3 hours. I did approximately four mediations per year prior to becoming a board member. As a board member, we would meet on a quarterly basis for approximately two hours. I was also involved in subcommittees and fundraisers as well. In my last year I served as vice-chair which involved an additional three-four hours per month. I volunteered at PCRC between 2006-10.

Center for Asian American Media (CAAM): CAAM's mission is present stories that convey the richness and diversity of Asian American experience to the broadest audience possible. I served as a board member and eventually as co-chair of the board of directors. I was a board member for six years. We did all-day board meeting two times per year. I also came to the film festival and showings throughout the year. I volunteered at CAAM between 1998 to 2003.

Teachers' Path: A colleague and I started a non-profit focused on helping new teachers become successful. I spent approximately sixty hours over a year's time to get this off the ground. However, the organization did not move beyond the start up stage. I volunteered time for Teachers' Path between 2004 to 2005.

Saint Anthony's Dining Room is one of the Bay Area's largest community meal programs. I have volunteered three times and spent approximately four hours each time there. I volunteered in 2010 and 2011.

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	310	274	10	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	737	745	67	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	715	108	72
Real estate owned-add schedule	1932	900	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	24	275	00				
Cash value-life insurance	21	416	53				
Other assets itemize:							
Accordence	522	401	56				
(Asset Value = 2010 gross revenue)							
				Total liabilities	715	108	72
				Net Worth	2833	796	44
Total Assets	3548	890	19	Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	no			Are any assets pledged? (Add schedule)	no		
On leases or contracts.	no			Are you defendant in any suits or legal actions?	no		
Legal Claims	no			Have you ever taken bankruptcy?	no		
Provision for Federal Income Tax	no						
Other special debt	no						

Grande Lum Real Estate Schedule 7/24/2011

Property owned

1) 6155 Skyline Boulevard, Hillsborough, CA 94010
   Zillow Valuation: $1,867,700
   Mortgage: Lender: New York Community Bank
   Remaining Balance: $715,108.72

2) 1307 Shelter Creek Lane
   Zillow Valuation: $195,600
   San Bruno, CA 94066
   No Mortgage
   My wife Gernanie Santiago owns 1/3 of this property.

Listed Investments Schedule for Grande Lum

401 (k)		$105,415.96
IRA		$479,224.61
Vanguard		$111,714.64
UC		$ 19,139.06
Franklin		$ 22,251.40
TOTAL	=	$737,745.67

AFFIDAVIT

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

December 1, 2011 (DATE)

Grande Lum (NAME)

(NOTARY)

State of California
County of SAN MATEO
Subscribed and sworn to (or affirmed) before me on this 1st Day of DEC 2011, by GRANDE LUM
~~personally known to me~~ or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(seal)

Signature Shalini Kalra

SHALINI KALRA
COMM. # 1901084
NOTARY PUBLIC - CALIFORNIA
SAN MATEO COUNTY
MY COMM. EXP. SEPTEMBER 19, 2014

Senator BLUMENTHAL. Thank you very much.

Let me begin the questioning and just state as a kind of prelude that I consider each of these nominees extraordinarily well qualified. I have reviewed all of the written material, and I want to thank each of you for your willingness to serve in each of these extraordinarily important roles. And I want to begin with the judicial nominees first and then come to you, Mr. Lum, if I may.

Each of you has a record of advocacy in the private sector or as a prosecutor or as a public defender, and perhaps I can ask the first question of each of you in turn, whether you feel that your background as an advocate, whether as a prosecutor or as a public defender or in the private practice of law, has equipped you in a way to serve in the judicial role, which is a very different one. If I could begin with you, Mr. Berg.

Mr. BERG. Thank you, Senator. I do think my experience has equipped me well. I have had the opportunity to conduct over 25 felony jury trials as an Assistant U.S. Attorney. I have also had the good fortune to be able to be the manager of the U.S. Attorney's Office in the Eastern District of Michigan and also the first assistant, acting first assistant in the U.S. Attorney's Office in Macon, Georgia. And I think these experiences have taught me the importance of being a very good listener and the importance of pursuing justice. Both of these things I think will equip me well as a district judge.

Senator BLUMENTHAL. Thank you.

Mr. Bernal.

Mr. BERNAL. Thank you, Senator. Yes, I believe that my work as an advocate has prepared me well to serve on the bench. I am very familiar with the Federal court. I spent most of my professional career litigating in Federal court, and I am keenly aware of the different roles and the importance of those roles that are played within the courtroom. Even though I play the role of an advocate, I realize that not all persons in the courtroom are advocates, and I realize the importance that each person play their own individual role to the best of their ability.

So I am ready to transition from being an advocate to being a more objective, dispassionate decisionmaker, which I believe is the role of the judge.

Senator BLUMENTHAL. Ms. Schofield.

Ms. SCHOFIELD. I, too, believe that I am qualified for this position that I am honored to have the opportunity to talk about. The background that I have I think gives me a unique and varied perspective because I have the viewpoint of both private practice and civil litigation, criminal practice—criminal practice both as a prosecutor but also on the defense side, civil litigation both on the plaintiff side and the defense side.

I have also represented individuals as well as corporations, so I have many different perspectives. And I hope that those perspectives would help me as a judge be able to be as fair and dispassionate as one would want a judge to be and to see all sides of an issue.

Senator BLUMENTHAL. Each of you knows, as I do, that the role of a district court judge is essentially to follow the law as it has been adopted by the legislature and interpreted by a court that

generally is above you or has ruled before you. There are some issues that will come before you of novel impression, but perhaps less than the public realizes, and you are bound to follow the law as it is given to you either by the legislature or the appellate courts.

So my question to you is: Can you envision any situations when it would be difficult or impossible for you to follow the law as it has been interpreted or set by the legislature? Mr. Berg.

Mr. BERG. No, Senator, I cannot. I think that fidelity to the rule of law is the hallmark of a good judge. It would certainly be the standard that I would set for myself. The role of a district judge is to apply the law as it is given by the appellate courts and by the Supreme Court, and that is exactly what I would do.

Senator BLUMENTHAL. Mr. Bernal.

Mr. BERNAL. Thank you, Senator. No, I do not imagine any area of law in which I will have difficulty applying if I were confirmed to be a district court judge. The law is what the law is, and as the Senator said, the role of the judge is to apply the law. And I am fully confident that I will do so, if confirmed.

Senator BLUMENTHAL. Ms. Schofield.

Ms. SCHOFIELD. I have to agree with my colleagues. The short answer is no, I do not think there is any such area. And to avoid repetition, I will just agree with everything that they have said.

Senator BLUMENTHAL. Thank you.

Mr. Lum, if I could ask you whether you have thought at all about what the priority areas of attention for the Community Relations Service should be given the vast array of challenges you will confront, whether it is racial tensions or hate crimes. Do you have any thoughts about that?

Mr. LUM. Thank you for the question, Senator. It is a challenge to think about priorities given all those differences with limited budget, limited staffing. I think one needs to really think about—in my experience and what I have done is think about where can you get the best outcomes, where can you get the most return on investment, and where can you make the greatest impact, and that is often in areas like prevention. I think that is important.

Senator BLUMENTHAL. Thank you. I have some additional questions, but I am going to turn to Senator Grassley because my first time has expired. So why don't you go ahead, Senator?

Senator GRASSLEY. I have a long list of questions. If you would like to go ahead?

Senator LEE. Sure, I would be happy to.

Senator BLUMENTHAL. Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

Thanks to all of you for coming and for your family members and loved ones who have joined you.

Mr. Berg, I had a couple questions for you. In your current position in the Department of Justice's Professional Misconduct Review Unit, I believe you reviewed the OPR's findings in review of the prosecution team of Senator Ted Stevens. Is that correct?

Mr. BERG. Yes, that is correct, Senator.

Senator LEE. Based on what you saw in that review, do you think there were serious compliance issues with regard to *Brady* in that case?

Mr. BERG. I do.

Senator LEE. Is there a role for judges in ameliorating this kind of situation?

Mr. BERG. Yes, there is, in my view.

Senator LEE. How would you as a judge, if confirmed by this body, take what you learned from that review and apply it in your courtroom to make sure that the rights of defendants are adequately protected under *Brady*?

Mr. BERG. I think that there are lots of lessons to be learned from the Stevens case. Narrowing it down to your question, I think a district judge needs to be very conscious of the role of the prosecutor in turning over evidence. The district judge should be—should not hesitate to inquire of the parties, of the defense, for example, Have you received everything that you think that you are entitled to?

Normally through the process, of course, motions are made, motions to produce discovery, and sometimes they are rather routine, and a judge does not necessarily give them the focus that perhaps they deserve. That is one lesson I would take away, is to be—try to be somewhat of an enforcer, a strict enforcer of the *Brady* rule.

Senator LEE. Now, in your review, I believe you concluded that the prosecutor's conduct amounted to poor judgment, and I think this was an assessment that was inconsistent with what OPR had found, which was that the prosecutors had engaged in reckless professional conduct. What led you to that conclusion that it was poor judgment rather than reckless professional conduct?

Mr. BERG. What led me to that decision was the definition for reckless misconduct and the definition for poor judgment and the way that the OPR report applied those to the people that were involved in the case.

In my view, the actions of the team as a whole and of the supervisor in particular were the actual causes of the discovery lapses that occurred; and yet the way the OPR applied those standards, they did not hold the supervisors to account. And in my view, because their actions were actually more significant in causing this, it was not appropriate for only the AUSAs to be held accountable. And under the applicable standards, the actual things that they did or failed to do fit within the definition of poor judgment.

Senator LEE. Thank you. Thank you. That is helpful.

In 1990, in an article in a local newspaper, I believe you wrote, "In our brief time here in Detroit, we have already learned that until this city outgrows its childish love affair with firearms, or until city officials find the courage to outlaw them, many of our hopes will remain unrealized and our optimism unfounded"

Do you believe that U.S. citizens have a constitutional right to bear arms?

Mr. BERG. Yes, Senator, I do.

Senator LEE. Is that statement consistent with that belief, the statement that you made in 1990?

Mr. BERG. That statement was probably not as carefully phrased as it might have been. To give a little bit of context, it was New Year's Eve. My wife and I had just moved into our home in Detroit where we still live now, where we have lived for some 20 years

now. And Detroiters, for whatever reason, fire off weapons on New Year's Eve, and so you hear gunfire.

Senator LEE. Just randomly?

Mr. BERG. Random gunfire.

Senator LEE. Probably not a good idea.

Mr. BERG. And it was worrisome to us. It was worrisome for our safety at the time. And, frankly, it was worrisome to me in terms of the city getting its violent crime problem under control.

What I meant when I talked about outlawing them was really more outlawing this conduct of firing weapons and outlawing the unlawful possession of firearms.

Senator LEE. Firing them randomly, indiscriminately in the air?

Mr. BERG. In neighborhoods, yes.

Senator LEE. OK. So this is not something that we should take as a signal that you do not believe in the Second Amendment right or that you think that all guns should be outlawed. The outlawing you were referring to was referring to this specific, fairly reckless conduct of——

Mr. BERG. Yes, Senator.

Senator LEE. OK.

Mr. BERG. That is correct.

Senator LEE. Thank you very much.

Senator BLUMENTHAL. Senator Grassley.

Senator GRASSLEY. The last question he asked I was going to ask later on, so I will toss that one out. I am talking about you, Mr. Berg. In your current capacity as an attorney with the Professional Misconduct Review Unit, you were asked to examine the findings of the Office of Professional Review regarding the prosecution of Alaska Senator Ted Stevens. OPR had found that two Alaska Assistant U.S. Attorneys had engaged in "reckless professional misconduct." You disagreed with this finding and said that the prosecutors only exercised poor judgment. What factors did you look to in deciding that the prosecutors showed poor judgment rather than reckless professional misconduct?

Mr. BERG. I applied the standards that were contained within the OPR report for the definition of reckless misconduct and for poor judgment. And, in addition, I tried to apply those standards fairly because, in my view, the causes of the discovery lapses were essentially actions by the supervisors and by the team as a whole, which I did conclude that both of those instances were appropriately described as misconduct in the report. But if you looked at the actual actions or the failures to act by the two line AUSAs, in my view their actions fell more within the definition of poor judgment—which is a form of misconduct, and I do not in any way mean to suggest that their actions were appropriate. They were not appropriate. But they fit within that definition.

Senator GRASSLEY. Your chief ultimately overrode your conclusions, recommending suspension without pay for both prosecutors. Given that fact, do you stand by your original conclusion? Do you disagree with your chief's decision?

Mr. BERG. I stand by my report.

Senator GRASSLEY. In a speech on February 13, 2009, at the Catholic Lawyers Society, you made these remarks: "You may recall *U.S.* v. *Koubriti*. That case was technically a victory. Most of

the defendants were found guilty. After the fact, though, we learned that the prosecutor handling that case had failed to turn over important exculpatory evidence. We measure that as a serious failure. We undertook an internal investigation and then decided on our own that the errors were significant enough that the case should be dismissed."

Question: The prosecutor in this case was Mr. Convertino. The Department of Justice filed criminal indictments for obstruction of justice against Mr. Convertino in 2006. This is when you were First Assistant U.S. Attorney in Michigan. What role did you have in the decision to file charges or in prosecuting Mr. Convertino?

Mr. BERG. I had no role, Senator. That decision was made by the Public Integrity Section here in Washington.

Senator GRASSLEY. Do you believe the charges were proper?

Mr. BERG. I do not really feel comfortable offering an opinion as to that because I did not review the facts of that.

Senator GRASSLEY. What standard do you apply when deciding whether an attorney should face discipline for discovery errors as opposed to a criminal prosecution, as was the case with Mr. Convertino?

Mr. BERG. You would need to have intentional misconduct that would rise to the level of obstruction of justice.

Senator GRASSLEY. What was your role in the decision to dismiss the case against Mr. Koubriti?

Mr. BERG. The decision to dismiss the *Koubriti* case occurred before I was involved in the management of the office.

Senator GRASSLEY. OK. Mr. Convertino testified before the Senate Finance Committee regarding the *Koubriti* case after being subpoenaed by the Committee. Do you believe that any of the allegations leveled against him by the Department of Justice were made in retaliation for his testimony before the Committee?

Mr. BERG. I do not have enough information to comment one way or the other on that, Senator.

Senator GRASSLEY. Would you be willing to research that and give us a written answer?

Mr. BERG. I would be glad to respond to any question the Senator may have.

Senator GRASSLEY. OK. Ultimately the criminal indictment and State disciplinary measures were dropped against Mr. Convertino. Do you think that it was the correct decision to charge him criminally?

Mr. BERG. I would hesitate to offer an opinion, Senator, without really knowing more about the underlying evidence. Normally, as I am sure the Senator knows, a great deal of attention and research and investigation goes into the decision to charge. And without knowing exactly what proof they had, I do not think I should comment.

Senator GRASSLEY. Do you believe that Mr. Convertino's supervisors had any responsibility for any misconduct that happened during the prosecution in the terror cases?

Mr. BERG. No.

Senator GRASSLEY. You criticized OPR for focusing on only the line prosecutors in the *Stevens* case. In your view, what is the difference between the *Koubriti* case and the *Stevens* case? In your

view, why are the supervisors partially responsible in one case but not the other?

Mr. BERG. The key difference to me is only that I know a great deal about the Stevens prosecution from having read all the materials and the OPR report and all of the supporting materials as well and the original documents. I do not have that basis of knowledge with the *Koubriti* case.

Senator GRASSLEY. OK. In 2006, you participated in a panel decision to prosecute. With regard to Internet victims, the transcript states that the panel discussed characteristics of the victims that are considered when deciding to prosecute. One of these factors listed is "politically connected victims." Who would be a politically connected victim?

Mr. BERG. I do not really know. I have to admit, Senator, I am not sure what that quote was referring to.

Senator GRASSLEY. Let me ask my staff, do you think that is his quote?

OK. I will pass over that. We will send you the material to answer what we made reference to.

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

Senator GRASSLEY. Mr. Bernal, while a majority of the ABA Standing Committee on the Judiciary rated you as qualified, a minority found that you were unqualified, and the attachments you provided in response to questions in your Senate questionnaire provided very little in the way of examples of your legal writing and analytical abilities. Is there anything further that you could share with the Committee to ease any doubts that any Committee member might have that may exist about your qualifications?

Mr. BERNAL. I would just say that my experience has qualified me for a position on the bench. I have been an attorney for 23 years. The majority of my experience has been in Federal court, litigating in Federal court. I have both civil and criminal experience. During my 2-year judicial clerkship, I worked in the same district to which I am being nominated, and that experience was almost exclusively civil work. I believe that my work inside the courtroom and on the civil matters qualify me to be a district court judge.

Senator GRASSLEY. Before I ask the next two questions, I have this preliminary statement. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt in favor of a proverbial "little guy."

Justice Roberts addressed this issue at his hearing for the Supreme Court, saying that,"If the Constitution says that the little guy should win, the little guy is going to win"—let me start over again. His quote: "If the Constitution says that the little guy should win, the little guy is going to win in court before me. But if the Constitution says that the big guy is going to win, well, then the big guy is going to win."

To what extent does empathy have a place in the judicial process? And in your view, what is determinative as to who wins or loses?

Mr. BERNAL. In my view, what is determinative as to who wins or loses is the law and the facts as applied to the law. If by empathy it is meant that somehow the playing field is—the scales are somehow tipped in one favor or the other, I agree that empathy has no role in the judicial making process. There is no circumstance in which that kind of empathy should play a role in a judge's decision.

If by empathy, on the other hand, it is meant that you treat people with dignity and respect, then that type of empathy I think is acceptable. But there is no—it is not acceptable to have the kind of empathy which would impair the fair, objective, and dispassionate application of the law.

Senator GRASSLEY. I am going to read two questions. You do not have to answer them because I think you just answered them, but I want you to know that I wanted to be a little more specific. Do you believe judges should ever base their decisions on a desire outcome or solely on the law and facts presented? I think you answered that.

Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? And if so, what circumstances? You might want to touch that last one a little bit more for us.

Mr. BERNAL. I think that the role of the judge is to apply the law as it is and to understand what the law is and apply it fairly to every litigant.

Senator GRASSLEY. OK. I will have just one question for you, Ms. Schofield. You have frequently written and spoken on issues affecting women in the legal world. In a couple of your writings, you have used the behavior of "dominant male gorilla" to describe male legal adversaries. Could you please elaborate on what your intent was in using the analysis? In your view, could the gorilla analysis apply to aggressive tactics used by anyone, including women?

Ms. SCHOFIELD. Thank you, Senator, for the opportunity to explain that, and you will forgive me if I do it with a little bit of an anecdote.

I wrote that as a young lawyer and I was still learning how to be a litigator, and I was a little bit frustrated about—my adversaries were usually men because there were not very many women at that time, but about the attempts to intimidate me by some of my adversaries. And I was reading a book by Dian Fossey called "Gorillas in the Mist," and the book talked about tension between the lead gorilla and another gorilla, and if the lead gorilla was challenged, the behavior to challenge was shaking tree branches and beating on the chest. And the response was usually shaking tree branches and beating on the chest. And the light suddenly went on that what I was seeing was shaking tree branches and beating on the chest and that it was not really a personal attack.

And so when I wrote my actual on the gorilla adversary and when I have given speeches, I always begin with that anecdote to explain that this is posturing and it is a way for a young lawyer to learn to deal with attempts to intimidate.

Senator GRASSLEY. I think I will defer to you. Go ahead.

Senator BLUMENTHAL. Thank you. I would like to—I am not going to follow on the gorilla story.

[Laughter.]

Ms. SCHOFIELD. Thank you.

Senator BLUMENTHAL. Having been a litigator for some four decades and having seen a fair amount of that kind of posturing, as you put it so well.

Mr. Lum, I would like to sort of followup on what you will be doing, assuming you are confirmed, because I think it is so important to prevent, as you have just put it very well, the kinds of incidents that are so troubling when they reflect racial and religious tensions in what is increasingly a diverse society in the United States, and we welcome the diversity. It is part of who we are. I wonder if there are particular areas of prevention where you think that we should be devoting—"we," meaning the Congress should be devoting—more attention?

Mr. LUM. Thank you, Senator Blumenthal, for that question. In terms of prevention, I do think especially since 2009 when the Shepard Act expanded jurisdiction for CRS, that those are areas in which more resources can certainly be given. And certainly I think a lot of work can be done, especially by CRS, in terms of reaching out to all those different stakeholder groups, whether it is from gender identity, whether it is from sexual orientation, religion, all the issues that are covered.

So that is my sense, that in all those issues it is useful to think through it. Again, the focus here is, since 1964, on preventing community conflict.

Senator BLUMENTHAL. And are there particular parts of the country where you think you would focus your attention?

Mr. LUM. You know, I think that when we look at the entire country, it is really being aware of what is happening in those areas, whether it is in Florida, which clearly is where the Trayvon Martin situation happened or in other areas of the country, that is going to be important to see where there is tension, where there is community conflict, and if I were to have the good fortune of being confirmed for this position, to figure out the best ways of prevention.

Senator BLUMENTHAL. Well, I think that this position is one of profound importance, although perhaps little understood by the general public. But having served as a State official, as State Attorney General for some 20 years, and before that as a United States Attorney, I have worked with many of the staff that will be under your command, and I would welcome an opportunity and hope that other members of the Committee will be interested as well to talk to you more about the great potential for the work that you will be doing. So I thank you.

I do not know whether Senator Grassley is—evidently, he is done with his questions, so I would give each of you an opportunity, if you wish to say anything more, if there is some part of your answer; otherwise—oh, I am sorry. Senator Lee, do you have another——

Senator LEE. Yes, if I can take another round, that would be great.

Senator BLUMENTHAL. Sure.

Senator LEE. Thank you, Mr. Chairman.

I have presented several questions already to Mr. Berg. I will present my next question to Mr. Bernal and Ms. Schofield and Mr. Lum in that order.

One of the things that you will be called upon to do, should you be confirmed as judges, is to review acts of Congress, taking into account the fact that Congress was always intended to be a legislative body with powers that James Madison described as few and defined. We are a limited-purpose, limited-power Government.

Much, if not most, of the regulatory legislation that has come out of Congress in recent decades has, of course, been based on the Commerce Clause. I would like each of you to just take a moment and tell me what you think the limits of Congress' power under the Commerce Clause might be.

Mr. BERNAL. If I may, I think it is clear under the case law that the powers under the Commerce Clause are broad but limited. And there is a pending case before the Supreme Court which I think would further define what those powers are, the parameters and the limits of that power.

Senator LEE. Right. And obviously we are not going to be talking in this context about a matter that is currently under review by the Supreme Court. Can you identify some powers that are outside of Congress' authority?

Mr. BERNAL. Without having more of a context, I cannot really give an example.

Senator LEE. Thank you.

Ms. SCHOFIELD. I agree with Mr. Bernal. The powers of Congress are broad but limited. I think the *Morrison* and *Lopez* cases make that clear, but I think the boundaries are not entirely clear, and hopefully in the upcoming decision they will become more clear. I confess I am not a scholar or a student in this area, so it is not something I am deeply familiar with.

Senator LEE. Mr. Lum, I will give you a pass since you are not actually going to be a judge, but I will let Mr. Berg answer this one.

Mr. BERG. I remember when the *Lopez* case was decided. It did affect our gun prosecutions. But it is very hard to make a judgment as to the scope of the Commerce Clause without an actual case in front of you.

I agree with my colleague's comments that it is clearly limited. The Supreme Court has made that clear. And so defining the contours of that needs to be determined on a case-by-case basis.

Senator LEE. It certainly does, and I will just comment in response to each of your answers. I understand this is a difficult question. It is a difficult question to answer in the abstract. I raise it because I think it is an often neglected issue. It is an issue that we are often too quick to gloss over in Congress, and I think in part because of the way the precedent has gone, at least since 1942 when the Court decided *Wickard* v. *Filburn*, that if anything—that when measured in the aggregate can be said substantially to affect interstate commerce, that if anything that does that is within Congress' power, it can be difficult to define what, if anything, is the limit on Congress' power. And this simply cannot stand, it cannot be the case—if, in fact, we are a Government with few and defined powers, it cannot be the case that we can regulate anything and

everything. I do think the Supreme Court has given some guidance in recent years in *Lopez* and in *Morrison*, but I think we have got to do better as lawyers, we have got to do better within our Government in reviewing this power with an eye toward identifying outer limits. And certainly there are some things that Congress has yet to take over. Most issues involving family law, public education, inheritance, land ownership, and taxation and things like that have not been taken over by Congress. One could argue that, pushed to its logical limit, the substantial effects test could take us there. But I think we would all do better within our Government, within all three branches of our Government, if we looked at that with a more skeptical eye. I would encourage each of you to do that, assuming you are confirmed to these posts.

Thank you.

Senator BLUMENTHAL. Thank you, Senator Lee, for your comments and your observations. Thank you all for being here today, and to your families and your guests who are here, and anyone who is listening. And I certainly hope for your speedy confirmation and will enlist my colleagues on both sides of the aisle in that effort.

So thank you for being here. I am going to adjourn the hearing and keep the record open for 1 week for any additional questions that Senators may have or submissions that you wish to make or have agreed to make.

Thank you very much for being here. This hearing is adjourned.

[Whereupon, at 3:25 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Terrence G. Berg
Nominee to be United States District Judge for the Eastern District of Michigan
to the Written Questions of Senator Chuck Grassley

1. **During your hearing, both Senator Lee and I asked you about your report that concluded that the U.S. Attorneys involved in Senator Stevens' prosecution showed "poor judgment" rather than "reckless professional misconduct". You said you made that judgment after you "applied the standards that were contained within the OPR report for the definition of reckless misconduct and for poor judgment."**

   a. **Who drafted these definitions?**

      Response: The definitions are contained within the OPR Report, and were drafted by OPR. They are the standards that OPR applies in all its investigations.

   b. **Please provide the Committee with the definitions.**

      Response:

      The OPR report defines "reckless misconduct" as follows:

      An attorney acts in reckless disregard of an obligation or standard when: (1) the attorney knows or should know, based on his or her experience and the unambiguous nature of the obligation or standard, of an obligation or standard; (2) the attorney knows or should know, based on his or her experience and the unambiguous applicability of the obligation or standard, that the attorney's conduct involves a substantial likelihood that he or she will violate, or cause a violation of, the obligation or standard; and (3) the attorney nonetheless engages in the conduct, which is objectively unreasonable under all the circumstances. Thus, an attorney's disregard of an obligation is reckless when it represents a gross deviation from the standard of conduct that an objectively reasonable attorney would observe in the same situation.

      The OPR Report defines "poor judgment" as follows:

      An attorney exercises poor judgment when, faced with alternative courses of action, he or she chooses a course of action that is in marked contrast to the action that the Department may reasonably expect an attorney exercising good judgment to take. Poor judgment differs from professional misconduct in that an attorney may act inappropriately and thus exhibit poor judgment even though he or she may not have violated or acted in reckless disregard of a clear obligation or standard. In addition, an attorney may exhibit poor judgment even though an obligation or standard at issue is not sufficiently clear and unambiguous to support a professional misconduct finding. A mistake, on the other hand, results from an excusable human error despite an attorney's exercise of reasonable care under the circumstances.

2. **During your hearing, we discussed the U.S. v. *Koubriti* case and the conduct of the AUSA, Mr. Convertino. The Department of Justice filed criminal indictments for obstruction of justice against Mr. Convertino in 2006 and I asked you if you thought these charges were proper. You said that you did not feel comfortable offering an opinion because you had not reviewed the relevant facts. After taking time to review the relevant facts, do you believe these charges were proper?**

   Response: To make a considered determination of whether the charges against Mr. Convertino were properly drawn I would need to review the following kinds of materials: the Grand Jury testimony and all of the evidentiary exhibits that were presented to the Grand Jury to support the Indictment, the FBI memoranda of all relevant witness interviews, all of the documents, physical exhibits, and any other evidence that the government was relying on to prove its case, and the prosecution memo describing the government's theory of the case under the relevant federal criminal statutes. These materials are not and have never been available to me, but are part of a prosecution that was conducted by the Public Integrity Section, a component of the Criminal Division of the Department of Justice in Washington, D.C. Because I have had no access to any of these materials, I am unable to offer a fair and responsible judgment on the question of whether the charges against Mr. Convertino were properly filed.

   When I spoke publicly to the Catholic Lawyers' Society of Detroit about the *Koubriti* case in February of 2009, and referenced the fact that "we," meaning my office, had dismissed this case after discovering serious discovery lapses, I was referring to the actions of my office collectively, and was pointing out our office's value of recognizing the importance of doing justice rather than winning a particular case. I did not intend to give the impression that I was personally involved in the decision to dismiss the *Koubriti* case in August of 2004, as that decision was made by the acting United States Attorney at the time.

3. **Did Mr. Convertino's actions involve "intentional misconduct that would rise to the level of obstruction of justice"?**

   Response: I would respectfully refer to my answer to question 2, above. I cannot make an assessment of whether Mr. Convertino's actions involved "intentional misconduct that would rise to the level of obstruction of justice" without reviewing all the relevant evidence, which is not available to me.

4. **Do you believe it was proper to drop the case against Mr. *Koubriti*? Please explain your answer.**

   Response: At the time the case was dismissed, I read the publicly available motion to dismiss filed by my office, and the court's order dismissing the case. I have reviewed these documents again in preparing this answer. Based on the information contained in those documents, I do believe it was proper to dismiss the case against Mr. *Koubriti*.

5. **Mr. Convertino testified before the Senate Finance Committee regarding the *Koubriti* case after being subpoenaed by the Committee. During the hearing you indicated that you did not have enough information to comment. Now that you have had time to review the relevant information, do you believe that any of the allegations leveled against him by the DOJ were made in retaliation for his testimony?**

   Response: At the time when Mr. Convertino testified before the Senate Finance Committee, I was a line AUSA in the U.S. Attorney's Office in Detroit. I had no knowledge then, and have made no subsequent study, of Mr. Convertino's testimony before the Committee. Even if I were to review Mr. Convertino's testimony before the Committee, because I was not involved in the management of my office at that time, and did not participate in any decision to bring allegations against Mr. Convertino, I have no information that would allow me to form an opinion as to whether any allegations made against Mr. Convertino were in retaliation for his testimony.

   a. **Would you have scrutinized Mr. Convertino's actions more closely because of his testimony before the Senate?**

      Response: If I had been in a position to scrutinize Mr. Convertino's conduct, I would not have considered his testimony before the Senate in any way because it had no bearing on his conduct before or during the *Koubriti* trial.

   b. **Do you believe that Mr. Convertino's decision to comply with a Congressional subpoena had anything to do with the decision to criminally charge him as opposed to seeking internal discipline?**

      Response: Unless a case involves perjury before a Congressional Committee, I do not believe that a person's compliance with a Congressional subpoena should be considered as a relevant fact in considering whether that person has committed a crime. Because I played no role in the decision to bring criminal charges against Mr. Convertino, I have no knowledge as to whether Mr. Convertino's compliance with a Congressional subpoena was considered in any way by those who made the charging decision. Such a consideration would be completely inappropriate in my view.

6. **You told me that you do not believe that Mr. Convertino's supervisors had any responsibility for any misconduct that happened during the prosecution in the terror cases. However, you said that the supervisors were not responsible in this case while they were in the Stevens case because you did not have enough information to comment on the *Koubriti* case. Will you please elaborate on that?**

   Response: I read and reflected on a great deal of information regarding the Stevens prosecution which was made available to me in connection with my role as an Attorney with the Professional Misconduct Review Unit. I explained my conclusions about that case in a lengthy memorandum which describes all of the materials that I considered and reviewed. In contrast, my knowledge of the Koubriti matter is very limited. The *Koubriti* trial took place

when I was working for the Michigan State Attorney General's Office. By the time the case was dismissed, I had returned to the U.S. Attorney's Office in Detroit as a line AUSA in the Economic Crimes Unit. My knowledge of the *Koubriti* matter is based on having read the government's motion to dismiss the case and the court's order of dismissal. In those documents, there is no suggestion that supervisors in my office were responsible or involved in any of the discovery violations that occurred.

7. **In 1999, you wrote an article criticizing the United States for treating suspected terrorists on American soil differently than those who were not in America. You wrote, "It is ironic that the men accused of bombing the U.S. Embassy in Nairobi sit comfortably in prison awaiting their trial, while, at the same time, the US bombed a sight of alleged terrorists in Afghanistan. The suspected terrorists of the embassy are allowed rights under the due process of law because they are in the US, while those off US shores have no rights, and can be bombed at will. The terrorists offshore should enjoy the same human rights as those onshore."[1] Is this still your view? If not, please describe your new understanding of the rights of those accused of terrorism on American soil versus those on foreign ground but in U.S. custody.**

Response: The article that I wrote, as published in the national Catholic journal *America* on January 16, 1999, did not contain language quoted in the above question. I have attached a print version of the article for the Committee's review which does not contain the quoted language. I did not write the quoted language. I have reviewed the electronic version of this article that was retrieved from Westlaw which was submitted to the Committee, however, and I do see that this version contains the language quoted, but I do not know who wrote that language or why it appears prior to the text of the article itself. I regret that I did not notice that this version of the article contained this paragraph, because I would not have submitted this version to the Committee if I had realized that it contained this paragraph. I respectfully would ask to remove this electronic version of the article from the Attachments to my Senate Judicial Questionnaire and replace it with the print version which is attached to this response, and is an accurate copy of the article that I wrote.

It is possible that the quoted language may have been written by an editor attempting to summarize the article, but a review of the article itself will show that the quoted language is inconsistent with the position that I took in the article. For example, I did not state in my article "The terrorists offshore should enjoy the same human rights as those on shore." Rather, I drew a distinction between the Constitutional rights available to criminal defendants in the United States, and the unavailability of those rights to those who commit the same criminal acts, but who are located outside the United States. I further noted that the use of military force against terrorists located in other countries operates under rules of engagement that are appropriately different from those that apply in criminal cases, but I stated that our government should be "extremely judicious in using force in other parts of the world." To respond to your request that I describe my understanding of the rights of those accused of terrorism on American soil versus those on foreign ground but in U.S. custody, my view is

[1] Berg, Terrance. "Human Rights for Terrorists Beyond the Water's Edge", Detroit Free Press, January 16, 1999. Berg Senate Attachments, page 114.

that those accused of terrorism on American soil would be protected by the United States Constitution. The question of what rights apply to individuals accused of terrorism outside the United States, but in U.S. custody, is one that the courts are in the process of addressing. In such a case, I would apply the relevant case law as set down by the appellate courts and the U.S. Supreme Court.

8. **In 2006, you participated in a panel, The Decision to Prosecute. You provided the committee with the transcript of this panel[2]. On page 12 of the transcript, you appeared to pose the question, "what kinds of cases involving what types of victims should get priority?" There is then a list of "characteristics discussed prior to the panel", including "politically connected victims".**

Response: I submitted a law review article, rather than a transcript, from the University of Mississippi Law Journal that summarized the proceedings of a panel discussion in which I was a member. This article was written by Marc M. Harrold, a Visiting Professor at the University of Mississippi School of Law. According to Professor Harrold, the purpose of the article was to provide a "distillation" of two panel discussions presented at a Conference on "Prosecutorial Responses to Internet Victimization." The panel discussion that I participated in was called "The Decision to Prosecute." This panel, according to the article, was asked to discuss five questions, including the question: "What role do the characteristics of Internet victims or their experiences play in the decision to prosecute?" In the portion of the article that summarizes the panel's discussion on this question, I am quoted as posing the question, "What kinds of cases involving what types of victims should get priority?" The author of the article, Prof. Harrold, then states: "Some of the characteristics discussed *prior to the panel* (emphasis added) were:

- seriousness of crime/victimization;
- ease of victim identification;
- chance of recidivism with the same victim (e.g., incest, etc.);
- age of victim;
- previous instances of victimization;
- ability of victim to testify adequately;
- credibility/perceived character of victim;
- whether victim is a "persistent" victim (with regards to past claims);
- trauma to victim from testifying in court;
- "politically-connected" victims; and
- existing or anticipated press coverage of victimization/victim."

It appears that these factors were discussed prior to the panel. I did not use or author the term "politically-connected victims." I did not make any statements during the panel discussion pertaining to "politically connected victims." Prof. Harrold later makes the statement in the article, on page 13-14: "Cases where the victim may be politically connected, in the public eye, or high profile for some other reason can affect the initial decision to prosecute. Prosecutors' offices are led by an elected official and are dependant

[2] 76 Miss. L.J. 789

(at least in part) on the legislature for appropriate statutes and funding." Another prosecutor on the panel followed with a comment relating to this issue, but I am not quoted regarding "politically-connected" victims, and I do not recall making any statements addressing how to respond to the issues presented by this type of victim. If I had commented, I would have stated that a prosecutor should follow the law regardless of any pressures that a politically connected victim may attempt to exert.

a. **Who would politically connected victims be?**

Response: I did not author or use this term in the article cited, so I do not know what types of victims the author intended to include in this category.

b. **How did politically connected victims factor into your decision making as a prosecutor whether to try a case or not?**

Response: Other than by a conscious effort to give no weight to such issues, I have never factored a victim's real or perceived political connections into any decision as a prosecutor regarding whether to charge a case.

c. **If confirmed, how will you view 'politically connected victims' in your courtroom?**

Response: I would view all victims as entitled to fair, impartial, and respectful treatment by the court and the judicial process, regardless of their political affiliations or connections.

9. **In your questionnaire, you indicated that you co-hosted a forum on charitable giving rules and designated terrorist organizations on September 4, 2007. You indicated that you have no notes, transcript, or recording. Can you provide the committee with an overview of the forum and your role in it?**

Response: The U.S. Attorney's Office invited a speaker from the Department of Treasury, Michael Rosen, a Policy Advisor with the Office of Terrorist Financing and Financial Crimes, who was an expert in the charitable giving regulations to make a presentation explaining the rules pertaining to designated terrorist organizations to the community in Dearborn, Michigan. Our U.S. Attorney could not attend the meeting and so I stood in, as the First Assistant, and welcomed and introduced the expert to the audience.

10. **You have publically supported and campaigned for a Democrat for Attorney General and Governor in your home state of Michigan. While there is certainly nothing inappropriate with supporting one party or the other, your political history may concern future litigants, should you be confirmed.**

a. **What is your view on the role of politics in the judicial decision-making process?**

Response: My role as a volunteer was limited to distributing literature in 1998 and 2002, and providing advice on computer crime issues in 2002. Politics should play no role in the judicial decision-making process. Judicial decision-making should be guided by a faithful and consistent application of the law to the facts.

b. Can you assure this Committee that, if confirmed, your decisions will be based on law rather than any underlying political ideology or motivation?

Response: Yes, I believe that fidelity to the rule of law is a judge's solemn obligation. I would follow this principle and not any other motivation or political ideology.

c. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I am firmly committed to treating all persons who may appear before the court with equal respect, dignity, fairness, impartiality and courtesy, and to putting aside any and all personal views or feelings in order to apply the law fairly and without favor or bias.

11. Since United States v. *Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?

Response: In fashioning any sentence, I would defer to the Federal Sentencing Guidelines as the appropriate starting point in determining the applicable sentencing range. As required under *Booker*, I would determine the sentence after carefully applying the factors set out in 18 U.S.C. § 3553.

a. Under what circumstances would you be willing to depart from the Guidelines?

Response: If the government makes a motion for a downward departure based on the defendant's having provided substantial assistance to the government, this would provide a basis for departing from the Guidelines. In other circumstances, I would only depart from the Guidelines when the underlying facts were of such an unusual nature that they were not adequately addressed by the Sentencing Guidelines.

b. Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?

Response: I would respectfully refer to my previous answer.

12. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

Response: Yes, unfairly disparate sentences are unjust to those who receive them and undermine the public's respect for the rule of law. Those who are convicted of crimes, and the public generally, should be able to expect that the sentence will be determined based on the seriousness of the crime and the criminal history of the defendant, and not on who the judge may be.

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 act with integrity in all things. This means to act with fairness, intellectual honesty, courage, and above all fidelity to the rule of law. I believe I have 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: The most important elements of judicial temperament are to be fair, impartial, timely, diligent, hardworking, patient, calm, decisive and respectful of the equal dignity of all persons who appear before the court. I do believe I meet this standard.

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. Regardless of any personal opinion I may have, I am firmly committed to applying the precedent of the Sixth Circuit Court of Appeals and the United States Supreme Court.

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: In deciding cases of first impression involving the interpretation of a federal statute, I would consult precedent of the Supreme Court, the Circuit Courts of Appeal and the district courts for persuasive guidance. I would also review the language of the individual statutory provision, as understood within the context of the entire statute, to discern the ordinary meaning of the plain language of the provision. If the language is ambiguous, I would also research the legislative intent of Congress to help determine the correct meaning.

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 best judgment of the merits to decide the case?

Response: Even if I believed that the Supreme Court or the Court of Appeals had incorrectly decided an issue, I would faithfully apply the controlling precedent of the Supreme Court and the Sixth Circuit courts as required by the doctrine of stare decisis.

18. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: I would approach constitutional challenges to federal statutes with caution because a federal statute enjoys a presumption of constitutionality. If the statute were capable of being interpreted in a manner consistent with the Constitution, I would adopt that interpretation. If a statute clearly violates a provision of the Constitution, or falls outside of one of the enumerated powers of Congress under Article I and the Amendments, I would hold the statute unconstitutional.

19. 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 would canvass the judges of the district to learn and adopt their best practices regarding case management, focusing particularly on those judges who are known to move cases in a timely manner. I would utilize pretrial and status conferences to control the pace of the litigation and impose firm, reasonable deadlines to facilitate an efficient docket. Finally, I would make certain to refer appropriate motions and other matters to magistrate judges to assist in the swift resolution of cases.

20. 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, the judge plays a most significant role in controlling the pace and conduct of the litigation. By setting firm deadlines and disposing of motions in a decisive and timely manner, a judge can create an expectation and reputation among the litigants as an efficient forum in which matters are addressed without unnecessary delay. I would be proactive in setting pretrial and status conferences to ensure that cases are not stagnating.

21. Please describe with particularity the process by which these questions were answered.

Response: I received and reviewed the questions on June 13, 2012 and prepared responses over the next several days. I then discussed my responses with representatives of the Department of Justice, put them into final form and authorized transmittal to the Committee.

22. Do these answers reflect your true and personal views?

Response: Yes.

Senator Chuck Grassley
Additional Questions for the Record

Terrence G. Berg
Nominee, U.S. District Judge for the Eastern District of Michigan

On July 19, 2008, the Detroit Free Press reported that then-Governor Granholm contacted you regarding "the strength of the government's ongoing investigation of Bernard Kilpatrick." According to their source, Governor Granholm contacted you in hopes of "achieving a 'global resolution' to the federal corruption probe in city government." The source further claimed that you then spoke with U.S. Attorney Stephen Murphy concerning your discussion with Granholm.

a. Were you ever approached by Governor Granholm or anyone in her office about this case?

Response: I was never approached regarding "the strength of the government's ongoing investigation of Bernard Kilpatrick" by Governor Granholm, as described in the article above. I was approached by Governor Granholm in May of 2008 concerning the then-pending state prosecution of Mayor Kwame Kilpatrick for perjury and whether a guilty plea and resignation by Mayor Kilpatrick in the state criminal prosecution would satisfy the federal interest in its separate, non-public federal investigation of Mayor Kilpatrick for public corruption. To provide context, in March 2008, the Wayne County Prosecutor filed felony criminal charges against then-Detroit Mayor Kwame Kilpatrick for perjury. As a result of these criminal charges, the Detroit City Council was considering bringing an action to remove Mayor Kilpatrick from office based on this conduct. Under Michigan law, the Governor would act as the deciding official in a quasi-judicial capacity in any removal proceeding. In addition, as of May of 2008, there had been published media reports concerning a federal criminal investigation regarding Mayor Kilpatrick and other City officials, but the details and progress of the investigation were not known to the public.

b. If so, what did you discuss and with whom?

Response: As indicated above, in May 2008, I recall being contacted by Governor Granholm, who asked whether, if Mayor Kilpatrick were to plead guilty, resign and be sentenced in the then-pending state prosecution for perjury, whether that would satisfy the federal government's interest in its separate investigation, so that no separate federal charges would be necessary. At that time, I was not involved in supervising or working on the City of Detroit corruption investigation, and I had not been briefed in any detail on its status or progress. Governor Granholm did not ask any questions about the nature of the federal investigation, and I did not provide any information regarding the investigation. I then disclosed all of the details of this contact with the Governor to the U.S. Attorney, and the prosecution team handling the City of Detroit Investigation. After

conferring with the U.S. Attorney and the prosecution team, and acting at their direction, I responded that we did not have sufficient information at that time to make a judgment as to whether such a resolution would be appropriate or not.

c. Did Governor Granholm or someone from her staff seek to elicit from you a specific result in the case? Please explain.

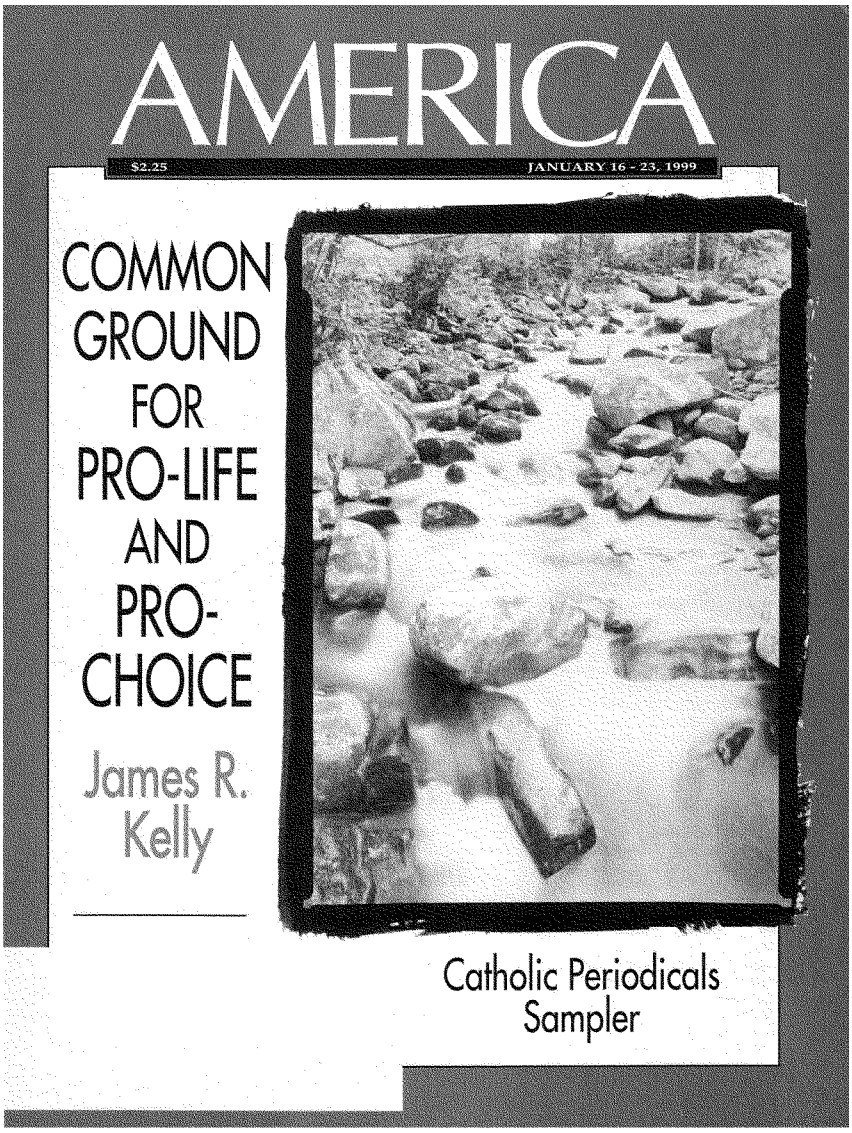
Response: No. Governor Granholm did not "seek to elicit from [me] a specific result in the case," in the sense of advocating for a specific result, but she did make the inquiries described above and below.

d. Did you speak with the United States Attorney, or anyone else involved in the investigation of Bernard Kilpatrick and the federal corruption probe, about your conversation with Governor Granholm or her representative? If so, please indicate with whom you spoke, the nature of the conversation, and what, if any, decision was made as a result of this conversation.

Response: As indicated above, I disclosed the contact by Governor Granholm immediately to the United States Attorney, Stephen J. Murphy, as well as to the prosecutors handling the Kilpatrick investigation, so they could also inform the investigating agents. I later described the contact directly to the investigating agents. After I conveyed to the Governor our office's position that we did not have sufficient information in our investigation to make a determination as to whether a state plea would protect the federal interest, Governor Granholm responded with the question whether, if the Mayor resigned, pleaded guilty to the state case and were sentenced, our office would be open to agreeing not to bring any specific federal charges that might arise out of precisely the same conduct that supported the state conviction. In other words, federal charges relating to other conduct would not be limited. I reported this contact and question to the U.S. Attorney, and the prosecution team as well. After conferring with the U.S. Attorney and the Special Prosecutions supervisor, and at their direction, I responded by indicating that the case was still under investigation, and the potential resolution of the case, if any, would need to be pursued through negotiations with the attorneys for Mayor Kilpatrick, and any of the other targets, and the prosecution team, and that, as in all criminal cases we would take under advisement a proposed resolution if it were raised by their attorneys.

e. Did you have any further conversations about the Kilpatrick case or the "global resolution" with Governor Granholm or any member of her staff?

Response: No.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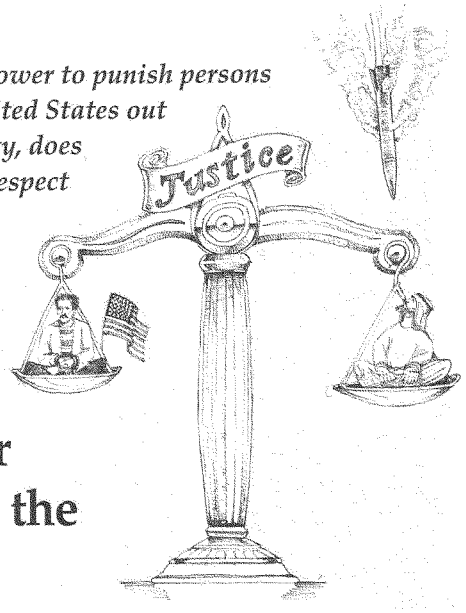
If our law restricts the state's power to punish persons for criminal acts within the United States out of respect for the person's dignity, does not that same dignity demand respect outside our borders?



Human Rights for Terrorists Beyond the Water's Edge

By TERRENCE BERG

AS A FEDERAL PROSECUTOR, I felt a strong sense of irony in reading about the arraignment in New York Federal court of two Middle-Eastern men accused of bombing the U.S. Embassy in Nairobi. These alleged "Islamic terrorists"—one of whom reportedly confessed—are from the same group our military had tried to destroy in a missile attack last August. Yet they will enjoy all the sacred protections of due process enshrined in our Constitution: counsel to defend them, the right not to answer any questions, the right to call their own witnesses and submit any Government witnesses to cross-examination, the right to have a jury of ordinary people—not Government officials—decide their fate.

Providing constitutional protections to alleged terrorists is something we can be proud of as Americans. No matter how atrocious the crime, or how trivial, in the United States you may not be punished by the state until the full fact-finding and truth-sifting function of "due process" has run its course. Even in the face of such strange results as those of the O. J. Simpson murder trial or the New England baby-sitter case, most Americans, and other people the world over, recognize that our criminal justice system, despite its many flaws, strives to protect the dignity of the human person by interposing strong barriers between the accused and punishment by the Government. These barriers include protection against unreasonable searches and seizures, the right against self-incrimination, the presumption of innocence and the burden of proof beyond a reasonable doubt.

The respect for human dignity enshrined in our Bill of Rights requires us to go through the slow and careful procedures mandated by due process before imposing any finding of guilt or any punishment on a person. The notion that the law must respect the dignity of the human person is an ideal to be held up as an example for other nations to follow and a goal to which our own society must continue to aspire.

But compare for a moment the slow and tedious criminal justice process—ultimately a procedure for determining the facts and then assessing the appropriate punishment—with the swift judgment and overpowering punishment imposed upon the people who died as a result of our military's cruise missile strikes against Afghanistan and the Sudan. What fact-finding was done before invoking this most powerful of all state punishments, the use of lethal force? What standards were applied to determine whether the evidence of guilt was sufficient? In our criminal justice system, even to

TERRENCE BERG is assistant U.S. attorney for the Eastern District of Michigan. He also teaches law at the University of Detroit-Mercy School of Law. (The views expressed in this article are those of the author and do not necessarily represent those of the U.S. Department of Justice.)

ART: FREDERICK H. CARLSON

lodge a criminal charge against someone requires an independent fact-finder—a magistrate or a grand jury—who examines the Government's evidence and issues the charge only after finding that there is "probable cause" (better than 50-percent likelihood) that the person committed the crime. To find guilt, there must be "proof beyond a reasonable doubt," sometimes called "proof to a moral certainty" by judges who are explaining the concept to juries. To bring a death penalty case, there are whole sets of internal Justice Department policies and procedures that must be carefully followed by the several levels of officials who examine such applications. Even after guilt is established, no death sentence may be imposed until an entire separate procedure is held, again before a jury, during which the jury hears more evidence that must meet certain standards showing that the murder was committed under particularly aggravating circumstances.

Our law's respect for human dignity requires that such rules be followed before the Government may invoke criminal punishments against individual persons. Obviously, we cannot expect our President or our military to hold a trial before a jury of citizens who would determine guilt and then impose a death penalty prior to taking military actions that may result in killing others. Nearly all military actions result in killing others. Although our cruise missile attack on the Sudan was timed to occur when there would be few people near the target, the attack nevertheless, according to the Associated Press, killed one person and wounded nine others. On the other hand, our attack on the training camps in Afghanistan was timed to occur when a meeting of Osama bin Laden's group was supposed to be taking place.

THE IRONY of watching the criminal process unfold for Mohamed Rashed Daoud al 'Owhali and Mohammed Saddiq Odeh is that these same two men could have been killed in an instant if they had been "lucky" enough to escape back to the camps in Afghanistan in time for the military strike. Yet here they sit, safe in a Federal holding facility in New York, enjoying three square meals a day, benefitting possibly from expert legal counsel paid for by the Government, being presumed innocent and given every chance to challenge the proof against them. The same Government that launched 75 $60-million missiles at their confederates may not even impose a sentence of probation on these two until after due process has been followed.

It is quite proper that the great protections of our Constitution apply to these two men with unchallengeable force, just as they would in any other criminal case. The respect and protection that our laws provide for human dignity is a beacon for all to see. But as a nation that goes to great pains not to allow the state to harm a person in the United States until after a very careful process has determined that person should be harmed, we must recognize a big difference between the rights that we accord persons accused of crimes within our borders, and the rights we accord those accused of crimes outside our borders.

If our law restricts the state's power to punish persons for criminal acts within the United States out of respect for the person's dignity, then does not the same human dignity demand respect beyond the water's edge? As a nation with a highly developed legal tradition regarding human rights, we have a responsibility to be extremely judicious in using force in other parts of the world. With the collapse of the ideological competition between capitalism and Communism, the need for our nation's use of force to be consistent with our values concerning human dignity is even greater.

WHEN APPLYING MILITARY FORCE, as our nation must do at times, we must be an example in protecting human rights and defending human dignity. It must be clear to our citizens, and to the world as well, that our nation's use of military force is factually justified, seeks to minimize the loss of innocent human life and is a proportionate response. The Administration has not yet made its case to meet these standards with respect to the cruise missile attacks, because it has not yet fully disclosed the evidence upon which the use of force was based.

As the laborious criminal process in the New York Federal court unfolds, perhaps many of the facts that supported our use of force will come to light. In the meantime, the irony persists that it appears much easier for our Government to use force to punish terrorists who have not been caught than it is to punish those who have been.

POETRY CONTEST

Poems are being accepted for

The Foley Poetry Award

Each contestant is asked to submit only one poem of 30 lines or fewer for consideration.

No poems will be returned. Only typed, unpublished poems not under consideration elsewhere will be considered. Winning poem will be published in the issue of AMERICA dated June 5-12, 1999.

Cash prize: $500.00. Deadline April 25, 1999

Send poem to:
Literary Editor, The Foley Poetry Award,
AMERICA, 106 West 56th Street,
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Responses of Terrence G. Berg
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: I do not agree that the Constitution is "constantly evolving as society interprets it;" it is subject to change through the amendment process only. The Supreme Court's interpretation of certain provisions of the Constitution has changed over time, but the Constitution's provisions do not change over time unless amended.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: No.

   a. **Please explain.**

      Response: While it is true that the Constitution replaced the Articles of Confederation, and in that sense represented new organizing principles for the government, I would not infer any ongoing "transformative purpose" from that fact which must be considered in constitutional interpretation.

3. **In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

   Response: No.

   a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

      Response: I do not see foreign law as having any persuasive authority in interpreting the Constitution.

4. **You worked as a volunteer for and supported Jennifer Granholm for Attorney General for Michigan in 1998 and later for Governor of Michigan in 2002. Do you agree with all of the positions she took publicly?**

Response: My role as a volunteer was limited to distributing literature in 1998 and 2002 and to also providing advice on computer crime issues in 2002. Governor Granholm was a state-wide elected official for 12 years and I do not know what all her publicly stated positions are; I am sure there are some with which I would not agree. I knew Governor Granholm and served with her as an Assistant U.S. Attorney and believed she was a person of high integrity, intelligence, and leadership skills.

a. If not, with which ones specifically do you disagree?

Response: Any personal views I may have, broadly, or whether in agreement or disagreement with public positions of Governor Granholm, would play no role in my service as a federal judge because my role would not involve applying my personal views but rather applying the law impartially to the facts presented in the narrow confines of specific cases brought before the court.

5. In 1999, you wrote an article entitled "Human Rights for Terrorists Beyond the Water's Edge." In that article, you wrote: "It is ironic that the men accused of bombing the U.S. Embassy in Nairobi sit comfortably in prison awaiting their trial, while, at the same time, the US bombed a site of alleged terrorists in Afghanistan. The suspected terrorists of the embassy are allowed rights under the due process of law because they are in the US, while those off US shores have no rights, and can be bombed at will. The terrorists offshore should enjoy the same human rights as those onshore."

Response: The article that I wrote, as published in the national Catholic journal *America* on January 16, 1999, did not contain the language quoted in the above question. I have attached a print version of the article for the Committee's review which does not contain the quoted language. I did not write the quoted language. I have reviewed the electronic version of this article that was retrieved from Westlaw which was submitted to the Committee, however, and I do see that this version contains the language quoted, but I do not know who wrote that language or why it appears prior to the text of the article itself. I regret that I did not notice that this version of the article contained this paragraph, because I would not have submitted this version to the Committee if I had realized that it contained this paragraph. I respectfully would ask to remove this electronic version of the article from the Attachments to my Senate Judicial Questionnaire and replace it with the print version which is attached to this response, and is an accurate copy of the article that I wrote.

It is possible that the quoted language may have been written by an editor attempting to summarize the article, but a review of the article itself will show that the quoted language is inconsistent with the position that I took in the article. For example, I did not state in my article "The terrorists offshore should enjoy the same human rights as those on shore." Rather, I drew a distinction between the Constitutional rights available to criminal defendants in the United States, and the unavailability of those rights to those who commit the same criminal acts, but who are located outside the United States. I further noted that the use of military force against terrorists located in other countries operates under rules of engagement that are appropriately different from those that apply

in criminal cases, but I stated that our government should be "extremely judicious in using force in other parts of the world."

a. Do you believe terrorists overseas have constitutional rights? Please explain.

Response: No.

i. If so, to what constitutional rights are they entitled?

Response: When I drafted the referenced article, my understanding was that non-citizens outside the jurisdiction of the United States who are not in U.S. custody were not entitled to claim protection under the United States Constitution.

b. Do terrorists overseas have due process rights?

Response: When I drafted the referenced article, my understanding was that non-citizens outside the jurisdiction of the United States who are not in U.S. custody would not be protected by the United States Constitution's guarantee of due process. Since 9/11, federal courts, including the Supreme Court, have decided a number of cases addressing issues relating to whether the Constitution may be invoked by foreign nationals in U.S. custody. I have not made a careful study of this area of law. If a question in this area were to come before me as a federal judge, I would review the relevant legal authorities and faithfully apply the binding precedents of the Supreme Court and the Sixth Circuit.

i. If so, from where in the constitution are those rights derived?

Response: I respectfully refer to my answer above.

c. Are constitutional rights and human rights coextensive?

Response: No.

d. Do you believe drone strikes against noncitizens are constitutional? Please explain.

Response: When I drafted the referenced article, my understanding was that the Constitution did not generally apply to non-citizens outside the jurisdiction of the United States who are not in U.S. custody. As I mentioned above, since 9/11, case law has developed in this general area which I have not carefully reviewed. If a question in this area were to come before me as a federal judge, I would review the relevant legal authorities and faithfully apply the binding precedents of the Supreme Court and the Sixth Circuit.

e. Given your statement that terrorists offshore should enjoy the same rights as those onshore, do you believe Anwar al-Awlaqi's constitutional rights were violated?

Response: As stated above, I did not make the statement that terrorists offshore should enjoy the same rights as those onshore. My article made the opposite point, that criminal defendants in the United States are protected by the Constitution while terrorists outside the United States generally are not. Regarding whether Anwar al-Awlaqi's constitutional rights were violated, I am aware that a lawsuit was brought by the father of Anwar al-Awlaqi challenging the constitutionality of targeting him, but this suit was dismissed by the U.S. District Court for the District of Columbia. Because this kind of question could come before me if I were to be confirmed, it would not be appropriate for me to express any opinion as to the merits of this issue. I would seek to faithfully apply the precedent of the Sixth Circuit Court of Appeals and the Supreme Court in deciding such an issue.

i. If not, why not?

Response: I respectfully refer to my answer above.

f. Were Anwar al-Awlaqi's human rights violated?

Response: My understanding is that if it is established that a person is involved in planning and executing terrorist attacks against the United States in another country, it would not necessarily violate international standards of human rights for the United States to use military force against that person.

i. If not, why not?

Response: I respectfully refer to my answer above.

Responses of Terrence G. Berg
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: My judicial philosophy is to adhere to the rule of law and act with integrity in all things. Integrity in this sense means being intellectually honest, open-minded and rigorous; applying the law fairly, impartially, and consistently; giving all parties a full opportunity to be heard; treating all who come before the court with dignity and courtesy; and having the courage to do the right thing. In our constitutional system, the role of the judge is to provide a neutral and open forum in which all sides will be heard, decisions will be rendered promptly, consistent with the rule of law, and narrowly tailored to address the case or controversy at issue.

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 committed to treating all persons who come before the court with fairness, impartiality, courtesy, and respect. I would give every party a full opportunity to be heard regardless of political belief, status, means, or affiliation.

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 are duty-bound to apply legal precedent in resolving questions according to the doctrine of *stare decisis*. Regardless of the court, adherence to *stare decisis* is necessary because it promotes stability, predictability and respect for law.

Responses of Jesus G. Bernal
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Chuck Grassley

1. **At your confirmation hearing, I gave you an opportunity to respond to the minority "not-qualified" rating given to you by the ABA Standing Committee on the Federal Judiciary. You responded in part by saying, "I would just say that my experience has qualified me for a position on the bench." The ABA standing Committee on the Federal Judiciary undoubtedly was aware of your general experiences as an attorney in evaluating your qualifications. Is there anything you could share with the Judiciary Committee that the ABA may have overlooked or may be unaware of that would further demonstrate your qualifications to be a district court judge?**

   Response: The ABA Standing Committee does not disclose the reasons for the ratings it gives judicial applicants, so I do not know what aspects of my record the Committee considered. I believe, however, that I possess the skill, intellect and experience necessary to be a successful district court judge. I have spent the majority of my career, including the last 16 years, litigating almost exclusively in federal court. During that time, I have appeared in federal court frequently, before many different judges, and have become familiar with court procedures and the role played by the judge, parties, lawyers, and juries in the courtroom. I have substantial experience in civil cases, having practiced complex civil litigation for almost five years and as a result of my two-year federal judicial clerkship. My vast experience in federal court and my skill and knowledge of both civil and criminal law and procedure have prepared me to be a federal judge.

2. **In 2007, you wrote an article that speaks favorably of the Fourth Circuit Court of Appeals ruling Al-Marri v. Wright. In *Hamdi v. Rumsfeld*, a Supreme Court plurality ruled that while the executive has the authority to detain enemy combatants, detainees who are U.S. citizens are entitled to due process before a judge though 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 believe the government has the ability to detain non-citizen enemy combatants without trial? What about U.S. citizens captured overseas?**

   Response: The plurality in *Hamdi v. Rumsfeld* held that the Authorization for Use of Military Force, (AUMF), Pub. L. No. 107-40, 115 Stat. 224 (2001), allows for the detention of enemy combatants for the duration of the particular conflict in which they were captured. The plurality also concluded that a citizen who, like Hamdi, is captured abroad and detained in the United States as an enemy combatant must receive "a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker." *Hamdi v. Rumsfeld*, 542 U.S. 507, 509 (2004). *Hamdi* itself did not involve application of the AUMF to non-citizens, but the plurality's reasoning indicates that the statute also authorizes the detention of non-citizen enemy combatants captured under the same circumstances. *See id.*, at 518-519. If I am confirmed, I would carefully examine and apply the Supreme Court and Ninth Circuit precedent in that area of the law.

a. **In Justice Thomas' dissent in *Hamdi*, he argued the executive has vast power in certain circumstances to detain citizen enemy combatants without judicial review, "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? If not, please explain**

Response: If I were confirmed as a lower court judge, I would be obligated to follow binding majority decisions of the Supreme Court whether or not I found them persuasive. Because Justice Thomas's views did not command a majority in *Hamdi*, I do not believe it would be appropriate for me to comment on the persuasiveness of his criticism of the plurality's analysis.

3. **In *Al-Marri*, by a 2 to 1 decision, a Fourth Circuit panel held that Al-Marri, an identified al Qaeda Associate connected to the 9/11 hijackers, could not be held as an enemy combatant and ordered him released from military custody. In coming to this decision, the Fourth Circuit panel distinguished *Al-Marri* from *Hamdi*. They reasoned that Hamidi met the definition of an enemy combatant because he was captured on the battlefield in Afghanistan, but Al-Marri did not because he was captured in the United States and was not demonstrated to have taken part in hostilities against the U.S. overseas. In your view, who qualifies as an enemy combatant under the AUMF? Please explain.**

Response: The plurality in *Hamdi v. Rumsfeld* concluded that the AUMF authorizes the detention of individuals who are "part of or supporting forces hostile to the United States or coalition partners" in Afghanistan and who "engaged in an armed conflict against the United States" in that country. 542 U.S. at 516. The plurality made clear that it was addressing only the "narrow question before [the Court]: whether the detention of citizens falling within that definition is authorized." *Id.* If I were confirmed as a district court judge and presented with a question concerning the scope of detention authority under the AUMF, I would faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit.

4. **In your article you wrote the following quoting from the majority opinion of the Fourth Circuit in *Al-Marri*, "The court rejected the government's core assumption that 'persons lawfully within this country…lose their civilian status and become 'enemy combatants' if they have allegedly engaged in criminal conduct on behalf of an organization seeking to harm the United States. Of course, a person who commits a crime should be punished, but when a civilian protected by the Due Process Clause commits a crime he is subject to charge, trial, and punishment in a civilian court, not to seizure and confinement by military authorities.'" Is it your view that acts of terrorism conducted by those in league with groups we are at war with should be treated just as any other criminal?**

Response: This article was an attempt to describe and explain the Fourth Circuit panel's decision in *Al-Marri*, which was later vacated by the full court sitting en banc. *See Al-*

Marri v. Pucciarelli, 534 F.3d 213 (4th Cir. 2008) (en banc). The *Hamdi v. Rumsfeld* plurality held that in the circumstances of that case, the government may detain persons who are part of or support forces that are hostile to the United States and who have engaged in armed conflict against the United States without criminal charges. In that sense, the *Hamdi v. Rumsfeld* plurality opinion allows for enemy combatants to be treated differently than other criminals. If I were confirmed as a district court judge and presented with a question in this area, I would faithfully apply all binding precedents of the Supreme Court and the Ninth Circuit.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is a commitment to resolve all matters impartially, fairly, and by faithfully applying the governing law to the facts. I believe I possess this attribute.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be impartial, even-tempered, patient, and respectful of all those that come before the court. A judge should display elements of judicial temperament that reaffirm in the parties and the public a belief in the fairness of the judicial system. I meet these standards.

7. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If the issue involved a statute, I would begin by looking at its language. If the language of the statute provided the answer to the issue, I would apply the clear meaning of the statute. If the language of the statute proved ambiguous, I would look to other parts of the statute to attempt to discern its meaning. If the answer remained unclear, I would consult the legislative history. If the issue of first impression did not involve a statute or other text, I would look to analogous cases decided by the Supreme Court or within the Ninth Circuit Court of Appeals.

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I would apply the decision of the Supreme Court or the Court of Appeals.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A federal court can appropriately declare a statute enacted by Congress unconstitutional only where the statute violates a provision of the Constitution or where Congress has exceeded its constitutional authority in enacting the statute.

11. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?

Response: No.

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 but firm deadlines and issue scheduling orders. In civil matters, I would use the magistrate judges in my District to expedite the resolution of discovery disputes and to facilitate settlements. In addition, I would rule promptly on all motions and requests. In criminal cases, I would adhere to the Speedy Trial Act and prevent any undue delay in the resolution of cases. In addition, I would actively keep informed about the volume and nature of my caseload in order to better manage it.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, judges play a vital role in controlling the pace and conduct of litigation. If confirmed, I would implement the procedures outlined in response to Question 12.

14. Please describe with particularity the process by which these questions were answered.

Response: I received these questions from the Department of Justice on June 13, 2012. I drafted the responses on the same day. I then discussed the responses with an official from the Department of Justice on June 15, 2012. I then finalized my responses and sent them to the Department of Justice to be delivered to the Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Jesus G. Bernal
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

   Response: No.

   a. **If not, please explain.**

      Response: I do not agree that the Constitution is a "living" document that is constantly evolving as society interprets it. It is the text of the Constitution, as interpreted by binding precedent, that governs district courts. That text is fixed, and can only be changed through the amendment and ratification process.

2. **Justice William Brennan once said: "Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized." Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

   Response: No.

   a. **Please explain.**

      The fundamental principles embedded in the Constitution remain constant and can only be changed through the amendment and ratification process. If confirmed, I would apply the binding decisions of the United States Supreme Court and the Court of Appeals for the Ninth Circuit.

3. **In your view, is it ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution?**

   Response: No.

   a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

      Response: Not applicable.

Responses of Jesus G. Bernal
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy is that judges should be impartial, even-tempered, patient, and respectful in the performance of their duties. In addition, judges should have the courage to render any decision which results from an impartial application of the law to the admissible facts. Judges should maintain an open mind and make decisions without preconceptions or prejudices of any sort. By exercising courage and impartiality, judges can help promote in litigants and the public a conviction that our system of justice is fair and accessible. Judges play an important but limited role in our constitutional system. They determine and faithfully apply the law to the facts in narrowly resolving all matters within their jurisdiction.

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 Deputy Federal Public Defender, I have learned the value of treating all persons with respect, whether or not they enjoy the respect of others. I can provide assurances that if confirmed, all litigants in my court will be treated fairly regardless of their political beliefs, whether they are rich or poor, or whether they are a plaintiff or a defendant.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: Judges should strictly adhere to the doctrine of stare decisis and apply binding precedent whether or not they personally agree with that precedent. Adherence to the doctrine of stare decisis ensures that cases are decided consistently and promotes the public trust in the fairness of our judicial system. I do not believe that the commitment to stare decisis should vary depending on the court.

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June 18, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington D.C. 20510

Dear Mr. Chairman,

Attached are my responses to written questions from Senator Grassley and Senator Klobuchar.

Sincerely,

Grande Lum

GHL/
Enclosures

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington D.C. 20510

Questions for the Record
Hearing: Nominations
June 6, 2012
Submitted by Senator Chuck Grassley

Questions for Grande Lum, nominated to be Director of the Department of Justice Community Relations Service:

1. Since law school, you have spent almost your entire professional career in mediation. How will your prior professional experiences help the Community Relations Service (CRS) conduct its mission to "work with law enforcement and local government officials, community leaders, and federal agencies to support those leaders in addressing tension associated with allegations of discrimination on the basis of race, color, and national origin"?

   Response: My experiences in conflict resolution would provide insight into both the approaches and benefits of collaborative problem-solving. The Community Relations Service (CRS)'s function is to assist state and local units of government, private and public organization and community groups to address conflicts arising from differences in race, color and national origin. In addition CRS helps communities develop capacity to prevent and respond to violent hate crimes on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion or disability.

   As director of the Center for Negotiation and Dispute Resolution at the University of California Hastings College of the Law, I stayed abreast of the latest developments in dispute resolution and this will aid my leadership at CRS, if I am confirmed, by allowing me to bring cutting edge thinking to CRS. In addition, I managed a cadre of adjunct professors, many of whom were mediators, which will inform effective management of CRS staff, especially its conciliation specialists.

   My work at Accordence and Conflict Management Inc. helped me understand conflict from the stakeholder and client perspective. Working with numerous engagements and a spectrum of disputes and negotiations will allow me to enhance outcomes at CRS. Establishing clear goals with the parties, measuring success and improving work product were critical aspects of what I did at these organizations and will serve my CRS leadership well.

2. Do you have any experience mediating situations where racial bias or discrimination was one of the contributing factors in the conflict?

   Response: Yes.

   a. If so, as the mediator, how did you assist the parties in resolving this conflict?

Response: In my experiences dealing with situations where racial bias or discrimination was one of the contributing factors in the conflict, I initially started by understanding the facts of the conflict as well as possible. What actually transpired and what were the irrefutable as well as contested facts played a key role in figuring out what needed to be done. Next I would learn about the history between individuals and groups involved in the conflict. From there I sought to understand the perceptions, the emotions and other flashpoints of the conflict. As a mediator or facilitator, being equipped with this information allowed me to navigate contentious issues like racial bias and discrimination.

When in the room with parties in such a dispute, I worked hard at creating a safe environment for constructive dialogue and collaborative problem-solving. First I helped the parties to communicate openly and build trust by setting ground rules and facilitating impartially. Next I probed for the underlying concerns or needs, which was especially important with hot-button issues like racial bias and discrimination. Finally I would assist the parties in finding common ground. As a third party I found that guiding the parties to focus on solutions that worked and were fair made a crucial difference. Racial bias and discrimination can be so divisive and therefore strategies to build trust, find shared interests and workable solutions were paramount.

3. As a Senator, I believe that transparency is one of the most important features of our federal government. It helps ensure accountability to the people.

In its most recent budget justification, CRS reported that it has been alerted of more than 800 incidents of potential civil unrest during each fiscal year since 2009. Yet, there does not seem to be any reporting of how CRS responds to the incidents, especially in projecting needs for future budgets.

Nor do there seem to be any measurable metrics CRS uses to disclose its performance to the public. As a matter of fact, it appears that the last time CRS issued a press release about a specific successful mediation was in 2007.

a. Do you agree that Congress has the duty and authority to hold federal government agencies accountable, and ensuring they are exercising sound judgment over the funds they are appropriated by Congress?

Response: I agree that agencies are accountable for conducting their mission. Transparency is an important feature of our federal government and accountability to the people is key. Federal agencies should exercise sound judgment over the funds they are appropriated by Congress. I understand that currently CRS does provide measurable performance metrics publicly, both in its annual reports and in its annual budget submissions to Congress.

b. If confirmed, as Director how will you increase transparency and accountability within CRS?

Response: If confirmed as Director of CRS, I would increase transparency and accountability by working with managers to first understand what measureable metrics are currently being used and how these metrics are operating. I would then seek to determine how these metrics could be improved, i.e., how the metrics can more accurately measure performance. If the metrics can be improved and there are sufficient resources and staffing, I would then seek to enhance the measurable metrics in an effort to increase transparency and accountability within CRS.

4. Recently, the Orlando Sentinel ran a story highlighting the involvement of the Community Relations Service during the unrest that accompanied the killing of Trayvon Martin. The article reported that CRS was responsible for teaching civil rights organizers how to peaceably control crowds and arranging for a police escort for protesters along a 40-mile marching route.

   The article suggested that CRS brokered a meeting between local NAACP and elected officials. And it was those meetings that led to the temporary resignation of the local police chief.

   These reported interactions suggest that CRS strongly represented the interests of community organizers during this period of civil unrest. The article does not suggest that the CRS offered corresponding representation of the interests of local government or law enforcement.

   a. As a mediator, is it good practice to gravitate or represent one party's interests over another?

   Response: As a mediator it is critical to be neutral and to assist parties in coming to an agreement of their own free will. The role of a mediator is to facilitate, not to advocate. The job of the third party is to encourage all parties to talk, and to listen to them. A mediator works to have the interests of all the parties discussed, and to help the parties find common ground amongst themselves.

   b. Often, the appearance of bias or favoritism can undermine the effectiveness of a neutral arbiter or mediator. If confirmed, how would you ensure that the CRS is able to protect its image as a neutral mediator?

   Response: I think it is crucial that CRS protect its image as a neutral mediator and I would consider it a significant part of my job as director of CRS if I am confirmed. Emphasizing the neutrality in communications that come out of the CRS office and from CRS staff is critical. Education of stakeholders and other interested parties about the role CRS plays in conciliation of conflicts will broaden and deepen understanding of its impartiality. Continued emphasis within CRS, the Department of Justice and the broader federal government of the peacemaking role of CRS will also burnish the brand and reputation of CRS as a non-biased third party.

Questions for the Record
Hearing: Nominations
June 6, 2012
Submitted by Senator Amy Klobuchar

Questions for Grande Lum, nominated to be Director of the Department of Justice Community Relations Service:

Mr. Lum, as Director of the Community Relations service, you will work with law enforcement and local government officials, community leaders, and federal agencies to support these leaders in addressing allegations of discrimination and in developing the capacity to more effectively prevent and respond to violent hate crimes. You have an extensive career in conflict resolution, leading Harvard's Center for Negotiation and Dispute Resolution, founding your own dispute resolution training firm, Accordance Inc., and serving as a partner with the consulting firm Conflict Management Inc., among other roles.

- How would these experiences in conflict resolution inform your leadership as Director of the Community Relations Service? What other experiences have prepared you for this role?

Response: My experiences in conflict resolution would provide insight into both the approaches and benefits of collaborative problem-solving. The Community Relations Service (CRS)'s function is to assist state and local units of government, private and public organization and community groups to address conflicts arising from differences in race, color and national origin. In addition CRS helps communities develop capacity to prevent and respond to violent hate crimes on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion or disability.

As director of the Center for Negotiation and Dispute Resolution at the University of California Hastings College of the Law, I stayed abreast of the latest development in dispute resolution and this will aid my leadership at CRS, if I am confirmed, by allowing me to bring cutting edge thinking to CRS. In addition I managed a cadre of adjunct professors, many of whom were mediators, which will inform effective management of CRS staff, especially its conciliation specialists.

My work at Accordence and Conflict Management Inc. helped me understand conflict from the stakeholder and client perspective. Working with numerous engagements and a spectrum of disputes and negotiations will allow me to enhance outcomes at CRS. Establishing clear goals with the parties, measuring success and improving work product were critical aspects of what I did at these organizations and will serve my CRS leadership well.

- What other experiences have prepared you for this role?

Response: Having been a volunteer and board member at Peninsula Conflict Resolution

Center, I gained the experience of working alongside local community leaders, law enforcement officials, mediators and local government officials with the goal of preventing and responding to community tension and conflict.

Working at the United States Small Business Administration as Director of its Historically Underutilized Business Zone (HUBZone) Program provided me with federal government experience and in dealing with numerous stakeholders including Congress and other federal agencies. It will be very helpful if I become CRS director to have had previous federal agency experience. Additionally, the deeper understanding of the country's economic development issues will help me in understanding the roots of many community conflict issues.

- As a former prosecutor, I know how critical it is to have strong and clear communication between law enforcement, local leaders and the federal government. How do you plan to foster this kind of communication?

Response: If I have the good fortune of being confirmed for this position, I would both model and encourage communication between law enforcement, local leaders and the federal government. Given the amount of conflict that arises in this country and the limited resources and staffing of CRS, it is critical to help local and state government units to build capacity and to communicate crisply to prevent and respond effectively to community conflict.

- If nominated, what would be your goals for this office?

Response: My first goal would be to learn as much about CRS from speaking to its staff. I have great respect for what CRS does currently and I would want to understand what they are doing now as well as possible.

Having said that, CRS has a very clear mission – to prevent and resolve racial and ethnic conflicts and prevent and respond to alleged violent hate crimes committed on the basis of race, color, national origin, gender, gender identity, sexual orientation, religion and disability. If I have the good fortune to be the director my second goal would be to be the best possible steward of that mission.

My third goal would be to build as strong a team of conciliators as possible. I would support the recruitment of new conciliation specialists (to replace retiring conciliators or if there were budget authorization), enhance the training and development of all conciliators and codify the best practices of what conciliators do.

My fourth goal would be focused on prevention. I believe in the building of capacity. Whether it's providing assistance in establishing human relations commissions, or teaching mediation to law enforcement, if I have the good fortune of being confirmed I would really want to focus on how CRS can continue to maximize its ability to help communities to help themselves.

Responses of Lorna G. Schofield
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Chuck Grassley

1. **In 1988, you represented plaintiffs as an ACLU cooperating attorney in a suit against the George Washington University Medical Center. The suit involved a number of claims relating to the decision of the Medical Center to seek a judicial declaratory order allowing them to perform a cesarean section on a terminally ill woman who was 26 weeks pregnant.**

   Please provide a summary of the case, including any facts that support the legal claims made against the George Washington University Medical Center, and a description of your role and that of the ACLU in representing the plaintiffs.

   Response: The estate of Angela Carder asserted claims against George Washington University Medical Center alleging lack of informed consent, medical malpractice, breach of warranty, false imprisonment, battery and other claims for forcing her to undergo a cesarean section pursuant to a court order obtained by the hospital. The evidence disclosed in discovery showed that the procedure had been performed without her consent, and contrary to the wishes of her husband, parents and treating physician. The evidence also showed that her physician and several of the hospital physicians refused to perform the procedure under the circumstances. The child died shortly after delivery and the mother died two days later. The evidence also showed that while Ms. Carder was an out-patient in the hospital's High Risk Pregnancy program, the hospital failed to diagnose a tumor in her lung, and eventually admitted her to the hospital for "fluid in the lung," when in fact by that time she had grapefruit-sized tumor in her lung and was terminally ill.

   The ACLU filed the Complaint in the summer of 1988, around the same time that I joined Debevoise & Plimpton (D&P) as an associate. D&P accepted the case as a pro bono matter in late 1988 or early 1989. A couple of months later, the senior associate on the matter, Terry Thornton, announced that she was leaving D&P for another firm, but wished to continue working on the case. D&P assigned me to the case to replace Ms Thornton, and to work with her and several junior D&P associates. Ms. Thornton and I, along with more junior associates, handled the day-to-day work on the case, which consisted chiefly of fact and expert discovery and some motion practice. We split the work so that Ms. Thornton's firm was primarily responsible for the medical ethical (forced cesarean section) issues, and D&P was primarily responsible for the medical malpractice (failure to diagnose) issues. The ACLU checked in from time to time, but did not play an active role during this phase of the case. The ACLU again became actively involved in the

settlement phase, and the three entities – Ms. Thornton's firm, D&P and the ACLU – acted as co-counsel in settling the case. The settlement consisted of a confidential monetary settlement for the estate, as well as an agreement by the hospital to revise its policies on informed consent.

2. **In the past, as a member of the ABA and Co-Chair of the Class Actions and Derivatives Suits Committee, you have been critical of legislation aimed at curtailing lawsuit abuse, including reforms to class action lawsuits. In 1995, you wrote an article critical of legislation aimed at curtailing abuses in securities class actions. Many of these reforms were enacted into law as part of the Private Securities Litigation Reform Act.**

   a. **Having litigated cases both prior to and after the reforms in this legislation, has your opinion of the reforms changed? If so, how?**

      Response: In the referenced article I was critical of two particular proposed reforms. One was a loser-pays proposal. The other was the requirement to create a plaintiffs' steering committee. Neither was enacted as proposed. The loser-pays proposal instead became a requirement that the Court consider compliance with Rule 11 of the Federal Rules of Civil Procedure at the conclusion of a class action, and apply sanctions in the event of a violation. Rule 11 long has required a good faith factual and legal basis for claims and contentions, and provided the court with authority to sanction parties that violate the rule. The steering committee proposal was dropped, and "lead plaintiff" requirements were created to ensure by other means oversight of class counsel by an interested party with economic clout. My criticisms of the two proposed reforms do not apply to the Private Securities Litigation Reform Act as enacted. In any event, as a district court judge, I would be bound to apply the law however it is enacted.

   b. **In your article, you reasoned that many of the reforms were unnecessary because of the "broad powers courts already have for controlling the class action process." Could you provide some examples of the broad powers to which you were referring?**

      Response: Courts have various powers to control the class action process, both with regard to frivolous law suits, and oversight of class counsel – which were the focus of the two reforms that I discussed. For example, courts may consider and decide dispositive motions at any time, including prior to class certification, thus avoiding the cost and disruption of class certification proceedings in frivolous cases. Courts must apply higher pleading standards when fraud is alleged, and the claims and factual

assertions must be "plausible." Discovery is automatically stayed in most federal securities cases until the motion to dismiss is decided, and courts have discretion to stay discovery pending this decision in other types of cases, thus avoiding the costs of discovery if claims are frivolous. If the parties to a class action agree to a settlement, the court must determine whether its terms are fair, including provisions for payment of class counsel, after notice has been given to class members and they have had an opportunity to object to the terms of the settlement. Because class actions involve the rights of absent parties, and because certifying a class exerts considerable settlement pressure on defendants, judges have a special responsibility to oversee putative class actions.

c. If confirmed, will you exercise your "broad powers" as a judge to control the class action process? Please explain.

Response: Yes. I believe that it is critically important for judges to be aware of and exercise their authority to manage complex cases, including class actions, in a manner that will result in adjudications that are just, speedy and as inexpensive as possible.

d. Curtailing lawsuit abuses continues to be a topic of debate, especially in the context of medical malpractice. Given your expertise in this area, I am curious as to your views on this subject. Do you believe reforms are necessary to prevent frivolous lawsuits and unreasonable awards? If so, what types of reforms do you think would be helpful?

Response: I do not have a view on, or expertise in, this particular subject. My experience in the medical malpractice area is limited and dated, as the only such case I litigated was the *Stoner* case, referenced above, which settled in 1990. Should any reforms be enacted, as a district court judge I would apply the law as written.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is to be fair and impartial in applying the law. A society governed by the rule of law is one in which the laws apply equally, predictably, transparently and in the same fashion to all regardless of the identity of the litigants or the judge. I believe I have the ability to be fair and impartial.

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: In my view, the most important elements of proper judicial temperament are being fair-minded and dispassionate. Decisions should be made without bias or emotion by applying the law to the facts before the court. Judges also must be unfailingly respectful, regardless of the merits of a case or argument. Judges are representatives of the justice system, and like the justice system should treat all those who deal with the courts fairly and well. 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 precedent?

Response: Yes.

6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If faced with a case of first impression involving the interpretation of a statute, I would first look at the text of the relevant provision and any precedent construing that text. If the text is ambiguous, I would then look to legislative history and any precedent construing it. Even if the precedent is not binding, it may well offer analysis that is useful and sound. I would also look for analogous issues and cases, and I would look to the parties' briefs and arguments for further guidance. In any event, judges should not simply "make-up" the law according to their own predilections, as that would undermine the rule of law.

7. What would you do if you believed the Supreme Court or the Court Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: As a district court judge, I would be bound to follow, and would follow, the precedent of the Supreme Court and the Court of Appeals for the Second Circuit.

8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Federal statutes are presumed to be constitutional. A federal court must declare a federal statute to be unconstitutional if the issue is properly before the court,

and the statute violates a provision of the Constitution or if Congress exceeded its constitutional authority in enacting the statute.

9. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?

Response: No.

10. 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 triage complex and other cases that need active judicial management and apply more judicial management in those cases; encourage the parties to narrow the issues and have more focused discovery; set reasonable but reasonably short deadlines early in the case; enforce deadlines and allow extensions only when absolutely necessary; encourage discussion and collaboration between the parties, especially regarding potentially contentious issues such as electronic discovery; set reasonable limits on the submission to the court of potentially voluminous materials; and endeavor to make prompt decisions.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe that judges have an important role and responsibility to control the pace and conduct of litigation. Rule 1 of the Federal Rules of Civil Procedure directs that those rules should be "construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding." If confirmed, in addition to the steps outlined above, I would continue to educate myself about innovative ways that other judges have successfully controlled their dockets. Some methods I have encountered in my bar association work on civil procedure issues in the past few years are to: (1) provide a list of procedures that the parties should discuss and possibly agree on, for example, regarding their communications about discovery disputes, privilege logs, the number of depositions in complex cases, and the scope and conduct of electronic discovery; (2) enforce the proportionality rule (Fed. R. Civ. P. 26(b)(2)(C)) to preclude unwarranted discovery, even in the absence of a motion if appropriate; (3) impose other discovery limitations permitted by the rules (e.g. Fed. R. Civ. P. 26(b)(2)(A)); (4) impose cost shifting as appropriate; (5) consider staging the proceedings – first bringing on issues that may be dispositive or that are likely to encourage resolution; and (6) offer prompt trial dates to parties willing to expedite their cases.

12. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on June 13, 2012. I personally prepared my responses on June 13 and 14, 2012 and then shared them with representatives of the Department of Justice. I subsequently finalized my responses and authorized the Department of Justice to submit my responses to the Committee on June 18.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Lorna G. Schofield
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy is based on the rule of law, which I believe is a bedrock value in our democracy. The rule of law means to me that the outcome of any case should depend on consistent and transparent application of the law to the facts, and should not vary according to the identity of the judge or litigants. I believe that judges play a narrow but important role in our constitutional system, to ensure that the laws are constitutional, and to apply them consistently.

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 will do my best to treat litigants coming into my courtroom fairly no matter their identity, political beliefs, wealth, gender, race, ethnicity or any other identifying feature. In private practice I have represented both plaintiffs and defendants and would treat both fairly without regard to what party commenced the lawsuit.

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 strictly adhere to the doctrine of stare decisis. It is stare decisis that helps assure that judicial decisions follow the rule of law – namely, that they are consistent, predictable and fairly applied to all.

SUBMISSIONS FOR THE RECORD

Defending Liberty Pursuing Justice

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Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

April 26, 2012

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Terrence G. Berg
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 Terrence G. Berg 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, a substantial majority of the Committee is of the opinion that Terrence G. Berg is "Well Qualified." A minority of the Committee is of the opinion that Mr. Berg is "Qualified" for this position.

A copy of this letter has been provided to Mr. Berg.

Sincerely,

Allan J. Joseph
Chair

cc: Terrence G. Berg
The Honorable Kathy Ruemmler
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

316752.1

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Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

April 26, 2012

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Jesus G. Bernal
To the United States District Court for the Central District of California

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Jesus G. Bernal who has been nominated for a position on the United States District Court for the Central District of California. As a result of our investigation, a majority of the Committee is of the opinion that Jesus G. Bernal is "Qualified." A minority of the Committee is of the opinion that Mr. Bernal is "Not Qualified" for this position.

A copy of this letter has been provided to Mr. Bernal.

Sincerely,

Allan J. Joseph
Chair

cc: Jesus G. Bernal
The Honorable Kathy Ruemmler
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq.(via email)

316758.1

Defending Liberty
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AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

April 26, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Lorna G. Schofield
To the United States District Court for the Southern District of New York

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Lorna G. Schofield who has been nominated for a position on the United States District Court for the Southern District of New York. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Schofield is "Well Qualified" for this position. There were two recusals.

A copy of this letter has been provided to Ms. Schofield.

Sincerely,

Allan J. Joseph
Chair

cc: Lorna G. Schofield
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

316764.1

May 1, 2012

The Honorable Patrick J. Leahy, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Grande Lum to be Director for the Community Relations Service of the Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

We write in enthusiastic support of the appointment of Grande Lum to be Director for Community Relations Service of the Department of Justice. We write as dispute resolution practitioners deeply familiar with the exemplary career, personal integrity, work ethic, reputation and character of Grande Lum. Some of us have worked jointly with him in conflict management situations, some of us have worked with or collaborated with him in the different dispute resolution organizations in which he has worked, and some of us have participated alongside him in professional associations.

The Community Relations Service (CRS) is the only federal agency dedicated to assisting local and state units of government, private and public organizations, and community groups with preventing and resolving racial and ethnic conflicts; and in restoring community stability and harmony. CRS also works with communities to prevent and respond to alleged violent hate crimes committed on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion and disability. Grande Lum has more than twenty years of experience in conflict resolution. He has deep knowledge and understanding of mediation and conflict management procedures. Mr. Lum knows, understands and respects the history and traditions of the Community Relations Service. With his long and distinguished career in dispute resolution, he is ideally suited to the work for which CRS is responsible.

For CRS to be successful, it requires leadership and an understanding of the importance and usefulness of dispute resolution in serving communities throughout the United States. Every year CRS' highly skilled conciliators bring hundreds of community-wide conflicts to peaceful closure in every State, the Commonwealth of Puerto Rico, and the U.S. territories. Mr. Lum has experience and insight with a variety of skills and intervention tools that help parties find common ground and agreement including mediation, negotiation, facilitation, conciliation and training.

Mr. Lum is a practitioner of the highest caliber. Conflict resolution requires excellent listening skills and an ability to lead groups. It also requires both analytical and problem

solving skills to deal with complex and intractable issues. He is a careful listener, open-minded and able to manage small as well as large groups. He is a quick study and has dealt with an array of conflict situations arising from difficult and technical issues.

Lastly, we highlight Mr. Lum's long-term efforts and strong commitment to dispute resolution by noting his record of contribution to the field of dispute resolution as a whole. He has regularly written about dispute resolution, has participated consistently in professional organizations and conferences. Mr. Lum has been a partner in Conflict Management, Inc. one of the leading negotiation consulting firms of its time; founder or co-founder of two other dispute resolution organizations; as well as director and clinical professor of one of the country's leading law school dispute resolution programs at UC Hastings School of Law.

We anticipate that the Senate, after full inquiry, will see all the virtues that Mr. Lum possesses which we know and appreciate from our firsthand experience. He is the consummate professional with a stellar personal and professional reputation. We urge the Senate to promptly confirm the appointment of Grande Lum to serve as the next Director for the Community Relations Service.

Respectfully Submitted,

THE FOLLOWING INDIVIDUALS HAVE SIGNED ON TO THIS LETTER IN THEIR INDIVIDUAL CAPACITIES – CURRENT AND PRIOR LISTED AFFILIATIONS ARE SOLELY NOTED FOR PURPOSES OF IDENTIFYING THEIR RELEVANT BACKGROUND OR PROFESSIONAL EXPERIENCE.

Terry Barnett
Present Positions:
President, CMI Washington/Carolina, 1997-2012
Past Positions:
Founding Chair, Conflict Management, Inc. 1984-97
Visiting Scholar leading graduate-level courses on International Conflict Management, University of North Carolina, 2002-2009

Norma Darshan Brach
Present Positions:
Adjunct Professor, University of California Berkeley School of Law (Boalt Hall), Mediation Course
Past Positions:
Mediation Clinic Coordinator and Lecturer in Law, University of California, Hastings College of the Law, 2008 – 2011
Training Director, Metropolitan Mediation Services, 1998 - 2004

Arlene Brock
Present Positions:
Ombudsman for Bermuda
Vice-President, Caribbean & Latin American region, International Ombudsman Institute
Chartered Institute of Arbitrators (London)
Past Positions:
Consultant, Conflict Management Inc. 1994-98

Russell Brunson
Present Positions:
Director of Operations and Finance, Peninsula Conflict Resolution Center
Past Positions:
Adjunct Professor, University of California Hastings College of Law, 2008 - 2010
Adjunct Professor, Notre Dame de Namur University, 2008
Development Director, National Center for Conflict Resolution Education, 1997 - 1999

Virginia Carson
Present Positions:
Independent Mediator and Arbitrator
Past Positions:
Director Campus Y University of North Carolina Chapel Hill, 2000 - 2009

Eric Davis Collins
Present Positions:
COO Mobile Posse
Past Positions:
Conflict Management Inc. Partner 1997-1998
ThoughtBridge Partner 1998-2002

Wayne H. Davis
Present Positions:
Co-Founder and Vice President, Government Affairs, Harvest Power, Inc.
Past Positions:
Co-Founder and General Counsel, Backyard Farms, LLC.
Chief Ethics Officer, Fidelity Investments
Chief Compliance Officer, Fidelity Brokerage Co.
Partner, Conflict Management, Inc.
Associate Director, Harvard Negotiation Project

Robert N. Dobbins
Present Positions:
Full time mediator
Adjunct Professor at University of California Hastings College of the Law
Adjunct Professor at Pepperdine Law's Straus Institute for Dispute Resolution
Past Positions:
LL.M. with emphasis in mediation and international, 2003

Danny Ertel
Present Positions:
Partner, Vantage Partners LLC
Past Positions:
Conflict Management Inc. Partner, 1993-1997
Harvard Negotiation Project Senior Researcher, 1989-1992

Maria Choi Fernandopulle
Present Positions:
Consultant in Mediation and Negotiation
Past Positions:
Conflict Management Inc., Consultant, 1996-1998
Visiting JD Advisor, Harvard Law School, 2007-2010

Keith M. Fitzgerald
Present Positions:
Sea-Change Partners Managing Director & Director of Negotiation, Conflict Management, & Crisis Leadership Team, 2000 – Present
Past Positions:
Conflict Management Group Project Assistant, Project Director, 1991-1999
Harvard Negotiation Project Special Assistant to the Director, Associate, Teaching Fellow, 1992-2000
Harvard University Kennedy School of Government Teaching Fellow, International Mediation & Conflict Resolution, 1998 – 2000
National University of Singapore Visiting Lecturer, International Negotiation & Conflict Management, 1999 – 2000
Asian Programme on Negotiation & Conflict Management Director, 2002 – 2007
Asian Development Bank Senior Conflict Advisor, 2008 – 2011

Robert Fries
Present Positions:
Attorney/Mediator
Past Positions:
President, The Mediation Society 2010
Adjunct Professor of Law, University of California Hastings College of Law (CNDR)

Ruth V. Glick
Present Positions:
Neutral Mediator and Arbitrator
Secretary of the Dispute Resolution Section of the ABA
Past Positions:
President, The Mediation Society of San Francisco, 2006-2007
Adjunct Professor of Arbitration Law, University of California, Hastings College of the Law 1995-2005
President, California Dispute Resolution Council, 2002

Jeffrey H. Goldfien
Present Positions:
HealthCare Ombudsman/Mediator, Kaiser Permanente
Past Positions:
Adjunct Professor of Law, University of California Hastings College of the Law, 2005-2010
Board of Directors, Association for Dispute Resolution of Northern California, 2008-2010

Mark N Gordon
Present Positions:
Managing Partner, Vantage Partners LLC
Senior Advisor, Harvard Negotiation Project
Member Board of Directors, Mercy Corps
Past Positions:
Conflict Management Inc., President and CEO, 1993-1997
Conflict Management Inc., Co-Founder, Partner, and Director, 1984-1997
Conflict Management Group, Co-Founder and Board Member, 1984-2004
Harvard Negotiation Project Teaching Assistant and Senior Researcher, 1980-1982

Sheila Heen
Present positions:
Founder and Principal, Triad Consulting
Senior Affiliate, Harvard Negotiation Project
Past Positions:
Lecturer on Law, Harvard Law School, 1995-2010
Associate, Harvard Negotiation Project, 1993-2000
Conflict Management Group, Consultant, 1992-1999

Heather J. Meeker Green
Present Positions:
Managing Director of Accordence, Inc.
Past Positions:
ThoughtBridge Operations Manager and COO, 1997-2004
Conflict Management, Inc. Associate, 1990-1997

Howard Herman
Present Positions:
Director, ADR Program, U.S. District Court, Northern District of California
Adjunct Professor, University of California Hastings College of the Law
CLE Officer and Member of Executive Committee, ABA Section of Dispute Resolution
Past Positions:
Director of ADR Programs, Contra Costa County Superior Court, 1993-1997
Pre-Briefing Settlement Conference Attorney, U.S. Court of Appeals
for the Ninth Circuit, 1985-1989

Jason Meek
Present Positions:
CEO of The iDeal World
Fellow, Chartered Institute of Arbitrators, UK
Member, Practices & Standards in Mediation Subcommittee, Chartered Institute of Arbitrators, UK
Adjunct Professor, University of California Hastings College of the Law
Adjunct Professor, University of California Berkeley Law School

Sadhana Narayan
Present Positions:
Adjunct Professor, University of California Hastings College of the Law, "Settlement & Negotiation".
Mediator & Arbitrator
San Francisco Bay Area Federal and California State Courts.
Board of Directors San Mateo County Bar Association
Past Position:
Board of Directors Peninsula Conflict Resolution Center, 2009-2010

Jessica Notini
Present Positions:
Principal, Notini Mediation & Facilitation Services
Mediator, Say Area Federal and State Courts
Lecturer or Adjunct Professor, Stanford Law Schools, University of California Berkeley Law, University of California Hastings College of Law and Mills Women's Business School
Consultant for Accordence, Integrated Management Associates and Lax & Sebenius
Past Positions:
Past Chair, California State Bar ADR Executive Committee, 2007-2008

Past President, Northern California Mediation Association (now "ADRNC"), 2000-2003

Sheila Purcell
Present Position: Appropriate Dispute Resolution Director, San Mateo Superior Court, 1996-present
Past Positions:
Adjunct Professor, University of California Hastings College of Law
Adjunct Professor University of California Berkeley Law School
ADR Program Developer, State Bar of California 1990-1995

Scott William Roberts
Present Positions:
President, OTP, LLC
Past Positions:
Senior Vice President, Strategic Development, Wright Express (Public Company), 2002-2005
President, CommTel, Inc (Public Company) 1998-2002
Corporate Counsel, IDEXX Laboratories, Inc, 1995-1998
Attorney, Skadden, Arps, Slate, Meagher and Flom, 1992-1995

Irma Tyler-Wood
Present Positions:
KiThoughtBridge Co-Founder and Partner
Past Positions:
Conflict Management Inc. Partner 1988-1996
ThoughtBridge Co-Founder and Partner 1996-2006

Frank Vargas
Present Positions:
CMI New Frontiers Founder, Managing Director
Conflict Management Inc. Partner and Director
Princeton University Woodrow Wilson School of Public and International Affairs, Graduate Program Lecturer of Public and International Affairs
Past Positions:
Harvard Medical School Department of Medical Education Guest Lecturer, 1993-1995

Statement of U.S. Senator Dianne Feinstein
on the Nominations of Jesus G. Bernal to be a U.S. District Judge for the Central District of California and Grande Lum to be Director of the Community Relations Service

June 6, 2012

Mr. Chairman, I am pleased to submit this statement to support Jesus Bernal's nomination to sit in Riverside on the U.S. District Court for the Central District of California, and to support Grande Lum's nomination to the Community Relations Service within the Department of Justice.

Jesus Bernal

Background

Born in Mexico, Mr. Bernal is 48 years old. He lives in Whittier, California with his wife Patricia, who is here today. They have two children, Jesus and Natalia.

Mr. Bernal earned his Bachelor's Degree *cum laude* from Yale University in 1986 and his law degree from Stanford Law School in 1989. He became a citizen of the United States in 1987.

Following law school, Mr. Bernal spent two years as a law clerk for the Honorable David V. Kenyon on the same court to which he is nominated today, the U.S. District Court for the Central District of California.

20 Years of Legal Practice

For over 20 years, Mr. Bernal has practiced civil and criminal law, primarily in the Federal courts.

Mr. Bernal began his career in private practice, working as an associate at the law firm of Heller, Ehrman, White, & McAuliffe in Los Angeles from 1991 through 1996. During his time at the firm, Mr. Bernal practiced complex civil litigation, representing corporate clients in business disputes.

Since 1996, Mr. Bernal has worked as a Deputy Federal Public Defender in the Office of the Federal Public Defender in the Central District of California, where he has personally represented hundreds of indigent criminal defendants and overseen hundreds of other representations.

Mr. Bernal has appeared hundreds of times in Federal court. He represents defendants through each phase of their cases – including in motions hearings, negotiations with prosecutors, plea hearings, at trial, at sentencing, and on appeal. Mr. Bernal has tried 10 criminal cases and has supervised several other attorneys in trial proceedings. Mr. Bernal has also represented individuals convicted in state court who are pursuing writs of habeas corpus in the Federal courts.

Mr. Bernal is well-versed in Federal criminal law, having handled cases involving violence on Federal property, tax evasion, bankruptcy fraud, mail fraud, computer intrusion, false claims, illegal firearms, narcotics possession, and money laundering.

Since 2006, Mr. Bernal has been a leader in the Federal Public Defender's Office, experience that will help him manage his courtroom. He is the Directing Attorney of the Riverside Branch Office, a role in which Mr. Bernal supervises trial attorneys, investigators, and other personnel, in addition to carrying his own caseload.

He also serves as chairman of the Ethics Committee for the Federal Public Defender's Office for the whole Central District, which is the largest Federal Public Defender organization in the Nation. In this capacity, Mr. Bernal works to resolve ethical issues and to provide ethical guidance for the 240 employees who work for the Federal Public Defender in the Central District.

In short, Mr. Bernal is well-qualified for the bench. He has over 20 years of legal practice, including 5 years in complex civil litigation and 15 years in Federal criminal defense. He also has extensive practical experience supervising other attorneys. He is prepared to serve on the District Court.

Riverside Seat

I am also very pleased that this particular judicial seat – based in Riverside – is being filled. This seat has been vacant since former District Judge Stephen Larson stepped down from the bench in 2009 in order to pursue a career in private practice.

Judge Larson sat in the Eastern Division of the Court, which hears cases in Riverside and covers the counties of San Bernardino and Riverside. The Central

District has 28 judgeships. Yet since Judge Larson's retirement, only a single active judge has been based in Riverside – even though the Eastern Division has nearly one-fourth of the Central District's total population.

So, I am very pleased to support Mr. Bernal, who is well-qualified and will bring needed judicial resources to the Federal bench in Riverside.

I encourage my colleagues to work with Senator Boxer and myself to move his nomination forward.

Grande Lum

Before I conclude, I also want to briefly express my strong support for the nomination of Grande Lum to be the Director of the Community Relations Service.

Mr. Lum is ideally suited to lead this office within the Department of Justice. Created by the Civil Rights Act of 1964, the Community Relations Service is the only Federal agency dedicated to helping local communities resolve racial and other conflicts peacefully, before they lead to violence, litigation, or another undesirable result. As most businessmen and women can attest, mediation is a preferable result over costly litigation. The same principle holds true for our communities.

Mr. Lum brings sterling credentials to the position. Born in my hometown of San Francisco, he graduated from the University of California at Berkley and Harvard Law School. He has spent most of the past twenty years serving as a trained mediator, working with a wide range of parties to achieve mutually

beneficial results – experience which will be very beneficial in heading up the Community Relations Service. A couple of examples of the mediations Mr. Lum has led show the breadth of skills he would bring to this position: He led a mediation between a teachers' union and management that was recognized as one of the best examples of labor-management cooperation in 1998. In another mediation, he brought together members of a leading pharmaceutical company to bridge differences on issues of business development, research, and regulatory concerns.

In addition to serving as a practitioner of mediation, he also has taught the practice as a clinical or adjunct professor at several leading schools in California, including my alma mater, Stanford University. Most recently, he served as Director of the Center for Negotiation and Dispute Resolution at the University of California Hastings College of Law.

Mr. Lum's mediation work has won him accolades from his peers. A group of 25 dispute resolution practitioners described his career, personal integrity, work ethic, reputation, and character as "exemplary" and praised his "deep knowledge and understanding of mediation and conflict resolution procedures." Mr. Lum's colleagues in academia stated that he "has a nationally-recognized reputation for the highest standards of professional expertise, integrity and interpersonal skills."

I am confident that Mr. Lum will be an outstanding leader of the Community Relations Service. I hope this Committee can move this nomination to a vote in the very near future.

Thank you, Mr. Chairman.

STATEMENT FOR THE RECORD
Senator Kirsten E. Gillibrand

June 5, 2012

Mr. Chairman, I am pleased to offer my support for the confirmation of a highly qualified and accomplished New Yorker, Lorna Schofield, who has been nominated by President Obama to serve as a United States District Court judge for the Southern District of New York. Lorna is currently a partner at Debevoise & Plimpton where she manages commercial civil disputes focusing primarily on complex civil litigation and white collar criminal defense. With over thirty years of experience, she will bring a wealth of knowledge and insight to the bench. I commend the President on this outstanding nomination.

Lorna earned her Juris Doctorate at New York University School of Law and was honored with the John Norton Pomeroy Award for Scholastic Achievement and the American Jurisprudence Award for Scholastic Achievement in Constitutional Law. In her final year, she was selected to serve as Editor of the Note and Comment section of the N.Y.U. Law Review.

Lorna began her legal career in 1981 at Cleary, Gottlieb, Steen and Hamilton, where she was named as an associate. She then moved to the United States Attorney's Office for the Southern District of New York where she served as Assistant United States Attorney during Rudolph Giuliani's tenure as United States Attorney. Since 1988, she has been a litigator with Debevoise & Plimpton, starting as an associate, before becoming the firm's first minority litigation partner more than twenty years ago.

Her extensive litigation experience, including roles as both a prosecutor and a defender, encompasses complex commercial civil disputes, corporate bankruptcies, insurance and tax fraud, contract and commercial disputes, along with significant criminal cases including those involving international arms sales and domestic terrorism.

Throughout her career, Lorna has been actively involved with the American Bar Association where she has served in numerous leadership capacities. She has been Vice Chair and Chair Elect for the Section of Litigation, Council Member, Co-Chair of the Class Actions and Derivative Suits Committee, and Co-Chair of the Woman Advocate Conference. She is also a member of the Association of the Bar of the City of New York, as well as the American Law Institute. In 2008, the National Law Journal named Lorna as one of the nation's 50 most influential minority lawyers.

Thank you, Mr. Chairman for your leadership on this Committee in this effort to confirm highly qualified individuals such as Lorna G. Schofield. Lorna is an exceptional litigator whose legal credentials, experience, and accomplishments make it clear that she is extraordinarily well-qualified to serve as a federal district court judge. Her professional background provides ample evidence that she has a willingness to make tough decisions coupled with a deep commitment to upholding fairness in our legal system. Lorna is a superb candidate for the federal bench and I urge the Committee to favorably report her confirmation to the full Senate for an up or down vote.

Statement of Senator Chuck Grassley
Before the Committee on the Judiciary
On the Nominations of:

Terrence G. Berg, to be United States Circuit Judge for the Eastern District of Michigan

Jesus G. Bernal, to be United States District Judge for the Central District of California

Lorna G. Schofield, to be United States District Judge for the Southern District of New York

Grande Lum, to be Director, Community Relations Service

June 6, 2012

Mr. Chairman:

I join you in welcoming the nominees who are appearing before us today, their friends and families. With three District Court nominees today and one Executive nominee, this Committee continues to make good and steady progress in confirming judicial nominees. After today we will have had a hearing for 34 nominees this year alone. I also note that we have a vote this afternoon on the Senate floor for a District Court nominee. If the nominee is confirmed, he will be the 148th judicial nominee confirmed during

President Obama's term so far. This is good progress. Again, welcome to the nominees and I look forward to this hearing.

Terrence G. Berg is nominated to be United States District Judge for the Eastern District of Michigan. Upon graduation from Georgetown University Law Center in 1986, Mr. Berg clerked for the Honorable Anthony A. Alaimo for the Southern District of Georgia. Mr. Berg worked as an associate at Debevois and Plimpton for two years and then joined the Department of Justice in Michigan, first as an Assistant U.S. Attorney, next as First Assistant U.S. Attorney and finally as interim U.S. Attorney. Mr. Berg is currently an attorney with the Department of Justice's Professional Misconduct Review Unit in Michigan, where he has served since 2011.

The American Bar Association's Standing Committee on the Federal Judiciary rated Mr. Berg with a Substantial Majority "Well Qualified" and Majority "Qualified" for this position.

Jesus G. Bernal is nominated to be United States District Judge for the Central District of California. Upon graduation from Stanford Law School in 1989, Mr. Bernal clerked for the Honorable V. Kenyon of the U.S. District Court for the Central District of California. After his clerkship, he joined the law firm of Heller, Ehrman, White &McAuliffe as a Litigation Associate for five years. In 1996, he joined the Federal Public Defender's office for the Central District of California. In 2006, he became the Directing Attorney for the Riverside branch office.

The American Bar Association's Standing Committee on the Federal Judiciary gave Mr. Bernal a rating of Majority "Qualified" and Minority "Unqualified" for this position.

Lorna Schofield is nominated to be a U.S. District Court Judge for the Southern District of New York. After graduating from New York University School of Law in 1981, Ms. Schofield worked as an associate for Cleary, Gottlieb, Steen & Hamilton, where she concentrated on litigation practice until 1984. From 1984 – 1988, Ms. Schofield served on the Major Crimes Unit as an Assistant United States Attorney for the

Southern District of New York where she lead an investigation into government sale of arms to Iran. She returned to Cleary Gottlieb in 1988, where she has concentrated on complex civil litigation. Ms. Schofield was made a partner at the firm in 1991.

The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Ms. Schofield as "Well Qualified" for this position.

Grande Lum is nominated to be Director of the Community Relations Services, an arm of the Department of Justice. After graduating from Harvard Law School in 1991, Mr. Lum joined Conflict Management, Inc., where he assisted with mediation matters, eventually becoming a partner of the firm. In 1997, Mr. Lum, along with other employees, left the firm and began a new alternative dispute resolution firm, ThoughtBridge, where he provided consulting services related to collective bargaining disputes. In 2004, Mr. Lum left ThoughtBridge to start his own alternative dispute resolution firm, Accordence. His career there has concentrated on assisting corporate clients to obtain a

competitive advantage in negotiations by using technology. In 2010, Mr. Lum stepped down to accept an appointment to HUBZone, a program that assists companies located under-developed economic areas to become more competitive in winning government contract bids.

Senator Charles E. Schumer
Statement for the Record
On the Nomination of Lorna Schofield
Wednesday, June 6, 2012

Mr. Chairman, I am extremely pleased to support the nomination of Lorna Schofield to the federal bench in the Southern District of New York.

I have had the privilege to recommend a number of truly outstanding nominees to become judges in New York, and Ms. Schofield is no different. She is the embodiment of the three qualities I always search for in a judge: excellence, moderation, and diversity.

First, excellence: her professional resume puts her right at the top of her field. She went to Indiana University for her undergraduate studies, and then came to New York to study law at one of the nation's best schools, NYU Law School, where she graduated as one of the top 15 students in her class. She went on to serve the public as an Assistant United States Attorney in the Southern District of New York, and then to join the top law firm of Debevoise and Plimpton, where she's been in private practice for nearly 25 years. As a general litigator, she's tried a wide array of cases, and her professional accomplishments and accolades are numerous, including serving as the head of the largest section of the American Bar Association.

Second, moderation: when I met with Ms. Schofield, I was struck by the fact that she has one, singular agenda – the preservation of the rule of law. Indeed, her professional work has not been devoted to any particular policy pursuits, but rather to the general improvement of the legal world. Evidence of her moderation can be found in the support she has across the political spectrum – both Democrats and Republicans have called me to tell me what a great judge she'd make.

Finally, diversity: Ms. Schofield's personal background and life experience will help broaden the perspective of the federal bench. Most notably, if confirmed, she will be the first Filipina judge (man or woman) to sit on the federal bench.

In conclusion, I believe Ms. Schofield will make a terrific judge, and I look forward to her speedy confirmation.

National Asian Pacific American Bar Association | NAPABA

June 5, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support for Lorna G. Schofield (S.D.N.Y.)

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the National Asian Pacific American Bar Association ("NAPABA"), we proudly endorse and urge the prompt confirmation of Lorna G. Schofield for the United States District Court for the Southern District of New York. Ms. Schofield has the experience, intellectual capacity, integrity, and temperament to be an excellent United States District Court judge. Notably, if nominated and confirmed, Ms. Schofield would become the first Filipino American in the history of the United States to serve as a federal Article III judge.

NAPABA is a national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. Now in its 24th year, NAPABA represents the interests of over 60 affiliate organizations and over 40,000 Asian Pacific American attorneys. NAPABA is deeply committed to supporting the appointment of qualified Asian Pacific Americans to the federal bench, where Asian Pacific Americans are woefully underrepresented.

Notably, if confirmed, Ms. Schofield would be the only Asian Pacific American federal judge in the Southern District of New York. Given that Asian Pacific Americans represent approximately ten percent of the population served by the Southern District, the lack of any Asian Pacific American representation among its over 50 jurists is shocking.

Ms. Schofield possesses the qualities and experiences necessary to be an excellent federal district court judge. For almost 20 years, Ms. Schofield has been a litigation partner at the New York-based, international law firm of Debevoise & Plimpton LLP. During that time, she has participated in a number of high profile matters. In addition, she has been appointed to conduct several internal investigations on behalf of large multinational companies who had concerns

about financial irregularities.

Prior to joining Debevoise Plimpton, Ms. Schofield served as an Assistant United States Attorney for the Southern District of New York for 4 years. During that time, she was principally assigned to the Criminal Division. In total, Ms. Schofield has tried 10 cases to verdict or judgment, and conducted two arbitrations to decisions.

Ms. Schofield has been very active in the American Bar Association (ABA). She was recently the Chair of the Litigation Section of the ABA, which is the ABA's largest section, with over 60,000 members. She was the first Asian Pacific American to be elected Chair of that section, and one of the very few Asian Pacific Americans to lead any of the sections of the ABA. Among her many ABA appointments and leadership roles, Ms. Schofield was a member of the ABA Standing Committee on the Federal Judiciary, serving as the Second Circuit representative. This committee is responsible for the ranking of all federal judicial nominees and submission of that ranking to the Senate Judiciary Committee. Based on her role with this committee and her other professional experiences, Ms. Schofield clearly understands the qualities necessary to be a good federal judge.

Ms. Schofield also continues to be active in community activities. Since 2006, she has served as a director for a nonprofit foundation dedicated to funding projects for children in need, especially from low-income urban neighborhoods. She also has been a member of several choral groups, and has helped to raise money for a public library.

Ms. Schofield is a second-generation Filipino American who understands hard work and sacrifices. She was an only child raised by her mother when her father left the family when Ms. Schofield was 3 years old. Growing up in a blue collar community that featured little diversity, Ms. Schofield was like many kids in such situations; she understood that she was "different" and learned to accept that she would be treated differently without complaint or resentment. She received a full tuition scholarship as an undergraduate at Indiana University, where she graduated Phi Beta Kappa and *magna cum laude* in three years – notwithstanding the fact that her mother died while she was in school. As a result of her mother's influence and her childhood experiences, Ms. Schofield has developed a strong interest in mentoring, especially of women of color. Such mentorship is not imposed on her by her law firm, but rather is based on her own personal interest in ensuring that all individuals are able to attain opportunities commensurate with their skills and talent.

Based on her qualifications, intellect, integrity, and commitment to justice, NAPABA enthusiastically supports Lorna G. Schofield to serve as a District Judge for the United States District Court for Southern District of New York. NAPABA urges that the Senate confirm her promptly.

Sincerely,

Tina R. Matsuoka
Executive Director

Peninsula Conflict Resolution Center
1660 So. Amphlett Blvd. #219 San Mateo, CA 94402
T 650.513.0330 F 650.513.0335
www.pcrcweb.org

March 21, 2012

The Honorable Patrick J. Leahy
Chairperson, 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
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Grande Lum to Serve as Director of Community Relations Service.

Dear Chairperson Leahy:

We are pleased to be writing in support of the nomination of Grande Lum to serve as Director of Community Relations Service. We are either current or former Executive Directors of the Peninsula Conflict Resolution Center.

Each of us have had the honor of working with Grande through the Peninsula Conflict Resolution Center (PCRC), a community benefit organization in San Mateo County, CA that provides a variety of well-respected services that include community building, violence prevention and conflict resolution. Grande began volunteering as a mediator with PCRC in 2004. He brought his many years of expertise and his highly developed conflict management skills to every mediation case we assigned to him, no matter the subject or level of complexity. His approach to conflict situations was always thoughtful and creative. He was highly attentive to and respectful of both those he worked with and clients he served. And, Grande's work always demonstrated his high level of dedication and integrity. At PCRC, we considered Grande to be one of our most valuable mediators and we called on him to work on particularly challenging cases.

In one example, Grande worked in partnership with PCRC staff on a multi-party mediation involving a staff team at a school. This team was experiencing a variety of disputes including accusations of harassment and unfair treatment. PCRC was called to help the team members work through their interpersonal disputes, while the school district managed the grievance procedures. Grande developed a conflict assessment and an intervention plan. He had one-on-one conversations with members of the school team and co-led group mediation sessions. This one project involved multiple hours of planning, preparation and mediation time.

In 2006, Grande joined the Board of Directors of PCRC and after 2 years became the Vice-Chair. In this role, he provided leadership in such areas as fund raising and marketing and offered valuable input into strategic planning and program assessment and evaluation. Grande spoke eloquently on behalf of PCRC at several public events. In these

public appearances his passion for collaborative problem solving and his dedication to promoting peaceful community building efforts was obvious.
In all of our experiences with Grande we found him to be a highly intelligent, creative, dedicated professional. He has laudable skills in the areas of conflict resolution, mediation, collaborative problem solving, group decision-making and effective facilitation. In addition, he is an accomplished leader in many different realms.
There is no doubt that Grande is exceptionally qualified to be the Director of the Community Relations Mediation Service and the Department of Justice would find him to be a true asset if he is appointed. I hope that you will join us in supporting his nomination.

Sincerely,

Jennifer Bullock
Former Executive Director
Peninsula Conflict Resolution Center

Patricia Brown
Former Executive Director
Peninsula Conflict Resolution Center

Michelle Villalobos
Executive Director
Peninsula Conflict Resolution Center

April 9, 2012

The Honorable Patrick J. Leahy, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

The Honorable Charles E. Grassley, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

Re: Nomination of Grande Lum to be Director of the Community Relations Service of the U.S. Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

We strongly and enthusiastically support the appointment of Grande Lum to be Director of the Community Relations Service of the United States Department of Justice.

We are a group of professional legal scholars and law school teachers specializing in the interdisciplinary field of negotiation, alternative dispute resolution (ADR), mediation, and public policy consensus building. We know Mr. Lum very well from his teaching, facilitation, mediation and writing in the dispute resolution field. Some of us have taught courses with him or alongside him at the University of California Hastings College of the Law, the University of California Berkeley School of Law and Stanford Law School. Others know him from his many years of professional and academic engagement in the years following the rigorous training he received at the Program on Negotiation (PON) at Harvard Law School, including collaborative work with many PON-affiliated faculty. Each of us knows Grande Lum as an immensely thoughtful, innovative, dedicated, careful, hardworking professional, nationally-recognized for his leadership and stature in the dispute resolution field.

We write to attest to the fact that Mr. Lum has had a significant impact on all of the law schools, ADR firms, and community nonprofit organizations in which he has been a leader, and his impact has extended not only to the improvement of organizational success but also to the students, disputants and stakeholders who have personally benefited from having Mr. Lum as a teacher, mediator or facilitator. In addition to affirming his professional knowledge and interpersonal skill, we wish to communicate our respect for Mr. Lum as a person of integrity and honesty, a colleague who upholds the highest standards of professional and personal ethics in all aspects of his life and work.

Mr. Lum was a clinical professor at the University of California Hastings College of the Law and Director of its Center for Negotiation and Dispute Resolution (CNDR) from 2008 to 2010. As Director, Mr. Lum gained a reputation as a thoughtful and collaborative leader dedicated to mentoring students and creating ties with the rest of the law school faculty. Institutionally, he effectively collaborated with U.C. Hastings Law faculty to introduce alternative dispute resolution as a subject in the law school's doctrinal courses. In addition, Mr. Lum was always mindful of the important role that CNDR could play in the larger community, both through programs to develop lawyers' ADR skills and as part of the Tenderloin neighborhood where Hastings is located, and his leadership raised the profile of CNDR nationally.

Mr. Lum also has extensive management and organizational leadership experience in the private and nonprofit sectors. He served as Managing Director of Accordence Inc., a dispute resolution training firm he founded in 2005. Previously he was one of the founders and a principal of ThoughtBridge, a mediation firm, and a partner with the pathbreaking negotiation training and ADR consulting firm Conflict Management Inc. Mr. Lum taught negotiation as an adjunct professor at U.C. Berkeley School of Law and served as co-manager of the ADR externship program at Stanford Law School. He has served on the boards of directors of the Peninsula Conflict Resolution Center and the Center for Asian American Media, and served on the California State Bar Association Committee on Alternative Dispute Resolution.

As you know, the Justice Department's Community Relations Service is the "peacemaker" for community conflicts and tensions arising from differences of race, color, and national origin. Indeed, CRS is the *only* Federal agency dedicated to assist State and local units of government, private and public organizations, and community groups with preventing and resolving racial and ethnic tensions, incidents, and civil disorders, and in restoring racial stability and harmony.

As conflict resolution scholars and teachers, we understand the unique importance of CRS as the sole community mediation agency within the U.S. Federal Government. We recognize the profound impact that CRS leadership and staff mediators can have on disputants, stakeholders and communities in some of the most complex, sensitive and troubling situations confronting citizens throughout our nation. In this context, we are immensely heartened by the nomination of our esteemed colleague Grande Lum as CRS Director, and we are confident of the excellence and depth of directly applicable conflict resolution experience that he brings to this position. Not only does Mr. Lum possess legal, professional and management expertise at the highest level of professional accomplishment, but in addition his legal career has been dedicated to the practice and teaching of negotiation, mediation, and conciliation.

In sum, Mr. Lum brings to this position the optimal professional and intellectual background and record of achievement, along with his nationally-recognized reputation for the highest standards of professional expertise, integrity and interpersonal skills. We therefore urge the Senate to promptly confirm the appointment of Grande Lum as the next Director of the Community Relations Service of the United States Department of Justice.

Respectfully Submitted,

THE FOLLOWING INDIVIDUALS HAVE SIGNED ON TO THIS LETTER IN THEIR INDIVIDUAL CAPACITIES. CURRENT AND PRIOR LISTED AFFILIATIONS ARE SOLEY NOTED FOR PURPOSES OF IDENTIFYING THEIR RELEVANT BACKGROUND OR PROFESSIONAL EXPERIENCE.

Cynthia Alkon
Associate Professor of Law
Texas Wesleyan University School of Law

Hiro N. Aragaki
Associate Professor of Law
Loyola Law School

Richard Birke
Professor of Law and Director, Center for Dispute Resolution
Willamette University College of Law

Robert C. Bordone
Thaddeus R. Beal Clinical Professor of Law
Director, Harvard Negotiation & Mediation Clinical Program
Harvard Law School

Elizabeth Borgwardt
Richard and Ann Pozen Visiting Professor of Human Rights, University of Chicago, Spring 2012
Associate Professor of History and Associate Professor of Law (by courtesy),
Washington University in St Louis
Fellow of the Center for Advanced Study in the Behavioral Science, Stanford University
Visiting Assistant Professor of Law, Stanford University
Fellow of the Stanford Center on Conflict and Negotiation

Timothy M. Dayonot
Senior Lecturer, Haas School of Business, University of California at Berkeley
Lecturer, Goldman School of Public Policy, University of California at Berkeley
Former Visiting Lecturer, Boalt Hall School of Law, University of California at Berkeley
Former member, Mediation and Alternative Dispute Resolution Committee, State Bar of California

Susan Dustin
Assistant Professor
Management & Marketing Department
Southern Illinois University Edwardsville

Clark Freshman
Professor of Law, University of California Hastings College of the Law

Brian Ganson
Senior Researcher, Africa Centre for Dispute Settlement, and Lecturer in Negotiation
University of Stellenbosch Business School
Adjunct Assistant Professor of International Negotiation
The Fletcher School of Law and Diplomacy, Tufts University, 2002-2010

Jonathan D. Greenberg
Lecturer in Law, Stanford Law School
Lecturer in Public Policy, Stanford University
Negotiation Teaching Team Founding Member, Stanford Gould Center for Conflict Resolution
Affiliated Scholar, Stanford Center on International Conflict and Negotiation
Former Director of International Graduate Studies, Stanford Law School, 2002-2005
Former Academic Director, Stanford Program in International Legal Studies, 2000-2005

Henry L. Hecht
Lecturer in Residence
University of California, Berkeley
School of Law (Boalt Hall)

Art Hinshaw
Clinical Professor of Law and Director, Lodestar Dispute Resolution Program
Sandra Day O'Connor College of Law, Arizona State University
Senior Fellow, Center of the Study of Dispute Resolution, University of Missouri School of Law
Former President, American Association of Law Schools, Alternative Dispute Resolution Section, 2010
Former Chair, ABA Dispute Resolution Section, Legal Education Committee, 2007-2009

Carol Izumi
Clinical Professor of Law
Acting Associate Director of the Center for Negotiation and Dispute Resolution
University of California Hastings College of the Law
Chair, AALS Section on ADR 1996-97
Chair, AALS Section on Clinical Legal Education, 2002-2003

Russell Korobkin
Professor of Law
Faculty Director, Negotiation and Conflict Resolution Program
UCLA School of Law

John Lande
Isidor Loeb Professor, University of Missouri School of Law
Senior Fellow, Center for the Study of Dispute Resolution, University of Missouri School of Law
Director, LLM Program in Dispute Resolution, University of Missouri School of Law, 2000-2001
Member, Council of the ABA Section of Dispute Resolution, 2004-2010.

Lela Porter Love
Professor of Law and Director, Kukin Program for Conflict Resolution
Director, Cardozo Mediation Clinic
Benjamin N. Cardozo School of Law
ABA Section of Dispute Resolution, 2009

Janet Martinez
Senior Lecturer, Stanford Law School
Director, Gould Center for Conflict Resolution, Negotiation and Mediation Program
Co-Director, Stanford Law School Alternative Dispute Resolution Research Initiative
Senior Consultant, Consensus Building Institute, Cambridge, Massachusetts
Board, California Dispute Resolution Council

Melissa Manwaring
Lecturer, Babson College
Associate Editor, *Negotiation Journal*
Director of Curriculum Development, Program on Negotiation at Harvard Law School (2002-2009)

Michael Moffitt
Philip H. Knight Dean
University of Oregon School of Law
1221 University of Oregon

Robert H. Mnookin
Williston Professor of Law
Chair, Program on Negotiation
Director Harvard Negotiation Research Project
Harvard University

Melissa Nelken
Professor of Law, University of California Hastings College of the Law
Acting Director and Faculty Chair, U.C. Hastings Center for Negotiation and Dispute Resolution

Linda Netsch
Lecturer on Law, Harvard Law School
Lecturer in Law, Stanford Law School
Negotiation Teaching Team Founding Member, Stanford Gould Center for Conflict Resolution,
Former Judge Advocate General, US Air Force, 1992-1998

Bruce M. Patton
Co-Founder and Distinguished Fellow, Harvard Negotiation Project
Co-Founder, Program on Negotiation at Harvard Law School
Co-Founder and Director, Vantage Partners, LLC

Robert Ricigliano
Director, Institute of World Affairs
University of Wisconsin, Milwaukee

Andrea K. Schneider
Professor of Law and Director of the Dispute Resolution Program
Marquette Law School

Douglas Stone
Lecturer on Law, Harvard Law School
Partner, Triad Consulting Group, Inc.

Anthony Wanis-St. John
Assistant Professor, International Peace and Conflict Resolution
American University, School of International Service
Advisor to Foreign Service Institute, U.S. Dept of State
Senior Advisor to the United States Institute of Peace, Academy of International Conflict Management and Peacebuilding

Nancy A. Welsh
William Trickett Faculty Scholar and Professor of Law, Penn State University, Dickinson School of Law
Member, American Bar Association Dispute Resolution Section Council, 2008-present
Chair, Alternative Dispute Resolution Section of the Association of American Law Schools, 2009

NOMINATION OF FRANK PAUL GERACI, JR., OF NEW YORK, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK; FERNANDO M. OLGUIN, OF CALIFORNIA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; MALACHY EDWARD MANNION, OF PENNSYLVANIA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA; MATTHEW W. BRANN, OF PENNSYLVANIA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA; AND CHARLES R. BREYER, NOMINEE TO BE A MEMBER OF THE U.S. SENTENCING COMMISSION

WEDNESDAY, JUNE 27, 2012

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

The Committee met, pursuant to notice, at 10:01 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Dianne Feinstein, presiding.

Present: Senators Feinstein, Schumer, and Grassley.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Senator Toomey walked in and dead silence in the room. What a tribute. We walked in and everybody just kept going.

Senator TOOMEY. Madam Chairman, I am sure it is because people saw you pick up the gavel.

Senator FEINSTEIN. Oh, yes. Good morning, everyone. It is my privilege to preside at today's hearing at which the Judiciary Committee will hear testimony from two distinguished nominees from California as well as nominees from New York and Pennsylvania. So congratulations to all of the nominees, and I would like to welcome you and your families to Washington.

Federal judges play an important role in interpreting the Constitution and Federal law, deciding actual disputes involving real people, businesses, and governments. And they serve for life once confirmed by the Senate. So it is vital that we do our due diligence ensuring that nominees have the qualifications, experience, and temperament to serve on the Federal bench.

Before the Committee today are four nominees to the United States district courts. The nominees are Fernando M. Olguin, a nominee to the United States District Court for the Central District of California, whom I recommended to President Obama; Frank Paul Geraci, a nominee for the United States District Court for the Western District of New York; and Malachy E. Mannion and Matthew Brann, both nominees to the United States District Court for the Middle District of Pennsylvania.

The Committee will also consider the nomination of a good friend of mine, actually, Judge Charles Breyer, known as Chuck Breyer, to serve on the United States Sentence Commission.

I thank my colleagues, particularly Senator Grassley, who is religious and constant in being here. It is very much appreciated. I know their schedules are busy, so if I may, I would like to ask if you have some opening comments, and then I will turn to our witnesses.

Senator GRASSLEY. I am going to put my entire statement in the record.

Senator FEINSTEIN. OK.

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

Senator FEINSTEIN. Senator Schumer is not yet present, but I am sure he will be. And, Senator Toomey, you are present, so perhaps you would like to make your statement at this time.

PRESENTATION OF MALACHY EDWARD MANNION, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, AND MATTHEW W. BRAN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, BY HON. PATRICK J. TOOMEY, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator TOOMEY. Thank you, Madam Chairman. Good morning, Chairman Feinstein, Ranking Member Grassley, and other members of the Committee. Thank you very much for providing me with this opportunity to introduce Matthew Brann and Judge Mal Mannion before the Committee. Following my and Senator Casey's recommendation, President Obama nominated these two very qualified individuals for the Federal bench on May 17th, and I appreciate very much your timely scheduling of this hearing today.

I want to take a brief moment to mention how pleased I am to be working closely with you colleague Senator Casey. He and I continue to work in a truly bipartisan fashion to fill the remaining Federal district vacancies in Pennsylvania. Last October, the Senate confirmed three nominees for the Western and Middle District of Pennsylvania who soon thereafter took their places on the Federal bench.

Today's hearing marks yet another important step forward in our collaborative efforts to fill the seven remaining district court vacancies across the Commonwealth of Pennsylvania.

Having extensively reviewed each of today's nominees' records and having spoken with each at length, I am very confident that they possess the crucial qualities necessary to be outstanding Federal judges: intelligence, wisdom, integrity, a commitment to public service, impartiality, justice, and respect for the limited role of the judiciary.

Since my colleague Senator Casey will provide a more detailed background on the nominees, I will just take a moment to share a few additional thoughts.

As you will hear, Mr. Brann is an accomplished and very well respected lawyer who possesses the requisite judicial acumen and the temperament for the judiciary. The American Bar Association has given Mr. Brann a unanimous qualified rating, and for good reason. Should he be confirmed, he would be an asset to the bench and a welcome and needed addition to the Federal court in Williamsport, Pennsylvania.

Judge Mannion is an excellent Federal magistrate judge with a solid record as an attorney in both the public and private sectors. His record reflects a commitment to professionalism, diligence, and his community where he has served as a youth league basketball coach and a longstanding volunteer of Friends of the Poor in Scranton.

Both Pennsylvania nominees before you today are highly accomplished in the field of law and exceedingly qualified for the Federal bench. They are well regarded members of their communities, and they possess an admirable sense of civic duty. Mr. Brann's and Judge Mannion's commitment to being impartial in upholding the law will serve both of them and, more importantly, the Commonwealth of Pennsylvania very well if they are confirmed to the bench. And I hope that the Committee favorably reports both nominees to the full Senate.

Again, thank you very much for providing me the opportunity to say a few words as well as for giving Mr. Brann and Judge Mannion the opportunity to testify before you today.

Senator FEINSTEIN. Thanks very much, Senator Toomey.

I know you have a busy schedule. Feel free to stay or leave as you wish.

Senator TOOMEY. Thank you.

Senator FEINSTEIN. I would now like to ask the senior Senator from the great State of New York, Senator Schumer, to introduce Judge Geraci.

PRESENTATION OF FRANK PAUL GERACI, JR., NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK, BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Well, thank you, and thank you, Madam Chair, because I am so pleased to introduce to the Committee Judge Frank Geraci to serve on the United States District Court for the Western District of New York, which covers the Buffalo and Rochester areas, as well as many other areas.

I also want to welcome people who I am confident he will credit with his being here: his wife, Carla; his two daughters, Kimberley and Pamela; his sons, Matthew and Michael; as well as his son-in-law, Adam; and his sister-in-law, Kristin. And I would just like them to stand so we can welcome you and everyone can see, Judge, what a nice family you have.

Senator FEINSTEIN. Good.

[Applause.]

Senator SCHUMER. Now, the Federal district court in New York State is among the oldest in the Nation, and in 1814, Congress divided our rapidly growing State into Northern and Southern Districts. In 1900, the Western District was broken off on its own from the other three, and at 112 years old, it is the youngest district in our State.

The Federal judges who sit in Rochester and Buffalo no longer sit in the United States Post Office in Lockport, as they did—I am sure you will be glad to hear that you no longer have to sit there, should you be confirmed, Judge—in the early days of the last century. Rochester and Buffalo are large, vibrant centers of the commercial and legal community of the State, and Judge Geraci has been an important and respected part of this community his entire life.

Judge Geraci was born in Rochester, graduated from McQuaid Jesuit High School, and left long enough to earn both his undergraduate and law degrees from the University of Dayton in Ohio—staying within the Jesuit fold, I might add. He returned to Rochester and immediately leapt into public service, working for 5 years in the Monroe County District Attorney's Office and rising to become chief of the Special Investigations Bureau. Judge Geraci then contributed another 4 years of distinguished service to Rochester as an Assistant U.S. Attorney in the Western District, serving in Rochester. In 1988, he left and formed his own law firm.

Madam Chair, I was particularly impressed, as I got to know Judge Geraci, by the fact that while he was in private practice, he also served as a mediator and expert in alternative dispute resolution. I have come to believe, as a Senator from a State with among the heaviest caseloads in the country, that an important part of managing a docket is getting parties to talk to each other before they are starting at an imminent trial date. It is likely that few nominees know this truth better than Judge Geraci. Even besides his dispute resolution experience, he has been a judge in the city of Rochester, Monroe County, and the State Supreme Court for 20 years. And that is our trial court in New York State, the Supreme Court. We named them backward. I do not know why. Maybe next time we will mention the history of that in our opening remarks, not just where the courthouses were.

Taken together, the breadth and depth of his professional experience in both the State and Federal system, civil and criminal, makes him a perfect fit for the Federal bench in Rochester. But Judge Geraci's sterling qualifications do not stop there. His dedication to his community, it is no exaggeration to say, is legendary. When you mention his name, people say, "Wow, what a great choice." I mean, they sort of take a breath because he is so well respected in Monroe County, and Monroe County is small enough

that at least the people of the bar all know him, large enough that it is important and you get varied experience. It has about 800,000 people.

He has worked for the bar and bench on issues such as criminal case management and jury diversification. He has served on boards and governing bodies of the diocese's Catholic schools. He even has conducted court tours, coached girls' basketball, and served as the President of the local Little League.

Madam Chair, Judge Geraci has earned the admiration of the people of the Western District of New York, and in turn they deserve no less than an accomplished lawyer of his intelligence and magnanimity to serve on the Federal bench.

So thanks for your time, thanks for the opportunity to introduce such a fine man, and I hope his nomination by the President will move quickly through this Committee and through the Senate.

Senator FEINSTEIN. Thanks very much, Senator Schumer, for those words. It is greatly appreciated.

What we will do now is proceed and ask the judges to come forward, the nominees to come forward. And then when Senator Casey comes, we will interrupt the testimony and take his statement at that time.

So if we can have the Honorable Frank Geraci on my far left, Honorable Fernando Olguin next, Judge Mannion, Mr. Brann, and Charlie Breyer, Chuck Breyer. Welcome. If you will sit, please, I would like to just introduce a couple of the—the two California people here.

The first one is Judge Olguin, who has a long track record of success as a magistrate judge in the Central District of California.

I have established a bipartisan judicial selection committee in California which reviews nominees for their skill and legal temperament. Judge Olguin earned a strong endorsement from this Committee, and I had the pleasure of interviewing him personally, and I recommended him to the President.

He was born and raised in the Greater Los Angeles community of Azusa. He lives in the Los Angeles area today, and his wife, Heidi-Jane, and their children, Aurelia and Gabriel. I know Judge Olguin's family is here today, and I would like to welcome them to the Senate Judiciary Committee. And if you would stand, we will give you a little welcome, too.

[Applause.]

Senator FEINSTEIN. We have some shyness in the family. That is all right. It is understandable.

The judge earned his bachelor's degree from Harvard in 1985, his law degree and master's degree from UC-Berkeley in 1989. After serving 2 years as a law clerk to a Federal district judge in Arizona, he joined the United States Department of Justice through the Attorney General's Honors Program. From 1991 to 1994, he served as trial attorney in the Civil Rights Division, enforcing numerous Federal statutes, including the Fair Housing Act and the Public Accommodations Act.

He left the Justice Department in 1994, joining the Mexican-American Legal Defense and Education Fund, or MALDEF, as it is known, serving as its national education program director for 1 year, from 1994 through 1995, in Washington, D.C.

He then returned to Southern California as a partner in the law firm of Traber, Voorhees & Olguin, where he practiced civil litigation from 1995 to 2001. At that time he was appointed to serve as a magistrate judge in the Central District, the first Latino to be appointed to that position.

In his 11 years as magistrate judge, Judge Olguin has built an impressive record, managing a docket of hundreds of civil cases at a time. He has issued hundreds of published opinions and nearly 2,000 decisions and orders.

He has become intimately involved with issues of court governance, serving on numerous committees at the district court level and with the Administrative Office of the U.S. Courts in Washington. His success on the bench has led to broad praise for his record, especially from the law enforcement community, which strongly supports his appointment. And I would like to enter into the record letters of support from the chief of the Los Angeles Police Department, Charlie Beck, and the Los Angeles County sheriff, Lee Baca.

I would also like to quickly introduce District Judge Charles Breyer, who is sitting second next to Senator Casey. He is a nominee to the United States Sentencing Commission. Judge Breyer is not only the brother of Supreme Court Justice Stephen Breyer, who, incidentally, was one of the first members of the Sentencing Commission; he is also a good friend of mine. So, Chuck, welcome to the Judiciary Committee.

The Sentencing Commission establishes sentencing policies for the Federal courts, including the Sentencing Guidelines, which must be consulted before pronouncing sentence in nearly every Federal criminal case. Judge Breyer has had a distinguished legal career that has qualified him to serve on this Commission. He graduated cum laude from Harvard in 1963, earned his law degree from UC-Berkeley School of Law in 1966. He then served as law clerk to Chief Judge Oliver Carter in the Northern District of California, after which he served as an assistant district attorney in San Francisco, trying over 50 felony trials from 1967 to 1973. He also served as a captain in the United States Army's Judge Advocate General Corps from 1969 to 1973, prosecuting and defending military courts-martial.

From August 1973 to November 1974, he served as Assistant Special Prosecutor to the Watergate Special Prosecution Force in Washington, D.C. He joined the firm now known as Coblentz, Patch, Duffy & Bass in 1974, becoming a partner in 1975 and serving until 1979, when he became chief assistant district attorney in San Francisco.

In 1980, he rejoined the Coblentz law firm, working on complex litigation until his appointment to the bench by President Clinton and his confirmation by the Senate by voice vote in 1997.

Over the course of his 15-year judicial career, Judge Breyer has imposed over 640 criminal sentences. He served on the front lines as a district judge during the time in which the Sentencing Guidelines have gone from being mandatory to being advisory. After the Supreme Court's decision in *Blakely* v. *Washington* and *United States* v. *Booker*, which essentially caused a big change in how dis-

trict judges impose sentences and how the appellate courts review them.

Judge Breyer's focus on sentencing issues extends beyond the courtroom. In 2009, he testified before the Sentencing Commission about the role of the guidelines and the Sentencing Commission, as well as sentencing process from a judge's perspective. In 2006, he served as Chair of the Ninth Circuit's Committee on Post *Blakely* Sentencing. He is also a member of the American College of Trial Lawyers, serving on its task force on sentencing and its Federal Rules of Criminal Procedure Committee.

In short, he is eminently qualified to serve on the Sentencing Commission, and I have no doubt he will serve with distinction.

I would like to close on a personal note. When I introduced Judge Breyer before this Committee 15 years ago, I said he was, and I quote myself, "quite simply an outstanding man, a proven leader, and a person of integrity." I stand by that today.

I would now like to turn to Senator Casey from the great State of Pennsylvania, and, Senator, if you would like to make your introductory comments now.

PRESENTATION OF MALACHY EDWARD MANNION, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, AND MATTHEW W. BRAN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, BY HON. ROBERT P. CASEY, JR., A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator CASEY. Senator Feinstein, thank you very much, and, Senator Grassley, good to be with you. I am honored to appear before the Judiciary Committee. I do not have the chance to do this very often, and I am grateful. And I am also sorry that I am running late. I know that Senator Toomey, my colleague from Pennsylvania, was here earlier and said——

Senator FEINSTEIN. Nice things.

Senator CASEY. He said nice things about our nominees, and I am both honored and somewhat intimidated to be at this table with the brain power and the commitment to public service.

I will say a little bit about both of our nominees, one of whom I know better than the second nominee, but I want to congratulate Malachy Mannion—I have known him for many years as "Mal" Mannion, if you would permit me that informality—just for today maybe—and Matthew Brann. When you look at both of their biographies, their resumes, so to speak, I think you see in those resumes, first of all, a commitment to excellence, academic excellence, and excellence in terms of being advocates for those they represent, whether as a lawyer or as a prosecutor. And I think you also see in both of our nominees for the District Court for the Middle District of our State, you see also not just that commitment to excellence and that ability, but also integrity, which is so essential if someone is going to serve with honor and distinction as a judge. So I can say that about both of them, and I want to congratulate both of them for getting to this point. I know it is a long process, and they have been very committed and patient. I want to commend their families as well. And in a special way, in addition to highlighting Matthew Brann's record as a lawyer, as an advocate,

and as someone who has been very active in his community, has handled a wide variety of cases, and has a great educational background, I want to thank Matthew for his commitment and for his willingness to put himself forward to be a Federal judge.

I will provide a little more detail about Mal Mannion. I would say on a personal note I have known him for most of my life. I do not remember a point in my life when I did not know him. He was in school with my sister, who was a better student than I was, and I am not sure I should give Mal credit for getting her through school, but she did well.

Let me just provide some brief highlights, and then I will turn over the microphone.

Mal Mannion has been a magistrate judge for more than a decade, starting in 2001. He was an Assistant United States Attorney for two time periods, and if my math is right, that is about 11 years as an Assistant U.S. Attorney in the Middle District of Pennsylvania. As a prosecutor, he served as chief of the Organized Crime Drug Enforcement Task Force. He had spent some time in private practice as well, and we are very proud of his record, and we are also very proud to speak on behalf of both Mal Mannion and Matthew Brann.

Senator Feinstein, thank you very much for this opportunity.

Senator FEINSTEIN. And I thank you, Senator Casey. You are welcome to remain with us if you wish, but I know we all have busy days. So if you would like to be excused, so be it. And thank you for chairman.

We will now proceed with brief statements from each of the nominees who are present at the table, and, Judge Geraci, why don't we begin with you. Please make your comments. If you could keep them within 5 minutes, then we can have a question-and-answer period.

If you would all stand, please, I am going to swear you in. Do you affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Judge GERACI. I do.

Judge OLGUIN. I do.

Judge MANNION. I do.

Mr. BRANN. I do.

Judge BREYER. I do.

Senator FEINSTEIN. Thank you.

STATEMENT OF FRANK PAUL GERACI, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

Judge GERACI. Thank you, Senator Feinstein, Senator Grassley, for convening this meeting. I want to thank Senator Schumer for his very nice remarks in the beginning of this session, and also thank him for the confidence he has shown by recommending me to the President.

I certainly want to thank President Obama for the nomination and sending that to the U.S. Senate.

I am not going to take time to introduce my family since Senator Schumer did so in his remarks, and I certainly appreciate that. But I do want to thank them for coming. My four children actually traveled 400 miles last night, arriving around midnight, and my

son Matt spent his 18th birthday 6 hours in a car, so I appreciate them doing that.

In addition, I know that there are a number of friends and family that are watching this webcast, and I appreciate their support and their interest.

Thank you.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Frank Paul Geraci, Jr.

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

   United States District Judge for the Western District of New York

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

   Monroe County Court
   Room 545 – Hall of Justice
   99 Exchange Boulevard
   Rochester, New York 14614

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

   1951; Rochester, 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.

   1974 – 1977, University of Dayton Law School; J.D., 1977
   1969 – 1973, University of Dayton; B.A., 1973

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

   1999 – Present
   Monroe County Court
   New York State Unified Court System
   Room 545 – Hall of Justice
   99 Exchange Boulevard

Rochester, New York 14614
Monroe County Court Judge (1999 – Present)
Acting Supreme Court Justice (2005 – Present)

1992 – 1998
Rochester City Court
New York State Unified Court System
Room 6 – Hall of Justice
99 Exchange Boulevard
Rochester, New York 14614
Rochester City Court Judge

1988 – 1992
United States Arbitration and Mediation of Upstate New York
235 Park Avenue
Rochester, New York 14606
Co-Owner

1987 – 1992
Law Firm of Geraci and Feldman
235 Park Avenue
Rochester, New York 14606
Partner

1987 – 1992
City of Rochester
42 South Avenue
Rochester, New York 14604
Parking Violations Hearing Examiner

1985 – 1990
St. John Fisher College
3690 East Avenue
Rochester, New York 14618
Adjunct Professor

1983 – 1987
United States Attorney's Office
Western District of New York
100 State Street
Rochester, New York 14614
Assistant United States Attorney

1978 – 1983
Monroe County District Attorney's Office
47 South Fitzhugh Street

Rochester, New York 14614
Special Assistant District Attorney

1977 – 1978
Monroe County Democratic Committee
1150 University Avenue
Rochester, New York 14604
Executive Assistant to Chair Laurence Kirwan

1975 – 1977
Legal Aid of Western Ohio (formerly Greene County Legal Aid)
333 West First Street, Suite 500A
Dayton, Ohio 45402
Law Student Intern

Summers 1975, 1976
City of Rochester Bureau of Employee Relations
30 Church Street
Rochester, New York 14614
Summer Personnel Coordinator

1973 – 1974
Rochester City Court
New York State Unified Court System
Room 6 – Hall of Justice
99 Exchange Boulevard
Rochester, New York 14614
Deputy Clerk

Other Affiliations (uncompensated):

2007 – 2012
Monroe County Bar Foundation
1 West Main Street, 10th Floor
Rochester, New York 14614
Director

2004 – 2011
Eastside Little League
P.O. Box 10834
Rochester, New York 14610
President (2005 – 2011)
Vice-President (2004 – 2005)

2003 – 2009
University of Dayton National Alumni Association

300 College Park Drive
Dayton, Ohio 45469
President (2006 – 2009)
President-Elect (2003 – 2006)
Board of Directors, Member (2003 – 2009)

2006 – 2009
University of Dayton
300 College Park Drive
Dayton, Ohio 45469
Trustee

2001 – 2003
Monroe County Bar Association
1 West Main Street, 10th Floor
Rochester, New York 14614
Trustee

1993 – 2000
Our Lady of Mercy High School
1437 Blossom Road
Rochester, New York 14610
Chair, Board of Governors (1996 – 1998)
Member, Board of Governors (1993 – 2000)

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.

   McQuaid Jesuit Knight's Roundtable Award, McQuaid Jesuit High School (2010)

   Cumminelli Youth Service Award, Center for Youth (2009)

   Champion for Peace Award, Center for Dispute Settlement (2008)

   The Nathaniel Award, The Daily Record (2006)

   Distinguished Alumni Award, University of Dayton Alumni Association (2005)

Distinguished Jurist Award, Center for Dispute Settlement (1998)

John Peter Medaille Award, Diocese of Rochester (1997)

University of Dayton Law School Scholarship (1974 – 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 Judges Association

Monroe County Bar Association
- Monroe County Bar Foundation
  - Director (2009 – 2012)
- Membership Committee (2009)
- Memorial Committee (2004 – 2012)
- Law Day Committee (2004 – 2009)
- Nominating Committee (2003 – 2005)
- Board of Trustees (2001 – 2003)
- Jury Diversification Project (1996)
- Justice Committee, Chair (1994)
- Courts Committee and Bench & Bar Committee (1993)
- Alternative Dispute Resolution Committee (1989)
- Young Lawyers Section (1979)

New York State Association of City Court Judges

New York State District Attorney's Association

Youth Courts Initiative Advisory Committee for a Youth Court Recommended Practices Manual (2010)

10. **Bar and Court Admission**:

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

New York, 1978

There has been no lapse in membership.

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

United States Court of Appeals for the Second Circuit, 1984
United States District Court for the Western District of New York, 1981

There have been no lapses in membership.

11. **Memberships**:

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

Boy Scouts of America
Law Explorers Program, Mock Trial Judge (1992 – Present)

Catholic Youth Organization
Assistant Coach, 5th and 6th Grade Girls' Basketball (1991 – 1994)
Assistant Coach, High School Girls' Basketball (1995 – 1996)

Center for Dispute Settlement
Long Range Planning & Advisory Committee (1995)
Small Claims & Mediation Program (1993 – 1995)

City Court of Rochester Internship Program (1995 – 1998)

County of Monroe Graduated Restrictions Advisory Board (1994 – 1996)

County of Monroe Open Appointments Board (1989 – 1991)

Eastside Little League
President (2005 – 2011)
Vice-President (2004 – 2005)
Assistant Coach (1994 – 2011)

Kids Voting USA (2009)
Local Exploratory Committee Chair

Law Enforcement Coordinating Committee, Chair (1983)

Monroe County Catholic Schools
St. John's/Blessed Sacrament School Board (1984 – 1987)
Northeast Cluster Planning Board (1985 – 1988)
Northeast Quadrant Planning Board (1985 – 1990)

Southeast Quadrant Planning Board (1990 – 1993)
Chair, Southeast Quadrant Governing Board (1991 – 1993)
Interim Catholic School Board of Monroe County (1992 – 1993)
Bishop's Stewardship Council, Diocese of Rochester (1993 – 1995)
Diocese of Rochester Catholic School Board of Monroe County (1993 – 1995)

Monroe County Court Case Management Committee (2002 – 2003)

Monroe County District Attorney's Office, Interview Committee (1979)

Monroe County Health Association (1979)

Monroe County Jury Board (2010 – Present)

Monroe County Sheriff's Office Senior Citizen's Academy (2002 – Present)

Monroe County Traffic Safety Board (1978)

National Center for Missing & Exploited Children – New York Branch Board Member (2004 – 2005)

National Council on Alcoholism (1979)

9/11 Commemoration Committee (2002 – Present)

Our Lady of Mercy High School, Board of Governors (1993 – 2000)
Chair (1996 – 1998)

Rochester Challenge Against Violence (Summer 1994)

Rochester/Monroe County Domestic Violence Consortium (1993)

Rochester Police Department, Clinton Section Liaison (1979)

Rochester Safety Council, Drinking Driver Task Force (1978)

Rochester Teen Court (1997 – Present)
Founding Committee (1997)
Presiding Judge (1997 – Present)
Chair, Advisory Board (1997 – Present)

Russian-American Rule of Law Consortium (2004 – Present)

7th Judicial District Committee to Promote Trust and Confidence in the Legal System, Co-Chair (1999 – 2000)
Subcommittee on Youth Violence, Chair (1998 – 2000)
Subcommittee on Teen Court, Chair (1998)
Civic Center Plaza Renovation Subcommittee, Chair (2000)

Task Force Against Violence (1994 – 1996)

United States District Court for the Western District of New York, Merit Selection Committee for United States Magistrate Judges (2002)

University of Dayton
Board of Trustees, Member (2006 – 2009)
National Alumni Association, President (2006 – 2009)
National Alumni Association, President-Elect (2003 – 2006)
National Alumni Association, Board of Directors, Member (2003 – 2009)
Rochester Alumni Chapter President (1994 – 2003)
Rochester Alumni Chapter Member (1994 – Present)

Volunteer Legal Service Project (1990 – 1992)

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 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.

Frank P. Geraci, Jr., Letter to Hall of Justice and Public Safety Building Employees, Seventh Judicial District Newsletter, Jan. 11, 2011. Copy supplied.

Frank P. Geraci, Jr., Letter to the Editor, *A Gentleman on the Mound*, DEMOCRAT AND CHRONICLE, June 5, 2010. Copy supplied.

Frank P. Geraci, Jr., Letter to the Editor, *City, District Recognize Value of Teen Court*, DEMOCRAT AND CHRONICLE, Feb. 16, 2009, at A9. Copy supplied.

Frank P. Geraci, Jr., Biography for the New York State Judicial Candidate Voter Guide, 2008. Copy supplied.

Frank P. Geraci, Jr., Letter to the Editor, *Ask the Expert*, DEMOCRAT AND CHRONICLE, June 10, 2007. Copy supplied.

Frank P. Geraci, Jr., *Speaking Out. Race for Rochester School Board and State Supreme Court Justice*, DEMOCRAT AND CHRONICLE, Oct. 18, 2004. Copy supplied.

Frank P. Geraci, Jr., Letter to the Editor, *Collaborate to Quell Juvenile Violence*, DEMOCRAT AND CHRONICLE, June 11, 2000, at 25A. Copy supplied.

Frank P. Geraci, Jr., *"Dayton Lawyer" – Title of Distinction*, 25 U. DAYTON L. REV. vii, xiv (2000). Copy supplied.

Frank P. Geraci, Jr., *Refreshing Day in City Court*, BRIEFLY (Seventh Judicial District Newsletter), July 31, 1998. Copy supplied.

Frank P. Geraci, Jr., Letter to the Editor, *This Beats New Jail Cells*, DEMOCRAT AND CHRONICLE, Sept. 17, 1991, at 19A. Copy supplied.

Frank P. Geraci, Jr., Letter to the Editor, *Act Now to Save Catholic Schools*, TIMES-UNION, Feb. 19, 1990. Copy supplied.

Frank P. Geraci, Jr., Letter to the Editor, *NO: Secrecy Aids Unbiased Decisions*, DEMOCRAT AND CHRONICLE, June 27, 1988. Copy supplied.

Frank P. Geraci, Jr., Letter to the Editor, *Violent Crime*, DEMOCRAT AND CHRONICLE, 1984. 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.

Recommended Practices for Youth Courts, Center for Court Innovation, Mar. 2010. Copy supplied.

Signatory to the fair campaign pledge circulated by the Fair Election Practices Committee of the Interfaith Alliance of Rochester and the League of Women Voters/Rochester Metro Area, 2008. I have been unable to obtain a copy of the pledge, but press coverage is supplied.

Monroe County Court Case Management Advisory Committee Report, Mar. 2003. Copy supplied.

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

None.

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

The list that follows represents my best efforts to identify speeches and remarks that I have given. There may be, however, other speeches or remarks that I am unable to recall or identify.

I have been involved in four political races, all for judicial office (1991 for Rochester City Court Judge; 1998 for Monroe County Court Judge; 2004 for New York State Supreme Court; 2008 for re-election to Monroe County Court). During those campaigns I made hundreds of appearances before community groups and political organizations. I have no notes, transcripts, or recordings from these appearances with the exception of two television commercial spots in 1998 as part of my campaign to be elected to the Monroe County Court bench, and two television commercial spots in 2004 as part of my campaign to be elected to the New York State Supreme Court bench (DVD supplied). As a judicial candidate my remarks were limited to my professional qualifications and providing information about the operations of the courts.

December 7, 2011: Presided over the Second Chance Call-in with the Rochester Police Department, United States Department of Justice, and the Monroe County Department of Probation – Community Services, Rochester, New York. I have no notes, transcript, or recording. The Rochester Police Department is located at 185 Exchange Boulevard, Rochester, New York 14614.

November 4, 2011: Gave a tribute to John Francis Redmond, Esq. during a Monroe County Bar Association memorial service, Rochester, New York. Remarks supplied.

October 27, 2011: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or recording. The Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

May 12, 2011: Presided over the Second Chance Cease Fire Call-in with the Rochester Police Department, United States Department of Justice, and the Monroe County Department of Probation – Community Services, Rochester, New York. Remarks supplied.

November 5, 2010: Gave a tribute to Reuben K. Davis, Justice Supreme Court, during a Monroe County Bar Association memorial service, Rochester, New York. Remarks supplied.

October 18, 2010: Acceptance remarks at the McQuaid Jesuit High School Roundtable Awards Ceremony, Rochester, New York. Remarks supplied.

September 14, 2010: Spoke on "Restorative Justice" to the congregation of Baptist Temple. I have no notes, transcript, or recording. The Baptist Temple is located at 1101 Clover Street, Rochester, New York 14610.

July 17-24, 2010: Hosted the Russian Delegation, Open World Program, Rochester, New York. Generally, I spoke about the New York State Court System, criminal courts and jury trial procedures. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue. SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

May 8, 2010: Gave presentation entitled, "Maximizing the Efficiency of the Prosecution Function," Abu Dhabi, UAE. Handout and PowerPoint slides supplied.

April 15, 2010: Presented on the Monroe County Criminal Court during a judges' panel held by the Young Lawyers Section of the Monroe County Bar Association. I have no notes, transcript, or recording. The Monroe County Bar Association is located at Telesca Center for Justice. One West Main Street, 10th Floor, Rochester, New York 14614.

April 8, 2010: Gave presentation entitled, "Exploring and Expanding Referral Services," at the New York State Youth Court Conference held by the New York State Bar Association, Albany, New York. Outline supplied.

November 6, 2009: Gave a tribute to Roderick MacKearnin Cunningham, Esq. during a Monroe County Bar Association memorial service, Rochester, New York. Remarks supplied.

October 20, 2009: Spoke to Professor Brian Schiffrin's class at the Rochester Institute of Technology (RIT) on criminal law. I have no notes, transcript, or recording. RIT is located at 27 Lomb Memorial Drive, Rochester, New York 14623.

September 15, 2009: Gave remarks at the graduation ceremony of the Monroe County Sheriff's Office Court Security Bureau, Class Number 11, Rochester, New York. Remarks supplied.

July 25-August 1, 2009: Hosted and spoke to the Russian Delegation, Open World Program, Rochester, New York. Generally, I spoke about the New York State Court System, criminal courts and jury trial procedures. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue, SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

April 16, 2009: Judged public speaking competition at McQuaid Jesuit High School. I have no notes, transcript, or recording. McQuaid Jesuit High School is located at 1800 South Clinton Road, Rochester, New York 14618.

March 27, 2009: Spoke at the Monroe County Bar Association's Law Over Lunch program on "Bail and Sentencing," Rochester, New York. PowerPoint slides supplied.

March 21, 2009: Conducted a mock trial for the Law Explorers of the Boy Scouts of America, Otetiana Council. I have no notes, transcript, or recording. Boy Scouts of America, Otetiana Council is located at 474 East Avenue, Rochester, New York 14607.

November 7, 2008: Remarks during a Monroe County Bar Association memorial service. I have no notes, transcript, or recording. The Monroe County Bar Association is located at Telesca Center for Justice, One West Main Street, 10th Floor, Rochester, New York 14614.

May 28-29, 2008: Spoke at the Russian-American Rule of Law Consortium Seminar, Novgorod, Russia. PowerPoint slides of my presentation on "Jury Trials and Related Issues" and a set summarizing the events of the seminar are supplied.

May 1, 2008: Spoke at Law Day luncheon of the Monroe County Bar Association regarding the presentation of the Humanitarian Award to Elaine Gallina-Spaull, Rochester, New York. Remarks and press coverage supplied.

May 1, 2008: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

April 19, 2008: Participated in the U.S. Marshals Service's Operation Safe Surrender at the Bethel Christian Fellowship. I have no notes, transcript, or recording. The U.S. Marshals Service is located at United States Courthouse, 100 State Street, Rochester, New York 14614.

April 5, 2008: Spoke to the Russian Delegation at the Open World Program, Rochester, New York. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue, SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

March 29, 2008: Hosted the Russian Delegation at the Open World Program, Rochester, New York. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue, SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

February 11, 2008: Spoke at the Center for Dispute Settlement's Champion for Peace Award Ceremony, Rochester, New York. Remarks and press coverage supplied.

November 1, 2007: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

June 8, 2007: Remarks given at Citirama at the University of Dayton, Dayton, Ohio. Remarks supplied.

May 22, 2007: Conducted a mock trial with students at School #4 of the Rochester City School District. I have no notes, transcript, or recording. School #4 is located at 198 Dr. Samuel McCree Way, Rochester, New York 14611.

April 17, 2007: Presentation on Jury Selection. Dialogue on Freedom at McQuaid Jesuit High School, Rochester, New York. Outline supplied.

March 24, 2007: Conducted a mock trial for the Law Explorers of the Boy Scouts of America, Otetiana Council. I have no notes, transcript, or recording. The Boy Scouts of America, Otetiana Council is located at 474 East Avenue, Rochester, New York 14607.

March 8, 2007: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

January 4, 2007: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

October 13, 2006: Presented on "Negotiations, Plea Bargaining and Civility" to members of Monroe County Bar Association, Rochester, New York. PowerPoint slides supplied.

September 28, 2006: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

September 28, 2006: Gave presentation regarding the court system to students at Olympia High School. I have no notes, transcript, or recording. Olympia High School is located at 1139 Maiden Lane, Rochester, New York 14615.

September 11, 2006: Remembrance Ceremony of September 11, 2001, Rochester, New York. Remarks supplied.

July 29-August 5, 2006: Hosted the Russian Delegation, Open World Program, Rochester, New York. Generally, I spoke about the New York State court system, criminal courts and jury trial procedures. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue, SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

May 25, 2006: Gave presentation on "Judicial Ethics" in Novgorod, Russia, sponsored by the Russian American Rule of Law Consortium. PowerPoint slides supplied.

March 9, 2006: Conducted a mock trial with students at Corpus Christi School, Rochester, New York (now closed). I have no notes, transcript, or recording. Corpus Christi School was located at 546 Oxford Street, Rochester, New York 14607.

October 13, 2005: Spoke to judges from Ukraine, Open World Program, Rochester, New York. Generally, I spoke about the New York State court system, criminal courts and jury trial procedures. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue, SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

October 6, 2005: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

September 29, 2005: Spoke to judges from Kosovo, Open World Program, Rochester, New York. Generally, I spoke about the New York State court system, criminal courts and jury trial procedures. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue, SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

July 30-August 6, 2005: Hosted the Russian Delegation, Open World Program, Rochester, New York. Generally, I spoke about the New York State court system, criminal courts and jury trial procedures. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue, SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

May 12-13, 2005: Gave presentation on Teen and Drug Court in Novgorod, Russia, sponsored by the Russian American Rule of Law Consortium. Remarks and PowerPoint slides supplied.

April 27, 2005: Speakers Series – Monroe County Bar Association. I have no notes, transcript, or recording, but press coverage is supplied. The Monroe County Bar Association is located at One West Main Street, Rochester, New York 14614.

April 27, 2005: Conducted a mock trial with the Law Explorers, Boy Scouts of America, Otetiana Council. I have no notes, transcript, or recording. The Boy

Scouts of America, Otetiana Council is located at 474 East Avenue, Rochester, New York 14607.

April 25, 2005: Spoke to students at McQuaid Jesuit High School regarding Dialogue on Freedom: "The American Jury – We the People in Action," Rochester, New York. Remarks supplied.

March 19, 2005: Conducted a mock trial with the Law Explorers, Boy Scouts of America, Otetiana Council. I have no notes, transcript, or recording. The Boy Scouts of America, Otetiana Council is located at 474 East Avenue, Rochester, New York 14607.

January 13, 2005: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy Clergy on aspects of Monroe County Court. I have no notes, transcript, or recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

November 22, 2004: Spoke with students at School #4 of the Rochester City School District regarding Dialogue on Freedom. I have no notes, transcript, or recording. School #4 is located at 198 Dr. Samuel McCree Way, Rochester, New York 14611.

November 19, 2004: Gave remarks about Gerald J. Album during the Monroe County Bar Association memorial service. I have no notes, transcript, or recording, but press coverage is supplied. The Monroe County Bar Association is located at Telesca Center for Justice, One West Main Street, 10th Floor, Rochester, New York 14614.

September 4-11, 2004: Gave presentation entitled "Ethics" at a Russian-American Rule of Law Consortium Seminar, Novgorod, Russia I have no notes, transcript, or recording. The Russian American Rule of Law Consortium is located at Harborside Professional Building, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

July 6, 2004: Gave presentation to members at the Monroe County Bar Association on Drug Court, Teen Court & Mental Health Court. I have no notes, transcript, or recording. The Monroe County Bar Association is located at One West Main Street, 10th Floor, Rochester, New York 14614.

May 5, 2004: Gave opening remarks during Law Day Awards ceremony sponsored by the Monroe County Bar Association. I have no notes, transcript, or recording, but press coverage is supplied. The Monroe County Bar Association is located at Telesca Center for Justice, One West Main Street, 10th Floor, Rochester, New York 14614.

March 19, 2004: Spoke on the general aspects of the legal system, Open World Program, Rochester, New York. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue, SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

March 14, 2004: Hosted a delegation from Russia, Open World Program, Rochester, New York. Generally, I spoke about New York State Court System, criminal courts and jury trial procedures. I have no notes, transcript, or recording. The event was sponsored by the Open World Leadership Center, 101 Independence Avenue, SE, John Adams Building, Room 144, Washington, DC 20540, and the Russian American Rule of Law Consortium, 85 Prim Road, Suite 202, Colchester, Vermont 05446.

October 23, 2003: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

October 17, 2003: Spoke regarding Dialogue on Freedom at Nazareth Academy Rochester, New York. Remarks supplied.

September 25, 2003: Spoke at the Johanna Perrin Middle School regarding the judicial branch of government, Fairport, New York. Remarks supplied.

September 11, 2003: Spoke at the Commemoration of September 11, 2001 Ceremony on the Monroe County Civic Center Plaza, Rochester, New York. Remarks supplied.

July 1, 2003: Gave remarks at the Rochester Teen Court Volunteer Recognition Ceremony, Rochester, New York. Remarks supplied.

May 18, 2003: Conducted a mock trial with the students of Corpus Christi School (now closed). I have no notes, transcript, or recording. Corpus Christi School was located at 546 Oxford Street, Rochester, New York 14607.

May 2, 2003: Spoke to students at McQuaid Jesuit High School regarding Dialogue on Freedom. Outline and remarks supplied.

March 21, 2003: Spoke at a ceremony honoring Monroe County Court officers, Rochester, New York. Remarks and press coverage supplied.

October 3, 2002: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or

recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

June 27, 2002: Spoke to members of the Monroe County Bar Association at the University of Rochester regarding "The Ten Most Common Errors" of appeals to County Court as the Intermediate Appellate Court. Handout supplied.

June 1, 2002: Spoke on the aspects of Monroe County Court to the congregation of Aenon Baptist Church. I have no notes, transcript, or recording. Aenon Baptist Church is located at 175 Genesee Street, Rochester, New York 14611.

May 14, 2002: Spoke at Irondequoit Council Chamber of Commerce's Annual Student Recognition Awards Luncheon, Rochester, New York. Remarks supplied.

March 22, 2002: Spoke to the Monroe County Paralegals Association regarding procedures in Monroe County Court, Rochester, New York. I have no notes, transcript, or recording. The event was sponsored by the Paralegal Association of Rochester, P.O. Box 20106, Rochester, New York 14602.

March 16, 2002: Presided over a mock trial with the Law Explorers, Boy Scouts of America, Otetiana Council. I have no notes, transcript, or recording. Boy Scouts of America, Otetiana Council is located at 474 East Avenue, Rochester, New York 14607.

December 13, 2001: Spoke to the Monroe County Sheriff's Office Senior Citizens' Police Academy regarding Monroe County Court. I have no notes, transcript, or recording. The Monroe County Sheriff's Office is located at Civic Center Plaza, 130 South Plymouth Avenue, Rochester, New York 14614.

May 16, 2001: Spoke to retired FBI agents regarding the Court System at Oak Hill Country Club, Rochester, New York. Outline supplied.

April 27, 2001: Gave presentation on "Community Policing – Partnerships for Safer Neighborhoods," Osaka, Japan. The event was sponsored by the National Police Academy. Written materials supplied.

April 26, 2001: Gave presentation on "Real People, Consequences, Choices & Hopes," Tokyo, Japan. The event was sponsored by the National Police Academy. Written materials supplied.

March 29, 2001: Conducted a mock trial with 6th graders at St. John the Evangelist School (now closed). I have no notes, transcript, or recording. St. John the Evangelist School was located at 545 Humboldt Street, Rochester, New York 14610.

February 8, 2001: Spoke at the naturalization ceremony held at the Monroe County Office Building, Rochester, New York. Remarks supplied.

January 17, 2001: Spoke at mock trial competition with Pittsford-Mendon Law Explorers, Boy Scouts of America, Otetiana Council. I have no notes, transcript, or recording. The address of Pittsford Mendon High School is 472 Mendon Road, Pittsford, New York 14534.

December 6, 2000: Spoke to McQuaid Jesuit High School students on the court system. I have no notes, transcript, or recording. The address of McQuaid Jesuit High School is 1800 South Clinton Avenue, Rochester, New York 14618.

May 2, 2000: Conducted a mock trial with 6th graders at Corpus Christi School (now closed). I have no notes, transcript, or recording. Corpus Christi School was located at 546 Oxford Street, Rochester, New York 14607.

April 26, 2000: Spoke to Benjamin Franklin High School students visiting the Hall of Justice regarding the New York State Court System, Rochester, New York. I have no notes, transcript, or recording. Benjamin Franklin High School is located at 950 Norton Street, Rochester, New York 14621.

April 2000: Gave presentation entitled, "The Changing Faces of Criminal Justice" at the Youth/Teen Court Conference in Albany, New York. Outline supplied.

March 28, 2000: Spoke to a group of German exchange students visiting the Hall of Justice on general aspects of County Court and the New York State Court System. I have no notes, transcript, or recording. The address of the Hall of Justice is 99 Exchange Boulevard, Rochester, New York 14614.

March 23, 2000: Gave presentation entitled "Presumed Competent" to members of the Monroe County Bar Association, Rochester, New York. Remarks supplied.

March 18, 2000: Conducted a mock trial with 6th graders at St. John the Evangelist School (now closed). I have no notes, transcript, or recording. St. John the Evangelist School was located at 545 Humboldt Street, Rochester, New York 14610.

March 29, 1999: Spoke to the Committee to Promote Public Trust and Confidence in the Legal System on Teen Court, Rochester, New York. Remarks and PowerPoint slides supplied.

October 18, 1998: Gave remarks to the congregation of the Grace Baptist Church, Brockport, New York. Remarks supplied.

September 15, 1998: Spoke to members of the Penfield Rotary Club regarding the Rochester Drug Treatment Court, Penfield, New York. Remarks supplied.

May 28, 1998: Gave acceptance speech in receipt of the Center for Dispute Settlement Distinguished Jurist Award, Rochester, New York. Remarks supplied.

February 27, 1998: Conducted a mock trial with 6th graders at Corpus Christi School (now closed). I have no notes, transcript, or recording. Corpus Christi School was located at 546 Oxford Street, Rochester, New York 14607.

November 1, 1997: Spoke at district meeting of United Methodist Church Women regarding Rochester Teen Court. I have no notes, transcript, or recording. United Methodist Church is located at 31 East Street, Honeoye Falls, New York 14472.

June 9, 1997: Spoke at the official opening of the Teen Court of the City of Rochester, Rochester, New York. Remarks supplied.

December 18, 1995: Gave remarks at the Swearing-In Ceremony of Jonathan Feldman as a United States Magistrate Judge for the Western District of New York, Rochester, New York. Remarks supplied.

September 12, 1995: Spoke to students at the Siena Catholic Academy as part of the blessing and building dedication, Rochester, New York. Remarks supplied.

January 20, 1995: Gave presentation entitled "Constitutional Rights and Obligations and Jury Duty" to a Cub Scout Troop at St. John the Evangelist School. I have no notes, transcript, or recording. St. John the Evangelist School was located at 545 Humboldt Street, Rochester, New York 14610.

December 17, 1993: Gave remarks to students at Brighton High School regarding general judicial duties. I have no notes, transcript, or recording. The address of Brighton High School is 1150 Winton Road South, Rochester, New York 14618.

December 27, 1991: Gave remarks upon taking the oath of office for Judge of the City Court of Rochester, Rochester, New York. Remarks supplied.

February 3, 1986: Guest lecture at St. John Fisher College to students of Professor Joseph Valentino on the subject of federal criminal law, Rochester, New York. I have no notes, transcript, or recording. The address of St. John Fisher College is 3690 East Avenue, Rochester, New York 14618.

October 4-11, 1985: Assisted in teaching a class on "Civil Trial Advocacy" at the United States Attorney General's Advocacy Institute in Washington, D.C. I have no notes, transcript, or recording. The United States Attorney General's Advocacy Institute is located at 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

May 2, 1985: Gave remarks to students of Professor Paul Brule on the subject of White Collar Crime at the Rochester Institute of Technology (RIT). I have no notes, transcript, or recording. The address of RIT is 27 Lomb Memorial Drive, Rochester, New York 14623.

April 2-5, 1985: Assisted in teaching a class on "Civil Trial Advocacy" at the United States Attorney General's Advocacy Institute in Washington, D.C. I have no notes, transcript, or recording. The United States Attorney General's Advocacy Institute is located at 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

April 28, 1983: Spoke at Career Day – Rochester Institute of Technology (RIT) for Professor Paul Brule's class, Rochester, New York. I have no notes, transcript, or recording. The address of RIT is 27 Lomb Memorial Drive, Rochester, New York 14623.

November 16, 1979: Gave remarks to members of the Board of Chemical Dependency at the Park Ridge Hospital (now Unity Health). I have no notes, transcript, or recording. The address of Unity Health is 1555 Long Pond Road, Rochester, New York 14626.

October 11, 1979: Spoke at Drinking Driver Workshop to community members at the Asbury Church. I have no notes, transcript, or recording. The address of Asbury Church is 1050 East Avenue, Rochester, New York 14607.

September 11, 1979: Spoke at meeting with members of Rochester Against Intoxicated Driving (RAID) at the Winton Road Library. I have no notes, transcript, or recording. The address of RAID is 244 South Plymouth Avenue, Rochester, New York 14608.

August 1, 1979: Spoke at meeting with members of RAID at the Jewish Community Center. I have no notes, transcript, or recording. The address of RAID is 244 South Plymouth Avenue, Rochester, New York 14608.

July 9, 1979: Spoke at meeting with members of RAID at the Jewish Community Center. I have no notes, transcript, or recording. The address of RAID is 244 South Plymouth Avenue, Rochester, New York 14608.

June 19, 1979: Spoke at meeting with community members regarding DWI at the Winton Road Library. I have no notes, transcript, or recording. The address of the Winton Road Library is 611 Winton Road North, Rochester, New York 14609.

PERIODIC PRESENTATIONS

1992 – present: I have conducted dozens of tours of the Rochester City Court and Monroe County Court. I have no notes, transcripts, or recordings. Rochester City

Court and Monroe County Court are located at Hall of Justice, 99 Exchange Boulevard, Rochester, New York 14614.

2010 – 2012: Restorative Justice Model for Rochester Teen Court, Rochester, New York. I have given this presentation several times to volunteer mediators for the Rochester Teen Court. Outline supplied.

2008 – 2009: "Chambers Chats." I spoke several times with attorneys who are members of the Greater Rochester Association of Women Attorneys in an informal setting over lunch in chambers. The topics involved the jurisdiction of the court and the role of a judge. I have no notes, transcript, or recordings. The Greater Rochester Association of Women Attorneys is located at 279 Castlebar Road, Rochester, New York 14610.

1998 – 2006: "Bench Trials: An Insider's View on How to Try a Case to the Court." I gave this presentation several times to new attorneys at the Monroe County Bar Association, Rochester, New York. Handout supplied.

2000s: Tips for Court Security Officers in the Monroe County Sheriff's Office, Court Bureau. I have given this presentation several times to classes of newly hired Court Deputies. Outline supplied.

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

Denise M. Champagne, *Geraci's Nod for Federal Judgeship Moves Forward*, THE DAILY RECORD, May 16, 2012. Copy supplied.

Hon. Frank Geraci Nominated to Serve as Federal Judge, WHAM News, May 14, 2012. Video available at http://www.13wham.com/news/local/story/frank-geraci-judge/5RU-eVQUp0K7vH1fpsqBnQ.cspx.

Brian Tumulty, *Monroe County Court Judge Frank Geraci Jr. Nominated for Federal Judgeship*, DEMOCRAT AND CHRONICLE, May 14, 2012. Copy supplied.

Denise M. Champagne, *Schumer Gives Monroe County Court Judge Frank P. Geraci Jr. Nod for Federal Bench*, THE DAILY RECORD, Feb. 9, 2012, at 1. Copy supplied.

Judge Geraci Recommended for Federal Judgeship, WHAM News, Feb. 9, 2012. Video available at http://www.13wham.com/news/local/story/Judge-Geraci-Nominated-For-Federal-Bench/btPmaZGH4UK0JF-rKH4OOA.cspx.

Gary Craig, *Schumer Pushing for Geraci*, DEMOCRAT AND CHRONICLE, Feb. 9, 2012. Copy supplied.

Claire Moody, Guest Essayist, *Teen Court Opens Pilot Program at East High*, DEMOCRAT AND CHRONICLE, Jan. 7, 2012. Copy supplied.

Nancy Fishman, *Youth Court as an Option for Criminal Court Diversion*, 83-JAN N.Y. ST. B.J. 38 (2011). Copy supplied.

Denise M. Champagne, *Monroe County Court Judge Patricia D. Marks to Step Down after 25 Years*, THE DAILY RECORD, Dec. 15, 2010. Copy supplied.

Brighid Leavy, *New York State Judges' Mandatory Retirement Age under Scrutiny*, THE DAILY RECORD, Apr. 16, 2010, at 1. Copy supplied.

Nicholas Fedyk. *Peer Court Sets Teens Back on Track*, DEMOCRAT AND CHRONICLE, Mar. 21, 2009, at 19A. Copy supplied.

Elizabeth Stull, *Election 2008: The Local Judicial Candidates, Frank P. Geraci, Jr., Monroe County Court*, THE DAILY RECORD, October 28, 2008, at 1. Copy supplied.

Dan Goldman, *Monroe County Judge Geraci Has No Opposition in Reelection Bid*, MESSENGER POST, Oct. 17, 2008. Copy supplied.

Alan Morrell, *Clark Calls for Sensitivity*, DEMOCRAT AND CHRONICLE, Oct. 4, 2008, at B1. Copy supplied.

John Boccacino, *City Baseball Makes Slow Strides*, DEMOCRAT AND CHRONICLE, July 6, 2008, at D8. Copy supplied.

Claudia Vargas, *Court Deputy Wins Accolades*, DEMOCRAT AND CHRONICLE, June 11, 2008, at B3. Copy supplied.

Sara Stout Ashcraft, *Commentary: An Intro to Rochester's Teen Court*, THE DAILY RECORD, Jan. 24, 2008. Copy supplied.

Press Release, Connie O. Walker, *Monroe County Court Judge Frank P. Geraci, Jr. Announces Candidacy for Monroe County Court Judge*, Jan. 15, 2008. Copy supplied.

Press Release, Katie Biggie, *Kids Voting Program*, Oct. 1, 2007 (quotes reprinted in multiple outlets). Copy supplied.

News conference about Citirama at the University of Dayton, June 8, 2007. Available press coverage of the conference is listed below:

'A Constantly Magical Place', DAYTON DAILY NEWS SUPPLEMENT, July 29, 2007, at 7. Copy supplied.

Michael Zeigler, *Jurists Hope New Calendar Saves Time*, DEMOCRAT AND CHRONICLE, Mar. 28, 2005, at 1B. Copy supplied.

Michael Zeigler, *Tough Stance On Plea Deals Clogging Courts*, DEMOCRAT AND CHRONICLE, Feb. 5, 2005, at A1. Copy supplied.

Lynn Wesley, *State Supreme Court Race*, YNN, Nov. 3, 2004. Copy supplied.

Radio spot to seek support of voters to serve as a justice of the Supreme Court in the Seventh Judicial District, WXXI Radio's Candidate Free Airtime Show, Oct. 31, 2004. Transcript supplied.

Gary Craig, *Decision 2004*, DEMOCRAT AND CHRONICLE, Oct. 9, 2004, at 3B. Copy supplied.

Press Release, Jill Vigdor-Feldman, *Monroe County Court Judge Frank P. Geraci, Jr. Announces Candidacy for New York State Supreme Court*, Mar. 30, 2004. Copy supplied.

Jim Memmott, *McQuaid, Then and Now*, DEMOCRAT AND CHRONICLE, Mar. 14, 2004, at 1A. Copy supplied.

Joseph Spector, *Democrats, GOP Shift Focus to Local Races*, DEMOCRAT AND CHRONICLE, Mar. 7, 2004, at 1B. Copy supplied.

Joseph Spector, *Local Elections Shape Up Early On*, DEMOCRAT AND CHRONICLE, Feb. 8, 2004. Copy supplied.

Alan Morrell, *City Teen Court Program Honors Peer Volunteers*, DEMOCRAT AND CHRONICLE, July 2, 2003, at B2. Copy supplied.

Carol Ritter, *Charlotte's Angels Keep the Spirit of Giving Alive*, DEMOCRAT AND CHRONICLE, Dec. 20, 2002, at B3. Copy supplied.

Jeffrey Blackwell, *Verdict Sparks Courtroom Fight*, DEMOCRAT AND CHRONICLE, Sept. 19, 2002, at 1B. Copy supplied.

Jim Memmott, *Remembering 9/11 One Year Later*, DEMOCRAT AND CHRONICLE, Sept. 12, 2002, at 1A. Copy supplied.

Gary Craig, *Troubling Questions in Child's Death*, DEMOCRAT AND CHRONICLE, June 3, 2001, at 1A. Copy supplied.

James Goodman, *Geraci Takes County Bench*, DEMOCRAT AND CHRONICLE, Nov. 4, 1998, at A13. Copy supplied.

Press Release, Connie O. Walker, *Rochester City Court Judge Announces Candidacy for Monroe County Court Judge*, Mar. 2, 1998. Copy supplied.

Peers and Punishment, TIMES-UNION, Jan. 9, 1997, at 6A. Copy supplied.

Michael Zeigler, *Owner of Illegal Gun Pays for Anti-Violence Billboard*, DEMOCRAT AND CHRONICLE, Apr. 1994, at B1. Copy supplied.

Greg Livadas, *Castro and Geraci Win 10-Year City Court Seats*, TIMES-UNION, Nov. 6, 1991, at B2. Copy supplied.

John Riley, *Indictment Puts On the Pressure*, DEMOCRAT AND CHRONICLE, Dec. 7, 1990, at A1. Copy supplied.

Patricia Braus, *M.D. Still Practiced as Probes Dragged On*, TIMES-UNION, Nov. 23, 1987, at A5. Copy supplied.

Todd Lighty, *Thomas Seeks Second Race after King Declared Winner*, DEMOCRAT AND CHRONICLE, Sept. 1987, at B1. Copy supplied. I have been unable to obtain a copy of the second page.

Warren White, *Dr. Stern Guilty*, TIMES-UNION, July 15, 1987, at B1. Copy supplied.

John O'Brien, *Doctor Accused of Illegally Dispensing Codeine*, DEMOCRAT AND CHRONICLE, June 26, 1987, B1. Copy supplied.

Warren White, *Physician Accused of Faking Prescriptions Faces State Prison*, TIMES-UNION, June 27, 1987, at B1. Copy supplied.

Rochester, ARKANSAS DEMOCRAT-GAZETTE, Jan. 7, 1987. Copy supplied.

Warren White, *'Majority' of Bank Robberies Linked to Drugs*, TIMES-UNION, 1987. Copy supplied.

In Rochester, TIMES-UNION, Dec. 19, 1986, at B14. Copy supplied.

Self-Styled Mercenary Sentenced to 25 Years in Prison, ASSOCIATED PRESS, Nov. 19, 1986 (reprinted in multiple outlets). Copy supplied.

John O'Brien, *Dickerson is Sentenced to 25 Years*, DEMOCRAT AND CHRONICLE, Nov. 1986, at B1. Copy supplied.

'Paladin' Gets 25 Years for Escape Plot, publication unknown, Nov. 1986. Copy supplied.

John O'Brien, *City Man Accused in Murder Plot*, DEMOCRAT AND CHRONICLE, Aug. 13, 1986, at B1. Copy supplied.

Dolores Orman, *Rochesterian Indicted in Spokane Murder Plot*, TIMES-UNION, Aug. 13, 1986, at B2. Copy supplied.

Associated Press, *Alleged Jailbreak Conspirators Could Face Long Prison Terms*, TIMES-UNION, July 27, 1986, at C4. Copy supplied.

Grand Jury Indicts 4 in Prison-Break Scheme, TIMES-UNION, July 25, 1986, at 6B. Copy supplied.

Todd Lighty, *Figure in Breakout Plot Schemer or Dreamer?*, DEMOCRAT AND CHRONICLE, July 17, 1986, at B1. Copy supplied.

Kate Phillips, *Grand Jury Here to Decide Charges for Four Linked to Escape Plot*, TIMES-UNION, July 17, 1986, at 1B. Copy supplied.

Kate Phillips and Laura Buterbaugh, *Have Gun, Will Travel*, TIMES-UNION, July 16, 1986, at A1. Copy supplied.

John O'Brien, *Man Admits Being Hired to Kill*, DEMOCRAT AND CHRONICLE, July 16, 1986, at A1. Copy supplied.

Untitled, UNITED PRESS INTERNATIONAL, July 16, 1986. Copy supplied.

Kate Phillips, *Defendant Was Informant, Defense Says*, TIMES-UNION, Apr. 16, 1986, at B1. Copy supplied.

Kate Phillips, *Man Says He, Not Twin, Robbed Grocery Store*, TIMES-UNION, May 2, 1985, at 2B. Copy supplied.

Dolores Orman, *Celebrated Con Artist Pleads Guilty in Bank Loan Scheme*, TIMES-UNION, Jan. 9, 1985. Copy supplied.

Former Postal Worker Admits Theft, TIMES-UNION, Jan. 8, 1985. Copy supplied.

Man Gets Probation for Stealing Savings Bonds, TIMES-UNION, Dec. 5, 1984. Copy supplied.

2 Guilty in Cocaine Conspiracy, TIMES-UNION, Oct. 1984. Copy supplied.

Twin's Defense Loses Out, TIMES-UNION, Late Apr. 1984. Copy supplied.

Laurie Bennett, *Defendant's Twin Switches Clothes to Challenge Idents*, TIMES-UNION, Apr. 14, 1982, at 1B. Copy supplied.

Dede Murphy, *Smith Guilty of Manslaughter, Assault*, DEMOCRAT AND CHRONICLE, Apr. 1982. Copy supplied.

Guilty of Homicide, DWI in Fatal Crash, publication unknown, Dec. 15, 1981. Copy supplied.

Dede Murphy, *Chili Driver, 'Impaired,' Found Guilty in Death*, DEMOCRAT AND CHRONICLE, Dec. 15, 1981. Copy supplied.

Sentenced to Prison, TIMES-UNION, Oct. 2, 1981. Copy supplied.

Dolores Orman, *Teen Admits He Fired Fatal Shot*, TIMES-UNION, Aug. 19, 1981. 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 1992 until 1998, I sat as a Rochester City Court Judge. I was elected to a 10-year term in November, 1991. Rochester City Court is a trial court of limited jurisdiction. It has jurisdiction over civil and criminal matters as defined in the Uniform City Court Act and the Criminal Procedure Law. City Court arraigns felonies and handles misdemeanor and lesser offenses, as well as civil lawsuits involving claims of up to $15,000. Additionally, there is a small claims part for the informal disposition of matters involving claims of up to $5,000 and housing parts to handle landlord-tenant matters and housing violations.

Since 1999, I have been a Monroe County Court Judge. I was first elected to a 10-year term in November 1998, and subsequently re-elected in 2008. In approximately 2005, I was appointed as an Acting Supreme Court Justice by the Administrative Judge of New York's Seventh Judicial District, and I continue to serve in that capacity. Monroe County Court is a trial court of superior jurisdiction that handles criminal prosecutions of felonies and misdemeanors committed within the county. County Court also has limited jurisdiction over civil lawsuits, generally involving claims up to $25,000. New York Supreme Courts are trial courts of superior jurisdiction and primarily handle civil matters beyond the monetary limits of the lower courts' jurisdiction. That court also handles divorces, separations, annulment proceedings and criminal prosecutions of felonies.

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

In Monroe County Court, I have presided over 261 criminal trials to verdict and approximately 2500 other criminal cases to judgment. I have also presided over 555 civil proceedings that have gone to judgment.

As a Rochester City Court Judge I presided over approximately 20,000 criminal and 20,000 civil cases to judgment. I presided over 200 criminal trials to verdict and 54 civil bench trials in Rochester City Court.

i. Of these, approximately what percent were:

jury trials:	80%
bench trials:	20%
civil proceedings:	40%
criminal proceedings:	60%

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

In my capacity as a state and local court trial judge, I authored hundreds of slip opinions. These are stored within the court case files and it would be impossible to create a list of every opinion that I authored. The opinions that are published in an official reporter, or available on Westlaw or Lexis, are listed below.

People v. Harris, 870 N.Y.S.2d 859 (Co. Ct. 2008).

People v. Kelley, No. 99-0385, 2005 WL 1553572 (N.Y. Co. Ct. June 20, 2005).

People v. Cooper, No. 2005-0024, 2005 WL 851077 (N.Y. Co. Ct. Mar. 31, 2005).

People v. Alexander, No 2004-0651, 2005 WL 1021505 (N.Y. Co. Ct. Mar. 31, 2005).

People v. Sterling, 787 N.Y.S.2d 846 (Co. Ct. 2004).

People v. Hopkins, 800 N.Y.S.2d 353 (Co. Ct. 2004).

People v. Reynolds, 713 N.Y.S.2d 813 (Co. Ct. 2000).

People v. Griffin, 695 N.Y.S.2d 868 (Co. Ct. 1999).

People v. Williams, 685 N.Y.S.2d 878 (Co. Ct. 1999).

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name

and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *People v. Garcia*, Indictment No. 2009–0150 (N.Y. Co. Ct.). Opinion supplied.

The defendant was charged with two counts of murder in the second degree in Monroe County after shooting a work colleague (a nurse) who he felt was responsible for his termination and an innocent bystander who stopped to aid the first victim. The defendant then proceeded to drive to Ontario County where he murdered a second colleague and her husband, acts witnessed by the young children of the victims. The defendant was convicted after a jury trial. The case was complicated by extensive pre-trial publicity, conflict of counsel, the fact that the defendant was recently convicted of the murders in Ontario County and the admission of extensive scientific and technical evidence including cell phone records which traced the defendant's location for each of the four murders. The defendant was sentenced to life in prison.

Prosecution:	Hon. Douglas A. Randall Special Assistant District Attorney (former) Monroe County Court Judge Room 545 – Hall of Justice 99 Exchange Boulevard Rochester, New York 14614 (585) 428-1935
Defense Attorney:	Joseph S. Damelio 125 State Street, Suite 200 Rochester, New York 14614 (585) 442-7360

2. *People v. Griffin*, Indictment No. 2002–0361 (N.Y. Co. Ct.). Opinion supplied.

The defendant was identified through a DNA database as being involved in three unsolved rapes. The sexual assaults involved a four year old, a 14 year old and a 67 year old as victims. The defendant was convicted after a jury trial which involved extensive DNA evidence. He was sentenced to 165 years of incarceration.

Prosecution:	Lawrence Bernstein Monroe County Special Assistant District Attorney (former) 47 South Fitzhugh Street Suite 832, Ebenezer Watts Building Rochester, New York 14614 (585) 753-4780

Defense Attorney: James D. Stevenson
Monroe County Assistant Public Defender (former)
Law Clerk
Appellate Division, Fourth Department
50 East Avenue
Rochester, New York 14604
(585) 530-3100

3. *People v. Hopkins*, 800 N.Y.S.2d 353 (Co. Ct. 2004).

The defendant was charged with a vehicular manslaughter involving the death of a 21-year-old woman. The evidence indicated that the defendant was under the influence of alcohol and was driving in excess of 100 miles per hour when involved in a head-on collision with the victim. Expert testimony involving the "black box" contained within the motor vehicle was critical to the conviction in this matter. This case was the first to utilize black box evidence in Monroe County. The defendant was convicted of Manslaughter in the Second Degree and sentenced to five to 15 years in prison.

Prosecution: Richard C. Roxin
Assistant District Attorney (former)
Law Office of Richard C. Roxin
76 Hulburt Avenue
Fairport, New York 14450
(585) 943-5677

Defense Attorney: Paul J. Vacca, Jr.
One East Main Street, Suite 1000
Rochester, New York 14614
(585) 325-3336

4. *People v. Gonzalez*, Indictment No. 2000–0053 (N.Y. Co. Ct.).

The defendant was charged with Murder in the Second Degree under alternative theories of intentional murder and depraved indifference murder. The defendant had provided a statement to police indicating that he had blanked out and fired shots randomly in a barber shop. He was acquitted of the intentional murder and convicted of depraved indifference murder. The Appellate Division, Fourth Department affirmed, but modified the judgment by reversing the depraved indifference murder conviction. 755 N.Y.S.2d 146. The New York State Court of Appeals affirmed, finding that under the facts, intentional murder was the only appropriate verdict. 775 N.Y.S.2d 224. This case led to a string of subsequent decisions by the Court of Appeals clarifying the appropriate use of the depraved indifference murder statute.

Prosecution:	Lawrence Bernstein Monroe County Special Assistant District Attorney (former) 47 South Fitzhugh Street Suite 832, Ebenezer Watts Building Rochester, New York 14614 (585) 753-4780
Defense Attorney:	Matthew J. Clark Monroe County Public Defender's Office 10 North Fitzhugh Street Rochester, New York 14614 (585) 753-4019

5. *People v. Herring*, Indictment No. 2007-0340 (N.Y. Co. Ct.).

The defendant was charged with Attempted Aggravated Murder of a Police Officer, Attempted Aggravated Assault, Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree. He was convicted of all charges after a jury trial. This case involved the defendant charged and convicted of firing three shots directly at a sergeant of the Rochester Police Department and coming within inches of striking him. The entire shooting was captured on a nearby video camera. This was the first conviction in Monroe County for Attempted Aggravated Murder of a Police Officer. Section 125.26 of the Penal Law of the State of New York, a statute enacted in 2005. The defendant was sentenced to 40 years to life imprisonment.

Prosecution:	Paul D. Irving, Esq. Assistant District Attorney (former) 50 West Main Street Rochester, New York 16414 (585) 753-1446
Defense Attorney:	Maroun G. Ajaka, Esq. 144 Exchange Boulevard, Suite 103 Rochester, New York 14614 (585) 232-1420

6. *People v. Peters*, Indictment No. 2006-0235A (N.Y. Co. Ct.). Opinion supplied.

The case involved the attempted robbery and murder of a local minister as he was backing out of his driveway. Because the defendants all gave incriminating statements implicating each other, separate trials were conducted. Each of the three defendants was convicted after a jury trial.

Prosecution:	Michael C. Green Monroe County District Attorney (former) 47 South Fitzhugh Street Suite 832, Ebenezer Watts Building Rochester, New York 14614 (585) 753-4780
Peters Defense Attorney:	James E. Brown 45 East Main Street Liberty Plaza – Second Floor Rochester, New York 14614 (585) 423-0246
Owens Defense Attorney:	Dianne C. Russell Monroe County Assistant Public Defender (former) 818 Times Square Boulevard Rochester, New York 14614 (585) 330-6106
Rouse Defense Attorney:	Daniel Mastrella 16 West Main Street, Suite 100 Rochester, New York 14614 (585) 232-8810

7. *People v. Linnan*, Indictment No. 2001–0616 (N.Y. Co. Ct.). Opinion supplied.

This case involved the brutal murder of a woman by her drug addicted boyfriend. After an argument, he beat her to death with an ax. He then proceeded to sell items from the home to purchase drugs. In the meanwhile, he left her decaying body in the bed where the murder occurred. The victim's daughter discovered the body three days after the murder. The defendant was convicted after a jury trial. The conviction was reversed based upon the determination by the Appellate Division, Fourth Department that the court erred by not allowing a challenge for cause to a juror who indicated that she would have difficulty viewing photos of the crime scene. The defendant was convicted upon a re-trial and sentenced to 25 years to life.

Prosecution:	Jennifer A. Whitman Monroe County Assistant District Attorney (former) Law Clerk to Hon. Melchor E. Castro Rochester City Court Room 6 – Hall of Justice 99 Exchange Boulevard Rochester, New York 14614 (585) 428-1758

Defense Attorney: Jeffrey A. Jacobs (deceased)
Monroe County Public Defender's Office
10 North Fitzhugh Street
Rochester, New York 14614
(585) 753-4019

8. *People v. Arena*, Indictment No. 2008–0696 (N.Y. Co. Ct.).

This case involved the murder of a pedestrian and the assault of three other individuals who were injured when the defendant drove her car into a crowd of people in a parking lot outside a bar. The defendant was convicted after a bench trial of manslaughter in the second degree. Although she had no prior criminal history, the defendant was sentenced to the maximum of five to 15 years of incarceration based upon the magnitude of the harm inflicted.

Prosecution: Sandra Doorley
Monroe County District Attorney (former First Assistant)
47 South Fitzhugh Street
Suite 832, Ebenezer Watts Building
Rochester, New York 14614
(585) 753-4334

Defense Attorney: Joseph S. Damelio
125 State Street, Suite 200
Rochester, New York 14614
(585) 442-7360

9. *People v. Owes*, Indictment No. 2000–0161 (N.Y. Co. Ct.). Opinion supplied.

The defendant was charged with murder in the first degree. This was a potential death penalty case. A mitigation investigation conducted by the defense demonstrated that the defendant was sexually, physically and psychologically abused severely as a child. Although this involved the brutal murder and near decapitation of an innocent woman, the prosecution elected not to pursue the death penalty. The court sentenced the defendant to life without the possibility of parole.

Prosecution: Gregory J. Huether
Monroe County Special Assistant District Attorney (former)
Chief Counsel, Attorney Grievance Committee
New York State Supreme Court
Appellate Division, Fourth Department
50 East Avenue

Rochester, New York 14604
(585) 530-3180

Defense Attorneys: David A. Murante
8 Exchange Street
700 Wilder Building
Rochester, New York 14614
(585) 546-1770

Lawrence L. Kasperek
144 Exchange Boulevard, Suite 108
Rochester, New York
(585) 423-8290

10. *People v. Smith*, Indictment No. 2009–0870 (N.Y. Co. Ct.).

This case involved charges of official misconduct against the defendant who was the Deputy County Executive. This case was the culmination of a large scale investigation of widespread fraud conducted by a group of contract workers for the County of Monroe. This was a politically explosive case involving allegations against some of the county's highest officials. The defendant was acquitted after a jury trial.

Prosecution: William T. Gargan
Monroe County Assistant District Attorney
47 South Fitzhugh Street
Suite 832, Ebenezer Watts Building
Rochester, New York 14614
(585) 753-4656

Defense Attorney: Joseph S. Damelio
125 State Street, Suite 200
Rochester, New York 14614
(585) 442-7360

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

1. *People v. Kelley*, No. 99-0385, 2005 WL 1553572 (N.Y. Co. Ct. June 20, 2005).

Prosecution: Mary W. Randall
Monroe County Assistant District Attorney
47 South Fitzhugh Street

Rochester, New York 14614
(585) 753-4597

Defense Attorney: Roger Brazill
Monroe County First Assistant Public Defender
10 North Fitzhugh Street
Rochester, New York 14614
(585) 753-4642

2. *People v. Cooper*, No. 2005-0024, 2005 WL 851077 (N.Y. Co. Ct. Mar. 31, 2005).

Prosecution: Perry Duckles
Monroe County Assistant District Attorney
47 South Fitzhugh Street
Rochester, New York 14614
(585) 753-4653

Defense Attorney: Karen Bailey Turner
Monroe County Assistant Public Defender (former)
Brown & Hutchinson
925 Crossroads Building
Two State Street
Rochester, New York 14614
(585) 286-1499

3. *People v. Alexander*, No 2004-0651, 2005 WL 1021505 (N.Y. Co. Ct. Mar. 31, 2005).

Prosecution: Thomas J. Brilbeck
Monroe County Assistant District Attorney (former)
7th Judicial District Supreme Court
Room 545 – Hall of Justice
99 Exchange Boulevard
Rochester, New York 14614
(585) 428-3157

Defense Attorney: Roger G. Alexander, Pro Se

4. *People v. Hopkins*, 800 N.Y.S.2d 353 (Co. Ct. 2004).

Prosecution: Richard C. Roxin
Monroe County Assistant District Attorney (former)
Law Office of Richard C. Roxin
76 Hulburt Avenue

Fairport, New York 14450
(585) 943-5677

Defense Attorney: Paul J. Vacca, Jr.
One East Main Street, Suite 1000
Rochester, New York 14614
(585) 325-3336

5. *People v. Reynolds*, 713 N.Y.S.2d 341 (Co. Ct. 2000).

Prosecution: Hon. Stephen Lindley
Monroe County Assistant District Attorney (former)
New York State Supreme Court
Appellate Division, Fourth Department
50 East Avenue
Rochester, New York 14604
(585) 530-3227

Defense Attorney: Thomas A. Corletta
16 West Main Street, Suite 240
Rochester, New York 14614
(585) 546-5072

6. *People v. Griffin*, 695 N.Y.S.2d 868 (Co. Ct. 1999).

Prosecution: Mary W. Randall
Monroe County Assistant District Attorney
47 South Fitzhugh Street
Rochester, New York 14614
(585) 753-4597

Defense Attorney: James D. Stevenson
Monroe County Assistant Public Defender (former)
Law Clerk
Appellate Division, Fourth Department
50 East Avenue
Rochester, New York 14604
(585) 530-3100

7. *People v. Williams*, 685 N.Y.S.2d 878 (Co. Ct. 1999).

Prosecution: Stephen Sercu
Sercu & Sercu LLP
Monroe County Assistant District Attorney (former)
31 North Main Street

Pittsford, New York 14534
(585) 385-2510

Defense Attorney: Timothy M. Lexvold
Monroe County Assistant Public Defender (former)
Room 320, Hall of Justice
99 Exchange Boulevard
Rochester, New York 14614
(585) 753-2895

8. *People v. LaValla*, Indictment No. 1998-0462 (N.Y. Co. Ct. July 15, 1999). Opinion supplied.

Prosecution: Kenneth C. Hyland
Monroe County Assistant District Attorney (former)
Law Office of Kenneth C. Hyland
31 North Main Street
Pittsford, New York 14534
(585) 200-3016

Defense Attorney: Culver K. Barr
16 East Main Street, Suite 265
Rochester, New York 14614
(585) 964-8566

9. *People v. Owes*, Indictment No. 2000–0161 (N.Y. Co. Ct. July 11, 2000). Opinion supplied in response to 13(c).

Prosecution: Gregory J. Huether
Monroe County Assistant District Attorney (former)
Chief Counsel, Attorney Grievance Committee
New York State Supreme Court
Appellate Division, Fourth Department
50 East Avenue
Rochester, New York 14604
(585) 530-3180

Defense Attorney: David A. Murante
8 Exchange Street
700 Wilder Building
Rochester, New York 14614
(585) 546-1770

Lawrence L. Kasperek
144 Exchange Boulevard, Suite 108

Rochester, New York
(585) 423-8290

10. *People v. Cain*, Indictment No. 2001-0410 (N.Y. Co. Ct. Mar. 25, 2002). Opinion supplied.

Prosecution:	Kenneth C. Hyland Monroe County Assistant District Attorney (former) Law Office of Kenneth C. Hyland 31 North Main Street Pittsford, New York 14534 (585) 200-3016
Defense Attorney:	John R. Parrinello 36 West Main Street, Suite 400 Rochester, New York 14614 (585) 454-2321

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

None.

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

People v. Webb, 935 N.Y.S.2d 423 (App. Div. 2011), *amended on rearg.*, 937 N.Y.S.2d 911 (App. Div. 2012).
Appellate Division, Fourth Department reversed the defendant's conviction on the ground that he was deprived of the effective assistance of counsel.

People v. Gregory, Ind. No. 90-W0382, Slip Op. (N.Y. Co. Ct. Feb. 13, 2008), *rev'd*, 897 N.Y.S.2d 665 (App. Div. 2010). Opinion supplied.
Appellate Division, Fourth Department ruled that the defendant's sex offender classification was time-barred since he was not notified of his requirement to register until 11 years after his conviction.

People v. Groth, 896 N.Y.S.2d 547 (App. Div. 2010).
Appellate Division, Fourth Department found that the verdict convicting the defendant of reckless assault of a child was against the weight of the evidence.

People v. White, 894 N.Y.S.2d 707 (App. Div. 2010).
Appellate Division, Fourth Department reversed the defendant's conviction by plea of Murder in the Second Degree as Depraved Indifference Murder, finding that the factual allocution established an intentional assault, but not recklessness.

People v. Manges, 889 N.Y.S.2d 341 (App. Div. 2009).
Appellate Division, Fourth Department ruled that the court erred by allowing the People to admit printout of electronic data that did not qualify as a business record.

People v. Thomas, 867 N.Y.S.2d 595 (App. Div. 2008).
Appellate Division, Fourth Department ruled that the court erred by denying the defendant's request to charge Assault in the Third Degree as a lesser included offense.

People v. Davis, 859 N.Y.S.2d 804 (App. Div. 2008).
Appellate Division, Fourth Department reversed the defendant's conviction for failure of the People to comply with discovery demands in a timely fashion and the court's denial of requests for adjournment to review the materials disclosed by the People.

People v. Ball, 871 N.Y.S.2d 532 (App. Div. 2008).
Appellate Division, Fourth Department affirmed in part and reversed in part finding that the indictment and proof did not support conviction for criminal possession of weapon in second degree.

People v. Trisvan, 860 N.Y.S.2d 377 (App. Div. 2008).
Appellate Division, Fourth Department reversed and vacated the defendant's guilty plea holding that the plea had not been knowingly, voluntarily and intelligently entered. The reviewing court also found that the defendant should not have been ordered to pay restitution without first affording him opportunity to withdraw his guilty plea because restitution had not been part of plea agreement.

People v. Bolling, 853 N.Y.S.2d 803 (App. Div. 2008).
Appellate Division, Fourth Department vacated the defendant's sentence because it reduced the conviction of Murder in the Second Degree to manslaughter in the second degree, finding that the evidence was insufficient to support a murder conviction.

People v. Ortiz, Ind. Nos. 2006-0790A & B, Slip Op. (N.Y. Co. Ct. Apr. 3, 2007), *rev'd*, 851 N.Y.S.2d 784 (App. Div. 2008). Opinion supplied.
Appellate Division, Fourth Department ruled that the court erred by dismissing the indictment alleging a hate crime, finding that there was sufficient evidence to warrant the charge of Assault in Third Degree as a hate crime.

People v. Rivera, 845 N.Y.S.2d 636 (App. Div. 2007).
Appellate Division, Fourth Department reversed a jury verdict of criminal possession of a controlled substance in the third degree and criminally using drug paraphernalia in the second degree after a finding of ineffective assistance of counsel.

People v. Pierre, 829 N.Y.S.2d 386 (App. Div. 2007).
Appellate Division, Fourth Department affirmed in part and reversed in part, holding that one of defendant's second degree murder convictions was properly considered a lesser included offense in the conviction for first degree murder.

Wynters v. Poole, 464 F. Supp. 2d 167 (W.D.N.Y. 2006).
United States District Court for the Western District of New York granted defendant's petition for habeas corpus relief on the basis of ineffective assistance of counsel after his conviction had been affirmed by all New York State appellate courts.

People v. Linnan, 817 N.Y.S.2d 549 (App. Div. 2006).
Appellate Division, Fourth Department ruled that the court erred by failing to allow the defendant's challenge for cause of a prospective juror who did not provide an unequivocal assurance that she could be fair and impartial.

People v. McClain, Ind. No. 2003-0032, Slip Op. (N.Y. Co. Ct. May 5, 2003), *rev'd*, 821 N.Y.S.2d 729 (App. Div. 2006) and 821 N.Y.S.2d 522 (App. Div. 2006).
Appellate Division, Fourth Department ruled that the court erred by denying a motion to suppress and holding that the defendant was not under arrest at the time he was stopped by police based upon the fact that the police did not have probable cause to arrest him at that point.

People v. Kennedy, Ind. No. 2003-7211, Slip Op. (N.Y. Co. Ct. Jan. 26, 2004), *rev'd*, 821 N.Y.S.2d 522 (App. Div. 2006).
Appellate Division, Fourth Department held that the defendant who had a prior conviction by a military court martial for indecent assault was not required to register as a sex offender with the Navy and therefore was not required to register as a level two sex offender under the Sex Offender Registration Act.

People v. Farchione, Ind. No. 2004-0734, Slip Op. (N.Y. Co. Ct. June 6, 2005), *rev'd*, 821 N.Y.S.2d 522 (App. Div. 2006). Opinion supplied.
Appellate Division, Fourth Department ruled that the People failed to comply with the notice requirements of the Corrections Law seeking an upward departure of a sex offender registration.

People v. Bridgeland, 796 N.Y.S.2d 768 (App. Div. 2005).
Appellate Division, Fourth Department ruled that the court erred by not allowing the defendant to question the witness about previous allegedly false allegations of sexual abuse made by the complainant.

People v. Clark, 776 N.Y.S.2d 656 (App. Div. 2004).
Appellate Division, Fourth Department affirmed in part and reversed in part finding that the indictment and proof did not support conviction for criminal possession of weapon in second degree. The Appellate Division also concluded that the 15-year sentence imposed was unduly harsh and severe, and reduced the sentence to seven years incarceration.

People v. Burns, 757 N.Y.S.2d 199 (App. Div. 2003).
Appellate Division, Fourth Department ruled that the court erred by failing to charge the jury that the defendant's specific acts in violation of the order of protection must be those articulated in the Bill of Particulars filed by the People.

People v. Gonzalez, 755 N.Y.S.2d 146 (App. Div. 2003).
Appellate Division, Fourth Department reversed the defendant's conviction for Murder in the Second Degree as Depraved Indifference Murder, ruling that the defendant's statement that he was "blanking out" negated the reckless element of being aware of the risk being disregarded.

People v. Moyer, 738 N.Y.S.2d 810 (App. Div. 2002).
Appellate Division, Fourth Department ruled that the previous judge erred in denying the defendant's motion to suppress; resulted in the reversal of the verdict rendered by a jury trial over which I presided.

People v. Reynolds, 713 N.Y.S.2d 341 (Co. Ct. 2000), *rev'd sub nom. People v. Robinson*, 97 N.Y.2d 341 (2001).
New York State Court of Appeals held that a police officer who had probable cause to believe a driver has committed a traffic infraction does not violate the New York State Constitution when the officer, whose primary motivation is to conduct another investigation, stops the vehicle, thereby adopting the standard articulated by the United States Supreme Court in *Whren v. United States*, 517 U.S. 806 (1996).

People v. Grady, Ind. Nos. 99-0038A & B, Slip Op. (N.Y. Co. Ct. July 26, 1999), *rev'd*, 708 N.Y.S.2d 765 (App. Div. 2000). Opinion supplied.
Appellate Division, Fourth Department ruled that suppression of evidence was error in that there was credible evidence for approaching defendants to request information and probable cause to arrest the defendants.

Lortz v. Lortz, Slip Op. (N.Y. Co. Ct. Sept. 13, 2003), *rev'd*, 616 N.Y.S.2d 876 (N.Y. Co. Ct. 1994). Opinion supplied.

Monroe County Court ruled on appeal that City Court lacked authority to transfer case out of the Small Claims Part and into the regular part of that court without notice to and consent of the parties.

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.

Since 1992 when I first began serving as a judge, I have issued thousands of decisions which are part of the stenographic record of those proceedings or are slip opinions contained in case files maintained by or filed with the Rochester City Court or the Monroe County Clerk's Office. Over 90 percent of my decisions issued are unpublished.

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

People v. LaValla. Opinion supplied in response to 13(d).

People v. Reynolds, 713 N.Y.S.2d 813 (Co. Ct. 2000), *rev'd sub nom. People v. Robinson*, 97 N.Y.2d 341 (2001).

People v. Owes. Opinion supplied in response to 13(c).

People v. Cain. Opinion supplied in response to 13(d).

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

None.

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

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

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

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

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

The Seventh Judicial District – New York State does not employ an automatic recusal policy.

If I am assigned a case in which I recognize one of the parties from some prior contact, personal or professional, I immediately inform all parties on the record. I outline my knowledge of the individual and give the parties an opportunity to make further inquiry. If the contact has been relatively casual and the parties raise no objection, I rule that recusal is unnecessary. If either party raises a concern, I make further inquiry as to the basis for that concern. Based upon the relative ease in transferring the matter to another judge within our jurisdiction, if there is any concern, I will notify the administrative judge and request a transfer of the case. The same procedure is employed if I have any knowledge of the case prior to it being assigned to me.

When an issue of recusal is raised, the court has an obligation to make sufficient inquiry to assure that no reasonable person with knowledge of the applicable facts would conclude that the judge's impartiality might be questioned. The court has a primary responsibility to preserve the integrity of the court and foster confidence in the court's jurisdiction.

In the case of the *People v. Evans*, Ind. No. 2011-0170 (involving felony charges of Operation of a Motor Vehicle While Intoxicated and a violation of probation), I recused myself after the case was randomly assigned to me. Mr. Evans is my auto mechanic and a family friend. His case was re-assigned by the administrative judge.

In the case of *People v. Farchione*, Ind. No. 2001-0734, my sex offender classification determination was reversed by the Appellate Division Fourth Department which also granted the defendant's application to have the matter assigned to a different judge on remand, although not finding any fault by the court justifying the recusal. On remand, the court's original determination was re-affirmed.

As a United States District Judge, I would follow all court rules and ethical rules in determining whether to recuse myself. Any potential conflicts would be disclosed to counsel so that they could file any appropriate motions. I would strictly follow the Code of Conduct for United States Judges.

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

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

I was appointed to the position of Deputy Clerk of the City of Rochester and served in that capacity between July 1973 and August 1974. I was appointed by the City Court judges.

In 2004, I ran unsuccessfully for a seat on the New York State Supreme Court, Seventh Judicial District.

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.

Between July 1977 and January 1978, I served as Executive Assistant to Monroe County Democratic Party Chair Laurence Kirwan. I was responsible for coordinating many elections held in 1977, in particular the Monroe County legislative races.

In 1987, I worked on the campaign to elect Thomas Frey as Monroe County Executive. I helped distribute literature and participated in phone banks.

In 1988, I worked on the Monroe County Democratic Committee's Judicial Screening Committee and the Petition Committee.

In 1988, I also worked on the Campaign to Elect Joan Kohout to Family Court. I primarily was involved in the distribution of literature.

In 1990, I worked with the Committee to Elect Joseph Morelle to the New York State Assembly. Again, I was primarily involved in the distribution of literature. Also in 1990, I worked on the campaign of Susan John for New York State Assembly. I was involved in literature drops and in a phone bank.

On Election Day 1990, I served as an attorney advisor for the Monroe County Democratic Committee.

In February 1991, I worked on the campaign of Nan Johnson for Monroe County Executive. I participated in literature distribution.

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

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

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

I have never served as a law clerk.

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.

1978 – 1983
Monroe County District Attorney's Office
47 South Fitzhugh Street
Rochester, New York 14614
Special Assistant District Attorney

1983 – 1987
United States Attorney's Office
Western District of New York
100 State Street
Rochester, New York 14614
Assistant United States Attorney

1987 – 1992
Law Firm of Geraci and Feldman
235 Park Avenue
Rochester, New York 14606
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 presided over a number of mediation proceedings while serving as co-owner of United States Arbitration and Mediation of Upstate New York between 1988 and 1992. The disputes involved contracts and business issues. I have no records existing to further describe these matters.

b. Describe:

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

Between 1978 and 1983, I served as a Special Assistant District Attorney in the Monroe County District Attorney's Office. In 1978, I worked as an assistant in the Rochester City Court handling a variety of violations, misdemeanors and felonies. I prosecuted felony matters prior to grand jury presentation and violation and misdemeanors from arraignment to disposition, including jury and bench trials. In 1979, I was appointed Chief of the DWI Bureau, where I was responsible for the prosecution of felony DWI cases as well as vehicular assaults and homicides. I also supervised all assistants handling DWI cases. I handled vehicular homicides, including investigating the accident scene, presenting the matter to the Monroe County Grand Jury, and handling motions, hearings, trials and post-trial motions and sentences. My next assignment was as a member of the Career Criminal Bureau. This bureau handled violent felony offenders who had extensive histories. This bureau was composed of the most experienced trial attorneys. We handled rapes, robberies, homicides and burglary matters. I was involved in the arraignments, bail applications, grand jury presentations, indictments, motions, trials, post-trial motions and sentences for these matters. In 1983, I was appointed Chief of the Special Investigations Bureau. During this service, I assisted law enforcement investigators in the prosecution of cases involving drugs, gambling, prostitution and organized crime. I also presented appropriate matters to the Monroe County Grand Jury and prosecuted any resulting indictments through trial and sentencing.

In July 1983, I was appointed as an Assistant United States Attorney for the Western District of New York. At the time, there were four attorneys in the Rochester Office. We were responsible for civil and criminal cases. As counsel for the United States, we represented the government in the United States District Court, the United States Bankruptcy Court and the Second Circuit Court of Appeals. I worked with a variety of federal agents from the DEA, FBI, IRS, Customs and the United States Postal Service. As an Assistant United States Attorney, I also served as defense counsel when the United States was a defendant. I handled a variety of civil cases, including Social Security matters and personal injury litigation. In 1986, I was assigned to the Organized Drug Task Force. During this assignment I handled complex drug conspiracy cases while working with the DEA, FBI and IRS. I also handled a very complicated prison escape case involving multiple defendants and several different state jurisdictions.

As an Assistant United States Attorney, I also argued two cases before the United States Court of Appeals for the Second Circuit. One involved a speedy trial issue and the other involved the disclosure of a confidential informant.

Between 1987 and 1992, Geraci and Feldman was a general litigation firm. We handled civil and criminal cases, real estate, collections, and disciplinary proceedings. As counsel, we were responsible for the cases from the initial filing through trial and sentence.

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

As a Special Assistant District Attorney, I represented the People of the State of New York. I was responsible for the investigation and prosecution of violations, misdemeanors and felony offenses.

During my tenure as an Assistant United States Attorney, I represented the United States in civil and criminal cases. I represented the United States as a plaintiff and as a defendant in civil matters in the United States District Court and the United States Bankruptcy Court and the Second Circuit Court of Appeals.

As a partner in Geraci and Feldman, I represented individuals in a variety of civil and criminal cases. Our clients included individuals charged with violations, misdemeanors and felonies in both state and local courts. We handled both retained and assigned cases. Our firm represented defendants on appeal to the Appellate Division Fourth Department. We also represented professionals, including doctors, nurses and law enforcement officers charged with disciplinary violations. Our clients in our civil practice included individuals, corporations and small businesses, both as plaintiffs and defendants. We represented the Mercantile Adjustment Bureau and Strong Memorial Hospital as part of our collections practices. We also represented individuals and real estate agents involved in the purchase and sale of real estate. As a partner in the firm of Geraci and Feldman, civil and criminal trial practice was our specialty. We often handled matters referred from other law firms.

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

Throughout my career as a practicing lawyer, I frequently appeared in court. The large bulk of our private practice at Geraci and Feldman involved litigation in civil and criminal matters. As a Special Assistant District Attorney, I spent virtually all of my time in the courtroom conducting litigation. While serving as

an Assistant United States Attorney. I represented the United States in the United States District Court, the United States Bankruptcy Court and the Second Circuit Court of Appeals, and I appeared in court as necessary.

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: 65%
   3. other courts: 0%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 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.

As an Assistant District Attorney assigned to the Rochester City Court between 1978 and 1979, I handled hundreds of misdemeanor and violation cases to verdict. I estimate that I handled 200 bench trials and 20 jury trials. As a Special Assistant District Attorney assigned to the DWI Bureau, Career Criminal Bureau and Special Investigations Bureau, I handled approximately 35 felony cases to jury verdicts and approximately 28 non-jury trials. In all cases I served as sole counsel with the exception of one case in which I served as co-counsel.

While serving as an Assistant United States Attorney for the Western District of New York, I tried five criminal jury trials and one bench trial to verdict, and one civil trial to verdict. I was sole counsel in all cases.

As a partner in Geraci and Feldman, I tried 12 jury trials and 10 bench trials to verdict. I also tried three matters before an administrative law judge involving disciplinary proceedings. I served as sole counsel for all of these proceedings.

i. What percentage of these trials were:
   1. jury: 60%
   2. non-jury: 40%

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

I have never practiced before the United States Supreme Court.

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

    a. the date of representation;

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

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

1. *People v. Kates*, Indictment No. 1979-0273 (Monroe County Court, 1980), Hon. Andrew Celli (deceased).

Kates was tried before a Monroe County Court jury and convicted of Criminally Negligent Homicide. As Chief of the DWI Bureau, I responded to the accident scene, directed officers to take blood from the defendant at the hospital and handled all matters related to this case including discovery, presentation to the grand jury, discovery motions, hearings, trial, sentencing and post-trial motions. I was sole counsel. The conviction was later upheld by New York State Court of Appeals; *People v. Kates*, 53 N.Y.2d 591 (1981).

Defense Attorney: Charles Crimi (deceased)

2. *People v. Dekdebrun*, Indictment No. 1979-0709 (New York State Supreme Court, 1980), Hon. Elizabeth W. Pine (retired).

Dekdebrun was convicted of Criminal Negligence Homicide after evidence presented to the jury showed that he had been intoxicated and under the influence of marijuana while operating a motor vehicle in excess of 90 miles per hour on a city street. He lost control, struck a tree and killed four of his five passengers who were boys aged 14 to 17 years old. As Chief of the DWI Bureau, I responded to the accident scene and guided police investigators on this matter. I also employed the services of an auto accident reconstruction expert. I was involved in the defendant's arraignment, bail application, discovery motions, hearings, trial, sentencing and post-verdict motions. This was a jury trial. I was sole counsel.

Defense Attorney: James V. Phillipone
31 East Main Street, Suite 4000
Rochester, New York 14614
(585) 325-7455

3. *People v. Delano*, Indictment No. 1981-0101 (New York State Supreme Court, 1981), Hon. Eugene Bergin (deceased).

Defendant beat and raped a 21-year-old woman. He assaulted her sexually and physically and dumped her body alongside a railroad track, believing she was dead. She survived the attack, crawled to a farm house and called police. The defendant had four prior arrests for rape. He was convicted after trial and sentenced to the maximum sentence of 12½ to 25 years imprisonment.

This case was a jury trial handled in the Monroe County Court. Shortly after the commission of the crime, I had contact with the victim, presented the case to the grand jury and handled all proceedings, including a bail application, discovery motions, hearing, trial, sentencing and post-trial motions. I was sole counsel.

Defense Attorney: George Nier (deceased)

4. *People v. Frey*, Indictment No. 1980-0502 (New York State Supreme Court, 1980), Hon. Frederick G. Reed (deceased).

The defendant was charged with burglary in the third degree and convicted after a jury trial. Subsequent to the trial, the presiding judge ordered that the People file persistent felony offender papers on the defendant. He had a long history of burglary convictions. After a full hearing, the defendant was sentenced to life imprisonment. This was only the second time in the history of Monroe County that a defendant was deemed a persistent felony offender.

This case was handled in Supreme Court. The defendant was classified as a career criminal based upon his extensive criminal record and, therefore, I selected his case for prosecution by the career criminal bureau established in the Monroe County District Attorney's Office. I was involved in the defendant's arraignment, bail application, presentation of the case to the grand jury, motions, discovery, hearings, trial, sentencing and post-trial motions. I was sole counsel.

Defense Attorney: Frederick Emery
Assistant United States Attorney for the District of Maine
P.O. Box 9717
Portland, Maine 04104
(207) 780-3257

5. *Hendrickson v. United States*, Civil No. 82-621T (United States District Court, Western District of New York, 1982), Hon. Michael A. Telesca.

The plaintiff in this action sued the United States Marine Corp and a Marine recruiter for injuries he suffered while acting as a good Samaritan along a county road, helping an accident victim. He was struck by the Marine recruiter's vehicle which drove into a bank of headlights that blinded him. Additionally, the Marine had been drinking alcohol prior

to the accident. There were complex issues of liability, negligence and scope of employment. After several days of testimony, the case was settled with what I believe was the first structured settlement ever approved for the Western District of New York.

This was a matter handled as a bench trial in the United States District Court. As the sole Assistant United States Attorney assigned to the matter, I was responsible for responding to the complaint, drafting memoranda, arguing legal issues, writing briefs and, ultimately, negotiating the settlement.

Plaintiff counsel: Paul K. Lange
28 East Main Street, Suite 1100
Rochester, New York 14614
(585) 325-5150, ext. 223

6. *People v. Schultz*, Indictment No. 1990-0445A (New York State Supreme Court, 1990), Hon. Eugene W. Bergin (deceased).

Defendant, along with 12 other defendants, was charged by the New York State Attorney General's Office with price fixing based upon a tent sale coordinated by all local area Chrysler dealers. This was a complex case involving 13 defendants. The case lasted several weeks, resulting in the acquittal of all defendants.

This case was tried in Supreme Court. Initially, I was contacted by one potential defendant, and when it became clear that 12 additional parties would be charged, other counsel were retained due to potential conflicts. I represented Mr. Schultz from the beginning of the investigation by the New York State Attorney General's Office through the jury trial. I was sole counsel for Mr. Schultz handling all matters, including bail application, discovery issues, motions, hearings and jury trial.

Prosecution: Susan Beth Farmer
Pennsylvania State University
Dickinson School of Law
329 Katz Building
University Park, Pennsylvania 16802
(814) 863-4616

7. *United States v. Stagnito*, CR No. 84-1137 (United States District Court, Western District of New York, 1984). Hon. Michael A. Telesca.

Defendant was convicted of a conspiracy to distribute controlled substances. An issue of disclosure of a confidential informant arose at pre-trial and at trial. The government opposed the disclosure. The issue was argued on appeal to the United States Court of Appeals for the Second Circuit, which upheld the government's position.

This was a jury trial in the United States District Court for the Western District of New York. I handled the matter from arrest to jury trial, including the arraignment, discovery,

motions, hearings, jury trial and post-trial motions. I was also responsible for handling the appeal, writing the brief for the government and arguing the appeal before the United States Court of Appeals for the Second Circuit. I was sole counsel.

Defense Attorney: Lawrence Andolina
Trevett, Cristo, Salzer & Andolina, P.C.
2 State Street, Suite 1000
Rochester, New York 14614
(585) 454-2181

8. *United States v. Tunnessen*, CR No. 84-1419 (United States District Court, Western District of New York, 1984), Hon. Michael A. Telesca.

Defendant was convicted of conspiracy to distribute controlled substances. This case involved a large distribution of cocaine from Pennsylvania to western New York. The conviction was reversed after the United States Court of Appeals for the Second Circuit ruled that the defendant's speedy trial rights were violated. *United States v. Tunnessen*, 763 F.2d 74 (2d Cir.1985). Prior to the re-trial, the defendant pled guilty.

This was a jury trial conducted in the United States District Court for the Western District of New York. I handled the matter from the initial investigation, grand jury presentation, arraignment, motions, discovery, hearings, jury trial, sentencing and post-trial motions. I also was responsible for the appeal filed in the United States Court of Appeals for the Second Circuit. I prepared the brief on behalf of the government and argued the appeal before the Second Circuit. I was sole counsel for this case.

Defense Attorneys: Glenn E. Pezzulo
36 West Main Street, Suite 500
Rochester, New York 14614
(585) 546-7830

John P. Moses
120 South Franklin Street
Wilkes-Barre, Pennsylvania 18701
(570) 970-8030

9. *United States v. Stern*, CR Nos. 86-194T and 87-106T (United States District Court, Western District of New York, 1986 and 1987), Hon. Michael A. Telesca.

The defendant was a local doctor originally charged with Medicaid fraud. During the investigation he sent death threats to witnesses who had worked for him as nurses. Additionally, it was discovered that the doctor was misusing narcotics. He pled guilty and surrendered his license to practice medicine as a condition of the disposition.

This was a matter handled in the United States District Court for the Western District of New York. As the Assistant United States Attorney assigned to the matter, I handled

various cases against Dr. Stern, including the initial case involving Medicaid fraud and later charges of possession of controlled substances and intimidation of witnesses. I handled these matters from the initial stages of the investigation through disposition, including bail application, discovery, motions, hearings, plea and sentencing. I was sole counsel for this case.

Defense Attorney: Charles Crimi (deceased)

10. *United States v. Dickerson*, CR No. 82-621T (United States District Court, Western District of New York, 1986), Hon. Michael A. Telesca.

The defendant, Dickerson, was charged on a conspiracy to execute a prison escape from Lewisburg Federal Correctional Facility. The case involved the delivery of machine guns from California, the rental of a helicopter from Tennessee and the delivery of $250,000 in cash from Philadelphia. The case, coordinated from Rochester, New York, involved the execution of simultaneous search warrants in California, Tennessee, Florida, Pennsylvania and New York. Local, state and federal agents from the FBI, DEA and U.S. Marshals Service were involved in the prosecution of this case. The defendant and all the co-conspirators pled guilty. An organized crime figure was the subject of the escape.

This matter was handled in the United States District Court for the Western District of New York. I was the sole Assistant United States Attorney assigned. I handled the matter as part of my responsibilities as the head of the Organized Drug Task Force. Initially, it was thought to be a narcotics operation, however, it was later discovered to be a conspiracy to allow the escape of an organized crime figure from a federal prison. I handled all the coordination of the investigation which involved the DEA, FBI, Postal Service, U.S. Marshals Service, Tennessee State Police and local law enforcement in California, Pennsylvania, Florida, Kentucky, Arkansas and New York. I was responsible for drafting wire tap applications and multiple search warrants. I helped coordinate the simultaneous arrest of the defendants in California, Arkansas, Tennessee, Pennsylvania and New York. I presented the case to a grand jury and handled the arraignment of all defendants. I negotiated the ultimate disposition for all defendants.

Defense Attorney: James V. Phillipone
31 East Main Street, Suite 4000
Rochester, New York 14614
(585) 325-7455

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.)

Over the past eight years, I have been involved with the Russian-American Rule of Law Consortium traveling primarily to Novgorod, Russia to conduct legal seminars and exchange thoughts and ideas with Russian judges and attorneys. Yearly, we also host a group of judges and attorneys visiting from Russia.

In 2000, New York State Chief Judge Judith S. Kaye appointed me as Co-Chair of the Seventh Judicial District's Committee to Promote Trust and Confidence in the Legal System. Teen Court and Access to Justice were two major initiatives of this committee.

As a Monroe County Court Judge, I was part of a Case Management Committee exploring more effective measures to handle the criminal calendar and best utilize resources.

In 1997, I helped establish the Rochester Teen Court, a diversion program for first-time, non-violent offenders. This program includes teens serving as counsel, jurors, court staff and security. I have presided over the Teen Court sessions, usually one time per month. I also serve as the Chair of the Teen Court Advisory Committee.

Between 1994 and 1996, I worked on the County of Monroe's Graduated Restriction Advisory Committee. This group explored alternatives to incarceration, establishing a schedule of graduated alternative release programs. A Day Reporting Center was established and a Home Confinement Program was also developed.

As the DWI Bureau Chief, I worked with the Monroe County Pre-Trial Service Corporation to establish the DWI Diversion Program, which involved having repeat DWI felony offenders surrender their driver's license while undergoing treatment for substance abuse. This program was established in 1980 and continues to operate today.

I served as a liaison to the Rochester Police Department's Clinton Section in 1979. As an Assistant United States Attorney while serving as Chief of the Organized Drug Task Force in 1986 and 1987, I served as chair of the Law Enforcement Coordinating Committee. This committee brought local, state and federal law enforcement agencies together to discuss common issues.

I have never served as a lobbyist for any group or lobbied on behalf of any organization or issues.

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

I taught as an adjunct professor at St. John Fisher College (1985 – 1990), a course entitled "The Legal Environment of Business." The subject matter of the course involved teaching the legal system primarily to business students. It involved a general discussion of the Constitution, contract law, property law, bankruptcy law, criminal law and the

structure of the federal, state and local courts. I no longer have the syllabus for this course.

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

    Aside from any pension from the New York State Retirement System, I have no anticipated receipts from deferred income arrangements for future benefits from any 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 intentions of pursuing outside employment during any potential service as a United States District Judge, if I am confirmed.

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). Following is my income for 2011:

    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 not aware of any potential conflicts of interest if I am confirmed as a United States District Judge for the Western District of New York. I would address any potential conflict of interest by first disclosing all relevant information to counsel and the parties, receiving their input and ruling on the issue following the Code of

Conduct for United States Judges and all applicable statutes, rules and ethical guidelines.

My son, Michael Frank Geraci, was admitted to the New York State Bar on February 23, 2012. He is an associate with the Law Firm of Trevett Cristo Salzer & Andolina P.C. I believe that under the Code of Conduct for United States Judges, it would not be proper for me to handle any cases handled by him as counsel. Additionally, pursuant to Canon 3c(1)(d)(ii), it would be my responsibility to disclose his association with a law firm in which he is employed and determine if the court's impartiality might reasonably be questioned.

My daughter Kimberley Brock is a Worldwide Marketing Manager for Eastman Kodak Company. If Eastman Kodak were a party to an action in District Court, I would disclose this information to counsel to explore any possible conflict.

My wife Karla Peterson Geraci is retired from the City of Rochester as a Senior Personnel Analyst. She currently serves as a Senior Personnel Analyst On-call and works part-time for the City of Rochester. Again, if the City of Rochester were a party in District Court, I would disclose this fact to counsel to determine if any conflict in fact exists.

My daughter Pamela Geraci Tellier is a teacher with the Rochester City School District. If the district were a party to litigation in the District Court, I would disclose this fact to counsel to explore any possible conflict.

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

To resolve any potential conflict of interest, I would first disclose all relevant information to counsel and the parties, receive their input and rule on that issue – understanding that even the appearance of impropriety can undermine trust in the legal system. I would follow all the rules of the Code of Conduct for United States Judges and follow all applicable statutes, rules and ethical guidelines.

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

While in private practice as a partner in the firm of Geraci and Feldman (1987 – 1991), I participated in the Volunteer Legal Services Project and handled matters referred for no fees. Additionally, I served as a volunteer with the VLSP organization in the raising of funds to support this program. That program is now coordinated in an effort entitled "Campaign for Justice," which conducts an annual appeal. I volunteered for hundreds of hours over this four-year period.

Throughout my legal career I have volunteered in the community, coaching for both girls and boys basketball in the Catholic Youth Organization (CYO) and baseball for Eastside Little League. Over the past 20 years I have volunteered thousands of hours on these activities.

I helped found and continue to volunteer after court hours in the Rochester Teen Court. Since 1997, I have presided over dozens of Teen Court sessions and chaired the Advisory Committee.

While a law student at the University of Dayton School of Law, I worked as a volunteer student intern with the Greene County Legal Aid Society in Xenia, Ohio. I did this service for two academic years.

I volunteered as a Monroe County Court Judge to establish a new case management system for County and Supreme Courts. I also served as co-chair of the Seventh Judicial District's Committee to Promote Trust and Confidence in the Legal System.

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 contacted Senator Charles Schumer's office to express interest in the judgeship in the Western District of New York. I submitted a completed questionnaire to Senator Schumer's Screening Committee in early January 2012. On January 26, 2012, I was interviewed by Senator Schumer's Screening Committee in New York City. On February 3, 2012, I was interviewed by Senator Schumer. On February 8, 2012, I was notified that Senator Schumer would forward my name as a candidate for nomination. Since February 14, 2012, I have been in contact with the Office of Legal Policy at the United States Department of Justice. On March 12, 2012, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 14, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2012

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
Geraci, Jr., Frank P.	United States District Court Western District of New York	05/14/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination Date 05/14/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 04/25/2012
7. Chambers or Office Address		
Room 545 - Hall of Justice 99 Exchange Boulevard Rochester, New York 14614		

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. Insert signature on last page.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Director	Monroe County Bar Foundation
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Geraci, Jr., Frank P.	Date of Report 05/14/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2010	State of New York Salary	$146,700.00
2.	2011	State of New York Salary	$146,700.00
3.	2012	State of New York Salary	$160,000.00
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	City of Rochester Part-time Salary
2.	2011	NYS Retirement System Pension
3.	2012	City of Rochester Part-time Salary
4.	2012	NYS Retirement System Pension

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Gerarci, Jr., Frank P.	Date of Report 05/14/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Nelnet	Educational Loans	K
2.	Sallie Mae	Educational Loans	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Geraci, Jr., Frank P.	05/14/2012

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	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)
1. Alliance New York Municipal Income Fund	B	Dividend	L	T	Exempt				
2. Fidelity Magellan Fund	A	Int./Div.	J	T					
3. Fidelity OTC	B	Int./Div.	K	T					
4. MFS Municipal Limited Fund	A	Dividend	K	T					
5. New York Deferred Compensation Stable Income Fund	B	Dividend	K	T					
6. SEI Core Fixed Income Fund	B	Dividend	K	T					
7. SEI Emerging Markets Debt Fund	A	Dividend	J	T					
8. SEI Emerging Markets Equity Fund	A	Dividend	J	T					
9. SEI High Yield Bond Fund	A	Dividend	J	T					
10. SEI International Equity Fund	A	Dividend	K	T					
11. SEI International Fixed Income Fund	A	Dividend	J	T					
12. SEI Large Cap Growth Fund	A	Dividend	K	T					
13. SEI Large Cap Value Fund	A	Dividend	K	T					
14. SEI PrimeObligations Fund	A	Dividend	J	T					
15. SEI Small Cap Growth Fund	A	Dividend	J	T					
16. SEI Small Cap Value Fund	A	Dividend	J	T					
17. T. Rowe Price Equity Income Fund	C	Int./Div.	K	T					

1 Income Gain Codes (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2 Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

3 Value Method Codes (See Column C2)
Q =Appraisal
R =Assessment
S =Cost (Real Estate Only)
T =Cash Market
U =Book Value
V =Other
W =Estimated

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Name of Person Reporting	Date of Report
Geraci, Jr., Frank P.	05/14/2012

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

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

	A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18.	NYS 529 Coll Sav Pl - Mod Age Based Option Income Portfolio	C	Dividend	K	T					
19.	NYS 529 Coll Sav Pl - Mod Age Based Option Growth Portfolio	A	Dividend	J	T					
20.	M & T Bank accounts	A	Interest	K	T					

1 Income Gain Codes
(See Columns B1 and D4)

A =$1,000 or less
F =$50,001 - $100,000
B =$1,001 - $2,500
G =$100,001 - $1,000,000
C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
D =$5,001 - $15,000
H2 =More than $5,000,000
E =$15,001 - $50,000

2 Value Codes
(See Columns C1 and D3)

K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =More than $50,000,000

3 Value Method Codes
(See Columns C2)

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Geraci, Jr., Frank P.	Date of Report 05/14/2012

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Geraci, Jr., Frank P.	Date of Report 05/14/2012

IX. CERTIFICATION.

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

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

Signature

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		15	521	Notes payable to banks-secured (auto)		14	729
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		413	871	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		113	600
Real estate owned – personal residence		265	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		80	912	Education loans		51	798
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		180	127
				Net Worth		595	177
Total Assets		775	304	Total liabilities and net worth		775	304
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	
Alliance New York Municipal Income Fund	$ 64,129
Fidelity Magellan Fund	9,531
Fidelity OTC Portfolio	37,807
MFS Municipal Limited Fund	15,798
Microsoft stock	703
NY Deferred Compensation – Stable Income Fund	36,308
Paychex stock	733
SEI Core Fixed Income Fund	48,874
SEI Emerging Markets Debt Fund	8,485
SEI Emerging Markets Equity Fund	10,670
SEI High Yield Bond Fund	9,097
SEI International Equity Fund	21,683
SEI International Fixed Income Fund	11,102
SEI Large Cap Growth Fund	37,834
SEI Large Cap Value Fund	35,088
SEI Prime Obligations Fund	1,380
SEI Small Cap Growth Fund	6,925
SEI Small Cap Value Fund	6,355
T. Rowe Price Equity Income Fund	22,058
New York State 529 College Savings Plans	
Moderate Age Based Option Income Portfolio	26,628
Moderate Age Based Option Growth Portfolio	2,683
Total Listed Securities	$ 413,871

AFFIDAVIT

I, Frank Paul Geraci, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 15, 2012
(DATE)

(NAME)

sworn to before me this 15th day of May, 2012

(NOTARY)

PAUL M. RIORDAN
Notary Public, State of New York
Monroe County
Commission Expires May 26, 2015

Senator FEINSTEIN. Thank you very much.
Judge, please proceed.

STATEMENT OF FERNANDO M. OLGUIN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Judge OLGUIN. Thank you, Senator. I want to thank you and Senator Grassley for convening this meeting here today, and I want to thank you especially for the kind words and for recommending me to the President. And I want to thank the President also for the nomination.

I also want to thank a few people who have come today: of course, my wife, Heidi, and my daughter, Aurelia—she is 8 years old—and my son, Gabriel. We will have to see if they are able to sit through the whole proceeding.

Senator FEINSTEIN. If they would stand, we will give them a round of applause.

Judge OLGUIN. Yes, well, you could not see them, they are so short.

[Laughter.]

Senator FEINSTEIN. All right. I see a little face back there.

Judge OLGUIN. I also want to thank—I have a few friends, very close friends from college that are here today, and I have some of my former colleagues from the Department of Justice and a few friends from Arizona who are here, who actually now work in Washington. And I also want to recognize the people in Los Angeles, my family and friends who are watching this on the webcast. Maybe now it is a little early. Also I want to recognize my in-laws, Bill and Connie from New Hampshire, and my brother-in-law and sister-in-law. And I want to just thank you again.

[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).

   Fernando Manzano Olguin

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

   United States District Judge for the Central District of California

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

   United States Courthouse
   312 North Spring Street, Suite 901
   Los Angeles, California 90012

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

   1961; Los Angeles, California

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

   1985 – 1989, U.C. Berkeley School of Law (Boalt Hall); J.D., 1989
   1985 – 1989, U.C. Berkeley Graduate School of Arts & Science; M.A., 1989
   1980 – 1982, 1983 – 1985, Harvard University; B.A. (*cum laude*), 1985

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

   2001 – present
   United States District Court
   312 North Spring Street, Suite 901
   Los Angeles, California 90012
   United States Magistrate Judge

1995 – 2001
Traber, Voorhees & Olguin
128 North Fair Oaks Avenue, Suite 204
Pasadena, California 91101
Partner

1994 – 1995
Mexican American Legal Defense & Educational Fund
634 South Spring Street
Los Angeles, California 90014
Education Program Director

1991 – 1994
United States Department of Justice
Civil Rights Division, Housing and Civil Enforcement Section
P.O. Box 65998
Washington, D.C. 20035
Trial Attorney

1989 – 1991
United States District Court for the District of Arizona
Sandra Day O'Connor United States Courthouse
401 West Washington Street
Phoenix, Arizona 85003
Judicial Law Clerk to the Honorable C.A. Muecke (deceased)

Spring 1989
San Francisco Lawyers Committee for Urban Affairs
131 Steuart Street, Suite 400
San Francisco, California 94105
Law Clerk (work-study job)

Fall 1988
Kane, Ballmer & Berkman
515 South Figueroa Street, Suite 1850
Los Angeles, California 90071
Intern

Summer 1988
Rogers, Joseph, O'Donnell & Quinn
311 California Street
San Francisco, California 94104
Summer Associate

Summer 1988
Burns & Levinson
125 Summer Street

Boston, Massachusetts 02110
Summer Associate

Fall 1987
U.C. Berkeley
Ethnic Studies Department
Berkeley, California 94720
Teaching Assistant (work-study job)

Summer 1987
Los Angeles County Public Defender
210 West Temple Street, 19th Floor
Los Angeles, California 90007
Law Clerk

Fall 1986
ACLU of Northern California
39 Drumm Street
San Francisco, California 94111
Law Clerk (work-study job)

Summer 1986
O'Donnell & Gordon (no longer exists)
Summer Associate

Summer 1985
West San Gabriel Valley Consortium (no longer exists)
Administrative Assistant

Other Affiliations (uncompensated):

2011 – present
Western Justice Center Foundation
55 South Grand Avenue
Pasadena, California 91105
Member, Board of Directors

1995 – present
Centro Latino for Literacy
1709 West Eighth Street, Suite A
Los Angeles, California 90017
Member, Board of Directors (1995 – present)
Vice-President (1998 – 2001)
Treasurer (2001)

1999 – 2000
Sequoyah School

535 South Pasadena Avenue
Pasadena, California 91105
At-large 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 have registered with selective service.

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

Judicial Excellence Award, Mexican American Bar Association (2010)
United States Justice Department Special Commendation Award (1993 and 1994)
United States Attorney General's Honors Program (1991)
U.C. Berkeley, Foreign Language & Area Studies Fellowship
John Harvard Scholarship

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

Administrative Office of the United States Courts
    Human Resources Advisory Committee (2007 – 2010)
    Pro Se Working Group (2011 – 2012)
American Bar Association
    Litigation Section (1990 – present)
    Judicial Division (2002 – present)
Asian-Pacific American Bar Association (1998 – present)
California Bar Association
Department of Justice Latino Employees Association (1991 – 1994)
Federal Bar Association (1999 – present)
Federal Magistrate Judges Association (2001 – present)
Hispanic National Bar Association (2008 – present)
Latina Lawyers Bar Association (2001 – present)
Los Angeles County Bar Association (1995 – present)
    Federal Courts Committee (1995 – 2000)
Mexican-American Bar Association (1997 – present)
Ninth Circuit Judicial Conference
    Lawyer Representative for Central District of California (1996 – 2001)
    Clerk's Liaison Committee (1996 – 2001)
State Bar Access & Fairness Leadership Academy, Advisory Committee (2003 – 2006)
United States District Court for the Central District of California
    Ad Hoc Pro Bono/Pro Se Committee (2005 – 2010)

Attorney Liaison Committee (2003, 2007)
Civil Justice Reform Act and Alternative Dispute Resolution (2006)
Coordinator, Pro Bono Civil Rights Program (2003 – 2007)
Federal/State Liaison Committee (2002, 2007 – 2008)
Gender, Ethnic, Racial Bias & Professional Civility (2002, 2004 – 2005)
Information Technology Committee (2008 – 2010)
Magistrate Judges Committee (2011 – 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.

California, 1990

My membership in the California Bar was inactive for several months during my clerkship in 1991, and returned to inactive status upon my appointment as a United States Magistrate Judge for the Central District of California. Otherwise, there have been no lapses in membership.

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

Supreme Court of the United States, 1996
United States District Court for the Central District of California, 1992
California Supreme Court, 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.

Centro Latino for Literacy (1995 – present)
Board of Directors (1995 – present)
Vice-President (1998 – 2001)
Treasurer (2001)
Harvard-Radcliffe Club of Southern California (1998 – present)
Los Vecinos, South Pasadena Unified School District (2009 – present)
Marengo Elementary School, PTA (2009 – present)

Pasadena Human Services Commission (1999 – 2000)
Pasadena Unified School District-Wide Facilities Master Plan Committee (1998 – 1999)
Sequoyah School
At-large Trustee (1999 – 2000)
Western Justice Center Foundation (2011 – present)
Board of Directors (2011 – present)

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

To the best of my knowledge, none of the organizations listed in 11a discriminates or has ever discriminated on the basis of race, sex, religion or national origin.

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

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

With Diane August, Kenji Hakuta, and Delia Pompa, LEP Students and Title I: A Guidebook for Educators (Nov. 1995). Copy supplied.

"Guatemalan Refugees in Mexico: International Legal Standards," 13 The Fletcher Forum 327 (Summer 1989). Copy supplied.

I do not recall any other publications, although there may be some I have been unable to recall or identify.

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

I was interviewed by the California Higher Education Policy Center about the Center's draft policy recommendations in *Time for Decision* (1994) for a report

on the views of higher education policymakers, *Preserving the Legacy: A Conversation with California Leaders* (March 1995). 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.

Letter to Pasadena Mayor Bogaard requesting a waiver of the residency requirement so I could complete my term on the Human Services Commission, July 14, 2000. Copy supplied.

Between 1999 and 2000, I occasionally made statements during Human Services Commission meetings. I have been unable to obtain notes, transcripts, 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.

After reviewing my records and publicly-available information, I have listed all presentations, speeches and remarks that I am able to identify.

December 1, 2011: Swore in newly admitted lawyers to the federal court and gave brief remarks. The ceremony is held in Pasadena, California and sponsored by the California State Bar. In general, every June and December I swear in newly admitted lawyers to the federal court and give the same remarks. Remarks supplied.

October 12, 2011: Spoke at a luncheon in Los Angeles, California sponsored by the United States District Court for the Central District of California to celebrate Hispanic/Latino Heritage Month. I introduced the featured speaker, California Supreme Court Associate Justice, Carlos Moreno (Ret.). Remarks supplied.

September 28, 2011: Swore in and gave a speech to new citizens at a naturalization ceremony sponsored by the United States District Court for the Central District of California and the Department of Homeland Security, Immigration and Customs Enforcement. In general, I preside over one to two naturalization ceremonies a year and give the same remarks at locations selected by the United States District Court. Remarks supplied.

September 26, 2011: Served on a panel with two other judges, entitled "Tips from the Bench." I discussed discovery in federal court litigation and responded to questions from the audience relating to litigation in federal court. I have no notes, transcripts or recordings. The panel was sponsored by the Legal Aid Foundation of Los Angeles, 1102 Crenshaw Boulevard, Los Angeles, California 90019.

February 24, 2011: Served on a panel entitled "Basics of Civil Rights Actions," Barristers Section of the Los Angeles County Bar Association, Los Angeles, California. Notes supplied.

October 28, 2010: Gave remarks following receipt of Judicial Excellence Award from the Mexican American Bar Association, Los Angeles, California. Remarks supplied.

October 2, 2010: Gave speech at luncheon sponsored by the California Employment Lawyers Association, Los Angeles, California. Remarks supplied.

May 3, 2009: Served on a panel with another judge entitled "Views from the Bench." I have no notes, transcripts or recordings. The panel was held in Carlsbad, California and sponsored by the Labor and Employment Law Section of the Los Angeles County Bar Association, 1055 West Seventh Street, Suite 2700, Los Angeles, California 90017.

August 1, 2008: Gave speech to high school students attending a summer residential program sponsored by L.A. Works at the University of New Mexico. Remarks supplied.

April 5, 2008: Served on a panel entitled "Definition of Success: Varied Legal Perspectives" during the University of Pennsylvania Latin American Law Students Association's annual conference. I have no notes, transcripts or recordings. The panel was sponsored by the Latin American Law Students Association of the University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia, Pennsylvania 19104.

July 15, 2005: Served on a panel with two other individuals entitled "Latest Developments in Wage & Hour Law." I spoke about the Class Action Fairness Act. The panel was held in Los Angeles, California and sponsored by the California Employment Lawyers Association. Outline supplied.

September 6, 2003: Gave keynote speech at the State Bar of California's 2003 Diversity Awards Reception in Anaheim, California. Remarks supplied.

June 2, 2002 and December 7, 2002: Gave brief remarks at ceremony sponsored by the University of West Los Angeles Law School for its students who had passed the bar exam. Following remarks, I gave the oath of admission to the federal court to the new admittees. Remarks supplied.

December 3, 2002: Gave brief remarks at ceremony sponsored by Whittier Law School, Costa Mesa, California, for its students who had passed the bar exam. Following remarks, I gave the oath of admission to the federal court to the new admittees. Remarks supplied.

November 19, 2002: Served on a panel with two other U.S. Magistrate Judges to discuss Social Security and be introduced to the Social Security bar. I have no notes, transcripts and recordings. The panel was held in Los Angeles, California and sponsored by the Los Angeles County Bar Association, 1055 West Seventh Street, Suite 2700, Los Angeles, California 90017.

August 15, 2002: Gave brief remarks preceding the swearing-in of the incoming board of directors and President of the Latina Lawyers Bar Association, Los Angeles, California. Remarks supplied.

March 14, 2002: Gave brief remarks at a reception sponsored by the Latina Lawyers Bar Association and the Women's Lawyers of Los Angeles, Los Angeles, California. Remarks 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.

Susan McRae, "Jurist Owes It All to Upward Bound Program in Barrio," Los Angeles Daily Journal, May 6, 2003. Copy supplied.

October 1, 1999: Press conference regarding a housing discrimination lawsuit filed by my clients against their former employer. Press coverage of the conference is listed below:

> Thao Hua, "Ex-Managers Accuse Landlord of Racial Bias," Los Angeles Times, Oct. 2, 1999. Copy supplied.
>
> Press release, "Discrimination Suit Alleges Landlord's Overt Bias," National Fair Housing Advocate Online, Oct. 1, 1999. Copy supplied.

Kenneth Ofgang "Justices Extend Wrongful Termination Tort to Age Bias," Metropolitan New Enterprise, Aug. 28, 1997. Copy supplied.

July 23, 1997: Press conference regarding the certification of two classes against a southern California retail clothing store chain. A copy of the press release is supplied.

Skip Morgan, "Ex-County Worker Claims Harassment," Press Enterprise, Oct. 11, 1996. Copy supplied.

Ines Pinto Alicea, "Outlook on Washington: Congress Targets Illegal Immigrants," Hispanic Outlook in Higher Education, June 15, 1995. Copy supplied.

Ines Pinto Alicea, "Outlook on Washington: Dismantling Affirmative Action," Hispanic Outlook in Higher Education, June 1, 1995. Copy supplied.

Ines Pinto Alicea, "Outlook on Washington: GOP Proposes Merging Education Department," Hispanic Outlook in Higher Education, May 15, 1995. Copy supplied.

Ines Pinto Alicea, "Outlook on Washington: Republicans Look to Cut Financial Aid," Hispanic Outlook in Higher Education, May 1, 1995. Copy supplied.

Richard Martin, "Prepayment Policy at Denny's Sparks Civil Rights Uproar," Nation's Restaurant News, Jan. 27, 1992. Copy supplied.

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

In July 2001, I was appointed and sworn in as a United States Magistrate Judge for the Central District of California, pursuant to 28 U.S.C. § 636. As a United States Magistrate Judge, I preside over both civil and criminal matters. The civil cases include habeas corpus petitions, pro se civil rights cases, social security disability appeals, admiralty, extradition, applications for writs of attachment, and general civil cases where the parties have consented to the Magistrate Judge's jurisdiction for all purposes. Discovery motions and settlement conferences comprise another significant portion of my civil duties. My criminal work involves bail and detention matters, taking guilty pleas and imposing sentences in misdemeanor cases, making probable cause determinations on search and arrest warrants, and ruling on requests for pen registers, trap and trace devices, and electronic communications records.

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

i. Of these, approximately what percent were:

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

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

See attached list.

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

1. Naylor v. Candelaria, Warden, Case No. CV 03-0154 JFW (FMO)

Petitioner filed a petition for writ of habeas corpus alleging, among other things, that the trial court erred in failing to hold a hearing on the issue of whether he was competent to waive his right to counsel and represent himself. I issued a Report and Recommendation ("R&R"), finding that the record, viewed as a whole, did not reveal the type of "overwhelming indications of incompetence" that are present in cases where a "bona fide doubt" has been found to exist. The District Judge adopted my R&R in its entirety. A copy of the R&R is supplied. The Ninth Circuit, in an unpublished disposition, affirmed the decision in all respects. Naylor v. Candelaria, 143 F. App'x 773 (9th Cir. 2005).

Counsel for Petitioner:

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Counsel for Respondent:

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2. Sahakian, et al. v. City of Glendale, et al., Case No. CV 05-7419 (FMO)

The parties consented to my jurisdiction for all purposes. Plaintiffs brought suit against the City of Glendale and four of its police officers following a confrontation that occurred outside of plaintiffs' apartment complex after officers were called to investigate a "shots-fired" incident. One of the officers approached one of the plaintiffs to determine if he was involved in the incident. The officer asked the plaintiff some questions

and patted him down for weapons. During the pat down, a struggle ensued and the officer applied a "twist lock control" to the plaintiff's left arm. Thereafter, with the assistance of other officers, the officer took the plaintiff to the ground and handcuffed him. While the officers were taking the plaintiff to the patrol car, the plaintiff's sister and mother became engaged in an altercation with the officers and both were ultimately handcuffed. Plaintiffs brought the action pursuant to 42 U.S.C. § 1983 for violation of their constitutional right to be free from excessive force. They also raised a Monell claim for violation of their civil rights by a public entity, and a civil conspiracy claim. After I granted summary judgment in defendants' favor as to plaintiffs' Monell and civil conspiracy claims, the case proceeded to a jury trial. A copy of the summary judgment decision is supplied. The jury returned a verdict in favor of defendants. The case was affirmed on appeal. Sahakian v. City of Glendale, 388 F. App'x 679 (9th Cir. 2010).

Counsel for Plaintiffs:

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(626) 440-0477

Paul W. Wong
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(626) 585-1587

Counsel for Defendants:

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Glendale, CA 91206
(818) 548-2080

3. Lundquist v. Continental Casualty Co., et al., Case No. CV 02-9602 (FMO)

I presided over this case by consent of the parties. Plaintiff alleged that her disability benefits were improperly terminated in violation of ERISA. After considering the administrative record, the parties' trial briefs and counsels' oral argument, I found that the insurance company's denial of benefits was unreasonable and reversed the company's decision to terminate plaintiff's benefits. Lundquist v. Continental Casualty Co., 394 F. Supp. 2d 1230 (C.D. Cal. 2005).

Counsel for Plaintiff:

Glenn R. Kantor
Kantor & Kantor LLP

19839 Nordhoff Street
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(818) 886-2525

Counsel for Defendants: Robert F. Keehn
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4. Merolillo v. Felker, Warden, Case No. CV 05-0197 RGK (FMO)

Petitioner filed a petition for writ of habeas corpus alleging, among other claims, that: (1) his trial counsel rendered ineffective assistance by failing to request that the jury be properly instructed on causation; (2) the trial court erred by failing to correctly instruct the jury on causation; and (3) the trial court erred by allowing the prosecutor to elicit inadmissible hearsay evidence that the victim's death was caused by brain trauma in violation of petitioner's Sixth Amendment right to confront the witnesses against him. I issued an R&R, finding that defense counsel's failure to request the causation instruction was a sound tactical decision, as it was consistent with petitioner's defense, petitioner was not prejudiced by the trial court's failure to sua sponte instruct the jury with the causation instruction, and any error in allowing the opinion of the non-testifying pathologist to be presented to the jury did not have a substantial and injurious effect on the verdict. The District Judge adopted the R&R in its entirety. Merolillo v. Felker, 2008 WL 4820768 (C.D. Cal. 2008). The case was reversed on appeal. See Merolillo v. Yates, 663 F.3d 444 (9th Cir. 2011), pet. for cert. filed, 2012 WL 727232 (March 5, 2012).

Counsel for Petitioner: Michael Tanaka
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Counsel for Respondent: Teresa Torreblanca
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5. Taylor v. Glendale Police Department, et al., Case No. CV 03-4870 (FMO)

The parties consented to have me preside over this case for all purposes. Plaintiff brought suit against the City of Glendale and three of its police

officers arising out of a confrontation that occurred after officers were called to investigate a noise complaint. Plaintiff was placed in handcuffs and arrested for resisting, delaying, or obstructing an officer in violation of California law. Plaintiff alleged federal and state excessive force, false arrest, and malicious prosecution claims. After granting in part and denying in part defendants' motion for summary judgment, the case settled. A copy of the summary judgment decision is supplied.

Counsel for Plaintiff:
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Counsel for Defendants:
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6. Gibson v. Ortiz, Warden, Case No. CV 01-3661 CJC (FMO)

Petitioner filed a petition for writ of habeas corpus alleging, among other claims, that the trial court's jury instructions concerning "prior bad act" evidence denied petitioner his due process right to be convicted only upon a showing of proof beyond a reasonable doubt. I issued an R&R, finding that the trial court's instructional error misdirected the jury on the burden of proof and unconstitutionally reduced the required burden to a preponderance of the evidence standard. A copy of the R&R is supplied. After the District Judge adopted the R&R, the Ninth Circuit affirmed in a published decision. See Gibson v. Ortiz, 387 F.3d 812 (9th Cir. 2004).

Counsel for Petitioner:
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Counsel for Respondent:
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7. Fortune Elite Enterprises, LLC v. DHL Express Americas, Case No. CV 07-0061 (FMO)

The parties consented to my jurisdiction for all purposes. This was an action for damages stemming from the loss of plaintiff's shipment of goods that were transported by defendant. The Complaint, which was removed from state court, asserted four claims against defendant: (1) breach of contract; (2) fraud; (3) unfair business practices in violation of California Business and Professions Code § 17200 et seq.; and (4) bad faith. I granted defendant's motion for summary judgment, finding that plaintiff's state law claims were preempted by the Airline Deregulation Act of 1978 because the claims related to the rates and services of an air cargo carrier. I also found that there were no genuine issues of material fact in dispute with respect to plaintiff's federal common law claim for breach of contract. I found that it was undisputed that plaintiff's claim for lost or damaged goods was barred by the terms of carriage because plaintiff failed to provide defendant with timely written notice of its claim and there was no evidence that any of defendant's employees converted the shipment for their own use. A copy of the summary judgment decision is supplied. The Ninth Circuit dismissed plaintiff's appeal. See Fortune Elite Enterprises, LLC v. DHL Express (USA), Inc., Case No. 08-55138 (9th Cir. Dec. 17, 2008).

Counsel for Plaintiff:
Margarita Leslie Veloso Tioseco
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No phone number available

Counsel for Defendant:
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Robert J. Taitz
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(415) 464-2020

8. Najera v. Officer Batteny, et al., Case No. CV 00-0809 (FMO)

In this case, which was brought under 42 U.S.C. § 1983, the parties consented to my jurisdiction for all purposes. Plaintiff alleged excessive force in violation of the Fourth Amendment as well as a violation of his right to equal protection, and state claims for assault and battery, negligent infliction of emotional distress, and intentional infliction of emotional distress. After I ruled on various pretrial matters, the case ultimately settled.

Counsel for Plaintiff:	Lisa Woodward Lunt Office of the Federal Public Defender 6411 Ivy Lane, Suite 710 Greenbelt, MD 20770 (301) 344-0600 Michel F. Mills 14121 Beach Boulevard Westminster, CA 92683 (714) 892-2936
Counsel for Defendants:	Cory M. Brente Los Angeles City Attorney's Office City Hall East 200 North Main Street, 6th Floor Los Angeles, CA 90012 (213) 978-6900

9. United States v. One 2000 Range Rover Rhino, Case No. CV 01-4596 (FMO)

The parties consented to have me preside over the case for all purposes. This was a civil forfeiture case brought by the federal government and contested by the claimant, who sought to have the Range Rover vehicle returned to him. After conducting various pretrial proceedings (e.g., ruling on disputed jury instructions and motions in limine), the case settled on the day jury trial was scheduled to commence.

Counsel for Plaintiff:	John E. Lee United States Attorney's Office, Civil Division 300 North Los Angeles Street, Suite 7516 Los Angeles, CA 90012 (213) 894-3995
Counsel for Defendant:	Jerome A. Kaplan Kaplan Kenegos and Kadin 9150 Wilshire Boulevard, Suite 175 Beverly Hills, CA 90212 (310) 859-7700

10. Calles v. Alameida, Jr., Warden, Case No. ED CV 02-0212 R (FMO)

Petitioner filed a petition for writ of habeas corpus alleging, among other claims, that the questions the police asked him in his garage following a shooting in petitioner's home amounted to custodial interrogation and,

therefore, the police were obligated to advise him of his Miranda rights, their failure to do so constituted a violation of his constitutional rights, and petitioner's subsequent custodial statements were involuntary. I issued an R&R finding that the initial questioning of petitioner did not constitute custodial interrogation, the record did not support petitioner's contention that his statements had been coerced, and the state court's conclusion that petitioner's statements were voluntary was neither contrary to, nor an unreasonable application of, clearly established federal law. A copy of the R&R is supplied. After the District Judge adopted my R&R in its entirety, petitioner appealed. The Ninth Circuit denied petitioner's request for a certificate of appealability, effectively affirming my denial of the habeas petition in all respects. Calles v. Alameida, Case No. 05-56141 (9th Cir. Mar. 7, 2006).

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Counsel for Respondent:
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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. Sahakian, et al. v. City of Glendale, et al., Case No. CV 05-7419 (FMO). Opinion supplied in response to Question 13(c).

Counsel for Plaintiffs:
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Counsel for Defendants: Ann M. Maurer
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2. Lundquist v. Continental Casualty Co., et al., Case No. CV 02-9602 (FMO), 394 F. Supp. 2d 1230 (C.D. Cal. 2005).

Counsel for Plaintiff: Glenn R. Kantor
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Counsel for Defendants: Robert F. Keehn
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3. Fortune Elite Enterprises, LLC v. DHL Express Americas, Case No. CV 07-0061 (FMO). Opinion supplied in response to Question 13(c).

Counsel for Plaintiff: Margarita Leslie Veloso Tioseco
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No phone number available

Counsel for Defendant: David R. Shane
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4. Naylor v. Candelaria, Warden, Case No. CV 03-0154 JFW (FMO). Opinion supplied in response to Question 13(c).

Counsel for Petitioner: Sean K. Kennedy
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Hon. Maria E. Stratton
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Counsel for Respondent: Joseph P. Lee
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5. Allied Irish Banks, P.L.C. v. R2D2, LLC, Case No. 08-8527 RSWL (FMO). Order Granting Application for Writ of Attachment supplied.

Counsel for Plaintiff: Mary H. Haas
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Counsel for defendant: Susan Hilary Tregub
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6. Calles v. Alameida, Warden, Case No. ED CV 02-0212 R (FMO). Decision supplied in response to Question 13(c).

Counsel for Petitioner: Patrick M. Ford
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Counsel for Respondent: Kevin R. Vienna
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7. Le v. Astrue, Case No. SA CV 06-0681 (FMO), 540 F. Supp. 2d 1144 (C.D. Cal. 2008).

Counsel for Plaintiff: Jimmy Ogbonna Ewenike
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Counsel for Defendant: Sharla Cerra
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8. Gibson v. Ortiz, Warden, Case No. CV 01-3661 CJC (FMO). Decision supplied in response to Question 13(c).

Counsel for Petitioner: Ralph H. Goldsen
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9. Ekot v. Kornelis, Case No. SA CV 03-0547 JVS (FMOx). Order denying third-party Motion for Protective Order supplied.

Counsel for Plaintiff: Hector G. Gallegos
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Asako Sakai
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Australia
61298172893

Counsel for Third-Party: Thomas K. Bourke
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10. Core Industries, Inc. v. Shinn Fu Corp., Case No. CV 11-3100 PA (FMO) Order Denying Application for Writ of Attachment supplied.

Counsel for Plaintiff:	C. Dennis Loomis Baker and Hostetler LLP 12100 Wilshire Boulevard, 15th Floor Los Angeles, CA 90025 (310) 820-8800
Counsel for Defendant:	Kenneth L. Perkins, Jr. Musick, Peeler & Garrett LLP 650 Town Center Drive, Suite 1200 Costa Mesa, CA 92626 (714) 668-2441

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

Merolillo v. Felker, 2008 WL 4820768 (C.D. Cal. 2008), rev'd, Merolillo v. Yates, 663 F.3d 444 (9th Cir. 2011), pet. for cert. filed, 2012 WL 727232 (Mar. 5, 2012).

Maxwell v. Roe, Case No. CV 02-9555 JVS (FMO), rev'd, 628 F.3d 486 (9th Cir. 2010), cert. denied, 132 S. Ct. 611 (2012).

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.

Merolillo v. Felker, Case No. ED CV 05-0197 RGK (FMO). Petitioner filed a petition for writ of habeas corpus alleging, among other claims, that the trial court committed prejudicial error by allowing the prosecutor to elicit inadmissible hearsay evidence that the victim's death was caused by brain trauma in violation of petitioner's Sixth Amendment right to confront the witnesses against him. I issued an R&R, finding that any error in allowing the opinion of the non-testifying pathologist to be presented to the jury did not have a substantial and injurious effect on the verdict because, while the non-testifying pathologist was the only expert who opined that head trauma contributed to the victim's death, his testimony was consistent with the two prosecution experts who testified at trial that petitioner's conduct contributed to the victim's death. After the District Judge accepted the R&R in its entirety, see Merolillo v. Felker, 2008 WL 4820768 (C.D. Cal. 2008), the Ninth Circuit reversed on the ground that the trial court's error in admitting inadmissible hearsay evidence had a substantial and injurious effect on the verdict. See Merolillo v. Yates, 663 F.3d 444 (9th Cir. 2011), pet. for cert. filed, 2012 WL 727232 (Mar. 5, 2012).

Murphy v. Dexter, Case No. CV 08-1313 ODW (FMO). Petitioner alleged that the evidence was insufficient to prove that his prior conviction was a serious or violent felony within the meaning of California's "three strikes" law. I issued an R&R finding that, while the record did not indicate whether petitioner had pled guilty to first or second degree burglary, there was sufficient evidence to demonstrate that petitioner had a prior serious or violent felony conviction since the trial court could reasonably have concluded that the sentencing court's finding that "an unusual circumstance" justified probation necessarily indicated petitioner had pled guilty to first degree burglary under the relevant sections of the California Penal Code. After the District Judge accepted the R&R in its entirety, see Murphy v. Dexter, 2008 WL 4345163 (C.D. Cal. 2008), the Ninth Circuit reversed, finding that the state appellate court was objectively unreasonable in concluding that any rational trier of fact could have found that petitioner was convicted of a serious prior offense within the meaning of California's "three strikes" law. See Murphy v. Sandor, 447 F. App'x 824 (9th Cir. 2011).

Maxwell v. Roe, Case No. CV 02-9555 JVS (FMO). Petitioner filed a petition for writ of habeas corpus alleging, among other claims, that his constitutional rights were violated because: (1) he was convicted on the basis of false testimony of a jailhouse informant, Storch; and (2) the prosecution failed to investigate and disclose material and exculpatory evidence about two jailhouse informants, including Storch. I issued an R&R, concluding that the state court's finding that Storch did not lie when he testified he shared a cell with petitioner for approximately three and a half weeks was not unreasonable. Also, even if Storch lied about the deal he received from the prosecution, his lies were not prejudicial to petitioner. Finally, I found that the prosecution did not violate Brady because petitioner did not show that the evidence allegedly withheld was material or prejudicial. The District Judge accepted the R&R in its entirety. A copy of the R&R is supplied. The Ninth Circuit reversed, finding that petitioner was convicted on the basis of false and material evidence and the prosecution withheld material evidence in violation of Brady. See Maxwell v. Roe, 628 F.3d 486 (9th Cir. 2010), cert. denied, 132 S. Ct. 611 (2012).

Ward as next friend of Crystal M. v. Ortega, Case No. ED CV 02-1022 MMM (FMO). Petitioner filed a petition for writ of habeas corpus alleging, among other claims, that she did not make a knowing and intelligent waiver of her Miranda rights. I issued an R&R, finding that petitioner could not demonstrate that she did not knowingly and intelligently waive her Miranda rights where, other than her age, she did not put forth any evidence indicating that she did not understand her Miranda rights, and the record reflected that petitioner understood her Miranda rights and that petitioner appeared to be "street smart." The District Judge accepted the R&R in its entirety. A copy of the R&R is supplied. The Ninth Circuit reversed, finding that the state court failed to consider the totality of the circumstances and made an erroneous factual determination regarding a pivotal fact. See Ward v. Ortega, 379 F. App'x 687 (9th Cir. 2010).

Monaco v. Moberg, et al., Case No. CV 07-6536 CAS (FMO). Plaintiff filed a civil rights complaint alleging that defendants used excessive force when they assaulted him without provocation and that defendants proceeded to cover up this incident by submitting false allegations against him, which resulted in plaintiff being improperly convicted of battery. I issued an R&R, recommending that the complaint be dismissed with prejudice for failure to state a claim. The District Judge adopted the R&R in its entirety. A copy of the R&R is supplied. The Ninth Circuit vacated the judgment and remanded for the limited purpose of entering a dismissal without prejudice. See Monaco v. Moberg, 362 F. App'x 866 (9th Cir. 2010).

Diouf v. Mukasey, et al., Case No. CV 06-7452 TJH (FMO). Petitioner filed a petition for writ of habeas corpus alleging, among other claims, that his prolonged detention while removal proceedings were pending against him violated the Immigration and Naturalization Act ("INA"). I issued an R&R, recommending that the writ be granted because petitioner's detention for nearly two years was excessive and unauthorized by the controlling statute, 8 U.S.C. § 1226(c). The District Judge accepted the R&R in its entirety. A copy of the R&R is supplied. The Ninth Circuit reversed on the ground that, at the time the district court granted the writ, petitioner was being detained under 8 U.S.C. § 1231(a)(6). Also, while petitioner's detention undoubtedly extended beyond the presumptively reasonable period of six months under § 1231(a)(6), he failed to demonstrate that there was no significant likelihood of removal in the reasonably foreseeable future. See Diouf v. Mukasey, 542 F.3d 1222 (9th Cir. 2008).

Roman v. Hedgpeth, Case No. ED CV 04-1226 JFW (FMO). Petitioner filed a petition for writ of habeas corpus alleging, among other claims, that his right to a fair trial was violated by juror misconduct. I issued an R&R, recommending that the writ be granted because the state court's conclusion that petitioner's right to a fair trial was not violated by the jury's exposure to improper evidence of petitioner's two prior strikes was contrary to, and an unreasonable application of clearly established federal law, and was based on an unreasonable determination of the facts. Roman v. Hedgpeth, 2008 WL 4553137 (C.D. Cal. 2008). The District Judge accepted my R&R in part, concluding that the state court decision was not contrary to clearly established federal law, but it was based on an unreasonable application of clearly established federal law. See Roman v. Hedgpeth, 2008 WL 4553091 (C.D. Cal. 2008).

Burnham v. Barnhart, Case No. CV 03-3813 (FMO). Plaintiff alleged that the Commissioner of the Social Security Administration ("Commissioner") improperly rejected the opinion of his treating physician in denying his disability claim. I issued a decision, finding that the Commissioner properly considered the medical opinions in the record before concluding that plaintiff was not disabled. A copy of the decision is supplied. The Ninth Circuit remanded the matter to the Commissioner for further development of the record, finding that the medical evidence arguably supported plaintiff's claim for benefits, but that the stale state

of the record precluded a final determination on the matter. See Burnham v. Barnhart, 213 F. App'x 562 (9th Cir. 2006).

Brittain v. County of San Bernardino, et al., Case No. ED CV 01-0595 VAP (FMO). Plaintiff alleged that defendants violated her constitutional rights when one defendant acted to remove plaintiff's son from her custody. I issued an R&R, recommending that defendants' motion for summary judgment be denied in part because a jury could conclude that the state's decision to remove plaintiff's child from her custody without notice and a hearing in the absence of an emergency violated her procedural due process rights. I also concluded that a genuine issue of material fact existed as to whether the actions of the defendant who removed plaintiff's son from her custody violated plaintiff's substantive due process rights. The District Judge adopted the R&R in its entirety. A copy of the R&R is supplied. The Ninth Circuit reversed, finding that plaintiff failed to allege a sufficient deprivation of liberty and defendants' actions were not conscience shocking. Additionally, the Due Process Clause did not require a pre-deprivation hearing before plaintiff could be deprived of one week of visitation with her child. See Brittain v. Hansen, 451 F.3d 982 (9th Cir. 2006).

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

As a Magistrate Judge, I issue orders on non-dispositive matters and in dispositive matters where the parties have consented to magistrate judge jurisdiction. I also issue reports and recommendations in habeas corpus and pro se civil rights cases and dispositive orders in social security disability appeals. My non-dispositive orders include discovery motions, applications for writs of attachment, and admiralty and extradition cases. The orders and reports and recommendations I issue are filed with the court's electronic filing system. While very few orders or reports and recommendations are published, many of the substantive decisions are posted on Westlaw and/or LexisNexis.

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

I have not issued any opinions that addressed any significant federal or state constitutional issues.

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

I have not sat by designation on a federal court of appeals.

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

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

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

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

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

    I follow the recusal statutes and the Code of Conduct for United States Judges. I also recuse myself if I have a relationship with counsel or a party such that it would be improper or create an appearance of impropriety for me to be a judge on the case. Our court does not employ an "automatic" recusal system. I evaluate each case when referred to me and when assigned for the parties' consent to my jurisdiction. CM/ECF maintains a conflict checking tool which I periodically update. The conflict checking tool runs cases against a list I maintain in the system. That list includes attorneys from my former firm, former law clerks, attorneys who are close personal friends, and other entities and individuals whose appearance before me could give rise to an appearance of a conflict. I also review cases as they proceed, examining the list of counsel and parties to determine if an association appears which is not listed in our conflict database.

    In the following cases, I recused myself due to personal, family or staff relationships, former professional relationships (e.g., former law firm, former law clerks) and/or because my impartiality might reasonably be questioned:

    Housing Rights Ctr., et al. v. Nijjar, et al., Case No. CV 02-9712 DSF (FFMx)
    Martinez v. City of South Gate, et al., Case No. CV 03-0979 JFW (SHx)
    UGG Holdings Inc. v. Severn, et al., Case No. CV 04-1137 JFW (PLAx)
    Shmoldas v. MBDA Inc., et al., Case No. CV 04-2287 PA (CWx)
    Unocal Corp. v. Lexington Ins. Co., et al., Case No. CV 05-1857 JFW (VBKx)
    Construction Laborers Trust Funds for Southern California Administrative Co. v. Alfa 26 Construction Co., et al., Case No. 05-3738 JFW (CWx)
    Atkins v. Gillette Co., et al., Case No. CV 05-4024 DDP (VBKx)
    Lipper v. Gillette Co., et al., Case No. CV 05-5022 DDP (VBKx)
    Marr v. Gillette Co., et al., Case No. CV 05-5024 DDP (VBKx)

Weaver v. Internal Affairs Clerk, US District Court Central, et al., Case No. CV 05-6123 UA (MLG)
Deckers Outdoor Corp. v. Chengs Enterprises Inc., Case No. CV 05-8297 DSF (RCx)
MGA Entertainment v. Hasbro Inc., Case No. CV 06-4915 JFW (FFMx)
Multi-Ethnic Immigrant Workers Organizing Network, et al. v. City of Los Angeles, et al., Case No. CV 07-3072 AHM (FFMx)
Disney Enterprises Inc. v. Rizzo, et al., Case No. CV 07-3215 ODW (CTx)
Sanrio Inc., et al. v. El Sol Trading, et al., Case No. CV 07-3608 RGK (MANx)
Nike Inc. v. Jones, et al., Case No. CV 07-3912 PA (JTLx)
The Harman Press v. AAA Cooper Transportation, et al., Case No. CV 07-6792 DSF (SHx)
Tomassi, et al. v. City of Los Angeles, Case No. CV 08-1851 DSF (SSx)
Eastwest United Group, Inc. v. American Bio-Synthetics Corp., et al., Case No. CV 08-4677 SJO (RCx)
Screen Actors Guild, Inc. v. The Skippy Limited Partnership, et al., Case No. CV 08-7807 ODW (FFMx)
The Regents of The University of California, et al. v. Comerchero, et al., Case No. CV 09-0862 MMM (Ex)
International Medical Research, Inc. v. Meco, et al., Case No. CV 09-0865 RGK (RZx)
Astorga, et al. v. GMAC Mortgage, LLC, et al., Case No. CV 09-1226 FMC (FFMx)
Lisker v. City of Los Angeles, et al., Case No. CV 09-9374 AHM (AJWx)
Waitt, et al. v. Internet Brands, Inc., et al., Case No. CV 10-3006 GHK (JCGx)
U.S. Equal Employment Opportunity Commission v. Garfield Medical Center, Inc., Case No. CV 10-6179 GHK (SHx)
United States v. City of Walnut, California, Case No. CV 10-6774 GW (MANx)
Placo San Bernandino, LLC v. City of San Bernardino, et al., Case No. CV 11-1187 GW (AGRx)
Hwa Seung Networks America Corp. v. Keystone Textile, Inc., et al., Case No. CV 11-2556 JHN (VBKx)
Li v. Costco Wholesale Corp., et al., Case No. 11-2996 JHN (JCGx)
Kuhns v. Deitchle, et al., Case No. CV 06-0917 ABC (MANx)

Five pro se litigants (four of whom are prisoners) filed motions requesting my recusal. All of the motions were denied by the assigned District Judge or by a District Judge randomly selected to review the motion.

Martin v. Cash, Case No. CV 10-1501 PSG (FMO)
McKinney v. Los Angeles County Sheriff Department, et al., Case No. CV 04-4185 RMT (FMO)
Sainthill v. LAPD, et al., Case No. CV 03-9168 SJO (FMO)
Sainthill v. U.S. Government, SSA, Case No. CV 02-4106 FMO
Villegas v. Cassim, Case No. CV 04-5888 FMC (FMO)
Zinchenko v. Scribner, Case No. CV 06-0953 JFW (FFM)

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 not been a member or held an office in any political party or election committee. I have never held a position or played a role in a political campaign.

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

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

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

From 1989 to 1991, I clerked for the Honorable C.A. Muecke, United States District Judge for the District of Arizona (deceased).

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.

1991 – 1994
United States Department of Justice
Civil Rights Division, HCE
P.O. Box 65998
Washington, D.C. 20035
Trial Attorney

1994 – 1995
Mexican American Legal Defense & Educational Fund
634 South Spring Street
Los Angeles, California 90014
Education Program Director

1995 – 2001
Traber, Voorhees & Olguin
128 North Fair Oaks Avenue, Suite 204
Pasadena, California 91101
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.

Since assuming the position of United States Magistrate Judge in 2001, I have conducted numerous settlement conferences and successfully settled a number of cases. However, I did not serve as a mediator or arbitrator while in private practice.

b. Describe:

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

I was a civil litigator. In 1991, after completing a two-year judicial clerkship with a District Judge from the District of Arizona, I was selected through the United States Attorney General's Honors Program to work in the Civil Rights Division of the United States Department of Justice. While at the Justice Department, I prosecuted violations of the federal Fair Housing Act and the Public Accommodations Act. I left the Department of Justice in 1994, and spent a year at the Mexican American Legal Defense and Educational Fund as the Director of the Education Program, where I was responsible for coordinating and monitoring education issues and matters on a national scale. From 1995 to my appointment as a Magistrate Judge in 2001, I was a named partner in the Pasadena-based law firm, Traber, Voorhees & Olguin, where I litigated housing and employment cases. In addition to my litigation matters, I was involved in firm administration, client intake, budgeting and recruiting.

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

During my practice, I worked as a lawyer for the federal government, a private, non-profit organization, and with a private law firm. The clients I represented were, with very few exceptions, economically disadvantaged,

women and/or members of minority groups. Nearly all of my clients, including the complainants on whose behalf the United States filed suit, lacked the financial and legal resources to pursue their 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.

Prior to my appointment as a United States Magistrate Judge, all of my practice was in civil litigation. As an attorney with the United States Department of Justice (1991– 1994), I appeared in federal court 100% of the time. When I went into private practice, I appeared in both federal and state courts, with approximately 65% of my court appearances in federal court and 35% in state court. I would estimate that during my time in practice, I appeared in court four to seven times a month.

i. Indicate the percentage of your practice in:
   1. federal courts: 75%
   2. state courts of record: 25%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

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

I tried two civil cases to verdict, serving as chief counsel in one case and associate counsel in the other case.

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

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

I have 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. Denny's Restaurants, Inc., Civ. No. 93-20208-JW (N.D. Cal.) (consolidated)

I was lead counsel for the United States in a federal civil rights enforcement action alleging violations of the Public Accommodations Act. The case settled and resulted in what many consider to be the most comprehensive civil rights injunction ever entered into by the Department of Justice. The injunction, which I prepared and negotiated, applied to all Denny's restaurants in the country and required the appointment of a Civil Rights Monitor who was responsible for: (1) training all Denny's employees, managers and agents in the requirements of the Public Accommodations Act; (2) investigating all complaints of discrimination and making reasonable cause determinations as to whether discrimination had occurred; (3) ensuring that all of Denny's advertisements included Denny's non-discrimination policies; (4) ensuring that Denny's includes African-American and other non-white persons in its advertising; and (5) testing Denny's restaurants throughout the country to monitor Denny's practices.

Judge: Hon. James Ware

Opposing Counsel: Robert M. Barrett
Holcombe Bomar, P.A.
100 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 594-5321

Tom Pfister
2006 Fairburn Avenue
Los Angeles, CA 90025
(310) 446-1572

Maureen E. Mahoney
Latham & Watkins

555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
(202) 637-2250

Robert L. Wynn, III
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Spartanburg, SC 29307
(864) 582-3069

Co-Counsel: Mari Mayeda
284 The Uplands
Berkeley, CA 94705
(510) 841-4970
(510) 917-1622

Teresa Demchak
Goldstein, Demchak, Baller, Borgen & Dardarian
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
(510) 763-9800

Antonio M. Lawson
Lawson Law Offices
7700 Edgewater Drive, Suite 255
Oakland, CA 94621
(510) 878-7818

2. United States. v. Plaza Mobile Estates, et al., Civ. No. 91-6255-RMT(GHKx) c/w 92-3015-RMT (GHKx) (C.D. Cal.)

I was lead counsel for the United States in a federal civil rights enforcement action alleging violations of the Fair Housing Act on the basis of familial status. The case, which I initially filed on behalf of five complainants, was consolidated with another case and eventually became a multi-state pattern or practice case. A portion of the case settled, resulting in a comprehensive injunction and approximately $2.2 million in damages for the complainants and class members. The case is considered to be one of the largest familial status cases ever settled since the 1988 amendments to the Fair Housing Act, which added familial status as a protected class.

Judge: Hon Robert M. Takasugi (deceased)

Opposing Counsel: Barbara J. Ferguson
24 South Penobscot Court
Simpsonville, SC 29681
(864) 297-3775

Joey P. Moore
420 Exchange Street, Suite 270
Irvine, CA 92602
(714) 438-7210

Co-Counsel: William B. Senhauser
29310 Wagon Road
Agoura Hills, CA 91301
(213) 345-9559

Brian F. Heffernan
5980 Richmond Highway, # 611
Alexandria, VA 22303
(703) 407-6839

Theresa M. Traber
Bert Voorhees
Traber & Voorhees
128 North Fair Oaks Avenue, Suite 204
Pasadena, CA 91103
(626) 585-9611

3. United States v. Casitas Capistrano Assoc., No. 1, et al., Civ. No. 92-2723-DWW (C.D. Cal.)

I was lead counsel in a federal civil rights enforcement action alleging violations of the Fair Housing Act. I filed the case on behalf of five complainants, four of whom claimed they were discriminated against because of their race and national origin when the manager of the condominium association made derogatory remarks about the complainants to the effect that Latinos "tend to multiply" and that the condominium complex "had no intention of becoming like the complex across the railroad track." After a bench trial, the trial judge ruled in favor of the United States and awarded over $60,000 in damages to the complainants. United States v. Casitas Capistrano Assoc. No. One, Inc., et al., 1993 WL 787196 (C.D. Cal. 1993).

Judge: Hon. David W. Williams (deceased)

Opposing Counsel: J. Stephen Pascover
San Bernardino County Superior Court
303 West Third Street, 4th Floor
San Bernardino, CA 92415
(909) 382-7685

James R. Robie (deceased)

Co-Counsel: Diane Houk
Emery Celli Brinckerhoff & Abady LLP
75 Rockefeller Plaza, 20th Floor
New York, NY 10019
(212) 763-5000

4. Pedroza v. Fashion 21, Inc., Civ. No. BC 079974 (Los Angeles Superior Court)

I was lead counsel in a class action against a retail clothing store chain that operates stores in California, Texas and Hawaii. Plaintiff served as a class representative for two classes: (1) an overtime class, consisting of all current and former employees who had been denied overtime wages due to them; and (2) a discrimination class, consisting of all current and former non-Asian-American employees who had been paid lower wages because of their race, ethnicity and/or national origin. After an overtime and wage class was certified by the court, the case settled on the eve of trial for an injunction and $1 million in damages and attorneys' fees.

Judge: Hon. Bruce E. Mitchell

Opposing Counsel: Bryan K. Sheldon
Christopher Kim
Lim, Ruger & Kim
1055 West Seventh Street, Suite 2800
Los Angeles, CA 90017
(213) 955-9500

Christine Chang-Min
Chambers Attorney
California Supreme Court
300 South Spring Street
Los Angeles, CA 90013
(213) 830-7574

5. Macias v. County of Riverside, et al., Civ. No. 97-1835 (Mc) (C.D. Cal. 1999)

I was lead counsel in a case alleging discrimination and harassment on the basis of gender and national origin against the Riverside County Public Defender's Office ("RCPD"). Plaintiff alleged, among other things, that her former supervisors engaged in an extended campaign of harassment, discrimination and retaliation against her because of her gender and national origin (Mexican), in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000e, et seq., and the California Fair Employment and Housing Act, Cal. Gov't Code §§ 12900, et seq. The

case settled for approximately $400,000, including attorneys' fees and costs.

Judge: Hon. James W. McMahon (Ret.)
Hon. Carla Woehrle

Opposing Counsel: Hon. Robert M. Padia (Ret.)
1240 Lyndhurst Drive
Riverside, CA 92507
(unable to locate current telephone number)

Gail F. Montgomery
41720 Crazy Horse Canyon Road
Aguanga, CA 92536
(unable to locate current telephone number)

Arthur K. Cunningham
Lewis Brisbois Bisgaard & Smith LLP
650 East Hospitality Lane, Suite 600
San Bernardino, CA 92408
(909) 387-1130

Co-Counsel: Pegine E. Grayson
361 Plumosa Drive
Pasadena, CA 91107
(626) 755-1186

Carol Klauschie
255 East Temple Street
Los Angeles, CA 90012
(213) 894-2838

6. Stevenson v. Superior Court, 16 Cal. 4th 880 (1997) (California Supreme Court No. S052588)

This was an appeal from a state court of appeal decision upholding the trial court's decision to sustain the defendant's demurrer to the plaintiff's complaint. The trial court had ruled that there was no common law cause of action for age discrimination in California. The plaintiff's trial counsel retained my firm to prepare the briefing before the California Supreme Court. Although I did not argue the case, I did all the briefing before the California Supreme Court, which reversed the court of appeal, holding that there is a common law cause of action for age discrimination in California. Stevenson v. Superior Court, 16 Cal. 4th 880 (1997).

Justices: Chief Judge Ronald M. George (Ret.)
Joyce L. Kennard

Marvin R. Baxter
Kathryn M. Werdegar
Ming W. Chin
Stanley Mosk (Ret.)
Janice Brown (Ret.)

Trial Judge: Hon. Thomas Stoever (Ret.)

Opposing Counsel: Todd E. Croutch
Fonda & Fraser LLP
100 West Broadway, Suite 650
Glendale, CA 91210
(818) 649-3590

Co-Counsel Antonio M. Lawson
Lawson Law Offices
7700 Edgewater Drive, Suite 255
Oakland, CA 94621
(510) 878-7818

7. Spencer, et al., v. Conway, et al., Case No. CV 00-0350 GLT (EEx) (C.D. Cal.)

I was co-lead counsel on behalf of a couple who were resident managers at defendants' apartment complex. Plaintiffs alleged that defendant Conway instructed them not to rent to minority tenants. Specifically, in a letter to plaintiffs, defendant Conway wrote, "No more blacks and no more Mexicans are my instructions to you." When plaintiffs refused to follow defendant Conway's instructions, they were harassed and ultimately terminated and evicted from their apartment. I filed a motion for judgment on the pleadings and obtained a liability finding on an issue of first impression, i.e., whether the federal Fair Housing Act is violated when an apartment owner instructs residential managers not to rent to minority applicants, even if no further discriminatory action is taken as a result of the instruction. Spencer v. Conway, 2001 WL 34366573 (C.D. Cal. 2001). The case subsequently settled.

Judge: Hon. Gary L. Taylor (Ret.)

Opposing Counsel: Gregory J. Ferruzzo
Ferruzzo & Ferruzzo LLP
3737 Birch Street, #400
Newport Beach, CA 92660
(949) 608-6900

Co-Counsel: D. Elizabeth Martin (Pierson)
Law Office of Spix & Martin

1505 East 17th Street, Suite 230
Santa Ana, CA 92705
(714) 835-5112

8. Walker, et al. v. Lakewood Condominium Owners Assoc., et al., Civ No. CV 93-4531 KMW (ANx) (C.D. Cal. 1997)

I served as associate counsel in a class action on behalf of a group of former and current African-American tenants who alleged they were discriminated against on the basis of their race by the owners and management of an apartment complex. The case was settled for nearly $1.7 million and a consent decree that required, among other things, the: (1) training of all employees, including the residential complex's security guards; (2) development of an eviction policy; (3) inclusion of the Equal Opportunity Housing logo in all advertising; and (4) display of a fair housing sign in the rental office with the name and phone numbers of the local fair housing council and the various governmental agencies that enforce fair housing laws.

Judge: Hon. Kim McLane Wardlaw

Opposing Counsel: Edith Norton Dinneen
1707 South Hesperides Street
Tampa, FL 33629
(813) 286-0614

Constance E. Norton
Littler Mendelson
650 California Street, 20th Floor
San Francisco, CA 94108
(415) 433-1940

Ilse H. DiPinto
Crandall Wade & Lowe
9483 Haven Avenue, Suite 102
Rancho Cucamonga, CA 91729
(909) 483-6700

John Sanford Todd
(deceased)

Thomas M. Phillips
The Phillips Firm
444 South Flower Street, Suite 601
Los Angeles, CA 90071
(213) 244-9913

9. United States v. Pacific Serena Homeowners Assoc., et al., Civ. No. 92-110G (LSP) (S.D. Cal.)

This case involved a subdivision known as Pacific Serena, located in Encinitas, California. A family with a two-year-old daughter alleged that they sought to purchase a unit in the subdivision but were turned down because of their familial status. I was lead counsel for the United States in a federal civil rights enforcement action alleging violations of the Fair Housing Act on the basis of familial status. The case settled, resulting in a consent decree and damages for the complainants on whose behalf the case was brought.

Judge: Hon. Earl B. Gilliam (deceased)

Hon. Leo S. Papas (Ret.)

Opposing Counsel: Jay J. Brown
Alan H. Burson
Feist, Vetter, Knauf and Loy
810 Mission Avenue Suite 300
P.O. Box 240
Oceanside, CA 92049
(619) 722-1914

10. United States v. Bay Heights Owners Assoc., Inc., et al., Civ No. 93-C-0565 (E.D. Wis. 1993-1994) (lead counsel)

This case concerned the sale of a condominium in a complex known as Bay Heights Condominiums, located in South Milwaukee, Wisconsin. I was lead counsel for the United States in a federal civil rights enforcement action challenging the complex's rule that prohibited children under the age of 14 from living at the complex. The case settled, resulting in a consent decree and damages for the complainants on whose behalf the case was brought.

Judge: Hon. Rudolph T. Randa

Opposing Counsel: Debra A. Slater
Weiss Berzowski Brady LLP
700 North Water Street, Suite 1500
Milwaukee, WI 53202
(414) 276-5800

Co-Counsel: Barbara Z. Quindel
Hawks Quindel SC
222 East Erie Street, Suite 210
P.O. Box 442

Milwaukee, WI 53201
(414) 271-8650

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

Prior to becoming a Magistrate Judge, I spent my legal career as a litigator and the cases described above were representative of my practice. My former legal activities include participation in the Los Angeles County Bar Association and the Mexican American Bar Association of Los Angeles. In addition, I served as a moot court judge at the local law schools.

As a current Magistrate Judge, I have been involved in court governance at both the district and national level. At the district level, I have served on the Attorney Liaison, Federal-State Liaison, Pro Bono/Pro Se, and the Information Technology Committees. From approximately April 2003 to 2007, I was the Coordinator of the Central District's Pro Bono Civil Rights Program ("Program"). The Program consists of a volunteer panel of private law firms that have agreed to assist pro se plaintiffs in prisoner civil rights cases filed pursuant to 42 U.S.C. § 1983. Prisoner civil rights cases were chosen as the focus of the Program because the plaintiffs, most of whom are incarcerated, have no means to obtain private counsel, and pro se litigants comprise more than 60 percent of a Magistrate Judge's caseload and more than 30 percent of the Central District's caseload. During the time that I was responsible for the Program, I helped increase the number of volunteer law firms from 13 to approximately 40 law firms. Finally, I currently serve on the Magistrate Judges Committee, which is, among other things, responsible for reviewing and recommending to the full court candidates for the position of Magistrate Judge.

On a national level, I was selected by the Administrative Office of the United States Courts (AO) to serve as the Magistrate Judge representative on the Human Resources Advisory Council, which provides advice to the Administrative Office on judiciary-wide human resources matters, including operational personnel management, core and supplemental benefits administration, training, work measurement, employee relations and fair employment practices. In addition, I just completed an appointment to the AO's Pro Se Working Group, which was charged with reviewing and recommending formulas for the allocation of pro se law clerks to the Judicial Resources Committee.

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 have no plans, commitments, or agreements to pursue outside employment during service with the court.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If confirmed, my current recusal list would remain in place and I would regularly review and update the list. I will also continue to review the parties and attorneys listed in the matters that are assigned to me to ensure that there are no conflicts of interest.

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

I will continue to follow the federal recusal statutes and the Code of Conduct for United States Judges, just as I do in my current position. I will continue to recuse myself from cases in which I perceive there is any appearance of impropriety. If necessary, I will seek guidance from the Committee on Codes of Conduct of the Judicial Conference of the United States.

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

While my law practice was directed at assisting individuals who were economically disadvantaged and seeking to have their rights vindicated, my pro bono work outside the office was devoted to assisting non-profit organizations. For example, I have been on the Board of Directors of Centro Latino for Literacy since 1995. Centro Latino was founded in 1991 to address widespread illiteracy among Latino adults and promote family literacy. It has pioneered an innovative approach to effectively educate adults who are illiterate in their Spanish native language. Since its inception, Centro Latino has graduated over 1,000 Latino adults who learned to read and write in their own language. After learning to read and write in their Spanish native language, the students go on to learn basic reading and writing skills in English. Centro Latino conducts its programs in diverse Los Angeles communities with high concentrations of low-income Latino residents.

Since 2011, I have been a member of the Board of Directors of the Western Justice Center Foundation ("Foundation"), which is located in Pasadena, California. The Foundation designs, implements and promotes innovative methods of conflict prevention and resolution for children, communities and courts.

I also served as a member of the Pasadena Unified School District-Wide Facilities Master Plan Committee ("Committee"). After Pasadena voters approved a $240 million dollar school bond initiative, the Pasadena Unified School District School Board created a District-Wide Master Plan Committee comprised of community representatives, including parents, business representatives, community organizations, teachers and other school employee labor representatives. As a member of the Committee, I was involved in studying and proposing recommendations relating to the District's long-term facilities priorities that would balance educational opportunities, cost effectiveness, community needs and facility utilization.

Finally, I served on the Pasadena Human Services Commission ("Commission"). The purpose of the Commission is to advise and make recommendations to the Pasadena City Council regarding the human service needs of the residents of Pasadena. As a member of the Commission, I was involved in reviewing and making recommendations relating to proposals submitted by human services organizations dedicated to serving the residents of Pasadena. The Commission also heard testimony from residents and city officials on a variety of human service needs and gaps in the City of Pasadena.

26. **Selection Process**:

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

I submitted my application to Senator Feinstein's Central District Judicial Advisory Committee ("Advisory Committee") in early December, 2011. On December 16, 2011, I was interviewed by the Advisory Committee. On January 13, 2012, I was interviewed in San Diego by Senator Feinstein's Statewide Chair, David S. Casey, Jr. I met with Senator Feinstein and one of her staffers on March 2, 2012, in Washington, DC. Since March 9, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 13, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 14, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2012

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
Olguin, Fernando M	U.S. District Court for the Central District of California	05/14/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. District Judge	☑ Nomination Date 05/14/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 04/30/2012
7. Chambers or Office Address		
312 N. Spring Street Los Angeles, CA 90012		

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. Insert signature on last page.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Board Member	Centro Latino for Literacy
2.	Board Member	Western Justice Center Foundation
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Olguin, Fernando M.	Date of Report 05/14/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2012	Progressive Management Resources, Inc. (salary)
2.	2011	Progressive Management Resources, Inc. (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 Olguin, Fernando M.	Date of Report 05/14/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Olguin, Fernando M.	Date of Report 05/14/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
1. Bank of America (Accounts)	B	Interest	O	T	Exempt				
2. Oppenheimer Small & Mid Cap. Value Fund A	A	Dividend	J	T					
3. IRA #1	C	Dividend	L	T					
4. --American Funds: Investment Co. of America									
5. - American Funds: New Perspective Fund									
6. --American Funds: Bond Fund of America									
7. Wells Fargo (Accounts)	A	Interest	L	T					
8. Vanguard Target Retirement 2035 (no control)	D	Dividend	M	T					
9. Utah Educ. 529 Savings Plan, Age-Based Moderate	D	Dividend	M	T					
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1 Income Gain Codes (See Columns B1 and D4)
A = $1,000 or less
B = $1,001 - $2,500
C = $2,501 - $5,000
D = $5,001 - $15,000
E = $15,001 - $50,000

2 Value Codes (See Columns C1 and D3)
F = $50,001 - $100,000
G = $100,001 - $1,000,000
H1 = $1,000,001 - $5,000,000
H2 = More than $5,000,000
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

3 Value Method Codes (See Columns C2)
Q = Appraisal
R = Cost (Real Estate Only)
S = Assessment
T = Cash Market
U = Book Value
V = Other
W = Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Olguin, Fernando M.	Date of Report 05/14/2012

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Olguin, Fernando M.	Date of Report 05/14/2012

IX. CERTIFICATION.

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

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

Signature Fernando M. Olguin

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		826	725	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities		293	097	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		779	092
Real estate owned – see schedule	1	617	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		35	500				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		323	382				
				Total liabilities		779	092
				Net Worth	2	316	612
Total Assets	3	095	704	Total liabilities and net worth	3	095	704
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

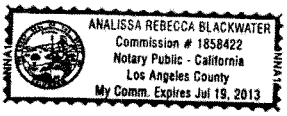
Listed Securities	
American Funds Bond Fund of America	$ 16,963
American Funds Investment Company of America	18,416
American Funds New Perspective Fund	24,391
Oppenheimer Small & Mid Cap Value Fund	4,040
Utah Educational Savings Plan Age-Based Moderate	123,854
Vanguard Target Retirement 2035	105,433
Total Listed Securities	$ 293,097
Real Estate Owned	
Personal residence	$ 1,200,000
Vacation home	417,000
Total Real Estate Owned	$ 1,617,000
Real Estate Mortgages Payable	
Personal residence	$ 616,468
Vacation home	162,624
Total Real Estate Mortgages Payable	$ 779,092

AFFIDAVIT

I, Fernando M. Olguin, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5-14-12
(DATE)

Fernando M. Olguin
(NAME)



Analissa Rebecca Blackwater
(NOTARY)

Senator FEINSTEIN. Welcome.
Judge Mannion.

STATEMENT OF MALACHY EDWARD MANNION, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Judge MANNION. Thank you, Senator Feinstein.
Senator FEINSTEIN. Could you press your microphone button?
Judge MANNION. Sorry. Senator Feinstein, Senator Grassley, thank you very much. I want to first thank Senators Casey and Toomey for their warm and kind remarks this morning, as well as their recommendation of me to the President. I certainly want to thank the President for nominating me, and I want to thank you for the privilege of appearing before this Committee today.

With me in the audience are a number of loved ones. My wife, Peg, and my mom are both here. Three of my four children—my son, Chris; my son, Jason; and my daughter, Cara—are here. My brother and sister-in-law, Glenn and Renee Druckenbrode, and my nephew, Matthew, are here. My cousin John and Teresa Devereaux and my nephew Jonathan is here. My good friend, Dr. Marianne McDonald, has made the trip, along with my staff who left at 4 o'clock this morning to be here. And I cannot tell you how warm that feeling is when they are here: Barbe Sempa, Krista Ammenhauser, John Fuller, and our intern actually came down, Alex Perry.

In addition to that, my son Chris' fiancee is here, and I am so happy that Jen Diorio is here as well.

My second son could not be here. He is away on business in Salt Lake City—Ryan—but he is watching, and I thank you for the live webcast. He is up early, and he told me he would be watching.

Aside from that, back in the Middle District of Pennsylvania, I want to thank what we call the court family there, and I know a number of them are watching as well as many friends from around the country. I appreciate their support, and I thank you very much for this opportunity.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Malachy Edward Mannion

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

   United States District Judge for the Middle District of Pennsylvania

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.

   Max Rosenn United States Courthouse
   197 South Main Street
   Wilkes-Barre, Pennsylvania 18701

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

   1953; Montreal, Canada

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

   1976 – 1979, Pace University School of Law; J.D., 1979
   1972 – 1976, University of Scranton; B.S., 1976

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

   2001 – Present
   United States District Court for the Middle District of Pennsylvania
   Max Rosenn United States Courthouse
   197 South Main Street

Wilkes-Barre, Pennsylvania 18701
Chief United States Magistrate Judge (2011 – Present)
United States Magistrate Judge (2001 – Present)

1997 – 2001
United States Department of Justice
United States Attorney's Office for the Middle District of Pennsylvania
225 North Washington Avenue
Scranton, Pennsylvania 18503
Assistant United States Attorney

1993 – 1997
Hourigan, Kluger, Spohrer & Quinn, PC
434 Lackawanna Avenue
Scranton, Pennsylvania 18503
Litigation Partner

1986 – 1993
United States Department of Justice
United States Attorney's Office for the Middle District of Pennsylvania
225 North Washington Avenue
Scranton, Pennsylvania 18503
Assistant United States Attorney (1986 – 1993)
Chief, Organized Crime Drug Enforcement Task Force (1989 – 1993)
District Office Security Manager (1989 – 1993)

1980 – 1986
Nassau County District Attorney's Office
262 Old Country Road
Mineola, New York 11501
Assistant District Attorney

1977 – 1980
Bartels, Pykett & Aronwald, Esqs.
99 Court Street
White Plains, New York 10601
Litigation Associate (1979 – 1980)
Law Clerk (1977 – 1979)

1976 – 1977
Pace University School of Law
78 North Broadway
White Plains, New York 10603
Student Aide

1975 – 1976
Greater Scranton YMCA
706 North Blakely Street
Dunmore, Pennsylvania 18512
Water Safety Instructor

1969 – 1976
Sugerman's Eynon Drug
Route #6
Eynon, Pennsylvania 18403
Sales Associate

Other Affiliations (Uncompensated):

2008 – Present
Federal Magistrate Judges Association
P.O. Box 267
Scranton, Pennsylvania 18501
President (2011 – Present)
President-Elect (2010 – 2011)
Vice President (2009 – 2010)
Secretary (2008 – 2009)

1996 – 1998
Federal Bar Association – Middle District of Pennsylvania Chapter
(no permanent address)
President (1997 – 1998)
President-Elect (1996 – 1997)

1979 – 1982
Pace University School of Law Alumni Association
78 North Broadway
White Plains, New York 10603
President (1979 – 1980)
Board of Governors (1979 – 1982)

1972 – 1975
Scranton Preparatory School Alumni Board of Governors
1000 Wyoming Avenue
Scranton, Pennsylvania 18509
Board of Governors

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

I have not served in the military. I have registered for selective service.

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

Lackawanna County Bar Association special recognition for an outstanding address at the annual Bench/Bar Conference (2001)
Federal Bar Association – Middle District of Pennsylvania Chapter special recognition for outstanding leadership as the MDPA Chapter President (1998)
Director of the Federal Bureau of Investigation – Personal Commendation for outstanding service to the FBI (1993)
Attorney General of Pennsylvania – Personal Commendation for outstanding service to the Commonwealth of Pennsylvania (1993)
District Attorney for the County of Lackawanna – Personal Commendation for excellence in prosecution (1993)
Organized Crime Drug Enforcement Task Force – Mid-Atlantic Region DOJ/DEA/FBI/ATF/IRS/INS/Treasury/Customs/Dept. of Defense special recognition for outstanding leadership as the Chief of the Middle District of Pennsylvania Task Force (1993)
Federal Bureau of Alcohol, Tobacco and Firearms – Philadelphia District special recognition for outstanding support, dedication and commitment to ATF (1993)
Federal Bureau of Investigation – Scranton Resident Agency special recognition for dedicated service to the FBI (1993)
Immigration and Naturalization Service Liberty Bell Award for outstanding counsel to the INS
Internal Revenue Service – Criminal Investigation Division honorary Special Agent Award in recognition of professional competence and personal diligence (1993)
United States Customs Service – Philadelphia District special recognition for dedication to the work of the Customs Service (1993)
United States Drug Enforcement Administration – Allentown Resident Agency special recognition for dedication to the mission of DEA (1993)
United States Drug Enforcement Administration – Philadelphia Field Division special recognition in appreciation for support and dedication to the mission of DEA (1993)
United States Marshals Service – Middle District of Pennsylvania special recognition for dedication and support of the Marshals Service (1993)
Kingston, Pennsylvania Police Department special recognition for dedication and professionalism in the prosecution of narcotics offenses with the Special Investigation Division (1993)
Wilkes-Barre, Pennsylvania Police Department special recognition for outstanding service to the people of Wilkes-Barre (1993)
United States Attorney's Office – Middle District of Pennsylvania Special Achievement Awards for outstanding service (multiple)
United States Department of Justice Special Achievement Awards for outstanding service (multiple)

Prosecutor of the Year Award– Pennsylvania Narcotics Officers Association (1992)
President's Scholarship – University of Scranton (1972 – 1976)
Dean's List (multiple semesters) – University of Scranton (1972 – 1976)
Psi Chi National Honor Society – University of Scranton (1976)
Who's Who Among American Colleges and Universities (1976)

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

Administrative Office of United States Courts, Magistrate Judges Advisory Committee (2010 – Present)

Federal Bar Association – Middle District of Pennsylvania
Third Circuit National Delegate (1998 – 1999)
President (1997 – 1998)
President-Elect (1996 – 1997)

Federal Magistrate Judges Association
President (2011 – Present)
President-Elect (2010 – 2011)
Vice President (2009 – 2010)
Secretary (2008 – 2009)
Third Circuit Director (2003 – 2007)
Chair, E-Communications Committee (2008 – 2011)
Chair, Title Committee (2005 – 2007)
Member, Rules Committee (2003 – 2008)

Judicial Council of the Court of Appeals for the Third Circuit, Automation and Technology Committee (2010 – Present)

Lackawanna County Bar Association
Civil Rules Committee (1993 – 1997)
Red Mass Committee (1993 – 1997)

Pennsylvania Bar Association

10. **Bar and Court Admission**:

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

New York (1980) ("retired" pursuant to N.Y. CLS Standards & Admin. Pol. § 118.1(g) and N.Y. CLS Jud. § 468-a)
Pennsylvania (1986) ("inactive" pursuant to Pa. R.D.E. 219(b))

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 (1985)
United States Court of Appeals for the Second Circuit (1985)
United States Court of Appeals for the Third Circuit (1987)
United States District Court for the Middle District of Pennsylvania (1986)
United States District Court for the Eastern District of New York (1980)
United States District Court for the Southern District of New York (1980)
Supreme Court of Pennsylvania (1986)
Supreme Court of New York (1980)

There have been no lapses in membership.

11. **Memberships**:

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

Abington Youth Basketball League
Coach (1990 – 2007)
Abington Youth Soccer League
Coach (1989 – 2005)
Friends of the Poor Thanksgiving Dinner server (1988 – Present)
Friendly Sons of St. Patrick of Lackawanna County (1986 – Present)
Lakeland Girls Softball Association
Coach (2005 – 2008)
Our Lady of Peace School (1989 – Present)
Basketball Coach (1995 – 2008)
Forensics Judge (2001 – Present)
Parent's Association (1989 – 2008)
Junior Academy of Science Advisor (1996 – 2008)
Annual Field Day Judge (1989 – 2008)
Pace University School of Law Alumni Association (1979 – Present)
President (1979 – 1980)
Alumni Board of Governors (1979 – 1982)
Pennsylvania Junior Academy of Science
Regional & State Judge (1996 – 2008)

Saint John Vianney Roman Catholic Parish (formerly Corpus Christi Roman Catholic Parish) (1985 – Present)
Finance Committee (1990 – 2001)
Saint Joseph's Children's Hospital Auxiliary (1985 – Present)
Co-Chair Annual Picnic Booth (1987 – Present)
Scott Township Little League
Coach (1985 – 2005)
Scranton Preparatory School
Alumni Board of Governors (1972 – 1975)
Mock Trial Coach (1998 – Present)
Parent's Association (1996 – Present)
University of Scranton Alumni Association (1976 – Present)
Annual Fund Captain (1990's)

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

As indicated in its name, the Friendly Sons of St. Patrick of Lackawanna County is an annual dinner of Irish-American fathers and sons. Otherwise, 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.

In 2011, as President of the Federal Magistrate Judges Association, I prepared a statement of introduction and goals for the Association during my year as President. That statement was published on the Federal Magistrate Judges Association internal website. Copy supplied.

Hon. Malachy E. Mannion, *Objections Overruled: The Trial Advocacy Course Should Be Mandatory*, 30 Pace L. Rev. 1195, 1206 (2010). 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 participated, as a Federal Magistrate Judges Association Rules Committee member and as a Federal Magistrate Judges Association Executive Board member, in drafting and/or approving the Association's annual review and comments to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, concerning the annual proposed revisions to the Federal Rules of Evidence, Criminal and Civil Procedure. Copies of those comments are supplied.

As the Third Circuit Director for the Federal Magistrate Judges Association, I drafted the *Federal Magistrate Judge Association Third Circuit Director Election Plan*, which was adopted on November 26, 2004. Copy supplied.

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

To the best of my recollection, I have not given any of the above.

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 listed the speaking engagements that I have been able to recall or identify by reviewing my calendar, travel records, resume and other sources available to me. While I have attempted to include each presentation, it is entirely possible that there are a few others for which I have no record or recollection. If there are any others, it is likely that they would have been presented to one of the groups listed below. I normally speak without notes, however, in those instances where I used notes or an outline that I have retained, I have supplied a copy. Similarly, I have supplied any recordings that I am aware exist.

March 13, 2012: Wilkes University Exchange Student Program. I spoke about the United States Constitution and the Federal Court System. I have no notes.

transcripts, or recordings. The address for Wilkes University is 84 West South Main Street, Wilkes-Barre, Pennsylvania 18766.

November 17, 2011: Immigration and Naturalization Ceremony. I have no notes, transcripts, or recordings. The address for the United States District Court for the Middle District of Pennsylvania is 240 West Third Street, Williamsport, Pennsylvania 17701.

June 9-10, 2011: "Rule 16 and E-Discovery," Electronic Discovery in Civil Litigation Instructor for the United States Department of Justice National Advocacy Center, Columbia, South Carolina. Notes and materials supplied.

March 23, 2011: Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 16, 2011: Federal Tort Claims Seminar Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 15-18, 2011: Federal Criminal Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 10, 2011: Committee for Justice for All Continuing Legal Education Seminar (previously known as the Northeastern Pennsylvania Trial Lawyers Association), Wilkes-Barre, Pennsylvania. I spoke on Ethics for Judges and Trial Lawyers. I have no notes, transcripts or recordings. This group does not have a formal address.

December 2-3, 2010: "Hearsay: The Word that Strikes Fear in the Hearts of Lawyers," Federal Evidence and Civil Litigation Instructor for the United States Department of Justice National Advocacy Center, Columbia, South Carolina. Copy of PowerPoint slides supplied.

November 18-19, 2010: Electronic Discovery in Civil Litigation Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 16, 2010: Lackawanna Bar Association Memorial Service, Scranton, Pennsylvania. I spoke *in Memoriam* for Joseph A. Lach, Esquire. Remarks supplied.

October 22, 2010: Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

July 29-30, 2010: Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 25-28, 2010: Electronic Discovery in Civil Litigation Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 15, 2010: Marywood University Graduate School. I gave a presentation to graduate students about the Federal Courts. I have no notes, transcripts or recordings. The address for Marywood University is 2300 Adams Avenue, Scranton, Pennsylvania 18509.

April 7, 2010: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 31, 2010: Widener University School of Law. I served as a Hugh B. Pearce Mock Trial Finals Judge. I have no notes, transcripts or recordings. The address for Widener University School of Law is 3800 Vartan Way, Harrisburg, Pennsylvania 17106.

February 4-5, 2010: "Federal Rule of Civil Procedure 68: Offer of Judgment," Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center, Columbia, South Carolina. Copy of Corel presentation slides supplied.

November 18-20, 2009: Electronic Discovery in Civil Litigation Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 27-29, 2009: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 22, 2009: "How to Have a Safe Flight through the Discovery Process," American Bar Association Tort, Trial & Insurance Section Seminar, Washington, DC. I presented on Electronic Discovery in Federal Cases. Materials supplied.

July 30, 2009: Wilkes University Exchange Student Program. I spoke about the United States Constitution and the Federal Court System. I have no notes, transcripts, or recordings. The address for Wilkes University is 84 West South Main Street, Wilkes-Barre, Pennsylvania 18766.

April 28-30, 2009: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 24, 2009: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 23-26, 2009: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 16, 2009: Marywood University. I gave a presentation to undergraduate students concerning Federal Identity Fraud/Theft Crimes. I have no notes, transcripts or recordings. The address for Marywood University is 2300 Adams Avenue, Scranton, Pennsylvania 18509.

January 8-9, 2009: Federal Civil Pretrial Practice Instructor for the United States Department of Justice National Advocacy Center, Columbia, South Carolina. DVDs supplied.

November 18-19, 2008: Negotiation and Mediation Seminar Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 6, 2008: Luzerne County Bar Association Annual Bench/Bar Conference. I presented on Removal to Federal Court pursuant to 28 U.S.C. § 1441. I have no notes, transcripts or recordings. The address for the Luzerne County Bar Association is 200 North River Street, Wilkes-Barre, Pennsylvania 18711.

October 21-23, 2008: Federal Evidence for Civil Litigators Instructor for the United States Department of Justice National Advocacy Center. I have no notes,

transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

July 19-24, 2008: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 21-25, 2008: Federal Evidence and Federal Mediation Practice Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 3, 2008: Marywood University Graduate School. I gave a presentation to graduate students concerning Federal Criminal Prosecution and Sentencing. I have no notes, transcripts or recordings. The address for Marywood University is 2300 Adams Avenue, Scranton, Pennsylvania 18509.

April 2, 2008: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 26, 2008: Widener University School of Law. I gave a presentation on Legal Writing and Research. I have no notes, transcripts or recordings. The address for Widener University School of law is 3800 Vartan Way, Harrisburg, Pennsylvania 17106.

February 5-7, 2008: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

December 12, 2007: Pennsylvania Trial Lawyers Association Auto Law Seminar, Pittston, Pennsylvania. I presented on Removal to Federal Court pursuant to 28 U.S.C. § 1441. I have no notes, transcripts or recordings. This group does not have a formal address.

December 8, 2007: Pace University School of Law Grand Moot Court. I presided over oral arguments. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

October 23-26, 2007: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no

notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 17, 2007: Northwest Area School District Constitution Day. I spoke on the greatness of the United States Constitution. I have no notes, transcripts or recordings. Northwest Area School District's address is 243 Thorne Hill Road, Shickshinny, Pennsylvania 18655.

May 18, 2007: Criminal Courtroom Deputy Training, United States District Court for the Middle District of Pennsylvania. I presented on Federal Courtroom Procedures. I have no notes, transcripts or recordings. The United States District Court address is 235 North Washington Avenue, Scranton, Pennsylvania 18503.

April 14, 2007: Pace University School of Law Grand Moot Court. I presided over oral arguments. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 14, 2007: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

February 12-15, 2007: Federal Civil Trial Advocacy Course Judge and Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 1, 2007: Widener University School of Law. I gave a presentation on Legal Writing and Research. I have no notes, transcripts or recordings. The address for Widener University School of law is 3800 Vartan Way, Harrisburg, Pennsylvania 17106.

October 25, 2006: Equal Employment Opportunity Mock Trial for the Pennsylvania Labor Management Council, Scranton, Pennsylvania. The members of the Scranton Prep Mock Trial Team participated in this event. I acted as the Judge. I have no notes, transcripts or recordings. The organization no longer exists in Scranton, Pennsylvania and therefore has no address.

October 5, 2006: Pace University School of Law 7th Annual Scholarship & Awards Ceremony. I was the Keynote Speaker. I presented on the topic of Honesty, Integrity and Ethics in the Law. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

October 11, 2006: University of Scranton. I gave a presentation to undergraduate students concerning Ethics and the Law. I have no notes, transcripts or recordings. The address for the University of Scranton is 800 Linden Street, Scranton, Pennsylvania 18510.

June 14-16, 2006: Federal Motion Practice, Brief Writing and a "View from the Bench" Instructor for the United States Department of Justice National Advocacy Center. I have no notes, transcripts or recordings. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

April 1, 2006: Pace University School of Law Grand Moot Court. I presided over oral arguments. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

March 29, 2006: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

October 24, 2005: United States Attorney for the Middle District of Pennsylvania's Office Conference. I presented on the functions of a United States Magistrate Judge. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

March 30, 2005: Pace University School of Law Honors Program. I gave a presentation concerning the Federal Sentencing Guidelines. I have no notes, transcripts or recordings. The address for Pace University School of Law is 78 North Broadway, White Plains, New York 10603.

November 18, 2004: Marywood University Graduate School Community Corrections class. I gave a presentation to graduate students concerning the Federal Judiciary. I have no notes, transcripts or recordings. The address for Marywood University is 2300 Adams Avenue, Scranton, Pennsylvania 18509.

October 7, 2004: Boy Scouts of America Citizenship Merit Badge. I spoke to a local Boy Scout troop concerning the Federal Courts at the United States Courthouse located at 197 South Main Street, Wilkes-Barre, Pennsylvania 18701. I have no notes, transcripts or recordings.

October 5, 2004: Age Discrimination in the Workplace Mock Trial for Pennsylvania Labor Management Council. The members of the Scranton Prep Mock Trial Team participated in this event. I acted as the Judge. I have no notes, transcripts or recordings. The organization no longer exists in Scranton, Pennsylvania and therefore has no address.

April 17, 2004: Temple University School of Law LL.M. Trial Advocacy Finals. I judged and critiqued participants in their LL.M. Final Trial Exam. I have no notes, transcripts or recordings. The address of Temple University School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

November 15, 2003: Dowling College Graduate School Government and Business class. I spoke on Federal White Collar Crime. I have no notes, transcripts or recordings. The address of Dowling College is 1300 William Floyd Parkway, Shirley, New York 11967.

September 26, 2003: University of Scranton. I gave a presentation to undergraduate students concerning the United States Constitution's Fourth, Fifth and Sixth Amendments. I have no notes, transcripts or recordings. The address for the University of Scranton is 800 Linden Street, Scranton, Pennsylvania 18510.

August 26, 2003: Middle District of Pennsylvania Chapter of the Federal Bar Association Lunch/Learn, Scranton, Pennsylvania. I spoke as part of a panel on the Patriot Act and Terrorism. I have no notes, transcripts or recordings. This group does not have a formal address.

April 5, 2003: Dowling College Graduate School Government and Business class. I spoke on Federal Money Laundering Violations. I have no notes, transcripts or recordings. The address of Dowling College is 1300 William Floyd Parkway, Shirley, New York 11967.

February 28, 2003: University of Scranton. I gave a presentation to undergraduate students concerning the Fourth Amendment to the United States Constitution. I have no notes, transcripts or recordings. The address for the University of Scranton is 800 Linden Street, Scranton, Pennsylvania 18510.

November 23, 2002: Dowling College Graduate School Government and Business class. I spoke on Federal White Collar and Economic Crime. I have no notes, transcripts or recordings. The address of Dowling College is 1300 William Floyd Parkway, Shirley, New York 11967.

October 24, 2002: Boy Scouts of America Citizenship Merit Badge. I spoke to a local Boy Scout troop concerning Basic Constitutional Rights at the United States Courthouse located at 197 South Main Street, Wilkes-Barre, Pennsylvania 18701. I have no notes, transcripts or recordings.

July 11, 2002: Commonwealth of Pennsylvania's "Office of General Counsel University." I spoke as part of a panel on Discovery in the Electronic Information Age. I have no notes, transcripts or recordings. The Office of General Counsel's address is 333 Market Street, 17th Floor, Harrisburg, Pennsylvania 17101.

June 25, 2002: Social Security Law Seminar, Wilkes-Barre, Pennsylvania. I spoke on Social Security Practice before United States Magistrate Judges. I do not have a recollection of the sponsor of this seminar. I have no notes, transcripts or recordings.

May 2002: Masters Leadership Program. I spoke on the United States Court System at the Max Rosenn United States Courthouse, Wilkes-Barre, Pennsylvania. I have no notes, transcripts or recordings. I have no address for this group.

November 10, 2001: Lackawanna Bar Association Annual Bench/Bar Conference. As the Keynote Speaker, I spoke on the Transition from Litigation Attorney to Federal Judge. I have no notes, transcripts or recordings. The address of the Lackawanna Bar Association is 338 North Washington Avenue, Scranton, Pennsylvania 18503.

April 2001: Middle District of Pennsylvania Chapter of the Federal Bar Association Lunch/Learn, Scranton, Pennsylvania. I spoke on Social Security Law and Practice in the Middle District of Pennsylvania. I have no notes, transcripts, or recordings. This group does not have a formal address.

October 27, 2000: Middle District of Pennsylvania Chapter of the Federal Bar Association, Scranton, Pennsylvania. I presented a plaque to retiring U.S. Magistrate Judge Raymond J. Durkin. I have no notes, transcripts, or recordings. This group does not have a formal address.

October 1998: Federal Bench/Bar – Program Organizer/Moderator on Federal Litigation and Ethics. I have no notes, transcripts or recordings. The Middle District of Pennsylvania Chapter of the Federal Bar Association does not have a formal address.

June 1998: Pennsylvania Bar Institute Developments in Federal Practice Seminar. I presented on Ethics and Professionalism. I have no notes, transcripts or recordings. The address of the Pennsylvania Bar Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

May 1998: Middle District of Pennsylvania Chapter of the Federal Bar Association Seminar on the Admissibility of Scientific Evidence in Federal Courts – Program Organizer/Moderator, Wilkes-Barre, Pennsylvania. I have no notes, transcripts, or recordings. This group does not have a formal address.

April 1998: Middle District of Pennsylvania Chapter of the Federal Bar Association Lunch/Learn, Lewisburg, Pennsylvania. I spoke on Pro Bono Practice and Government Lawyers. I have no notes, transcripts, or recordings. This group does not have a formal address.

October 1997: Middle District of Pennsylvania Chapter of the Federal Bar Association Seminar, Scranton, Pennsylvania. I spoke on Federal Litigation and Ethics. I have no notes, transcripts, or recordings. This group does not have a formal address.

October 1996: Lackawanna County Bench/Bar Conference Update on Pennsylvania Litigation Law. I spoke on Recent Pennsylvania Litigation and Evidence Law Decisions. I have no notes, transcripts or recordings. The address of the Lackawanna Bar Association is 338 North Washington Avenue, Scranton, Pennsylvania 18503.

December 1995: Pennsylvania Bar Institute Civil Trial Advocacy in Federal Court Seminar, Mechanicsburg, Pennsylvania. I have no notes, transcripts or recordings. The address of the Pennsylvania Bar Institute is 5080 Ritter Road, Mechanicsburg, Pennsylvania 17055.

April 1995: Georgetown University Law School Federal Civil Litigation Practice. I spoke on Federal Procedure and Trial Tactics. I have no notes, transcripts or recordings. The address for Georgetown School of Law is 600 New Jersey Avenue, NW, Washington, DC 20001.

October 1994: Kings College. I gave a presentation to undergraduate students concerning Federal Constitutional Law. I have no notes, transcripts or recordings. The address for Kings College is 133 North Franklin Street, Wilkes-Barre, Pennsylvania 18701.

April 1994: Kings College. I gave a presentation to undergraduate students concerning the Fourth Amendment/Search and Seizure. I have no notes, transcripts or recordings. The address for Kings College is 133 North Franklin Street, Wilkes-Barre, Pennsylvania 18701.

September 1993: Pennsylvania State Police Electronic Surveillance Seminar. I spoke on Federal Wiretap Law. I have no notes, transcripts or recordings. The address of the Pennsylvania State Police Training Academy is 175 East Hershey Park Drive, Hershey, Pennsylvania 17033.

July 1993: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 1993: Federal Narcotics Prosecution Seminar Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Phoenix, Arizona. I have no notes, transcripts or recordings. The Attorney General's Advocacy

Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 1992: Fourth Annual Pennsylvania Narcotics Officers Association Conference, Philadelphia, Pennsylvania. I presented on Federal Narcotics Prosecution and Asset Forfeiture Laws. I have no notes, transcripts or recordings. This group does not have a formal address.

September 1992: Internal Revenue Service International Narcotics and Money Laundering Seminar, Virginia Beach, Virginia. I presented on International Money Laundering and Tax Prosecution. I have no notes, transcripts or recordings. The address of the IRS is 1111 Constitution Avenue, NW, Washington, DC 20004.

June 1992: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

June 1992: United States Attorney for the Middle District of Pennsylvania's Federal/State/Local cooperative criminal investigation and prosecution seminar, Lewisburg, Pennsylvania. I presented on Federal Programs in Support of State/Local Law Enforcement. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

May 1992: United States Attorney for the Middle District of Pennsylvania's Asset Forfeiture/Equitable Sharing Seminar, Lewisburg, Pennsylvania. I presented on Federal Asset Forfeiture Laws. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

March 1992: Mid-Atlantic Great Lakes Organized Crime Law Enforcement Network (MAGLOCLEN) Major Crimes Seminar, Wilkes-Barre, Pennsylvania. I presented on Federal Narcotic Investigations and Prosecutions. I have no notes, transcripts or recordings. This group does not have a formal address.

February 1992: United States Attorney for the Middle District of Pennsylvania's Armed Career Criminal Seminar for State and Local Prosecutors and Law Enforcement Officials, Forty-Fort, Pennsylvania. I presented on Federal Armed Career Criminal Laws. I have no notes, transcripts or recordings. The address for

the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

January 1992: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

December 1991: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Los Angeles, California. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 1991: Internal Revenue Service International Narcotics and Money Laundering Seminar, Virginia Beach, Virginia. I presented on International Money Laundering and Tax Prosecution. I have no notes, transcripts or recordings. The address of the IRS is 1111 Constitution Avenue, NW, Washington, DC 20004.

July 1991: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 1991: Internal Revenue Service Financial Training Seminar. I presented on Money Laundering and Currency Transaction Reporting Laws, Wilkes-Barre, Pennsylvania. I have no notes, transcripts or recordings. The address of the IRS is 1111 Constitution Avenue, NW, Washington, DC 20004.

February 1991: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 1990: Internal Revenues Service Organized Crime Drug Enforcement Task Force Conference, Virginia Beach, Virginia. I presented on International Money Laundering and Tax Prosecution. I have no notes, transcripts or

recordings. The address of the IRS is 1111 Constitution Avenue, NW, Washington, DC 20004.

July 1990: Federal Criminal Trial Advocacy Course Instructor for the United States Department of Justice Attorney General's Advocacy Institute, Washington, DC. I have no notes, transcripts or recordings. The Attorney General's Advocacy Institute has since been replaced by the National Advocacy Center. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 1990: United States Attorney for the Middle District of Pennsylvania's Armed Career Criminal Seminar for State and Local Prosecutors and Law Enforcement Officials, Scranton, Pennsylvania. I presented on Federal Armed Career Criminal Laws. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

May 1990: United States Attorney for the Middle District of Pennsylvania's Armed Career Criminal Seminar for State and Local Prosecutors and Law Enforcement Officials, Harrisburg, Pennsylvania. I presented on Federal Armed Career Criminal Laws. I have no notes, transcripts or recordings. The address for the United States Attorney for the Middle District of Pennsylvania is William J. Nealon United States Courthouse and Federal Building, 225 North Washington Avenue, Scranton, Pennsylvania 18503.

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.

Sarah Hofius Hall, *Prep's Mock Trial Team Headed to National Competition*, Scranton Times-Tribune, May 4, 2010. Copy supplied.

A Destined Public Servant, Pace Law School Magazine, Spring 2010, at 18. Copy supplied.

Chris Parker, *Judge Orders Aucker to Work at Veterans Hospital in Iowa; For Falsifying Military Records, He'll Also Be on Probation 2 Years*, Allentown Morning Call, Oct. 19, 2000, at B1. Copy supplied.

David Slade, *Aucker to Plead Guilty to Falsifying His Record; Panther Valley's Ex-Chief Signs Papers that Transfer the Federal Military Charge to Iowa*, Allentown Morning Call, Mar. 25, 2000, at B5. Copy supplied.

Chris Parker, *Ex-Superintendent's Arraignment Delayed*, Allentown Morning Call, Feb. 10, 2000, at B1. Copy supplied.

Bonnie Adams, *Ex-School Head Faces Fraud Charge for Allegedly Lying about Military Record*, Wilkes-Barre Times Leader, Jan. 24, 2000, at 3A. Copy supplied.

Chris Parker, *Ex-Schools Superintendent Faces Arraignment Feb.11*, Allentown Morning Call, Jan. 17, 2000, at B01. Copy supplied.

Chris Parker, *Aucker Hit by Charge of Altering His Records*, Allentown Morning Call, Jan. 7, 2000, at A01 (reprinted in multiple outlets). Copy supplied.

Drug Prison Term Never Imposed Due to Mixup, Associated Press, Sept. 17, 1999. Copy supplied.

Chuck Ayers, *Judge Decides Alien Must Stay for Carbon Trial*, Allentown Morning Call, July 22, 1998, at B1. Copy supplied

Chuck Ayers, *Businessman Posts Bail, But Doesn't Leave Prison*, Allentown Morning Call, Jan. 9, 1998, at B1. Copy supplied.

Jerry Lynott, *Conaham Asks Judicial Board to Open Up Luzerne County*, Wilkes-Barre Times Leader, Aug. 18, 1994, at 1A. Copy supplied.

Jerry Lynott, *Kingston Cocaine Dealer Loses His Share of Tavern*, Wilkes-Barre Times Leader, Apr. 14, 1993, at 3A. Copy supplied.

Walt Roland, *Cocaine Suspects Face Arraignment*, Allentown Morning Call, Jan. 28, 1993, at B3. Copy supplied.

David Herzog, *American Dream Sours for Two After Drug Indictments*, Allentown Morning Call, Apr. 7, 1991. Copy supplied.

Bob Laylo, *Carbon Arrest Helps Topple Empire*, Allentown Morning Call, Apr. 29, 1990, at B01. Copy supplied.

Associated Press, *Restaurant Raid Turns Up Food Intended for Home*, Philadelphia Inquirer, Feb. 17, 1989. Copy supplied.

Associated Press, *Two Are Found Guilty in Appointment of Police*, Philadelphia Inquirer, May 20, 1988. Copy supplied.

Sean Connolly, *Jim Thorpe Faces U.S. Court in Drugs Case*, Allentown Morning Call, Apr. 18, 1988, at B1. Copy supplied.

David Singleton, *Treatment Ordered for Blast Suspect*, Philadelphia Inquirer, Mar. 21, 1987. Copy supplied.

The Wrong Man, United Press International, Nov. 24, 1982. 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 in 2001, and continue to serve in that position. United States Magistrate Judges are judges in the United States District Court System as described in 28 U.S.C. § 631 et seq.: "Upon consent of the parties, a full time United States Magistrate Judge… may conduct any and all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case…" 28 U.S.C. § 636. In consent matters, a Magistrate Judge has virtually the same jurisdiction as an Article III District Judge, including that appeals from the Magistrate Judge's consent cases normally go directly to the Court of Appeals. In non-consent matters, "a District Judge may designate a Magistrate Judge to hear and determine any pretrial matter pending before the court." 28 U.S.C. § 631. Unlike a consent case, if the pretrial matter would be dispositive of the case, the Magistrate Judge prepares a Report and Recommendation outlining proposed findings of facts and conclusions of law for consideration by the District Judge. In criminal matters, Magistrate Judges have jurisdiction over misdemeanor and petty offenses. A Magistrate Judge also has jurisdiction over preliminary felony criminal matters including, but not limited to, initial appearances, arraignments, bail determinations, pleas, search and arrest warrants.

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

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i. Of these, approximately what percent were:

jury trials:	25%
bench trials:	75%
civil proceedings:	30%
criminal proceedings:	70%

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. *Schmidt v. Aponick*, 4:06-cv-997. Opinion supplied.

This was a federal civil rights action alleging a violation of the Fourth Amendment of the United States Constitution. The plaintiff alleged that when signaled by a Pennsylvania state trooper to pull over for a traffic violation, he failed to stop and instead led the trooper on a 13 mile vehicle chase. With the state trooper in pursuit, the plaintiff smashed his truck into a gate thereby disabling the vehicle in a remote wooded area. The plaintiff fled on foot and was pursued by a trooper into a wooded state game land area, where he was caught and advised that he was under arrest. According to the plaintiff, upon being caught, the state trooper began beating the plaintiff with his baton, and with the plaintiff face down on the ground, the state trooper put his knee into the plaintiff's back and forced his arms behind his back. The plaintiff alleged that he suffered a shoulder injury that required surgical repair. Additionally, the plaintiff complained of injury to his leg, neck and finger, bruising on various parts of his body and open wounds which required closure. Prior to trial, counsel for both sides submitted motions *in limine* attacking the opposing medical experts. Both motions were denied as I ruled that each expert was qualified to testify. This case was tried before a jury. A verdict was returned for the defendant. No appeal was taken.

Counsel for the Plaintiff:

Barry H. Dyller
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88 North Franklin Street
Gettysburg House
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Counsel for the Defendant:

Lisa W. Basial
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2. *Dorkoski v. Pensyl, et al*., 4:05-cv-705, 2007 U.S. Dist. LEXIS 17114 (M.D. Pa. Mar. 9, 2007).

This was a federal civil rights action alleging unreasonable force, malicious prosecution, assault and battery, conspiracy and due process violations under the Fourth and Fourteenth Amendments of the United States Constitution. The plaintiff, a 72-year-old man, became involved when his son fled police onto the plaintiff's property and into the plaintiff's garage. When the defendants arrived on the plaintiff's property, the plaintiff ordered them off of his property unless they possessed a warrant. An altercation ensued between the plaintiff and the defendants involving a steel pipe. The defendants forcefully took the plaintiff to the ground and removed a set of keys from his pocket to access the garage. The plaintiff alleges he was beaten without cause, arrested on false charges designed to cover up the defendants' activities and held in a jail cell without probable cause. The plaintiff claimed multiple injuries requiring hospitalization, medication, physical therapy and substantial medical indebtedness. Prior to trial, I granted partial summary judgment to some defendants and denied summary judgment on a number of other claims. This case was tried before a jury. A verdict was returned for the defendants. No appeal was taken.

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3. *Kress v. Birchwood Landscaping*, 3:05-cv-566. Report and recommendation supplied.

This was a federal employment discrimination suit based upon allegations of sexual harassment, retaliation and hostile work environment under Title VII of the Civil Rights Act of 1964 and the Pennsylvania Human Relations Act. In addition, plaintiff alleged discrimination under the Federal Equal Pay Act based upon gender discrimination. The plaintiff was hired by the garden center as a salesperson. Over time she began working with the landscape designer and foreman but alleged she did not receive the same pay because she was a female. Additionally, during this time the owner allegedly made numerous unwanted sexual advances to the plaintiff, including asking her out, giving her gifts and stating that if she was nice to him she could get a raise. The plaintiff allegedly rejected these advances and was punished by being required to work as landscape designer foreman but without the same pay as her male counterpart. Prior to trial, and before the parties had consented to my full jurisdiction, defense counsel submitted a motion for summary judgment. I recommended that the motion be granted with respect to several claims, and denied as to others. The District Judge adopted the report and recommendation in its entirety. 2007 U.S. Dist. LEXIS 17630 (M.D. Pa. Mar. 14, 2007). The parties later consented to my full

jurisdiction and this case was tried before a jury. A verdict was returned for the defendant. No appeal was taken.

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4. *Imbergamo v. Castaldi, et al.*, 3:04-cv-292, 392 F. Supp. 2d 686 (M.D. Pa. 2005).

This was a federal civil rights action alleging unreasonable seizure, excessive force, malicious prosecution, and due process violations under the Fourth and Fourteenth Amendments of the United States Constitution. The plaintiff, a diabetic, was acting in a strange manner which resulted in his girlfriend calling an ambulance. When the ambulance arrived the plaintiff took off into the woods without shoes and was unable to be apprehended. The ambulance company contacted the Pennsylvania State Police for assistance. Upon arrival, the troopers located the plaintiff and convinced him to speak with them. There was no indication of any criminal activity on the part of the plaintiff. As the troopers got closer to the plaintiff, he was distracted and tackled to the ground by them. The plaintiff suffered multiple injuries, which allegedly resulted in his total disability. The ambulance company defendants cross claimed against the State Police defendants. Prior to trial, the State Police defendants moved for summary judgment on the malicious prosecution claim. Finding that the plaintiff had previously entered into a negotiated plea of guilty, I dismissed that claim. This case was tried before a jury and a verdict was returned for the plaintiff. However,

before judgment was entered, the parties agreed to settle the case. No appeal was taken.

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5. *Mauer v. Susquehanna Twp., et al.*, 4:03-cv-306. Opinion supplied.

This was a federal civil rights action alleging excessive force, malicious prosecution, and a *Monell* claim for lack of proper training against a municipality in violation of the First, Fourth, Fifth and Fourteenth Amendments of the United States Constitution. Plaintiff alleged that he was approached by the police at his

apartment because of a complaint by a neighbor of excessive noise. The police officer allegedly banged on the plaintiff's apartment door for some time without response. When the plaintiff did respond, he was advised he was being placed under arrest for disorderly conduct and asked for identification. The plaintiff attempted to retreat into his apartment and a struggle ensued. According to the plaintiff, he was dragged into the public hallway, violently thrown to the ground and beaten. The plaintiff was charged with various criminal offenses, some of which he was later acquitted of. Prior to trial, I granted summary judgment with respect to a police officer and the township he worked for based upon a lack of any allegations of personal involvement. I also granted summary judgment in favor of an individual defendant on the allegations that the arrest lacked probable cause. I denied summary judgment on the excessive force, assault and battery claims. This case was tried before a jury. A verdict was returned for the defendant. No appeal was taken.

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6. *Salvato v. Wal-Mart, Inc.*, 3:00-cv-1697.

This case was a diversity action alleging libel, slander and assault in violation of Pennsylvania law. The defendant refused to sell the plaintiff a firearm after she allegedly indicated that she intended to use the weapon to harm a neighbor. When the plaintiff left the store, she indicated that she would purchase her gun somewhere else. An employee of Wal-Mart then contacted local sporting goods stores to warn them of the plaintiff's intention. The plaintiff denied these facts and alleged that this incident ruined her reputation such that she was unable to shop at

other stores. This case was tried before a jury. A verdict was returned for the plaintiff. No appeal was taken.

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7. *Valenti, et al. v. Allstate Insurance*, 3:99-cv-1234, 243 F. Supp. 2d 200 (M.D. Pa. 2002); 243 F. Supp. 2d 221 (M.D. Pa. 2003); *aff'd, Valenti v. Allstate Ins. Co.*, 94 Fed. Appx. 970 (3d Cir. 2004).

This was a diversity action for bad faith, breach of contract and punitive damages against the plaintiff's insurance carrier pursuant to Pennsylvania law. The plaintiff alleged a failure to pay claims related to a significant property fire. The defendant insurance company filed a counterclaim alleging insurance fraud and arson by the plaintiff as justification for the nonpayment of the claim, and seeking reimbursement for the costs of the investigation into the fire. This case was tried before a jury and a verdict was returned for the defendant/counterclaim-plaintiff. Following trial, counsel for the plaintiff submitted post-trial motions pursuant to

Fed. R. Civ. P. 50 and 59 claiming the court erred in its *in limine* rulings, its determination that the insurance policy in question was joint and the sufficiency of the evidence relating to the jury verdict in favor of the defendant/counterclaim-plaintiff on its insurance fraud claim. I denied each post-trial motion. The case was appealed to the Third Circuit and affirmed.

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8. *Eisenberry v. Shaw Brothers, et al.*, 3:08-cv-1337, 2010 U.S. Dist. LEXIS 81345 (M.D. Pa. Aug. 11, 2010), *aff'd*, 421 Fed. Appx. 239 (3d Cir. 2011).

This was a diversity case involving allegations of failure to properly maintain a rented premises by both the licensee who used the premises and the out of possession landlord who owned the property. The plaintiff alleged that as a result of these failures he sustained catastrophic injuries resulting in the plaintiff becoming a paraplegic. This case was tried before a jury. A verdict was returned

for the plaintiff. Following trial, counsel for one defendant submitted post-trial motions pursuant to Fed. R. Civ. P. 50 claiming, as a matter of law, that the court had erred in allowing the case to go to the jury. I denied the motion. The case was appealed to the Third Circuit and affirmed.

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9. *Brown, et al. v. United States*, 3:07-cv-621, 2008 U.S. Dist. LEXIS 52986 (M.D. Pa. July 7, 2008).

This was a Federal Tort Claims Act action alleging negligence by a federal military employee, during and in the course of his federal employment, resulting in severe pain, suffering and permanent injuries to plaintiff. The plaintiff alleged that the defendant was negligent in the operation of a government owned vehicle driven by the plaintiff in the course of his employment as a military recruiter. Because this was a federal tort claim action it was tried before me without a jury. Judgment was entered in favor of the plaintiff. No appeal was filed.

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10. *Sampson Fire Sales Inc., et al. v. Oaks, et al.*, 4:99-cv-1208, 201 F.R.D. 351 (M.D. Pa. 2001), *aff'd*, 55 Fed. Appx. 87 (3d Cir. 2003).

This was a diversity action alleging misrepresentation and fraud, breach of lease, unjust enrichment, promissory estoppel and breach of agreement and contract to sell/purchase Sampson Fire Sales Inc. of Pennsylvania by North American Fire Equipment Co. of Alabama and North Alabama Fire Equipment Co. This complicated action included counterclaims for breach of contract, fraud and misrepresentation as well. In addition to the underlying action there were interesting issues concerning attorney-client privilege. Prior to trial, counsel for the plaintiff inadvertently disclosed alleged attorney/client privileged material to a defendant. Defense counsel thereafter included this information in a reply brief. When it was discovered, plaintiff's counsel moved to strike and seal the reply brief, strike defendants' answer and impose sanctions on defense counsel. I granted the motion to the extent that the brief was sealed, and denied the motion as to the request to strike defendants' answer and impose sanctions. This case was tried before a jury. A verdict was returned for the defendant. The case was appealed to the Third Circuit and affirmed.

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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. *In the Matter of the Extradition of Harshbarger*, 600 F. Supp. 2d 636 (M.D. Pa. 2009).

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2. *Franceschelli v. Verizon Pa., Inc.*, 2011 U.S. Dist. LEXIS 36180 (M.D. Pa. Apr. 4, 2011).

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3. *Rahemtulla v. Hassam, et al.*, 539 F. Supp. 2d 755 (M.D. Pa. 2008).

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4. *Zuder v. Aigeldinger, et al.*, 2007 U.S. Dist. LEXIS 64139 (M.D. Pa. 2007).

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5. *Ainbinder, et al. v. White Ash Land Association*, 363 F. Supp. 2d 762 (M.D. Pa. 2005).

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6. *Knoblauch v. Metropolitan Life Insurance Co. et al.*, 315 F. Supp. 2d 636 (M.D. Pa. 2004).

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7. *Sinde v. Gerlinski*, 252 F. Supp. 2d 144 (M.D. Pa. 2003).

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8. *Valenti v. Allstate Insurance Co.*, 243 F. Supp. 2d 200 (M.D. Pa. 2003).

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9. *Evan v. Estell*, 203 F.R.D. 172 (M.D. Pa. 2001).

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10. *Sampson Fire Sales, Inc., et al. v. Oaks, et al.*, 201 F.R.D. 351 (M.D. Pa. 2001).

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

Patterson v. Pennsylvania Office of Inspector General, 2006 U.S. Dist. LEXIS 59532 (M.D. Pa. Aug. 23, 2006), *aff'd*, 243 Fed. Appx. 695 (3d Cir. 2007), *cert. denied*, 552 U.S. 976 (2007).

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

In the following cases, I entered final orders that were appealed to either the District Court or the Third Circuit and reversed.

Scottsdale Insurance Co. v. Bieber Associates, Inc. et al., 262 F. Supp. 2d 477 (M.D. Pa. 2003), *rev'd*, 105 Fed. Appx. 340 (3d Cir. 2004). In this declaratory judgment action, Scottsdale sought to be relieved of its obligations under a liability insurance policy on the grounds of late notice. Because Scottsdale had, *inter alia*, investigated the claim, negotiated with the injured plaintiff's counsel and made at least one pre-complaint offer to settle, I ruled that this evidence was sufficient to conclude that Scottsdale had notice of the claim. The Court of Appeals disagreed and held that there were unresolved issues of fact as to Scottsdale's knowledge. The parties settled the suit before any further proceedings could be scheduled.

In re Scranton Housing Authority, 436 F. Supp. 2d 714 (M.D. Pa. 2006), *vacated*, 487 F. Supp. 2d 530 (M.D. Pa. 2007). In this motion pursuant to Fed. R. Crim. P. 41(g) to unseal the affidavit of probable cause and for the return of property, in a case where I had authorized the underlying warrant, I ruled that a magistrate judge who has the authority to issue the search warrant and order its sealing pursuant to Rule 41 also retains the authority to unseal the affidavits and decide the motion for return of property. On appeal, the District Judge ruled that a magistrate judge does not have jurisdiction to entertain a Rule 41(g) motion to unseal and for the return of property.

According to the records of the clerk of court for the Middle District of Pennsylvania, as a United States Magistrate Judge, I have authored over 1340 "Report and Recommendations" ("R&Rs"). Every R&R is subject to review by the District Court, and I have been adopted in approximately 95% of those cases. The clerk of court has attempted to identify reports that were not adopted, or adopted in part, and I have listed the cases below. I have included cases in which the decision not to adopt related to some substantive disagreement with my R&R. Therefore this list does not include, for example, cases in which the District Judge allowed another opportunity to file an untimely amended document, payment of an untimely filing fee, or the late filing of the proper paperwork. Also excluded are cases in which the R&R was not adopted due to an intervening change of circumstances or because a party withdrew a claim after reviewing my R&R. It is possible there are others, however, because if they were not properly docketed there is no way to identify those cases.

Askew v. Paone, et al., 3:10-cv-2401, 2012 U.S. Dist. LEXIS 67014 (M.D. Pa. Jan. 11, 2012), *adopted in part*, 2012 U.S. Dist. LEXIS 67270 (M.D. Pa. May 14, 2012). The District Court adopted, in part, the recommendation; however, it allowed the plaintiff a limited discovery period on one issue, after plaintiff submitted new evidence in his objections to the report and recommendation.

Rockmore v. Harrisburg, et al., 1:10-cv-2652, USDC-MDPA, *not adopted*, 2012 U.S. Dist. LEXIS 37349 (M.D. Pa. Mar. 20, 2012). My report recommended that a motion to dismiss, based upon statute of limitations, be denied pending discovery on the issue of equitable tolling. The District Court did not adopt the report and instead dismissed the case. Copy supplied.

Kitchen v. Astrue, 3:10-cv-2150, USDC-MDPA, *not adopted*, 2012 U.S. Dist. LEXIS 13639 (M.D. Pa. Feb. 3, 2012). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the matter should be remanded to the Commissioner for further consideration of conflicts in the medical opinions of some doctors.

Gray v. United States, 1:10-cv-1772, 2011 U.S. Dist. LEXIS 116780 (M.D. Pa. Aug. 17, 2011), *adopted in part*, 2011 U.S. Dist. LEXIS 112319 (M.D. Pa. Sept. 30, 2011). My report was adopted in part, however, the District Court dismissed the entire case after finding that the FTCA discretionary function defense applied.

Ward v. Kaminski, 1:10-cv-1276, USDC-MDPA, *adopted in part*, 2011 U.S. LEXIS 110699 (M.D. Pa. Sept. 28, 2011). The District Court did not agree that the plaintiff's claim only spoke to breach of contract and therefore could not be pursued in a Bivens action. Copy supplied.

Young v. Commonwealth of Pennsylvania, et al., 3:09-cv-2513, USDC-MDPA. The case was remanded with directions to issue a notice of election allowing the petitioner an opportunity to re-file a habeas corpus petition despite his failure to raise the issue in the state court proceeding. Copies supplied.

Hammond v. Wilkes-Barre, et al., 3:09-2310, 2010 U.S. Dist. LEXIS 142402 (M.D. Pa. Sept. 17, 2010), *adopted in part*, 2011 U.S. Dist. LEXIS 34312 (M.D. Pa. Mar. 30, 2011). The District Court adopted the recommendation to dismiss some counts in the complaint but went further than the recommendation and dismissed the entire complaint.

Nguyen v. United States Citizenship & Immigration Service, et al., 1:09-cv-2211, 2010 U.S. Dist. LEXIS 90256 (M.D. Pa. May 12, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 90234 (M.D. Pa. Aug. 31, 2010). The District Court dismissed the case for lack of jurisdiction, but noted that if that finding was incorrect, it agreed that the matter must be dismissed for the reasons contained in the report and recommendation.

Desavage v. Grove, et al., 3:09-cv-1204, 2009 U.S. Dist. LEXIS 70570 (M.D. Pa. July 2, 2009), *adopted in part*, 2009 U.S. Dist. LEXIS 70572 (M.D. Pa. Aug. 6, 2009). My report was adopted in part, but remanded to consider the prisoner's equal protection claim that he was removed from his prison employment in the bakery for improper reasons.

Evans v. York County Adult Probation and Parole Dep't, et al., 1:09-cv-1013, 2010 U.S. Dist. LEXIS 131066 (M.D. Pa. Sept. 28, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 131007 (M.D. Pa. Dec. 10, 2010). The report was adopted with respect to the dismissal of the claims against the state entity, but not adopted with respect to an individual defendant because the District Court found that he was not entitled to qualified immunity.

Sharpe v. County of Dauphin, et al., 1:09-cv-989, 2010 U.S. Dist. LEXIS 92794 (M.D. Pa. Aug. 10, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 92799 (M.D. Pa. Sept. 7, 2010). The District Court adopted in part the recommendation, however, it allowed the *Monell* claim to proceed and dismissed the Due Process claims against some defendants.

Balter v. Martinez, 3:09-cv-504, 2010 U.S. Dist. LEXIS 72875 (M.D. Pa. May 12, 2010), *not adopted*, 2010 U.S. Dist. LEXIS 72738 (M.D. Pa. July 20, 2010). The District Court did not adopt the recommendation that the case be dismissed, without prejudice, as a result of plaintiff's admitted failure to exhaust. Rather, the District Court directed that the case be transferred to another district.

Pavuscko v. Fiala, 4:08-cv-1878, 2010 U.S. Dist. LEXIS 78529 (M.D. Pa. June 22, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 78528 (M.D. Pa. Aug. 4, 2010). The District Court granted summary judgment to the defendant on all counts, rather than just on those recommended in the report.

Frankenberry v. FBI, et al., 3:08-cv-1565 USDC-MDPA, *adopted in part*, 2012 U.S. Dist. LEXIS 39027 (M.D. Pa. Mar. 21, 2012). The District Court adopted in part the recommendation by denying the plaintiff's motion for summary judgment but did not adopt the recommendation to grant summary judgment in favor of the defendants, finding that they had not shown a proper FOIA basis to withhold information. Copy supplied.

Frankenberry v. FBI, et al., 3:08-cv-1565, 2010 U.S. Dist. LEXIS 35098 (M.D. Pa. Jan. 29, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 35078 (M.D. Pa. Apr. 7, 2010). The District Court adopted in part the recommendation to deny the plaintiff's request for a TRO/Injunction but did not adopt the recommendation to grant summary judgment in favor of the defendants.

Sanders v. Downs, et al., 3:08-cv-1560, 2009 U.S. Dist. LEXIS 125655 (M.D. Pa. Nov. 25, 2009), *adopted*, 2010 U.S. Dist. LEXIS 21429 (M.D. Pa. Mar. 9, 2010), *aff'd in part and vacated in part and remanded*, 420 Fed. Appx. 175, 2011 U.S. App. LEXIS 5855 (3d Cir. Mar. 22, 2011). The District Court adopted the report and recommendation in full, however, on appeal the Third Circuit reversed and remanded on the issue whether the statute of limitation had expired.

Banks, et al. v. Gallagher, et al., 3:08-cv-1110, 2010 U.S. Dist. LEXIS 141544 (M.D. Pa. Dec. 13, 2010), *adopted in part*, 2010 U.S. Dist. LEXIS 141540 (M.D.

Pa. Feb. 22, 2011). The District Court adopted all recommendations except it allowed one party the opportunity to amend his complaint.

Stephens v. Klopotosky, et al., 1:08-cv-1029, 2009 U.S. Dist. LEXIS 124759 (M.D. Pa. Oct. 29, 2009), *not adopted*, 2010 U.S. Dist. LEXIS 10188 (M.D. Pa. Feb. 5, 2010). The District Court did not adopt the recommendation to dismiss the petition because it was filed outside of the one year statute of limitations.

Houseknecht v. Brulo, et al., 3:08-cv-482, 2009 U.S. Dist. LEXIS 106922 (M.D. Pa. Aug. 6, 2009), *not adopted*, 2009 U.S. Dist. LEXIS 106197 (M.D. Pa. Nov. 12, 2009). The District Court did not adopt the recommendation of dismissal for the reasons recommended, but dismissed the case for other reasons.

Bryan v. Astrue, 3:07-cv-2121, USDC-MDPA, *adopted*, 2009 U.S. Dist. LEXIS 19652 (M.D. Pa. Mar. 12, 2009), *aff'd in part and rev'd in part*, 383 Fed. Appx. 140; 2010 U.S. App. LEXIS 11386 (3d Cir. June 4, 2010). The District Court adopted the report and recommendation in full, however, on appeal the Third Circuit reversed and remanded on one aspect of the plaintiff's residual functional capacity. Copy supplied.

Zagata v. Astrue, 4:07-cv-1882, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding there was not substantial evidence supporting the Commissioner's decision as to the plaintiff's residual functional capacity. Copies supplied.

Sands v. Astrue, 4:07-cv-1435, 2008 U.S. Dist. LEXIS 113615 (M.D. Pa. June 6, 2008), *adopted in part*, 2008 U.S. Dist. LEXIS 49908 (M.D. Pa. June 25, 2010). The District Court adopted the recommendation in part, however, it remanded the case to the Commissioner of Social Security concerning the plaintiff's residual functional capacity determination.

Sponenberg v. Astrue, 4:07-cv-1300, USDC-MDPA, *not adopted*, 2008 U.S. Dist. LEXIS 46782 (M.D. Pa June 16, 2008). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner for further consideration of new evidence. Copy supplied.

Wall v. Miner, 3:07-cv-1127, USDC-MDPA, *adopted in part*, 2008 U.S. LEXIS 122825 (M.D. Pa. May 22, 2008). The report was adopted in part, dismissing the *Bivens* claim against any employees of the Public Health Service but allowing the claim to go forward at this stage of the proceedings against the non-medical employees. Copy supplied.

Zucker v. Astrue, 3:07-cv-710, 2008 U.S. Dist. LEXIS 113025 (M.D. Pa. Mar. 21, 2008), *adopted in part*, 2008 U.S. Dist. LEXIS 42915 (M.D. Pa. May 30, 2008).

The District Court adopted the recommendation in part, however, it remanded the case to the Commissioner because it believed the hypothetical question used by the Commissioner was incomplete.

McDonough v. Astrue, 4:07-cv-613, USDC-MDPA, *not adopted*, 2008 U.S. Dist. LEXIS 49974 (M.D. Pa June 30, 2008). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner for further consideration of certain medical evidence. Copy supplied.

Shields v. Astrue, 3:07-cv-417, USDC-MDPA, *not adopted*, 2008 U.S. Dist. LEXIS 74519 (M.D. Pa Sept. 8, 2008). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner for further consideration of the weight to be given certain medical evidence. Copy supplied.

Benson v. Forney, et al., 4:07-cv-352, USDC-MDPA, *adopted in part*, 2007 U.S. Dist. LEXIS 43241 (M.D. Pa June 14, 2007). The report was adopted in part, dismissing the claims against some defendants. However, the District Court went further than the recommendation and dismissed all claims. Copy supplied.

Fowler v. Borough of Dallas, 3:07-cv-276, 2009 U.S. Dist. LEXIS 96221 (M.D. Pa. July 27, 2009), *adopted in part*, 2009 U.S. Dist. LEXIS 90341 (M.D. Pa. Sept. 30, 2009). The District Court adopted the recommendation in part, however, it found that the ADEA claim may go forward at this stage of the proceedings.

Horton v. Harrisburg, et al., 1:06-cv-2338 USDC-MDPA, 2009 U.S. LEXIS 63428 (M.D. Pa. July 23, 2009). The report was adopted in part, dismissing all claims as recommended except the state law claims against one defendant and the intentional infliction of emotional distress claim against another defendant. Copy supplied.

Ames v. Astrue, 1:06-cv-2214, USDC-MDPA, *not adopted*, 2008 U.S. Dist. LEXIS 4552 (M.D. Pa. Jan. 22, 2008). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner to more specifically explain why the ALJ rejected plaintiff's subjective complaints. Copy supplied.

Candido v. Hogsten, 3:06-cv-1112, USDC-MDPA, *adopted*, 2008 U.S. Dist. LEXIS 15662 (M.D. Pa. Feb. 29, 2008) *rev'd*, 315 Fed. Appx. 405, 2009 U.S. App. LEXIS 4635 (3d Cir. Mar. 5, 2009). The District Court adopted the report and recommendation in full, however, on appeal the Third Circuit reversed the District Court and remanded for further findings on the issue of exhaustion of administrative remedies. Copy supplied.

Chambers v. Beard, 3:06-cv-980, 2007 U.S. Dist. LEXIS 58091 (M.D. Pa. Aug. 9, 2007), *not adopted*, 2008 U.S. Dist. LEXIS 108875 (M.D. Pa. Mar. 5, 2008). My report recommending the allowance of discovery in this habeas corpus case was not adopted, as the District Court found that discovery was not necessary.

Massi v. Hollenbach, et al., 4:06-cv-34, USDC-MDPA, *adopted in part*, 2007 U.S. Dist. LEXIS 14787 (M.D. Pa. Mar. 2, 2007). The District Court adopted the recommendation in part, however, it allowed the case to proceed at this stage against some prison administrative staff, finding sufficient personal involvement had been shown. Copy supplied.

Glicos v. Astrue, 3:05-cv-2561, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge had inadequately evaluated the medical evidence. Copies supplied.

Brownawell v. Barnhart, 1:05-cv-2076, USDC-MDPA, *rev'd*, 554 F.3d 352 (3d Cir. 2008). The District Court adopted the report and recommendation in full, however, on appeal the Third Circuit reversed and granted benefits to the plaintiff. Copies supplied.

Koljenovic v. Decker, 3:05-cv-1109, 2006 U.S. Dist. LEXIS 85637 (M.D. Pa. June 26, 2006), *adopted in part*, 2006 U.S. Dist. LEXIS 78755 (M.D. Pa. Oct. 27, 2006). The District Court adopted the recommendation in part, however, rather than ordering an immediate hearing concerning the petitioner's immigration detainer, the District Court merely ordered the petitioner's immediate release.

Mitrow v. Verizon, et al., 3:05-cv-64, USDC-MDPA, *adopted in part*, 2007 U.S. Dist. LEXIS 28829 (M.D. Pa. Apr. 19, 2007). The report was adopted on all issues except one related to the amount of FMLA leave available to the plaintiff. Copy supplied.

Velazquez v. Grace, 4:04-cv-2348, USDC-MDPA. The District Court did not adopt the recommendation; rather it was remanded to decide whether the plaintiff's violation of the statute of limitations should be equitably tolled. Copies supplied.

Angelatos v. US Food Service, Inc., et al., 4:04-cv-2033, USDC-MDPA, *adopted in part*, 2007 U.S. Dist. LEXIS 12646 (M.D. Pa. Feb. 23, 2007). The District Court adopted, in part, the recommendation and dismissed the disability and age discrimination claims, however, it did not adopt the recommendation that the gender discrimination claim be dismissed at this stage of the litigation. Copy supplied.

Zeglen v. Pappert, et al., 3:04-cv-1940, 2007 U.S. Dist. LEXIS 96734 (M.D. Pa. Nov. 30, 2007), *adopted in part*, 2008 U.S. Dist. LEXIS 20344 (M.D. Pa. Mar.

12, 2008). The District Court adopted, in part, the recommendation that the motion to dismiss the action be denied, however, the court did dismiss a portion of the action.

Coleman v. Smith, 3:04-cv-1753, USDC-MDPA. The District Court adopted the recommendation in part, however it remanded the case for further briefing on the issue of educational good time credit. Copies supplied.

Foley v. Barnhart, 3:04-cv-670, USDC-MDPA, *not adopted*, 432 F. Supp. 2d 465 (M.D. Pa. 2005). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge's decision was not based upon substantial evidence. Copy supplied.

Lane v. Barnhart, 1:04-cv-386, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge's decision was not based upon substantial evidence. Copies supplied.

Casavecchia v. Barnhart, 3:04-cv-93, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge was required to apply a different analysis when considering the plaintiff's medical impairment. Copies supplied.

Tsai v. Ashcroft, et al., 3: 03-cv-2412, USDC-MDPA, *not adopted*, 2004 U.S. Dist. LEXIS 11294 (M.D. Pa. May 11, 2004). The report recommending that this post-removal detention petition be referred for administrative review to the INS was not adopted; rather, the petition was permitted to go forward. Copy supplied.

Gutierrez v. Commissioner, 3:03-cv-2401, USDC-MDPA. The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the Administrative Law Judge's decision was not based upon substantial evidence. Copies supplied.

Barnett v. Pugh, et al., 1:03-cv-1750, USDC-MDPA. The District Court did not adopt the recommendation that the defendant's motion to dismiss be denied, but instead converted the motion to one for summary judgment and ordered additional briefing on the converted motion. Copies supplied.

McKeithan v. Jones, et al., 1:03-cv-1318, USDC-MDPA, *adopted in part*, 2005 U.S. Dist. LEXIS 43258 (M.D. Pa. June 3, 2005). The District Court adopted, in part, the recommendation and dismissed additional claims that it construed as not independent but within the parameters of the claims to be dismissed. Copy supplied.

Hakeem v. United States, et al., 3:03-cv-98, 2006 U.S. Dist. LEXIS 95800 (M.D. Pa. July 18, 2006), *adopted in part*, 2007 U.S. Dist. LEXIS 18177 (M.D. Pa. Mar. 13, 2007). The District Court adopted the recommendation in part, however, it allowed an allegation of deliberate indifference to proceed, finding there were questions of fact that would require more discovery.

Colon v. Colonial Intermediate Unit 20, et al., 3:02-cv-2123, 2006 U.S. Dist. LEXIS 94916 (M.D. Pa. Mar. 10, 2006), *adopted in part*, 2006 U.S. Dist. LEXIS 54273 (M.D. Pa. Aug. 4, 2006). The report was adopted in part, except as to the recommendation that an argument concerning individual capacity liability had been waived.

Seawright v. Kyler, et al., 1:02-cv-1815, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations of First Amendment retaliation to go forward at this stage of the proceedings. Copies supplied.

Stuber v. Olom, et al., 4:02-cv-1612, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations in a pendent state claim to go forward and required an amended complaint. Copies supplied.

Green v. Department of Corrections, et al., 1:02-cv-414, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations of deliberate indifference by failure to act to proceed against one additional defendant. Copies supplied.

Drayton v. Kyler, et al., 4:02-cv-77, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations of an Eighth Amendment violation to proceed at this stage of the pleadings. Copies supplied.

Telesha v. Barnhart, 3:01-cv-2371, USDC-MDPA, *not adopted*, 2003 U.S. Dist. LEXIS 16359 (M.D. Pa. Mar. 31, 2003). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, finding that the matter should be remanded to the Administrative Law Judge for further consideration. Copy supplied.

Wirs v. Davis, et al., 3:01-cv-2150, USDC-MDPA. The District Court adopted the report, however, on the allegation of ineffective assistance of counsel, it did so for other reasons. Copies supplied.

Calcek v. Commissioner of Social Security, 3:01-cv-1664, USDC-MDPA, *not adopted*, 2003 U.S. Dist. LEXIS 13564 (M.D. Pa. July 31, 2003). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed, instead remanding the case to the Commissioner for consideration of the plaintiff's potential mental impairment. A copy of my opinion is not available.

Munley v. Chase-Pitkin, 3:01-cv-1505, USDC-MDPA. The District Court adopted the recommendation in part, however, it allowed the allegations of age discrimination to go forward for reasons set forth on the record at oral argument. Copies supplied.

James v. York County Police Department, et al., 1:01-cv-1015, 2004 WL 3331865 (M.D. Pa. Aug. 17, 2004), *adopted in part*, 2005 WL 1154500 (M.D. Pa. 1154500). The District Court adopted the recommendation in part, however, it allowed the alleged *Monell* violations against the police department to proceed.

Schorr v. Borough of Lemoyne, et al., 1:01-cv-930, USDC-MDPA, 2002 U.S. Dist. LEXIS 25668 (M.D. Pa. Dec. 27, 2002), *adopted in part*, 243 F. Supp. 2d 232 (M.D. Pa. 2003). The report was adopted in part except as to the recommendation that the ADA claim be dismissed against the police commission.

Smith v. Morgan, et al., 1:01-cv-817, USDC-MDPA. The District Court adopted the recommendation in part, however, rather than remand the case to allow service on one remaining unserved defendant, the District Court dismissed the entire case. Copies supplied.

Greer v. Smith, et al., 4:01-cv-78, USDC-MDPA. The District Court did not adopt the recommendation that the defendants' motion to dismiss and motion for summary judgment be denied, but instead granted the motions and dismissed the case. Copies supplied.

Eberhart v. Massanari, 3:00-cv-817, USDC-MDPA, *not adopted*, 172 F. Supp. 2d 589 (M.D. Pa. 2001). The District Court did not adopt a recommendation that the decision of the Commissioner of Social Security be affirmed; instead, it awarded benefits to the plaintiff. Copy supplied.

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

As a United States Magistrate Judge all of my decisions are filed on the United States District Court for the Middle District of Pennsylvania's Electronic Case Filing System (ECF). The vast majority of my decisions are on nondispositive matters such as motions to enlarge the discovery deadlines, motions to amend pleadings, motions to compel or resolve discovery disputes and other similar motions. It is virtually impossible to estimate the number of such decisions. While those decisions generally are not published, as one of the judges who has signed onto the Courtweb program, all of my memorandum opinions and reports and recommendations, since July 2004, are available for public search, free of charge on Courtweb.

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.

Telepo v. Martin, 257 F.R.D. 76 (M.D. Pa. 2009)

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 appeals court.

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

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

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

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

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

The United States District Court for the Middle District of Pennsylvania has an automated conflict screening software program to identify conflicts of interest for each judge. I have included on that list, and recused myself from cases involving, any individuals or companies with which I have a financial or personal relationship that could be considered a conflict of interest under the Code of Conduct for United States Judges and/or 28 U.S.C. § 455. I am provided a copy of that list each month and I scrupulously review it to ensure it is up to date. I do not believe I have ever been requested to recuse myself from a case by counsel. In our district, once a judge has been assigned a pro se prisoner case, all future cases from the same pro se litigant are assigned to the same judge. This has occasionally resulted in a prisoner who was unhappy with a prior ruling requesting that I be recused from his case because of that prior ruling. This request would normally go to the District Judge co-assigned to the case. I have never felt biased or prejudiced toward any litigant whose case has been properly before me and to the best of my knowledge, I have never been recused by a

District Judge from a case. The following list includes those cases where the clerk of court has been able to identify that I recused myself. In each category of cases, I have included a brief explanation of the reason for my recusal.

In each of the following cases, I recused myself, sua sponte, because counsel for one of the parties or the party was a personal friend.

Odom v. Borough of Taylor, et al., 3:05-cv-341 USDC-MDPA.

Ballard v. Immel, et al., 1:04-cv-720 USDC-MDPA.

Luzerne Optical Laboratories, Ltd. v. Emerging Vision, Inc., 4:03-cv-2372 USDC-MDPA.

Femley v. Pocono Ambulatory Surgery Center, 3:03-cv-946 USDC-MDPA.

Dutter v. Commissioner of Social Security, 4:03-cv-719 USDC-MDPA.

Doe v. Ensey, et al., 3:02-cv-444 USDC-MDPA.

Parry v. Commissioner of Social Security, 1:01-cv-1715 USDC-MDPA.

Bloom v. County of Lackawanna, et al., 3:01-cv-1429 USDC-MDPA.

Franceschelli v. Commissioner of Social Security, 3:01-cv-1332 USDC-MDPA.

In each of the following cases, I recused myself, sua sponte, because counsel, a party or witness was affiliated with my former law firm.

Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. The County of Luzerne, 3:04-cv-1506 USDC-MDPA.

Battista v. Highmark Life & Casualty Co., 3:04-cv-853 USDC-MDPA.

Tooley v. Urban, et al., 3:02-2336 USDC-MDPA.

Pizzella v. Makowski, et al., 3:02-cv-908 USDC-MDPA.

Leap v. Stoudsburg Area School District, et al., 3:01-cv-30 USDC-MDPA.

Kelly v. Hazelton General Hospital, et al., 3:00-cv-1127 USDC-MDPA.

Laborers Local Union No 158 v. 78 Construction Corp., et al., 4:00-cv-181 USDC-MDPA.

In each of the following cases, I recused myself, sua sponte, because I was familiar with the matter, or one of the parties, as a direct result of my prior employment as an Assistant United States Attorney in the Middle District of Pennsylvania.

Shemonsky v. Social Security Administration, 4:07-cv-236 USDC-MDPA.

Locskai v. U.S. Department of Justice, et al., 3:05-cv-636 USDC-MDPA.

Schutz v. Conahan, et al., 4:03-cv-1508 USDC-MDPA.

Dalrymple v. United States, et al., 4:03-cv-905 USDC-MDPA.

In each of the following cases, I recused myself, sua sponte, because I had a financial investment with one of the parties or their parent companies.

McCullough, et al. v. Wells Fargo Home Mortgage, et al., 3:10-cv-1698 USDC-MDPA.

Munley v. Discover Financial Services, et al., 3:07-cv-1053 USDC-MDPA.

Collins v. Prudential Investment and Retirement Services, et al., 3:01-cv-1765 USDC-MDPA.

In each of the following cases, I recused myself, sua sponte, because I had represented one of the parties in the case when I was in private practice.

Houston v. Klopotoski, et al., 1:10-cv-1964 USDC-MDPA.

Purnell v. Wynder, et al., 4:03-cv-1830 USDC-MDPA.

Nealon v. Commonwealth of Pennsylvania, et al., 3:02-cv-1681 USDC-MDPA.

Henry v. Stanish, et al., 3:00-cv-1700 USDC-MDPA.

In the following case, I recused myself, sua sponte, because counsel for one of the parties had been appointed as a member of my Merit Selection Reappointment Panel.

Gulick v. City of Nanticoke, et al., 3:08-cv-717 USDC-MDPA.

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

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than my present judicial office. I have never had an unsuccessful candidacy for elective office or unsuccessful nomination for appointed office.

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

I have not held any office in or rendered any services to any political party or election committee. I have not held any position or played any 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 never served as a law clerk to a judge.

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

I have never practiced law alone.

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

1979 – 1980
Bartels, Pykett & Aronwald, Esqs.
99 Court Street
White Plains, NY 10601
Litigation Associate

1980 – 1986
Nassau County District Attorney's Office
262 Old Country Road
Mineola, NY 11501
Assistant District Attorney

1986 – 1993
United States Department of Justice
United States Attorney's Office for the Middle District of Pennsylvania
225 North Washington Avenue
Scranton, PA 18503
Assistant United States Attorney (1986 – 1993)
Chief, Organized Crime Drug Enforcement Task Force (1989 – 1993)
District Office Security Manager (1989 – 1993)

1993 – 1997
Hourigan, Kluger, Spohrer & Quinn, PC
434 Lackawanna Avenue
Scranton, PA 18503
Litigation Partner

1997 – 2001
United States Department of Justice
United States Attorney's Office for the Middle District of Pennsylvania
225 North Washington Avenue
Scranton, PA 18503
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.

As a member of the Lackawanna Bar Association, I was appointed, usually once a year, by the Lackawanna County Clerk of Court and required to sit as a member of the three-person arbitration panels in the Court of Common Pleas of Lackawanna County. The hearings lasted no more than one day each. I have no records from these matters as any file would have been returned to the Lackawanna County Clerk of Court at the end of the day. Otherwise, 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 1979 to 1980, I was a litigation associate at Bartels, Pykett & Aronwald, Esqs., in White Plains, New York, responsible for the preparation of pleadings, legal research, witnesses and exhibits in both federal and state court civil and criminal matters. I handled litigation and witness preparation for trial, examinations before trial and hearings.

From 1980 to 1986, I was an Assistant District Attorney in Nassau County, New York. I tried numerous jury and non-jury cases. My career included handling traffic offenses, arraignments, pleas, misdemeanor trials, grand jury presentments, and major felony trials, including but not limited to homicide, armed robbery, residential and commercial burglary, rape and other sexual offenses, narcotic distribution, escape, assault, grand larceny, extortion, economic crime and corruption. In addition, I was a member of the rackets bureau where I investigated, presented to the grand jury and prosecuted major cases against members of traditional organized crime, Columbian cartels and outlaw motorcycle gangs. I authored and supervised numerous eavesdropping and search warrants, and initiated and supervised complex undercover and covert investigations. I also was the Trial Supervisor responsible for litigation supervision and instruction of 41 Assistant District Attorneys in the District Court Bureau.

From 1986 to 1993 and again from 1997 to 2001, I was an Assistant United States Attorney in the Middle District of Pennsylvania. Early in my career as an AUSA, the Middle District of Pennsylvania was not divided into Civil and Criminal Divisions. Therefore, I represented the United States in both civil and criminal cases. My civil responsibilities included representing various federal agencies in Federal Tort Claim Act cases and complex medical malpractice cases originating out of the Wilkes-Barre, Pennsylvania Veterans Administration Hospitals. I also represented the United States in social security claims, civil litigation, tax matters and HUD cases, to name a few. My criminal responsibilities included investigation and prosecution of the full panoply of federal criminal matters, including but not limited to organized crime and RICO violations, political corruption, fraud, violent crime, counterfeiting, interstate transportation in aid of racketeering, money laundering, income tax and narcotics violations. Beginning in 1989, the United States Attorney's Office split into divisions. I was selected as the Chief of the Organized Crime Drug Enforcement Task Force. As chief, I was responsible for all large scale national and international drug prosecutions and organized crime prosecutions. I directed the task force comprised of other AUSAs, DEA agents, FBI agents, ATF agents, IRS agents, Customs agents, INS agents, U.S. Marshals and Defense Department agents. Our goal was to attack organized crime using complex civil and criminal strategies to seize illegal assets, dismantle criminal organizations and prosecute their members. In addition, I continued to be assigned other high profile cases including political corruption and other sensitive investigative matters.

During my years in the United States Attorney's Office, I was appointed as the District Office Security Manager and received a top secret United States government clearance and overall responsibility for all sensitive, secret and top secret information in the District. During my time in the Office, I tried more cases before juries than any other AUSA in the office

at that time. I also acted as a mentor and trial advisor to many AUSAs. I also personally researched, briefed and argued many cases before the United States Court of Appeals for the Third Circuit.

From 1993 to 1997 at Hourigan, Kluger, Spohrer & Quinn, PC (now Hourigan, Kluger & Quinn, PC), I handled complex litigation matters in both federal and state court. As a litigation partner, I was responsible for a varied case load, the vast majority of which were sophisticated and complex medical malpractice matters. I represented both plaintiffs and defendants in both state and federal court. I tried to successful jury verdict a number of civil cases, represented clients at numerous judicial hearings and argued before Pennsylvania appellate courts. In addition to medical malpractice cases, I handled commercial litigation, breach of contract cases, bad faith insurance litigation and many other civil litigation matters.

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

As a litigation associate with Bartels, Pykett & Aronwald, Esqs. from 1979 to 1980, my clients included private individuals, businesses, and corporations. I did not specialize in any particular area of law at this time.

From 1980 to 1986 as an Assistant District Attorney at the Nassau County District Attorney's Office, my client was the state of New York. I specialized in state criminal prosecution.

From 1986 to 1993 and again from 1997 to 2001 as an Assistant United States Attorney in the Middle District of Pennsylvania my client was the United States. I specialized in affirmative civil litigation, defensive civil litigation and criminal prosecution.

Finally from 1993 to 1997, as a litigation partner at Hourigan, Kluger, Spohrer & Quinn, PC, my clients included private individuals, businesses, corporations, governmental agencies and subdivisions. I specialized in state and federal civil litigation with an emphasis on medical malpractice.

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.

In all of my professional positions I have appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 85%
   2. state courts of record: 10%

3. other courts: 4%
4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 50%
2. criminal proceedings: 50%

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

More than 100 as sole counsel and/or chief counsel.

i. What percentage of these trials were:
1. jury: 40%
2. non-jury: 60%

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

I have never practiced before the Supreme Court of the United States.

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

a. the date of representation;

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

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

1. *United States v. Chipps*, D.C. No. 3: CR-97-66, *aff'd*, 230 F.3d 1349, 2000 U.S. App. LEXIS 22864 (3d Cir. 2000), *cert. denied*, 531 U.S. 1057 (2000); before the Honorable Robert J. Cindrich, United States District Judge for the Western District of Pennsylvania sitting by designation as a judge of the United States District Court for the Middle District of Pennsylvania.

On July 22, 1997, a federal grand jury sitting in the Middle District of Pennsylvania indicted Chipps for threatening to assault and murder United States District Judge William J. Nealon, as well as threatening to blow up the federal building in Scranton, Pennsylvania. The Honorable Robert J. Cindrich, United States District Judge from the Western District of Pennsylvania, was designated by the Third Circuit to sit by designation as a Judge in the Middle District of Pennsylvania to hear this case. On the day originally set for trial, the defendant fled to Canada. Working with the United States Department of State, I litigated the defendant's return and superseded his indictment to add additional charges related to his flight. I represented the United States throughout the investigation, extradition, trial and appeal. Following a jury trial in May 1998, the defendant was convicted. He appealed his conviction to the Third Circuit. The conviction was affirmed. The defendant petitioned the United States Supreme Court for a writ of Certiorari. That petition was denied.

Counsel for the Defendant:

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(570) 472-9593

Karen Sirianni Gerlach
Federal Public Defender
415 Convention Tower
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Pittsburgh, PA 15222
(412) 644-6565

Daniel I. Siegel
Appellate Counsel
Federal Public Defender
100 Chestnut Street #306
Harrisburg, PA 17101
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2. *United States v. Thomas and Sheridan*, D.C. No. 3:CR-88-44, *aff'd, United States v. Thomas*, 866 F.2d 1413 (3d Cir. 1988), *United States v. Sheridan*, 866 F.2d 1414 (3d Cir. 1988); before the Honorable William J. Nealon, United States District Court for the Middle District of Pennsylvania.

On March 14, 1988, a federal grand jury sitting in the Middle District of Pennsylvania indicted Thomas and Sheridan for mail fraud and conspiracy in a case that became known as "Examscam." This was a political corruption case involving the Scranton police department and the Scranton Civil Service Commission's fixing of the Civil Service examination to assure the hiring of

politically selected police officers. I represented the United States throughout the lengthy investigation, trial and appeal. Following a jury trial in May 1988, the defendants were convicted. They separately appealed their convictions to the Third Circuit. The convictions were affirmed.

Counsel for the Defendants:

Michael J. Barrasse
200 North Washington Avenue, 3rd Floor
Scranton, PA 18503
(570) 963-6452

Robert J. Farrell
Deceased

Michael J. Eagan, Jr.
Foley, McLane, Foley, McDonald & MacGregor
600 Linden Street
Scranton, PA 18501
(570) 342-8194

William J. Hall, Jr.
307 North Blakely Street
P.O. Box 272
Dunmore, PA 18512
(570) 342-3799

3. *United States v. Belletiere*, D.C. No. 3:CR-90-165, *aff'd in part, rev'd in part*, 971 F.2d 961 (3d Cir. 1992); before the Honorable Edwin M. Kosik, United States District Court for the Middle District of Pennsylvania.

On June 5, 1990 and November 29, 1990, a federal grand jury sitting in the Middle District of Pennsylvania indicted Belletiere for an international drug conspiracy resulting in the distribution of multiple kilogram quantities of cocaine purchased from Columbians through Miami, Florida and distributed through a network known as the "Empire" in Northeastern Pennsylvania. Belletiere's indictment was superseded before trial to include income tax evasion and asset forfeiture counts. I represented the United States throughout the investigation, trial and appeal. Following a jury trial in April 1991, in which over 400 exhibits were introduced, the defendant was convicted on all 27 counts. He appealed his conviction to the Third Circuit. The conviction was affirmed, however the sentence imposed by Judge Kosik was reversed and remanded for resentencing.

Counsel for the Defendant:

Leonard A. Sands
Sands & Moskowitz
Bayview Executive Plaza
3225 Aviation Avenue, Suite 300
Coconut Grove, FL 33133
(305) 285-1500

4. *Gilbride v. Rhiew*, CCP Lackawanna 90-CV-883; before the Honorable James J. Munley, Judge of the Lackawanna County Court of Common Pleas.

I represented Dr. Rhiew, a radiologist in this multi-million dollar medical negligence case where the plaintiff alleged that the defendant failed to properly diagnose his esophageal cancer resulting in severe pain, suffering and premature death. I represented Dr. Rhiew throughout the pre-trial and trial stages. The case was tried before a jury in the Court of Common Pleas of Lackawanna County. The jury returned a verdict in favor of my client. No appeal was taken from the verdict.

Counsel for the Plaintiff:

Mark C. Cavanaugh
Dugan, Brinkman, Maginnis, and Pace
1880 John F. Kennedy Boulevard, Suite 1400
Philadelphia, PA 19103
(215) 563-3500

5. *Gigliotti v. Larkin and De Sai*, CCP Lackawanna 91-CV-4002, before the Honorable Carmen D. Minora, Judge of the Lackawanna County Court of Common Pleas.

I represented the defendant, Dr. Larkin, in this medical negligence suit brought against him by the plaintiff and her family. Dr. Larkin performed surgery on the plaintiff, which resulted in an uncontrolled bleed and a resulting embolus. The embolus caused a stroke which resulted in the inability of the plaintiff to walk or function. I represented Dr. Larkin throughout the pre-trial and trial stages. The case was tried before a jury in the Court of Common Pleas of Lackawanna County. The jury returned a verdict in favor of my client. The case was later settled. No appeal was taken.

Counsel for the Plaintiff:

Kenneth M. Rothweiler
Eisenberg, Rothweiler, Winker, Eisenberg & Jeck, P.C.
1634 Spruce Street

Philadelphia, PA 19103
(215) 268-7153

F. Philip Robin
Kolsby, Gordon, Robin, Shore & Bezar
2000 Market Street, 28th Floor
Philadelphia, PA 19103
(215) 851-9700

Counsel for the Co-Defendant:

John J. Aponick
Marshall, Dennehey, Warner, Coleman & Goggin
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Moosic, PA 18507
(570) 496-4618

Frank G. Wenzel, Jr.
Polachek & Clark, P.C.
Phoenix Plaza Suite 600
22 East Union Street
Wilkes-Barre, PA 18701
(570) 822-8515

6. *Tucker v. Gentilezza, Bessoir, et al.*, CCP Lackawanna 91-CV-1633; before the Honorable S. John Cottone, Judge of the Lackawanna County Court of Common Pleas.

I represented Dr. Gentilezza, a physiatrist, in this medical negligence case where the plaintiff alleged that the defendants failed to properly prescribe and supervise the plaintiff's rehabilitation program, leading to severe and permanent disability. I represented Dr. Gentilezza throughout the pre-trial and trial stages. The case was tried before a jury in the Court of Common Pleas of Lackawanna County. The jury returned a verdict in favor of my client. No appeal was taken.

Counsel for the Plaintiffs:

Alan M. Feldman
Feldman, Shepherd, Wohlgelernter, Tanner, Weinstock & Didig, LLP
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(215) 567-8300

Carol Nelson Shepherd
Feldman, Shepherd, Wohlgelernter, Tanner, Weinstock & Didig, LLP
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Philadelphia, PA 19103
(215) 567-8300

Counsel for the Co-Defendant:

David L. Rohde
5104 Township Line
Drexel Hill, PA 19026
(610) 449-1707

7. *United States v. Sweeting*, D.C. No. 3: CR 99-139, *aff'd*, 251 F.3d 155 (3d Cir. 2000); before the Honorable Edwin M. Kosik, United States District Court for the Middle District of Pennsylvania.

On June 8, 1999, a federal grand jury sitting in the Middle District of Pennsylvania indicted Sweeting for bank fraud, counterfeiting and money laundering offenses. Sweeting, together with others, conspired to defraud banks in Scranton, New York and Detroit of approximately $1,000,000 in counterfeit cashier's checks. I represented the United States throughout the investigation, trial and appeal. Following a jury trial in September 1999, the defendant was convicted. He appealed his conviction to the Third Circuit. The conviction was affirmed.

Counsel for the Defendant:

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88 North Franklin Street
Wilkes-Barre, PA 18701
(570) 472-9593

Daniel I. Siegel
Appellate Counsel
Federal Public Defender
100 Chestnut Street
Harrisburg, Pennsylvania 17101
(717) 782-2237

8. *United States v. Gilbert*, D.C. No. 3:CR 91-215, *rev'd*, 1995 U.S. LEXIS 5009 (3d Cir. Feb. 8, 1995), *cert. denied*, 515 U.S. 1128 (1995); before the Honorable Edwin M. Kosik, United States District Court for the Middle District of Pennsylvania.

On October 29, 1991 and July 7, 1992, a federal grand jury sitting in the Middle District of Pennsylvania indicted Gilbert as an armed career criminal for possession of weapons. Gilbert had an extensive history of violent felony offenses. He threatened to harm and kill his neighbors and their young daughter.

and he frequently shot firearms into the neighbor's back yard where the child's swing set was located. I represented the United States throughout the investigation, trial and appeal. Following a jury trial in November 1992, the defendant was convicted. I requested approval from the Solicitor General of the United States to appeal the sentence imposed by the District Judge, which was granted. The Third Circuit granted my appeal, reversed the District Court and remanded with instructions that the District Court impose the 15-year mandatory sentence required for armed career criminals. The defendant's application for appeal to the United States Supreme Court was denied.

Counsel for the Defendant:

Gerard Edmund Grealish
Kane Professional Building
116 North Washington Avenue, Suite 3H
Scranton, PA 18503
(570) 346-0277

9. *United States v. Beck*, D.C. No. 3:CR-98-178, *aff'd*, 242 F.3d 372 (3d Cir. 2000), *cert. denied*, *Beck v. United States*, 531 U.S. 1180 (2001); before the Honorable William J. Nealon, United States District Court for the Middle District of Pennsylvania.

On July 28, 1998, a federal grand jury sitting in the Middle District of Pennsylvania indicted Beck for attempted bank robbery. Beck threatened to blow up the Mellon Bank in Wilkes-Barre, Pennsylvania, unless the bank president delivered $50,000 to a remote location. If the bank did not comply, Beck threatened to take bank employees as hostages. I represented the United States throughout the investigation, trial and appeal. Following a jury trial in August 1999, the defendant was convicted. He appealed his conviction to the Third Circuit. The conviction was affirmed. The defendant's application for appeal to the United States Supreme Court was denied.

Counsel for the Defendant:

Gino A. Bartolai, Jr.
88 North Franklin Street
Wilkes-Barre, PA 18701
(570) 472-9593

10. *United States v. Carlin*, D.C. No. 4:CR-86-128, *aff'd*, 833 F.2d 307 (3d Cir. 1987), *cert. denied*, *Carlin v. United States*, 485 U.S. 965 (1988); before the Honorable Malcolm Muir, United States District Court for the Middle District of Pennsylvania.

On July 22, 1986, a federal grand jury sitting in the Middle District of Pennsylvania indicted Carlin for murder in the first degree. Carlin, a white male, had murdered a black male to gain admission into the Arian Brotherhood, a white supremacist gang. I represented the United States throughout the pre-trial, trial and appeal. Following a jury trial in January 1987, the defendant was convicted of murder in the first degree. He appealed his conviction to the Third Circuit. The conviction was affirmed. The defendant's application for appeal to the United States Supreme Court was denied.

Counsel for the defendant:

James V. Wade
Federal Public Defender
100 Chestnut Street
Harrisburg, PA 17101
(717) 782-2237

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 was the lead prosecutor in the investigation of the Attorney General of the Commonwealth of Pennsylvania. That lengthy and complex investigation involved the acceptance of illegal campaign contributions from donors, who in turn requested protection for their illegal gambling activities. This high profile investigation remained completely confidential without a single public leak, over the multi-year period during my tenure as the lead prosecutor. When I left the United States Attorney's Office to enter private practice, the case was successfully concluded with the Attorney General's plea of guilty and subsequent sentence.

I was the lead prosecutor in the investigation of Pennsylvania's largest pornographer. Following a lengthy multi-agency, multi-district investigation into money laundering, tax evasion and obscenity, a plea agreement was negotiated, however the defendant died prior to the entry of his plea of guilty.

I was the lead prosecutor in the Immigration and Naturalization Service's nationwide investigation of Wal-Mart's use of undocumented aliens as independent sub-contractors performing maintenance and cleaning duties at Wal-Mart stores across the country. This investigation was successfully concluded by another AUSA when I was appointed to the bench as a United Stated Magistrate Judge.

I have been involved in the Federal Magistrate Judges Association since 2003, when I was first elected to the Board of Directors as the representative of my colleagues from the Third Circuit. From 2008 to the present, I have been elected by my fellow Magistrate Judges throughout the country to be their National Secretary, Vice President, President-Elect and now President of the Association. I have met regularly with the Director of the Administrative Office of United States Courts and the Chief of the Magistrate Judges Division to discuss ways to make the United States Magistrate Judges system more efficient, productive and uniform throughout the United States. As the President, I have been invited to meet with the Chief Justice of the Supreme Court and the Magistrate Judges Committee of the Judicial Conference of the United States, and I have been appointed as a member of the Administrative Office of United States Courts Magistrate Judges Advisory Committee. I also attend the Judicial Conference's Judicial Branch Committee meetings.

I have never performed any lobbying activities on behalf of clients or corporations.

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 a course at an institution of higher learning.

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

None.

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

None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

I will continue to use the automated conflict of interest software available in my court to identify any conflicts of interest. I presently do not foresee any categories of individuals or litigation that pose a potential conflict of interest for me.

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

If confirmed, I will continue to closely follow the Code of Conduct for United States Judges and its advisory opinions. In addition, I will also continue my practice of reviewing, on a monthly basis, my automated recusal list to identify any potential conflicts of interest.

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 researched and presented lectures on the need for, as well as the ethics of, pro bono activities by government lawyers. In private practice, I organized and formalized the pro bono program still in use by the Federal Bar Association in the Middle District of Pennsylvania. I was the Middle District of Pennsylvania Chapter President who initiated the pro bono program and appointed the first Middle District of Pennsylvania Pro Bono Chair. The program has flourished over the years and provides experienced attorneys to represent indigent individuals when requested by the federal court. As a United States Magistrate Judge, I am precluded from the practice of law and ethically unable to personally accept any pro bono assignments. In my personal capacity, I have been active in many organizations that specifically aid the poor and disadvantaged, such as the Friends of the Poor, in Scranton, Pennsylvania.

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 approximately April 2011, Senator Robert P. Casey and Senator Patrick Toomey formed a Judicial Merit Selection Panel to consider candidates for two vacancies on the United States District Court for the Middle District of Pennsylvania. On July 1, 2011, I submitted my application. I was interviewed by the Panel on October 18, 2011, in Scranton, Pennsylvania. It is my understanding that I was among the individuals recommended by the Panel for further consideration by the Senators. I was contacted by Senator Casey on January 23, 2012, and met with him on February 1, 2012. I also met with Senator Toomey on February 1, 2012. I understand that the Senators jointly submitted my name to the White House for vetting as a potential nominee.

Since March 9, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 11, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 17, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2012

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
Mannion, Malachy E	US District Court for the Middle District of Pennsylvania	05/17/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination Date 05/17/2012 ☐ Initial ☐ Annual ☐ Final	01/01/2011 to 05/01/2012
	5b. ☐ Amended Report	
7. Chambers or Office Address		
Max Rosenn United States Courthouse 197 South Main Street Wilkes-Barre, Pennsylvania 18701		

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. Insert signature on last page.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	President	Federal Magistrate Judge 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.	01/01/1995	Hourigan, Kluger & Quinn PC - 401(k) Retirement Plan with former law firm, no control, common fund directed by John Hancock Retirement Plan Services
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting	Date of Report
	Maunion, Malachy E.	05/17/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2012	Hospice of the Sacred Heart
2.	2012	Prime Med PC
3.	2012	University of Scranton
4.	2013	Hospice of the Sacred Heart
5.	2013	Prime Med PC
6.	2013	University of Scranton

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting	Date of Report
	Mannion, Malachy E.	05/17/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	PNC	Federal Plus Loans	K
2.	U.S. Department of Education	Federal Plus Loan	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Mannion, Malachy E.	Date of Report 05/17/2012

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

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

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Rental Property #1, Scranton, PA	C	Rent	L	W	Exempt				
2. IRA #1	A	Dividend	J	T					
3. - Prudential Global Total Return Fund									
4. 401(k) #1	A	Dividend	K	T					
5. - BIF Money Fund									
6. - Time Warner, Inc. (common stock)									
7. - Time Warner Cable, Inc. (common stock)									
8. 401(k) #2	C	Dividend	L	T					
9. - John Handcock Lifestyle Balanced Fund									
10. IRA #2	C	Dividend	K	T					
11. - Morgan Stanley Liquid Asset Fund									
12. - Morgan Stanley Bank Deposit Program									
13. - Fidelity D & D Bank (common stock)									
14. AT&T Inc. (common stock)	A	Dividend	J	T					
15. Fidelity D & D Bank (common stock)	B	Dividend	K	T					
16. Fidelity D & D Bank (bank acct.)	A	Interest	M	T					
17. Fidelity D & D Bank (CD)	A	Interest	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
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 =More than $5,000,000
P2 =$5,000,001 - $25,000,000
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 7	Name of Person Reporting Mannion, Malachy E.	Date of Report 05/17/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. First Liberty Bank & Trust (CD)	A	Interest	K	T					
19. Comcast (common stock)	A	Dividend	J	T					
20. U. S. Savings Bonds	A	Interest	J	T					
21. Rental Property #2, Chapman Lake, PA	A	Rent	K	W					
22. Methfe (whole life insurance)	A	Dividend	J	T					
23. LSI Logic Corp. (common stock)	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
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 7	Name of Person Reporting Mannion, Malachy E.	Date of Report 05/17/2012

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

Part VII. The investments listed in numbers 14, 15, 16, 17, 18, 19, and 23, are my mothers, however, I am listed as a co-owner. Therefore, for purposes of completeness, I have included these investments, although I do not consider them my assets.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Mannion, Malachy E.	Date of Report 05/17/2012

IX. CERTIFICATION.

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

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

Signature Malachy E Mann

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		14	544	Notes payable to banks-secured (auto)		11	996
U.S. Government securities—Series EE		1	100	Notes payable to banks-unsecured			
Listed securities – see schedule		159	614	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		3	806
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		227	003
Real estate owned – see schedule		407	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000	Education loans		63	285
Cash value-life insurance		3	108				
Other assets itemize:							
Thrift Savings Plan		446	513				
				Total liabilities		306	090
				Net Worth		751	289
Total Assets	1	057	379	Total liabilities and net worth	1	057	379
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	
BIF Money Fund	$ 24,302
Fidelity D&D Bancorp stock	23,375
John Hancock Lifestyle Balanced Fund	99,742
Morgan Stanley Liquid Asset Fund	5,092
Morgan Stanley Bank Deposit Program	5,961
Prudential Global Return Fund	358
Time Warner Inc. stock	364
Time Warner Cable Inc. stock	158
Wells Fargo Bank Deposit Sweep Account	262
Total Listed Securities	$ 159,614
Real Estate Owned	
Primary Residence	$ 320,000
Rental Property #1	65,000
Rental Property #2	15,000
Undeveloped Land	7,500
Total Real Estate Owned	$ 407,500
Real Estate Mortgages Payable	
Primary Residence	$ 199,312
Primary Residence Home Equity	27,691
Total Real Estate Mortgages Payable	$ 227,003

AFFIDAVIT

I, MALACHY E. MANNION, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5-18-12
(DATE)

(NAME)

(NOTARY)

SHARON D. WEST
Notary Public, District of Columbia
My Commission Expires October 31, 2012

Senator FEINSTEIN. Thank you very much.
Mr. Brann.

STATEMENT OF MATTHEW W. BRANN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Mr. BRANN. Madam Chairman, thank you. First I would like to thank the President for the honor of forwarding my nomination to this Committee for consideration.

Second, it is a tremendous privilege to be introduced to the Committee today by Senator Toomey and by Senator Casey, and I thank them for their courtesy, their support, and their recommendation to the President of this nomination.

Senator Feinstein, I thank you for presiding at this hearing, and I thank Senator Grassley for his attendance today as well.

I would like to briefly introduce to the Committee my wife, Laura, who has been extraordinarily supportive of this endeavor; my father and law partner, Gerald Brann; my father-in-law, Robert J. Murphy; my uncle, Neil Nelsen; and John Romano, who is the eldest son of one of my closest friends from Notre Dame who was not able to be here today, and so his son is here as a surrogate, you might say. My mother, brother, sister, uncles and aunts, my partners and friends are, I am advised, watching this by webcast. I thank them for that.

With that said, I will attempt to answer any questions the Committee may have for me.

[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).

   Matthew William Brann

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

   United States District Judge for the Middle District of Pennsylvania

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.

   120 Troy Street
   Canton, Pennsylvania 17724

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

   1965; Elmira, 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.

   1987 – 1990, The Dickinson School of Law (now Pennsylvania State University – The Dickinson School of Law); J.D., 1990

   1983 – 1987, University of Notre Dame; B.A., 1987

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

   1991 – present
   Brann, Williams, Caldwell & Sheetz
   120 Troy Street
   Canton, Pennsylvania 17724

Partner (1995 – present)
Associate (1991 – 1995)
(Since 2004, I have been the president, sole shareholder and sole employee of Matthew W. Brann, P.C., which is a partner in Brann, Williams, Caldwell & Sheetz.)

2009 – present
Harewood Group, LLC
1090 West Main Street
Troy, Pennsylvania 16947
Member
(This Pennsylvania limited liability company was created to hold an interest in oil, gas and mineral estate.)

1999 – present
Canton Area School District
509 East Main Street
Canton, Pennsylvania 17724
Solicitor

1999 – present
Borough of Canton
4 North Center Street
Canton, Pennsylvania 17724
Solicitor

1999 – present
Canton Borough Authority
62 Park Place
Canton, Pennsylvania 17724
Solicitor

1990 – 1991
Court of Common Pleas of Bradford County, Pennsylvania
301 Main Street
Towanda, Pennsylvania 18848
Law Clerk to the Honorable John C. Mott

Summer 1989
United States District Court for the Eastern District of Pennsylvania
601 Market Street
Philadelphia, Pennsylvania 19106
Intern for the Honorable John B. Hannum

Summer 1988
Office of General Counsel to the Governor of Pennsylvania

333 Market Street
Harrisburg, Pennsylvania 17101
Legal Clerk

Other Affiliations (Uncompensated):

2010 – present
Endless Mountain Music Festival
130 Main Street
Wellsboro, Pennsylvania 16901
Member, Board of Directors

1997 – present
Guthrie Healthcare System
One Guthrie Square
Sayre, Pennsylvania 18840
Member, Board of Trustees

1997 – present
Five Rivers Council, Boy Scouts of America
224 West Water Street
Elmira, New York 14901
Member, Executive Committee

1993 – present
Martha Lloyd School, Inc.
66 Lloyd Lane
Troy, Pennsylvania 16947
Secretary (2010 – present)
Member, Board of Directors (1993 – present)

1992 – present
St. Michael's Cemetery Association Inc.
106 North Washington Street
Canton, Pennsylvania 17724
Member, Board of Directors

1993 – 2005
Bradford County Bar Association
No physical address
Secretary – Treasurer (1993 – 1995)
Member, Executive Committee (1995 – 2005)

1991 – 2000
Green Free Library

38 North Center Street
Canton, Pennsylvania 17724
President and Member, Board of Trustees

1993 – 1996
North Penn Comprehensive Health Services
520 Ruah Street
Blossburg, Pennsylvania 16912
Member, Board of Directors

1993 – 1996
American Red Cross, Bradford – Sullivan Counties Chapter
421 Main Street
Towanda, Pennsylvania 18848
Member, Board of Directors

1999 – 2002
Rekindle the Spirit, Inc.
P.O. Box 243
Canton, Pennsylvania 17724
Member, Board of Directors

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

   I have not served in the military. I registered for the selective service upon turning 18.

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

   I was appointed by the Governor of Pennsylvania and the Secretary of the Commonwealth to serve on the Corporation Bureau Advisory Committee of the Pennsylvania Department of State on November 1, 2011.

   Editor-in-Chief, Dickinson Journal of International Law (1989 – 1990)

   Phi Alpha Theta Honor Society, University of Notre Dame (1987)

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
Bradford County Bar Association
Secretary – Treasurer (1993 – 1995)
Member, Executive Committee (1995 – 2005)
Federalist Society
Pennsylvania Bar Association
Member, House of Delegates (2002 – 2004)
Republican Party of Pennsylvania
Member, Judicial Evaluation Panel (2009, 2011)
Republican State Committee of Pennsylvania
Member, Judicial Selection and Review Committee (2001, 2003, 2007)

10. **Bar and Court Admission**:

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

Pennsylvania, 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, 2000
United States Court of Appeals for the Third Circuit, 2000
United States District Court for the Middle District of Pennsylvania, 1993
Supreme Court of Pennsylvania, 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.

American Red Cross, Bradford-Sullivan Counties Chapter (1993 – 1996)
Board of Directors (1993 – 1996)

Bradford County Republican Committee (1994 – present)
Chairman (1996 – 2005)
Corporation Bureau Advisory Committee, Department of State, Commonwealth of Pennsylvania (2011 – present)
Elmira City Club (1993 – present)
Endless Mountain Music Festival (2010 – present)
Board of Directors (2010 – present)
Five Rivers Council, Boy Scouts of America (1997 – present)
Executive Committee (1997 – present)
Green Free Library (1991 – 2000)
President (1994 – 1997)
Board of Trustees (1991 – 2000)
Guthrie Healthcare System (1997 – present)
Board of Trustees (1997 – present)
Hamilton Club (1995 – 2007)
Knights of Columbus (2010 – present)
Lions Club (1991 – present)
Martha Lloyd School, Inc. (1993 – present)
Board of Directors (1993 – present)
Secretary (2010 – present)
North Penn Comprehensive Health Services (1993 – 1996)
Board of Directors (1993 – 1996)
Rekindle the Spirit, Inc. (1999 – 2002)
Board of Directors (1999 – 2002)
Republican National Convention (2008)
Alternate Delegate (2008)
Republican Party of Pennsylvania (formerly Republican State Committee of Pennsylvania) (1996 – present)
Leadership Committee (2004 – present)
Chairman, Northeast Caucus (2004 – present)
Bradford County Republican State Committeeman (2008 – present)
Troy Community Hospital Ethics Committee (1991 – 2001)
Wheel Inn, Inc. (1991 – present)

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

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

national origin, except for the Knights of Columbus fraternal organization, which requires its members to be Catholic and male.

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

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

None.

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

None that I can 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.

Since Fall 2011, as a member of the Commonwealth of Pennsylvania, Department of State, Corporation Bureau Advisory Committee, I have made comments and motions during committee meetings. I have only been able to obtain the meeting minutes for Dec. 12, 2011. A copy is supplied.

Since 1999, I have been the solicitor for the Borough of Canton and occasionally made remarks during Council meetings. Meeting minutes from 2000 and available press coverage of my remarks is supplied.

Since 1999, I have been the solicitor for the Canton Area School District and occasionally commented during School Board meetings. Meeting minutes from 2007 to present are available online at http://www.canton.k12.pa.us/Page/99. Additional press coverage of my remarks 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.

This list represents the speeches, talks or remarks that I have identified through searches of my files, including papers and electronic calendars, computer files, notes, financial records and travel records. This list also represents a review of all Internet websites for organizations with which I have been affiliated throughout my studies and career.

In my role as Chairman of the Northeast Caucus of the Republican Party of Pennsylvania since 2004, I have coordinated and led the meetings of the Northeast Caucus. The dates and locations of those meetings are listed below. I have no notes, transcript or recording, but copies of the meeting minutes are supplied, except those for Feb. 5, 2010; Jan. 20, 2007; and Jan. 28, 2006, which I have been unable to obtain. The address of the Republican Party of Pennsylvania is 112 State Street, Harrisburg, Pennsylvania 17101.

January 14, 2012, Clarks Summit, Pennsylvania
September 17, 2011, Harrisburg, Pennsylvania
February 12, 2011, Harrisburg, Pennsylvania
September 25, 2010, Harrisburg, Pennsylvania
June 12, 2010, Hershey, Pennsylvania
February 13, 2010, Harrisburg, Pennsylvania
February 5, 2010, Clarks Summit, Pennsylvania
February 6, 2010, Clarks Summit, Pennsylvania
February 7, 2009, Harrisburg, Pennsylvania
January 24, 2009, Clarks Summit, Pennsylvania
September 20, 2008, Harrisburg, Pennsylvania
June 7, 2008, Hershey, Pennsylvania
February 9, 2008, Clarks Summit, Pennsylvania
February 2, 2008, Clarks Summit, Pennsylvania
September 8, 2007, Harrisburg, Pennsylvania
January 20, 2007, Clarks Summit, Pennsylvania
September 16, 2006, Camp Hill, Pennsylvania
June 3, 2006, Harrisburg, Pennsylvania
February 11, 2006, Harrisburg, Pennsylvania
January 28, 2006, Clarks Summit, Pennsylvania
September 10, 2005, Harrisburg, Pennsylvania
February 12, 2005, Harrisburg, Pennsylvania
February 5, 2005, Harrisburg, Pennsylvania
September 11, 2004, Harrisburg, Pennsylvania
June 5, 2004, Harrisburg, Pennsylvania

In my role as Chairman of the Northeast Caucus of the Republican Party of Pennsylvania since 2004, I have attended meetings of the Republican Party of Pennsylvania, and reported on the activities of the Northeast Caucus. The dates and locations of those meetings are listed below. I have no notes, transcript or recording, but copies of the meeting minutes from June 30, 2007 to present are supplied. I have been unable to obtain meeting minutes from prior to June 30, 2007. The address of the Republican Party of Pennsylvania is 112 State Street, Harrisburg, Pennsylvania 17101.

January 28, 2012, Hershey, Pennsylvania
September 17, 2011, Harrisburg, Pennsylvania
February 12, 2011, Harrisburg, Pennsylvania
September 25, 2010, Harrisburg, Pennsylvania
June 12, 2010, Hershey, Pennsylvania
February 13, 2010, Harrisburg, Pennsylvania
September 26, 2009, Harrisburg, Pennsylvania
August 8, 2009, Wilkes-Barre, Pennsylvania
February 7, 2009, Harrisburg, Pennsylvania
September 20, 2008, Harrisburg, Pennsylvania
June 7, 2008, Hershey, Pennsylvania
February 9, 2008, Harrisburg, Pennsylvania
September 8, 2007, Harrisburg, Pennsylvania
June 30, 2007, Hershey, Pennsylvania
February 10, 2007, Harrisburg, Pennsylvania
September 16, 2006, Camp Hill, Pennsylvania
February 11, 2006, Harrisburg, Pennsylvania
September 10, 2005, Harrisburg, Pennsylvania
February 12, 2005, Harrisburg, Pennsylvania
September 11, 2004, Camp Hill, Pennsylvania
June 5, 2004, Harrisburg, Pennsylvania

March 19, 2012: Moderator and introducer for a discussion panel on state impact fee during the Bradford County Convention, Towanda, Pennsylvania. I have no notes, transcript or recording. The address of the Bradford County government is 301 Main Street, Towanda, Pennsylvania 18848.

August 30, 2011: Presenter, Marcellus Shale Conference, Pennsylvania Institute of Certified Public Accountants (PICPA) Continuing Legal Education seminar, State College, Pennsylvania. I co-presented with Julius Green, Esq., CPA, a paper entitled "Natural Gas Industry Tax and Legal Issues: Social Clubs." PowerPoint slides supplied.

September 29, 2008: I made comments and answered questions during a political forum sponsored by the Towanda Chapter of the American Association of University Women, Wysox, Pennsylvania. I have no notes, transcript or

recording, but press coverage is supplied. The Towanda Chapter does not have a physical address.

January 28, 2008: Introduction of Dan Meuser at the Elks Lodge, Towanda, Pennsylvania. I have no notes, transcript or recording, but press coverage is supplied. The address of the Elks Lodge is 929 South Main Street, Towanda, Pennsylvania 18848.

October 23, 2007: Remarks at the Bradford County Council of Republican Women's meeting about current local campaigns, Towanda, Pennsylvania. I discussed the candidates for state supreme and superior courts. I have no notes, transcript or recording, but press coverage is supplied. The County Council does not have a physical address.

March 11, 2007: Remarks at the Bradford County Republican Committee Lincoln Day Dinner on the life and contributions of President Abraham Lincoln, Towanda, Pennsylvania. I have no notes, transcript or recording. The Committee has no physical address.

September 2006: Remarks about Senator Rick Santorum at a fundraiser for U.S. Representative Pickett. I have no notes, transcript or recording, but press coverage is supplied.

April 26, 2005: Participated in a candidate debate while running for judge of the Bradford County Court of Common Pleas, sponsored by the Daily Review, WATS/WAVR Radio, The Morning Times and The Rocket-Courier. I have no notes, transcript or recording, but press coverage is supplied. The address of the Daily Review is 116 Main Street, Towanda, Pennsylvania 18848. The address of WATS/WAVR is 193 South Keystone Avenue, Sayre, Pennsylvania 18840. The address of The Morning Times is 201 North Lehigh Avenue, Sayre, Pennsylvania 18840. The address of the Rocket-Courier is 302 State Street, P.O. Box 187, Wyalusing, Pennsylvania 18853.

March 10, 1998: Introduction of Governor Tom Ridge at the Bradford-Sullivan-Tioga Counties Republican Committees' Lincoln Day Dinner, Towanda, Pennsylvania. I have no notes, transcript or recording. The Committees have no physical addresses.

May 29, 1995: Speech at the Canton, Pennsylvania Memorial Day ceremony, sponsored by the local Veterans of Foreign Wars (VFW) Post 714. I have no notes, transcript or recording. The address of the Canton VFW is 28 Troy Street, Canton, Pennsylvania 17724.

April 27, 1995: Speech at induction ceremony for the Canton Area Junior-Senior High School National Honor Society, Canton, Pennsylvania. I have no notes,

transcript or recording. The address of the Canton Area School District is 509 East Main Street, Canton, Pennsylvania 17724.

From 1996 to the present, I have been asked to make remarks, from time-to-time, on behalf of Republican candidates for public office, particularly candidates for judicial office. These remarks were typically delivered to organizations affiliated with the Bradford County Republican Committee or the Republican Party of Pennsylvania. The remarks were made in an extemporaneous fashion and I have no other transcripts or recordings from these events.

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

In responding to this request, I searched my files, records and the Internet to identify interviews that I may have given as an attorney, a candidate for office, or as a private citizen. Listed below are the newspaper articles that I was able to find in which statements, comments or answers to questions that I gave are reported. While I believe that there were other occasions when I was questioned by reporters from local newspapers or radio stations with respect to matters in which I was engaged as an attorney or with respect to the Bradford County Republican Party or the Republican Party of Pennsylvania, I have no specific recollection of the comments or statements that I may have made.

Borys Krawczeniuk, *Obama Nominates Mannion and Brann as Federal Judges*, The Scranton Times Tribune, May 18, 2012 (reprinted in multiple outlets). Copy supplied.

Eric Hrin, *Judge Candidate Visits Troy*, The Daily Review, Oct. 29, 2011. Copy supplied.

Ian Millhiser, *Despite Internal GOP Opposition, Pennsylvania Gov. Tom Corbett Stands by His Election Rigging Scheme*, Think Progress (quote taken from an article on Capitolwire that I have been unable to obtain), Sept. 19, 2011. Copy supplied.

Eric Hrin, *Canton Thanks CUDD During Recent Meeting*, The Daily Review, June 14, 2011. Copy supplied.

Eric Hrin, *Raffle Fraud Victim 'Appalled' by Scheme*, The Daily Review, Jan. 26, 2011. Copy supplied.

Jason Whong, *Pa. Woman Charged in Fake Raffle Scam*, The Star-Gazette, Jan. 26, 2011. Copy supplied.

NE Driller, The Daily Review, June 24, 2010. Copy supplied.

Borys Krawczeniuk, *Carney Opponents Have an Uphill Climb*, The Daily Review, Nov. 29, 2009 (quotes reprinted in multiple outlets). Copy supplied.

Erin Hrin, *Police Negotiations Addressed in Canton*, The Daily Review, Oct. 14, 2009. Copy supplied.

Eric Hrin, *Commonwealth Seeks to Modify Brenda Mott Restitution*, The Daily Review, Jan. 7, 2009. Copy supplied.

New Year, New Child, The Star-Gazette, Jan. 2, 2009. Copy supplied.

James Loewenstein, *Mott Submits Financial Records Requested by Borough Authority*, The Daily Review, Dec. 31, 2008. Copy supplied.

Eric Hrin, *Canton Happy with Annexation Results*, The Daily Review, Nov. 6, 2008. Copy supplied.

James Loewenstein, *Local Gas Rush in Bradford County*, The Daily Review, Oct. 3, 2008. Copy supplied.

Shira Toeplitz, *Biden Aids Pa. Races*, Roll Call, Sept. 17, 2008. Copy supplied.

Borys Krawczeniuk, *Greetings from the Republican National Convention*, The Scranton Times-Tribune, Sept. 5, 2008. Copy supplied.

Eric Hrin, *Brief: Canton Seeks to Fill Seat*, The Daily Review, Sept. 4, 2008. Copy supplied.

GOP Delegates Are Ready to Rally, The Star-Gazette, Aug. 31, 2008. Copy supplied.

Borys Krawczeniuk, *Republicans Ready for a United Front*, The Scranton Times-Tribune, Aug. 31, 2008. Copy supplied.

Shira Toeplitz, *Chris vs. Chris*, Roll Call, July 29, 2008. Copy supplied.

Eric Hrin, *Property Issue Resolved in Canton*, The Daily Review, July 12, 2008. Copy supplied.

Eric Hrin, *Canton Gets Paving Update*, The Daily Review, June 20, 2008. Copy supplied.

Eric Hrin, *Company Fined $110,000 for Various Violations*, The Daily Review, Feb. 27, 2008. Copy supplied.

Todd Rogers, *Republican Party Will Miss Yanuzzi*, The Daily Review, Dec. 28, 2007 (reprinted in multiple outlets). Copy supplied.

James Loewenstein, *Petition Denied in B. Mott Case*, The Daily Review, Dec. 22, 2007 (reprinted in multiple outlets). Copy supplied.

Borys Krawczeniuk, *Carney's Congressional Seat a Target of the National GOP*, Citizens' Voice, May 27, 2007 (reprinted in multiple outlets). Copy supplied.

Area People Remember 'Down-to-Earth' Ford, The Daily Review, Dec. 28, 2006. Copy supplied.

Angela Couloumbis and Amy Worden, *Don't Be Quick to Rule Out Swann, Says His Campaign*, The Philadelphia Inquirer, Sept. 4, 2006. Copy supplied.

Peter Jackson, *Swann's Political Bliss May Soon Pass*, Associated Press, Feb. 6, 2006 (reprinted in multiple outlets). Copy supplied.

Greg Erbstoesser, *Civil Suit Filed against Brenda Mott*, The Daily Review, Jan. 31, 2006. Copy supplied.

Sharon Smith, *A Blow to the Scranton Campaign?*, Patriot News, Jan. 27, 2006. Copy supplied.

Amy Worden, *Scranton Aide Fired for Remark*, The Philadelphia Inquirer, Jan. 27, 2006 (reprinted in multiple outlets). Copy supplied.

Angela Couloumbis and Carrie Budoff, *Whom to Run against Rendell?*, The Philadelphia Inquirer, Nov. 20, 2005. Copy supplied.

Eric Hrin, *Was Canton's Police Chief Suspended?*, The Daily Review, Nov. 10, 2005. Copy supplied.

Aaron Cahall, *Reject Judge Smith, BCCC Urges: Write-In for Brann Launched*, The Daily Review, Oct. 31, 2005. Copy supplied.

James Loewenstein, *Smith Sweeps Bids*, The Daily Review, May 18, 2005. Copy supplied.

Matthew W. Brann: Court of Common Pleas (Candidate Survey), CQ News, May 14, 2005. Copy supplied.

James Loewenstein, *Brann: Judge Smith is Misleading*, The Daily Review, May 12, 2005. Copy supplied.

By the Review, *Candidates for County Judge State Their Views*, The Sunday Review, May 8, 2005. Copy supplied.

James Loewenstein, *Brann Disputes Judge Smith Statement*, The Daily Review, Apr. 29, 2005. Copy supplied.

Christine V. Sulat, *Three-Way Race for Judge Heats Up*, The Star-Gazette, Apr. 24, 2005. Copy supplied.

Wes Skillings, *Brann Vows Judicial Overhaul*, Rocket-Courier, Apr. 21, 2005. Copy supplied.

Lisa R. Howeler, *Matthew Brann: 'It's Time for New Leadership'*, Morning Times, Apr. 20, 2005. Copy supplied.

Erin Lemley, *Brann Blames Smith, Downs*, The Daily Review, Apr. 20, 2005. Copy supplied.

Attorney Wants to Unseat Bradford County Judge, The Star-Gazette, Mar. 13, 2005. Copy supplied.

Wes Skillings, *Bradford County Judge Job Turns into a Race*, Rocket-Courier, Mar. 10, 2005. Copy supplied.

Lisa R. Howeler, *Brann Comes Out Swinging*, Morning Times, Mar. 4, 2005. Copy supplied.

Lisa R. Howeler, *Brann Criticizes Judge Smith for 'Unreasonable Delays' in Court Decisions*, Morning Times, Mar. 4, 2005. Copy supplied.

Brann Makes Official Announcement for Judge Seat, The Daily Review, Mar. 4, 2005. Copy supplied.

C.J. Marshall, *Brann Makes Formal Bid for County Judge Seat*, The Daily Review, Mar. 4, 2005. Copy supplied.

Lisa R. Howeler, *Longtime Republican Leader Will Run for County Judge*, Morning Times, Mar. 3, 2005. Copy supplied.

Christine V. Sulat, *Missing Canton Funds Investigated*, The Star-Gazette, Feb. 28, 2004. Copy supplied.

PA10: Casey Late for Debate, The Bulletin's Frontrunner, Sept. 25, 1998 (quotes reprinted 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 have never held judicial office.

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

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

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

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

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

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

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

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

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

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

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

I have never held judicial office.

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

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

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

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

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

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

Member, Bradford County Republican Committee, representing Canton Borough (1994 – present); elected May 1994 (two-year term) and every two years thereafter

Bradford County Republican State Committeeman (2008 – present); elected May 2008 (two-year term), May 2010 (four-year term)

Unsuccessful candidate for the office of Judge, Court of Common Pleas of Bradford County, Pennsylvania (2005)

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.

Bradford County Republican State Committeeman (2008 – present)

Bradford County Republican Committee Member (1994 – present)
Chairman (1996 – 2005)

Republican Party of Pennsylvania (formerly Republican State Committee of Pennsylvania)
Leadership Committee (2004 – present)
Chairman, Northeast Caucus (2004 – present)
Member, Judicial Evaluation Panel (2009, 2011)
Member, Judicial Selection and Review Committee (2001, 2003, 2007)

Republican National Convention, Alternate Delegate (2008)

I have held active roles in all local, state-wide and Congressional campaigns from the time of my election as the Chairman of the Bradford County Republican Committee in 1996. I currently serve as the Republican State Committeeman for Bradford County, Chairman of the Northeast Caucus of the Republican Party of Pennsylvania, and as a member of the Leadership Committee of the Republican Party of Pennsylvania.

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 1990 to 1991, I served as a law clerk to the Honorable John C. Mott, Court of Common Pleas of Bradford County, Pennsylvania.

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

I have never been a sole practitioner.

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

1991 – present
Brann, Williams, Caldwell & Sheetz
120 Troy Street
Canton, Pennsylvania 17724
Associate (1991 – 1995)
Partner (1995 – present)

(Since 2004, I have been the president, sole shareholder and sole employee of Matthew W. Brann, P.C., which is a partner in Brann, Williams, Caldwell & Sheetz).

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

The general character of my private practice of law for the past 20 years has consisted of the representation of private individuals, small businesses, and municipal organizations, in litigation matters in state and federal courts of record, including practice before the appellate courts of Pennsylvania. Additionally, I serve as the solicitor for a public school district, a borough, a municipal authority, and, previously, several townships. I also represent clients in corporate and commercial transactions and probate and estate planning matters. In the beginning of my career in the early 1990s, I also handled criminal and domestic/ matrimonial litigation. As my career progressed, beginning in 2000, I began to undertake representation of clients in more complex commercial, personal injury and probate litigation; that practice has continued through the present. Commencing in 2007, my practice has also come to include specialty in the area of oil and gas law, including the negotiation of leases and collateral documents, complex estate planning, and litigation representing landowners and owners of oil, gas and mineral estates.

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

I represent, and have represented during my legal career, clients from all walks of life. I represent small business owners in both standard and complex business transactions and litigation, provide both standard and complex estate planning, including the use of Pennsylvania business entities and trusts, engage in real property litigation, including boundary disputes, easements and Private Road Act matters, and provide full representation of all municipal clients noted above, including litigation and contract preparation and review.

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

Throughout my legal career, approximately 50% of my practice has been in the area of litigation. At the beginning of my practice in the early 1990s, I appeared in court frequently. As my practice has developed and evolved, I appear less frequently in court, but in more complex matters, commencing in 2001.

i. Indicate the percentage of your practice in:
   1. federal courts: 10%
   2. state courts of record: 80%
   3. other courts: 0%
   4. administrative agencies: 10%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 90%
   2. criminal proceedings: 10%

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

I have tried approximately 20 cases to verdict, judgment or final decision, and served as sole counsel in all of these cases.

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

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

oral argument transcripts before the Supreme Court in connection with your practice.

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

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

a. the date of representation;

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

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

1. Martin v. Welles Mill Co., No. 03CV000336, Court of Common Pleas of Bradford County, Pennsylvania (Honorable Jeffrey A. Smith); No. 227 MDA 2008, Superior Court of Pennsylvania (Honorable Maureen E. Lally-Green; Honorable Susan Peikes Gantman; Honorable Cheryl Lynn Allen)

I represented Welles Mill Co., Inc. from July 2003 through the denial by the Superior Court of Pennsylvania of the application requesting re-argument on April 16, 2009, in a matter relating to whether the Pennsylvania Statute of Frauds was binding on an unsigned and uncompleted memorandum of understanding which addressed the purchase and sale of real property. I prepared and filed all pleadings, motions, discovery requests and responses, together with all briefs to the trial court and the Superior Court of Pennsylvania. I then argued the matters before both the trial court and the Superior Court. The Superior Court of Pennsylvania affirmed the trial court and concluded that the Statute of Frauds was inapplicable and did not render the settlement agreement unenforceable as a matter of law; Judge Maureen Lally-Green filed a dissenting memorandum.

Opposing Counsel: Matthew D. Jones, Esquire
DeSisti and Keeffe
(now retired)

2. Canton Borough Authority v. Unemployment Compensation Board of Review and Bradley Bailey, Intervenor, No. 159 C.D. 2005, Commonwealth Court of Pennsylvania (Honorable Doris A. Smith-Ribner; Honorable Robert Simpson; Honorable James R. Kelley)

I represented the Canton Borough Authority from the filing of the Petition for Review with the Commonwealth Court of Pennsylvania in January 2005 through the denial by the Supreme Court of Pennsylvania of the claimant's Petition for Allowance of Appeal in August 2006. This matter centered around whether the claimant, Bailey, had committed willful misconduct leading to his termination by his employer, a municipal authority, by reporting non-public information about his employer to an attorney representing his sister. The sister was under investigation for the embezzlement of public money from the same employer. During the course of this litigation, I prepared and filed the Petition for Review, the brief to the Commonwealth Court and all collateral briefs, and then argued the matter before this court. The Commonwealth Court concluded that the claimant committed willful misconduct by his actions and reversed the decision of the Unemployment Compensation Board of Review.

Opposing Counsel: Gerard M. Mackarevich, Esquire (for Unemployment Compensation Board of Review)
Department of Labor and Industry
Seventh and Forster Streets, Tenth Floor
Harrisburg, Pennsylvania 17121
(717) 787-4186

David B. Keeffe, Esquire (for Intervenor)
DeSisti and Keeffe
(now deceased)

3. Al's Midstate Market, Inc. v. Stalis, No. 99CV000232, Court of Common Pleas of Bradford County, Pennsylvania, 3 Brad. Co. L.J. 208 (2000) (Honorable John C. Mott)

This case centered on an agreement of sale from 1977 as an instrument under seal. I served as counsel for the defendant, Stalis. The agreement of sale between the parties resulted in the conveyance of real property from Stalis to the plaintiff. Seven years after this conveyance, Al's Midstate contacted my client and advised him that a subsequent property survey determined that a well serving the grocery store was not located on the property conveyed. Al's Midstate also informed my client that the costs and expenses of purchasing the land on which the well was located would be deducted from the monthly payments made on the mortgage held by Stalis. Twenty-one years after the original 1977 conveyance, Al's Midstate refinanced its mortgage and requested a payoff figure from Stalis; the payoff figure furnished by my client did not credit Al's Midstate for the payments withheld years before. The payoff amount was paid in full and Al's Midstate commenced suit. On behalf of my client, I successfully argued that the plaintiff's cause of action was barred by the twenty-year statute of limitations on an instrument in writing under seal (42 Pa. C.S.A. § 5529), as well as by the

doctrine of caveat emptor, and my motion for judgment on the pleadings was granted. There was no subsequent appeal of this case.

Opposing Counsel: John Kocsis, Esquire
(now retired)

4. Estate of Clark, No. 08-98-0113, Court of Common Pleas of Bradford County, Pennsylvania, Orphans' Court Division, 20 Fiduc. Rep. 2d 438 (2000) (Honorable John C. Mott)

I was appointed by the Orphans' Court in this matter to serve as an auditor. I prepared and filed an Auditor's Report which was ultimately affirmed by the Orphans' Court following objections to the report by the Office of Attorney General. In this case, the decedent died owning stock and leaving a will which gave "any common stock which I may own at the time of my death" to her church. The church entered into a receipt and release agreement with the estate in which it agreed to accept certain shares, after having been fully apprised as to the total number of shares held by the decedent, the value of those shares at the time of the decedent's death, the fact that there were both issued and unissued shares, and the nature of the intended distribution of the unissued shares by the executrix. The church was advised at all times by independent counsel. The primary issue was whether the Attorney General, as parens patriae for charities, had absolute veto power over such an agreement and whether the Court must void such an agreement merely because the Attorney General objected to it. I concluded, and the Orphans' Court affirmed, that it was not the correct role of the Attorney General, as parens patriae for charities, to substitute his judgment for that of a fully-informed and independently-counseled charity.

Opposing Counsel: James A. Pruyne, Esquire (for the Estate of Clark)
Duvall, Reuter & Pruyne
14 Park Street
Towanda, Pennsylvania 18848
(570) 265-2115

Carol Ryan Livingood, Esquire (for the Attorney General)
Davis Bennett Spiess & Livingood, LLC
130 West Lancaster Avenue
Wayne, Pennsylvania 19087
(610) 688-6200

5. Wise v. Bradford County Domestic Relations Office and Bradford County Children and Youth Services; Bradford County Children and Youth Services v.

Wise, Nos. 5-00-03356 and 5-01-00001A, United States Bankruptcy Court for the Middle District of Pennsylvania (Honorable John J. Thomas)

The debtor, Wise, was the father of a minor child who was placed in various juvenile facilities by the Court of Common Pleas of Bradford County, Pennsylvania because of delinquent behavior. My client, Bradford County Children and Youth Services, paid the facilities for the costs of these placements. The trial court directed the Bradford County Domestic Relations Office to effectuate a wage attachment against the debtor to enforce collection of the support obligation. The debtor subsequently filed for Chapter 7 Bankruptcy and I filed a complaint to determine the dischargeability of this debt, arguing on behalf of my client that the care rendered to the delinquent child fell within the exception to the provisions of 11 U.S.C. § 362(a)(1) and (6) and 12 U.S.C. § 523(a)(5). The Bankruptcy Court ultimately issued an order entering judgment in favor of Wise and against Children and Youth Services. This matter was of some significance because it appeared to be a case of first impression in the Third Circuit.

Opposing Counsel: Daniel J. Barrett, Esquire (for Wise)
301 Main Street
Towanda, Pennsylvania 18848
(570) 265-1712

Kenneth R. Levitzky, Esquire (for Bradford County Domestic Relations Office)
125 Churchill Street
Dushore, Pennsylvania 18614
(570) 928-8288

6. Baker v. Hoose, No. 97EQ000258, Court of Common Pleas of Bradford County, Pennsylvania, 3 Brad. Co. L.J. 132 (1999) (Honorable John C. Mott)

The trial court was asked to determine whether an actual case or controversy existed upon which it could enter declaratory judgment in this matter. I represented Baker's niece, Hoose. A parcel of real estate had been conveyed from a man's estate to his daughter with a provision which stated that if the property were sold during the daughter's lifetime, the proceeds of the sale must be divided equally among her siblings or their heirs. The daughter subsequently made a gift of the property to her own daughter, Hoose. Baker thereafter sought an injunction forbidding the encumbering of title to the property or the conveying of title to the property without her consent. The Court concluded that the subject property had not, in fact, been "sold" during the lifetime of the grantor, and therefore the case was not ripe for disposition by the Court. A future sale of the real estate is only an anticipated event which might never happen in the lifetime of the grantor. Consequently, the trial court determined

that declaratory judgment was not warranted. There was no subsequent appeal of this case.

Opposing Counsel: Daniel J. Barrett, Esquire
301 Main Street
Towanda, Pennsylvania 18848
(570) 265-1712

7. First National Bank of Canton, Pennsylvania v. Lycoming Creek Realty Co. and Sechler, No. 93CV000238, Court of Common Pleas of Bradford County, Pennsylvania (Honorable John C. Mott); No. 00589 Harrisburg 1994, Superior Court of Pennsylvania (Honorable Stephen J. McEwen, Jr.; Honorable James R. Cavanaugh; Honorable Joseph A. Del Sole)

The trial court faced two issues in this action for declaratory judgment in which I represented the First National Bank of Canton, Pennsylvania. The trial court was required to determine if the landlord had any claim to the proceeds of the personal property in dispute by virtue of the distraint provisions of the Pennsylvania Landlord Tenant Act of 1951 (68 Pa. C.S.A. § 250.302). Second, the trial court was asked to determine if the Bank's actions in properly recording its financing statements, as well as timely filing a Motion for Relief from Automatic Stay with the United States Bankruptcy Court, affirmed its priority as a lienholder against the personal property in dispute. A prior decision of the Superior Court of Pennsylvania concluded that the distraint provisions of the Act were unconstitutional and that the use of the distraint provisions conferred no legitimacy. The trial court overlooked this decision but the Superior Court was ultimately not persuaded by the merits of the arguments I presented and judgment was affirmed for the defendants.

Opposing Counsel: G. Scott Gardner, Esquire
2117 West Fourth Street
Williamsport, Pennsylvania 17701
(570) 322-7653

8. Pierce, Administratrix of the Estate Pierce, et al. v. HRI, Inc., et al. v. Heaton Construction, No. 1038-CV-2006, Court of Common Pleas of Tioga County, Pennsylvania (Honorable Robert E. Dalton, Jr.)

I served as co-counsel for HRI, Inc., defending this client, a highway contractor, from allegations that its negligent actions caused or contributed to a fatal head-on collision along Route 15, Tioga County, Pennsylvania. My representation of this client involved the preparation and argument of standard responsive pleadings, pre-trial and discovery motions. This case also involved the preparation and argument of various motions relating to the discovery of child protective services documents concerning both the deceased and badly injured

plaintiffs, all sisters. My representation of HRI, Inc. commenced in December 2006 and essentially concluded in January 2009. After prolonged litigation, the case was settled as the matter neared trial.

Co-Counsel: Joseph Goldberg, Esquire and Richard E. Stabinski, Esquire (for HRI, Inc.)
Weber, Gallagher, Simpson, Stapleton, Fires & Newby, LLP
2000 Market Street, Suite 1300
Philadelphia, Pennsylvania 19103
(215) 825-7215

Opposing Counsel: Jaime D. Jackson, Esquire (for Administratrix)
Atlee, Hall & Brookhart, LLP
8 North Queen Street, P.O. Box 449
Lancaster, Pennsylvania 17608
(877) 347-1665

Richard E. Freeburn, Esquire (for Latashia Pierce)
Freeburn & Hamilton
2040 Linglestown Road, Suite 300
Harrisburg, Pennsylvania 17110
(717) 671-1955

James T. Ragué, Esquire (for Larenna Pierce)
Spencer, Gleason, Hebe & Ragué, P.C.
17 Central Avenue, P.O. Box 507
Wellsboro, Pennsylvania 16901
(570) 724-6901

Dean F. Murtagh, Esquire and William J. D'Annuzio, Esquire (for United Rentals, Inc.)
German, Gallagher & Murtagh
The Bellevue, Suite 500
200 South Broad Street
Philadelphia, Pennsylvania 19102
(215) 545-7700

Daniel R. Goodemote, Esquire (for PennDot)
Office of Attorney General
Torts Litigation Unit
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
(717) 787-3391

Joan D. Daly, Esquire (for Heaton Construction, Inc.)
36 East Second Street
Media, Pennsylvania 19063
(610) 565-0600

Other Counsel: Nancy L. Siegel, Esquire (for Defendant Gallagher Associates, Inc.)
White and Williams, LLP
457 Haddonfield Road, Suite 400
Cherry Hill, New Jersey 08002
(856) 317-3600

Donald R. Dorer, Esquire (for Defendant Bliss)
Snyder & Dorer
214 Senate Avenue, Suite 503
Camp Hill, Pennsylvania 17011
(717) 731-0988

9. Sayre Borough, successor to the Northern Bradford Authority v. Sovereign Bank Corporation, No. 01CV000069, Court of Common Pleas of Bradford County, Pennsylvania (Honorable Jeffrey A. Smith)

I served as co-counsel for Sovereign Bank in the defense of a claim alleging a fraudulent misrepresentation on the part of this bank, which induced the plaintiff, Northern Bradford Authority, to make a sizeable loan to a third party. The scope of my representation of this client included the preparation and filing of all responsive pleadings, including preliminary objections, and argument related to these pleadings before the trial court. Extensive and detailed litigation followed, which resulted in multiple occasions for argument before the court on a variety of pre-trial motions. The case was eventually withdrawn by the plaintiff, which ultimately recognized the underlying weakness in its contentions directed toward my client. My involvement in this case lasted from April 2003 until October 2008.

Co-Counsel: Rees Griffiths, Esquire
CGA Law Firm
135 North George Street
York, Pennsylvania 17401
(717) 848-4900

Sean E. Summers, Esquire
Barley, Snyder, Senft & Cohen, LLC
100 East Market Street
York, Pennsylvania 17404
(717) 852-4978

Opposing Counsel: Robert C. Nowalis, Esquire
Doran, Nowalis & Doran
69 Public Square, Suite 700
Wilkes-Barre, Pennsylvania 18701
(570) 823-9111

10. Barnhill, et al. v. Pregent, et al., No. 05CV000182, Court of Common Pleas of Bradford County, Pennsylvania (Honorable Jeffrey A. Smith); No. 3:CV-09-00273, United States District Court for the Middle District of Pennsylvania (Honorable A. Richard Caputo); No. 10-1751, United States Court of Appeals for the Third Circuit

I represent Davidson, one of the many defendants in a dispute over the sale of a nursing facility in Athens, Pennsylvania. The merits of Plaintiff Barnhill's claims against my client and the principal defendants Misitano and Pinehurst Medical Corporation, LLC, involve the interpretation and validity of an exclusion agreement between a third defendant, the seller of the nursing facility, the nursing facility itself, and the Office of the Inspector General of the United States Department of Health and Human Services, and the Stipulation and Order between the seller of the nursing facility, the nursing facility itself, and the Attorney General of the State of New York. The case was removed to the U.S. District Court for the Middle District of Pennsylvania in February 2009 by the U.S. Department of Health and Human Services, which had been named as an additional defendant. After removal, nearly all parties filed motions and briefs requesting that the case be dismissed. In September 2009, following argument, the U.S. District Court found that the removal and jurisdiction was proper, dismissed the claims involving the United States, declined supplemental jurisdiction, and dismissed the suit, pursuant to 28 U.S.C. § 1367(c). In January 2010, plaintiff Barnhill raised the issue that the case should have been remanded instead of dismissed. The Court then entered an Order clarifying its September 2009 Order to state its intention that the entire case, state claims and all, was dismissed and not remanded to the state trial court. An appeal to the Third Circuit ensued, with a directive that the parties participate in the Circuit Court's mediation program. The matter has, however, been remanded to the Court of Common Pleas of Bradford County, which has assumed jurisdiction, and where responses to discovery requests are currently pending. I was engaged as counsel for Davidson in October 2005 and continue to represent him at present.

Opposing Counsel: John P. Leonard, Esquire
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue, P.O. Box 2075
Morristown, New Jersey 07962
(973) 993-8100

Other Counsel: Edward P. Seeber, Esquire (for defendants Pregent and The Kepler Home, Inc.)
James, Smith, Dietterick & Connelly, LLP
P.O. Box 650
Hershey, Pennsylvania 17033
(717) 533-3280

Rick L. Brunner, Esquire (for defendants Misitano and Pinehurst Medical Corp. Inc.)
Brunner Quinn
35 North Fourth Street, Suite 200
Columbus, Ohio 43215
(614) 241-5550

William Reynolds, Esquire (for Defendant David Arnold)
Bond, Schoeneck & King, PLLC
111 Washington Avenue
Albany, New York 12210
(518) 533-3000

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

I have been an active member of the Board of Directors of the Martha Lloyd School, Inc. of Troy, Pennsylvania for the past 19 years. The Martha Lloyd School provides services for persons with intellectual and developmental disabilities. During my time of affiliation with the Martha Lloyd School, I have attempted to serve as a legal advocate for those people with developmental disabilities who have the need for legal services in the greater-Bradford County area. Additionally, I have maintained an active association with the Bradford County Bar Association by organizing various bar events, dinners and receptions, as well as serving as a bar officer and as a member of the executive committee. Between 2002 and 2004 I served as a member of the House of Delegates of the Pennsylvania Bar Association, representing Bradford County. I have also served as an active participant on the various judicial selection and review committees established by the Republican Party of Pennsylvania. These panels were created by the respective Party Chairmen in 2001, 2003, 2007, 2009 and 2011 to interview and recommend candidates for the Pennsylvania appellate judiciary.

I have never performed lobbying activities for clients or organizations, except as noted above.

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

    None.

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

    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 should I be appointed to serve as a United States District Judge, and will resign from all elected and appointed political offices, as well as all boards of directors of the organizations noted above in response to questions 11.

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 engaged in the private practice of law with my father, Gerald W. Brann, and my brother, David J. Brann. My father is 77 years old and rarely appears in any court, including federal court. Consequently, I do not anticipate any potential conflict of interest with my father. My brother is an active member of the Bar of Pennsylvania. I would recuse myself from any case involving my brother, should I be confirmed. Additionally, if I am confirmed, I would recuse myself from any pending cases filed by my law firm while I was a member of the firm.

I have made what I consider to be standard financial investments in mutual funds, index funds, exchange-traded funds, stocks and bonds. I do not believe that these investments, in general, pose potential conflicts of interest. I will recuse myself from any matter which either affects or has the potential to affect this investment portfolio.

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

If confirmed, I would review each case for conflict or potential appearance of conflict and then apply the federal recusal statutes and Canon 3 of 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.

During my twenty years of private practice, I regularly provided *pro bono* legal services to the citizens and charitable organizations of northern Pennsylvania. Specifically, I have represented low-middle income individuals in family court, landlord/tenant disputes and contractual matters. Additionally, I have represented, without charge, religious groups, organizations and churches that perform charitable services in the review of contracts, the creation of non-profit corporations and by obtaining federal tax exempt status. I have also provided counsel and representation for the Martha Lloyd School, Inc., an organization dedicated to the needs of developmentally disabled individuals, for the past 19 years; the *pro bono* services rendered have included the review of contracts and other legal documents, representation in unemployment disputes, the creation of non-profit corporations, and the application for federal tax exempt status. Finally, I have recently provided *pro bono* services for the Bradford County Veterans Memorial Park Association in the review of contracts and in negotiations with a local municipality for a suitable location for a veterans memorial park.

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 July 14, 2011, I submitted the questionnaire for judicial nominees to the Judicial Merit Selection Panel formed by Senator Robert P. Casey, Jr. and Senator Patrick J. Toomey. I was subsequently interviewed by the Panel for the Middle District of Pennsylvania in Scranton, Pennsylvania on October 18, 2011. The Panel recommended my nomination to Senators Casey and Toomey. I was interviewed by Senator Toomey in Washington, D.C. on December 8, 2011, and by Senator Casey in Washington, D.C. on February 16, 2012.

I was contacted by Senator Toomey's staff on March 8, 2012 and advised that my name was being forwarded to the White House for recommendation for appointment as a United States District Judge. Since March 12, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 6, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 17, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2012

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
Brann, Matthew W.	District Court - Middle District, Pennsylvania	05/17/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	**5a. Report Type (check appropriate type)** ☑ Nomination, Date 05/17/2012 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2011 to 05/01/2012
7. Chambers or Office Address 120 Troy Street, P.O. Box 146, Canton, PA 17724		

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. Insert signature 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	Brann, Williams, Caldwell & Sheetz
2	President	Matthew W. Brann, P.C.
3	Member	Harewood Group, LLC
4	Director	Endless Mountain Music Festival
5	Member, Executive Committee	Five Rivers Council, Boy Scouts of America
6	Secretary and Director	Martha Lloyd School, Inc.

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 Braun, Matthew W.	Date of Report 05/17/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1	2012	Braun, Williams, Caldwell & Sheetz (through Matthew W. Braun, P.C.) salary	$40,819.00
2	2011	Braun, Williams, Caldwell & Sheetz (through Matthew W. Braun, P.C.) salary	$177,070.00
3	2010	Braun, Williams, Caldwell & Sheetz (through Matthew W. Braun, P.C.) salary	$193,563.00
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(s) unless excepted. See pp. 25-26 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 Braun, Matthew W.	Date of Report 05/17/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Brann, Matthew W.	05/17/2012

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

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

A Description of Assets (including trust assets) Please "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. Barewood Group, LLC	D	Distribution	L	U	Exempt				
2. Brokerage Account #1									
3. - Charles Schwab & Co. Inc. Money Market Account	B	Int. Div.	M	T					
4. - Alpine Total Dynamic Dividend Fund	A	Dividend	J	T					
5. - Altria Group, Inc. Common Stock	B	Dividend	K	T					
6. - Annaly Capital Management Common Stock	D	Dividend	K	T					
7. - Duke Energy Corp. Common Stock	A	Dividend	J	T					
8. - Ferrellgas Partners, L.P. Common Stock	C	Distribution	K	T					
9. - First Trust Energy Income and Growth Fund	B	Dividend	L	T					
10. - Frontier Communications Common Stock	A	Dividend	J	T					
11. - Pimco Income Strategy Fund II	A	Dividend	J	T					
12. - Spectra Energy Corp. Common Stock	A	Dividend	J	T					
13. - Tupperware Brands Corp. Common Stock	A	Dividend	J	T					
14. - Verizon Communications, Inc. Common Stock	B	Dividend	K	T					
15. - Wells Fargo & Co. Common Stock	A	Dividend	J	T					
16. Illinois Tool Works, Inc. Common Stock	A	Dividend	J	T					
17. Delaware Foundation Moderate Allocation Fund A	B	Dividend	L	T					

1 Income Gain Codes
(See Columns B1 and D4)

A = $1,000 or less
B = $1,001 - $2,500
C = $2,501 - $5,000
D = $5,001 - $15,000
E = $15,001 - $50,000
F = $50,001 - $100,000
G = $100,001 - $1,000,000
H1 = $1,000,001 - $5,000,000
H2 = More than $5,000,000

2 Value Codes
(See Columns C1 and D3)

J = $15,000 or less
K = $15,001 - $50,000
L = $50,001 - $100,000
M = $100,001 - $250,000
N = $250,001 - $500,000
O = $500,001 - $1,000,000
P1 = $1,000,001 - $5,000,000
P2 = $5,000,001 - $25,000,000
P3 = $25,000,001 - $50,000,000
P4 = More than $50,000,000

3 Value Method Codes
(See Column C2)

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

4 = $1,001 - $2,500
5 = $2,501 - $5,000
6 = $5,001 - $15,000
7 = $15,001 - $50,000
8 = $50,001 - $100,000
9 = $100,001 - $250,000
10 = $250,001 - $500,000
11 = $500,001 - $1,000,000
12 = $1,000,001 - $5,000,000
13 = $5,000,001 - $25,000,000
14 = $25,000,001 - $50,000,000
15 = More than $50,000,000

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Brann, Matthew W.	05/17/2012

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	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)
18 Gabelli Asset Fund	A	Dividend	L	T					
19 Neuberger Berman Guardian Fund	A	Dividend	K	T					
20 Wells Fargo Advantage Ultra Short-term Muni. Inc. Fund	A	Dividend	J	T					
21 Keough Plan *1									
22 - FIA Card Services, N.A. RASP	A	Interest	J	T					
23 - iShares Russell 3000 Index Fund	A	Interest	K	T					
24 - iShares Russell Midcap Index Fund	A	Interest	J	T					
25 - iShares Russell 2000 Value Index Fund	A	Interest	J	T					
26 - iShares Dow Jones U.S. Energy Sector Index Fund	A	Interest	J	T					
27 - iShares MSCI EAFE Index Fund	A	Interest	J	T					
28 - iShares Trust Dow Jones Select Dividend Index Fund	A	Interest	J	T					
29 - SPDR S & P 500 ETF Trust	A	Interest	J	T					
30 - Merrill Lynch Money Market Account	A	Interest	J	T					
31 Hartford Capital Appreciation Fund Class A		None	K	T					
32 Charles Schwab & Co., Inc. Money Market Account	A	Interest	K	T					
33 American Funds The Investment Co. of America A (IRA)	A	Dividend	K	T					
34 529A *1									

1 - Income Gain Codes
(See Columns B1 and D4)
A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
B =$1,001 - $2,500
C =$2,501 - $5,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
R =Cost (Real Estate Only)
V =Other
G =$100,001 - $250,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
S =Associate
W =Estimated
H1 =$1,001 - $15,000
H2 =More than $1,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000
T =Cash Market
E =$5,001 - $15,000

2 Value Codes
(See Columns C1 and D3)

3 Value Method Codes
(See Columns C2)
Q =Appraisal
T =Book Value

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Brana, Matthew W.	05/17/2012

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 "(NF)" 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 The Investment Co. of America	A	Dividend	L	T					
36	- American Funds The Growth Fund of America	A	Dividend	K	T					
37	529A #2									
38	- American Funds The Investment Co. of America	A	Dividend	K	T					
39	Chemung Canal Trust Co. Accounts	A	Interest	J	T					
40	Perdido Housing Corp. Florida bond	A	Interest	J	T					
41	Matthew W. Brana, P.C.	F	Distribution	L	W					

1 Income / Gain Codes:
(See Columns B1 and D4)
A = $1,000 or less
B = $1,001 - $2,500
C = $2,501 - $5,000
D = $5,001 - $15,000
E = $15,001 - $50,000
F = $50,001 - $100,000
G = $100,001 - $1,000,000
H1 = $1,000,001 - $5,000,000
H2 = Over $5,000,000

2 Value Codes:
(See Columns C1 and D3)
J = $15,000 or less
K = $15,001 - $50,000
L = $50,001 - $100,000
M = $100,001 - $250,000
N = $250,001 - $500,000
O = $500,001 - $1,000,000
P1 = $1,000,001 - $5,000,000
P2 = $5,000,001 - $25,000,000
P3 = Over $25,000,000

3 Value Method Codes:
(See Columns C2)
Q = Appraisal
R = Book Value
S = Cost (Real Estate Only)
T = Cash Market
U = Estimated
V = Other
W = Assessment

4 Type Codes:
(See Columns D1)

5 Gain Codes:
(See Columns D4)

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Braun, Matthew W.	Date of Report 05/17/2012

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Braun, Matthew W.	Date of Report 05/17/2012

IX. CERTIFICATION.

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

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

Signature

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		7	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		868	342	Notes payable to relatives			
Unlisted securities – see schedule		102	923	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		15	000	Real estate mortgages payable – personal residence		91	538
Real estate owned – see schedule		370	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		31	500				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		91	538
				Net Worth	1	303	227
Total Assets	1	394	765	Total liabilities and net worth	1	394	765
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	
Alpine Total Dynamic Dividend Fund	$ 4,640
Altria Group, Inc. stock	32,210
American Funds Investment Company of America	39,590
American Funds Investment Company of America –529A	107,295
American Funds Growth Fund of America –529A	32,972
Annaly Capital Management stock	24,480
Charles Schwab Money Market Account	182,632
Delaware Foundation Moderate Allocation Fund A	94,953
Duke Energy Corp. stock	8,572
Ferrellgas Partners, LP stock	22,350
FIA Card Services, N.A. RASP	6,073
First Trust Energy Income and Growth Fund	62,000
Frontier Communications stock	966
Gabelli Asset Fund	66,924
Hartford Capital Appreciation Fund Class A	17,871
Illinois Tool Works, Inc. stock	8,095
iShares Dow Jones US Energy Sector Index Fund	3,487
iShares MSCI EAFE Index Fund	10,813
iShares Russell 1000 Index Fund	15,135
iShares Russell 2000 Value Index Fund	2,772
iShares Russell Midcap Index Fund	5,631
iShares Trust Dow Jones Select Dividend Index Fund	7,106
Neuberger Berman Guardian Fund	37,283
PIMCO Income Strategy Fund II	5,020
SPDR S&P 500 ETF Trust	5,914
Spectra Energy Corp. stock	6,148
Tupperware Brands Corp. stock	6,229
Verizon Communications stock	40,380
Wells Fargo & Co. stock	6,650
Wells Fargo Advantage Ultra Short-Term Municipal Income Fund	4,151
Total Listed Securities	$ 868,342

Unlisted Securities	
Harewood Group LLC	$ 52,923
Matthew W. Brann, P.C.	50,000
Total Unlisted Securities	$102,923

Real Estate Owned	
Personal residence	$ 220,000
Undeveloped lot (1/3 interest)	150,000
Total Real Estate Owned	$ 370,000

AFFIDAVIT

I, Matthew W. Brann, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 17, 2012
(DATE)

Matthew W. Brann
(NAME)

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
AMY J. HARVEY, NOTARY PUBLIC
CANTON BORO, BRADFORD COUNTY
MY COMMISSION EXPIRES OCT. 15, 2012

Amy J. Harvey
(NOTARY)

Senator FEINSTEIN. Thank you very much.
Judge Breyer.

STATEMENT OF CHARLES R. BREYER, NOMINEE TO BE A MEMBER OF THE UNITED STATES SENTENCING COMMISSION

Judge BREYER. Senator Feinstein, thank you so much. I would, of course, express my appreciation to the President for nominating me and to you, Senator Feinstein, for presiding at the hearing as well as Senator Grassley, and I look forward to your questions.

Most of my family actually is not here today. Some are otherwise occupied. However, I have a number of family members who are in San Francisco. I expressed some concern that perhaps the webcast would be blocked out in San Francisco because this is not quite sold out here. But, in fact, I have been told that under the Supremacy Clause, it will be shown in San Francisco, so I am pleased with that.

And, of course, I stand ready to answer any questions that you may have. Thank you.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Charles Roberts Breyer

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

   Member, United States Sentencing Commission

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
   450 Golden Gate Avenue, 17th Floor
   San Francisco, CA 94102

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

   1941; San Francisco, California

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

   University of California, Berkeley Law School (Boalt Hall)
   1963 to 1966, Juris Doctor (June 1966)

   Harvard College
   1959 to 1963, Bachelor of Arts, *cum laude*, in Economics (June 1963)

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 to present
   United States District Court for the Northern District of California
   450 Golden Gate Avenue

San Francisco, CA 94102
District Judge

1980 to 1997
Coblentz, Cahen, McCabe & Breyer
Now: Coblentz, Patch, Duffy & Bass, LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
Partner

1979
District Attorney's Office
City and County of San Francisco
Hall of Justice
850 Bryant Street, Room 322
San Francisco, CA 94103
Chief Assistant District Attorney

December 1974 to December 1979
Jacobs, Sills & Coblentz
Now: Coblentz, Patch, Duffy & Bass, LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
Associate Attorney

August 1973 to November 1974
Watergate Special Prosecution Force
Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530
Assistant Special Prosecutor

December 1967 to August 1973
District Attorney's Office
City and County of San Francisco
Hall of Justice
850 Bryant Street, Room 322
San Francisco, CA 94103
Assistant District Attorney

October 1967 to December 1967
Juvenile Hall Project
Legal Aid Society of San Francisco
1663 Mission Street
San Francisco, CA 94103
Counsel

July 1967 to September 1967
U.S. Army Reserve
Fort Ord
Monterey, CA 93944

August 1966 to July 1967
United States District Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102
Law Clerk to Judge Oliver J. Carter, Chief Judge

Summer 1965
Experiment in International Living
P.O. Box 676
1 Kipling Road
Brattleboro, VT 05302
Group Leader

Summer 1964
Lewis & Rouda
San Francisco, CA
Law Clerk
The firm no longer exists.

Summer 1963
San Francisco Unified School District
555 Franklin Street
San Francisco, CA 94102
Playground Director

Other Affiliations (uncompensated unless otherwise indicated):

September 2011 to August 2012
University of California, Boalt Hall Alumni Association
215 Boalt Hall
Berkeley, CA 94720
President

2007 to present
University of California, Hastings College of Law
300 McAllister Street
San Francisco, CA 94102
Adjunct Professor (compensated)

2000 to 2003
University of San Francisco School of Law
2130 Fulton Street
San Francisco, CA 94117
Adjunct Professor (compensated)

1996 to 1997
Lawyers Committee for Human Rights
333 7th Avenue, 13th Floor
New York, NY 10001
Member, Advisory Council (Board of Directors was renamed the Advisory Council)

1996 to 1997
San Francisco Juvenile Probation Commission
375 Woodside Avenue
San Francisco, CA 94127
President

1995 to 1997
San Francisco Conservation Corps
241 5th Street
San Francisco, CA 94103
Member, Board of Directors

1987 to 1989
San Francisco Zoological Society
1 Zoo Road
San Francisco, CA 94132
Member, Board of Directors

1986 to 1989
Lawyers Committee for Human Rights
333 7th Avenue, 13th Floor
New York, NY 10001
Member, Board of Directors

1983 to 1985
Northern California Chapter of the American Civil Liberties Union
39 Drumm Street
San Francisco, CA 94111
Member, Board of Directors

1980
Friends of the San Francisco Public Library
100 Larkin Street

San Francisco, CA 94102
Member, Board of Directors

1979
Spring Opera
Member, Board of Directors
The organization no longer exists.

1977
Travelers Aid
Member, Board of Directors
The organization no longer exists.

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.

   1966 to 1972
   U. S. Army Reserve ER 19856060

   1966 to 1969
   P.F.C

   1969 to 1973
   Captain, Judge Advocate General's Corps, followed by an honorable discharge effective January 1, 1980.

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.

   I have received citations in connection with my services as Assistant District Attorney and Assistant Special Prosecutor. I am also a Fellow of the American College of Trial Lawyers, a recognition conferred by my peers in the practice of trial law. I was selected as a lawyers' representative to the Judicial Conference of the Ninth Circuit from 1989 to 1991. In my youth I was an Eagle Scout and the recipient of the Harvard College Hansen Award.

   As a federal district judge, I have received the following awards:
   Santa Clara County Bar Association Federal Judge of the Year for 2010
   Academy of Court Appointed Masters Civil Justice Award, 2009

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, 1975 to present
Chairperson, Ethical Considerations in the Prosecution and Defense of Criminal Cases, 1976 to 1982

American College of Trial Lawyers
Task Force on Sentencing, 2003 to 2004
Federal Rules of Criminal Procedure Committee, 1997 to 2003

Association of Business Trial Lawyers, Northern California Chapter
Board of Governors, 2001 to 2003

Judicial Panel on Multidistrict Litigation, 2011 to present

San Francisco Bar Association, 1975 to 1997
Juvenile Justice Task Force, 2000 to 2001
Co-Chair, Special Bar Committee investigating the San Francisco District Attorney's Office, 1976
Penal Reform Committee, 1970

San Francisco Civil Investigative Grand Jury, 1975

San Francisco Juvenile Probation Commission
President, 1996 to 1997

United States Court of Appeals for the Ninth Circuit
Chair, Committee on Sentencing Post-*Blakely*, 2006
Lawyer Representative, Ninth Circuit Judicial Conference, 1989 to 1991

United States District Court for the Northern District of California
Member, Advisory Committee, 1975 (This committee, established by an Act of Congress, was appointed by the judges of the District Court to serve as an advisory committee on the implementation of the "Speedy Trial Act.")

United States Judicial Conference
Member, Executive Committee of the Conference, 2005 to 2010
Long Range Planning Coordinator, 2010 to present
Ninth Circuit District Judge Representative, 2005 to 2010

10. **Bar and Court Admission**:

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

California, December 1966

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, 1974
United States Court of Appeals for the Ninth Circuit, 1966
United States District Court for the Northern District of California, 1966
United States District Court for the Central District of California, 1980
United States District Court for the Southern District of California, 1982
United States District Court for the Eastern District of California, 1985
United States District Court for the District of Columbia, 1973
United States District Court for the District of Kansas, 1987
United States District Court for the Northern District of Illinois, 1985
United States District Court for the Southern District of New York, 1988
United States District Court for the Northern Mariana Islands, 1986
United States Tax Court, 1978
California Supreme Court, 1966

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 Bohemian Club (Actor Associate), 2007 to 2011

California Tennis Club, 1970 to present

The Family Club (Singer Associate), 1967 to 1990

Friends of the San Francisco Public Library
Member, Board of Directors, 1980

Lawyers Committee for Human Rights, Advisory Council
Member, Advisory Council, 1996 to 1997
Member, Board of Directors, 1986 to 1989

Northern California Chapter of the American Civil Liberties Union
Member, Board of Directors, 1983 to 1985

San Francisco Conservation Corps
Member, Board of Directors, 1995 to 1997

San Francisco Zoological Society
Member, Board of Directors, 1987 to 1989

Spring Opera
Member, Board of Directors, 1979

Travelers Aid
Member, Board of Directors, 1977

University of California, Boalt Hall Alumni Association
President, September 2011 to August 2012

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Family Club and The Bohemian Club do not have female associates or members. As an associate I did not participate in governance or admission issues. My associate status with both these organizations has been terminated. To the best of my knowledge, none of the other 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.

"Overcrowding in the San Francisco County Jail," published in the San Francisco Bar Association Journal (1970). I have been unable to obtain a copy.

Book reviews published in the San Francisco Chronicle:

"Condemning the U.S. Justice System," May 16, 1982. Copy supplied.
"A Country Lawyer's Fear of Rejection," September 12, 1982. Copy supplied.
"Two Versions of a Lawyer's Art," December 18, 1983. Copy supplied.
"Legal Victory at Nearly Any Cost," 1983. Copy supplied.

"Constitutional 'Niceties' Were Just Inconvenient," April 1, 1984. Copy supplied.
"Flawed Study of a Murderer," June 2, 1985. Copy supplied.
"The Power of Life and Death," July 30, 1989. Copy supplied.
"A Pursuit of Justice," December 3, 1989. Copy supplied.
"A Supremely Pragmatic Court," February 25, 1990. Copy supplied.
"Medical Testimony with a Novel View," March 13, 1991. Copy supplied.
"'Chutzpah' Is His Middle Name," May 19, 1991. Copy supplied.
"Washington's Power Lawyer," December 1, 1991. 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.

Strategic Plan for the Federal Judiciary, Judicial Conference of the United States, September 2010. Copy supplied.

From 2005 to 2010, I served on the Executive Committee of the United States Judicial Conference and as a Ninth Circuit District Judge representative to the Conference. Conference reports summarizing the actions of both the Conference and Executive Committee are supplied.

Status Report on Judicial Accountability, Executive Committee of the Judicial Conference, August 2006. Copy supplied.

United States Sentencing Guidelines 2004: An Experiment That Has Failed, American College of Trial Lawyers Task Force on the United States Sentencing Guidelines, September 2004. Copy supplied.

Proposed Codification of Disclosure of Favorable Information under Federal Rules of Criminal Procedure 11 and 16, American College of Trial Lawyers Federal Criminal Procedure Committee, March 2003. Copy supplied.

The Erosion of the Attorney-Client Privilege and Work Product Doctrine in Federal Criminal Investigations, American College of Trial Lawyers Federal Criminal Procedure Committee, March 2002. Copy supplied.

Proposal: The American College of Trial Lawyers Proposed Modifications to the Relevant Conduct Provisions of the United States Sentencing Guidelines, American College of Trial Lawyers Federal Criminal Procedure Committee, Fall 2001. Copy supplied.

Report and Proposal on Section 5K1.1 of the U.S. Sentencing Guidelines, American College of Trial Lawyers Federal Criminal Procedure Committee, March 10, 1999. Copy supplied.

Haiti: A Human Rights Nightmare, Lawyers Committee for Human Rights, 1992. Copy supplied.

San Francisco Civil Investigative Grand Jury Reports, 1975 (copies supplied):

The Office of the Mayor
San Francisco Police Department
Sheriff's Department
Strike Report
Electronic Data Processing
The Art Commission
San Francisco's Legal Services
Minority Report on the Office of the District Attorney

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

Testimony before the United States Sentencing Commission, May 27, 2009. Transcript supplied.

Testimony before the United States Senate Committee on the Judiciary, October 29, 1997. Transcript supplied.

Remarks during a public meeting called by San Francisco Mayor Willie Brown to address overcrowding at the Youth Guidance Center, May 24, 1996. I have no notes, transcript or recording, but press coverage is supplied.

Testimony on behalf of California Attorneys for Criminal Justice before a California blue ribbon panel on jury verdicts, March 25, 1996. I have no notes, transcript or recording, but press coverage is supplied.

In 1996 and 1997, I served as president of the San Francisco Juvenile Probation Commission and frequently made remarks during meetings. I have no notes, transcripts or recordings, but available press coverage is supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or

recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Continuing Education of the Bar and State Bar of California: Each year from 1982 to 1997, I participated in a panel discussion called "Preparing a Case for Trial, The Last 100 Days." I have no notes, transcripts or recordings.

Barristers Club: On September 19, 1995, I co-moderated a debate between candidates running to be San Francisco's District Attorney. I have no notes, transcript or recording, but press coverage is supplied.

United States District Court for the Northern District of California: On February 13, 1998, I was sworn in as a U.S. District Court judge and made brief comments of appreciation. I have no notes, transcript or recording.

Federal Bar Association: On June 2, 2000, I sponsored a brown bag lunch for FBA members to discuss the creation of an attorney's lounge, my courtroom practices, and my service as an assistant special prosecutor for the Watergate Special Prosecution Force. I have no notes, transcript or recording.

CEELI: From September 2 to September 8, 2000, I participated in panel discussions in Moscow, Russia relating to federal criminal procedure. I have no notes, transcript or recording.

Barristers Club: On September 12, 2002, I participated in a judge's panel on discovery, motion practice, and settlement conference procedures for the Federal Court Walkthrough program, Bar Association of San Francisco. I have no notes, transcript or recording.

Institute for the Study and Development of Legal Systems (ISDLS): I have participated as a panelist on the subjects of alternative dispute resolution, case management, jury trials and guilty pleas in the countries listed below. I have no notes, transcripts or recordings from these panels.

New Delhi, India:	October 25, 2002 to November 8, 2002
Cairo, Egypt:	October 10, 2003 to October 15, 2003
Kuala Lumpur, Malaysia:	February 26, 2004 to February 29, 2004
Mumbai, India:	November 20, 2004 to November 22, 2004
Ankara, Turkey:	October 18, 2005 to October 22, 2005
Bangalore, India:	February 15, 2007 to February 24, 2007

Federal Judicial Center: "Baby" Judges School. Since 2003, I have spoken frequently on the subject of the procedures to be followed in acceptance of guilty pleas. This school is given whenever the number of new federal judges justifies

its expense. I have no notes, transcripts or recordings, but press coverage of an April 2005 session is supplied.

United States District Court Historical Society: On May 8, 2003, I participated in a fundraiser with my brother, Justice Stephen Breyer, for the District Court. I have no notes, transcript or recording, but press coverage is supplied.

American Bar Association: On August 7, 2003, I participated in a panel discussion about the criminal cases decided by the Supreme Court of the United States during the October 2002 term. I have no notes, transcript or recording.

District Attorney's Office of San Francisco: In May or June 2004, I participated in an "Anatomy of a Trial" training seminar for prosecutors. I have no notes, transcript or recording, but press coverage is supplied.

Federal Judicial Center, United States Sentencing Commission, Department of Justice: From 2004 through 2011, I participated as a panelist at the Sentencing Institute seminar sponsored by the above-listed federal government agencies. The panel subjects related to recent changes in sentencing law. I have no notes, transcripts or recordings.

American Bar Association: In February 2004, I served as a panelist for the Antitrust Section's International Cartel Workshop, New York, New York. I have no notes, transcript or recording, but press coverage is supplied.

American Conference Institute and LECG Corporation: On March 8 and 9, 2004, I gave remarks at a conference entitled "Defending and Managing Class Actions and other Complex Litigation." I have no notes, transcript or recording.

Stanford Law School: On October 9, 2004, I participated as a panelist in a forum on *Blakely v. Washington*. I sat on panels entitled "Lawyering Strategies, Balances of Power, and Plea-Bargaining in the Wake of *Blakely*" and "Idealistic Reflections: The Future of Sentencing Reform." Partial transcript supplied.

United States District Court for the Northern District of California: In 2005, I twice participated in a reenactment of the Chinese Exclusion Act case for 100th Anniversary celebrations of the James Browning courthouse. I have no notes, transcripts or recordings.

University of California, Berkeley School of Law: On February 18, 2005, I participated in a panel discussion entitled "Perspectives on Patent Law and Innovation." I have no notes, transcript or recording.

University of California, Hastings College of Law: On February 8, 2006, I participated in a panel moderated by Professor Rory Little about books by Justices Scalia and Breyer. I have no notes, transcript or recording.

Judicial Conference for the Northern District of California: On April 29, 2006, I gave brief remarks to thank Chief Magistrate Judge James Larson for his service on the Court. I have no notes, transcript or recording.

Association of Business Trial Lawyers: On October 19, 2006, I participated in a panel discussion on witnesses during a seminar on "When Things Go Wrong." I have no notes, transcript or recording.

Pepperdine Law School: Wm. Matthew Byrne Judicial Clerkship Institute: Since 2007, I have participated each year as a panelist addressing prospective law clerks on the role for which they have been selected. I have no notes, transcripts or recordings.

Hastings Constitutional Law Quarterly: On February 1, 2007, I moderated a panel on cameras in the courtroom. I have no notes, transcript or recording.

American College of Trial Lawyers: On April 19, 2007, I participated in a question and answer session with law students during a Canada-United States Legal Exchange. I have no notes, transcript or recording.

Rutter Group: In 2008, 2009 and 2011, I served as a panelist for Developments in Federal Civil Discovery. I have no notes, transcripts or recordings.

University of St. Thomas School of Law: On April 2, 2008, I participated as a panelist during an event on "Ethics of Watergate Lawyers." Video is available at http://www.c-spanvideo.org/program/EthicsofW.

The Recorder: On October 15, 2008, I participated in a panel discussion titled "Outstanding Trial Work: Best Practices as Seen from the Bench." I have no notes, transcript or recording.

Stanford Law Chapter of the American Constitution Society: On November 11, 2008, I spoke at Stanford Law about lessons to be learned from Watergate. I have no notes, transcript or recording, but press coverage is supplied.

Lawyers Club of San Francisco: On December 1, 2008, I served as a "headliner" guest with Chief Judge Vaughn Walker and Judge William Alsup. I do not recall the topic discussed and I have no notes, transcript or recording.

Academy of Court-Appointed Masters: On January 31, 2009, I participated in a panel discussion on "Special Masters in Joint Federal and State Cases: How Bextra/Celebrex Crossed the Federalism Divide." I have no notes, transcript or recording.

Administrative Office of the Courts: On May 7, 2009, I participated in a panel discussion titled "*Booker, Gall, Kimbrough & Spears*: A View from the District Court Bench" during a seminar on Winning Strategies. I have no notes, transcript or recording.

Federal Bar Association, Northern District of California Chapter: On June 8, 2009, I gave remarks during a reception celebrating the new attorney lounge in the federal courthouse. I have no notes, transcript or recording.

University of California, Berkeley School of Law: On June 24, 2009, I participated in a panel discussion with other California judges who were also Boalt Hall alumni. I have no notes, transcript or recording.

Department of State: From November 1 to 8, 2009, in Bangkok, Thailand, I participated in panel discussions relating to federal criminal procedure. I have no notes, transcripts or recordings.

Administrative Office of the U.S. Courts: On July 29, 2010, I participated in a panel discussion on Judging at Sentencing during a Sentencing Advocacy Workshop. I have no notes, transcript or recording.

Barristers Club and Young Lawyers Division of the Federal Bar Association: On October 18, 2010, I participated in a panel discussion titled "Federal Hearings: How to Advance Your Case at Discovery Conferences & Case Management Conferences." I have no notes, transcript or recording.

Association of Business Trial Lawyers, Northern California Chapter: On December 7, 2010, I participated in an event that presented the closing arguments of the case, *People v. Darrow*. I have no notes, transcript or recording.

Duke Law School: On June 17, 2011, I participated in a panel discussion titled "The Future of the Judiciary" during the Duke Law Alumni Retreat. I have no notes, transcript or recording.

Department of State: From June 23, 2011 to July 1, 2011, in Bangkok, Thailand, I participated in panel discussions on the subject of judicial corruption. I have no notes, transcripts or recordings.

Santa Clara University School of Law: On September 10, 2011, I played the role of Clarence Darrow in a reenactment of the case, *People v. Darrow*, during a centennial celebration of the law school. I have no notes or transcript, but press coverage is supplied and a video excerpt is available at http://www.youtube.com/watch?v=ZUDzsrME-FM.

University of California, Berkeley School of Law: On October 1, 2011, I participated in a panel discussion about cy pres judgments. I have no notes, transcript or recording.

Department of State: Between December 4, 2011 and December 7, 2011, in Kiev, Ukraine, I gave the keynote address on Long Range Planning. Remarks supplied.

Association of Business Trial Lawyers, Northern California Chapter: On March 13, 2012, I moderated a panel on the "Ten Most Important Things About Opening Statements: What To Do and What To Avoid." I have no notes, transcript or recording.

Since 1998, I have given remarks at numerous induction ceremonies for new admittees to the State Bar of California. I have also spoken at ceremonies in honor of new judges, departing judges and senior judges. Furthermore, I routinely judge moot court competitions and speak to groups visiting my courtroom. I did not speak from prepared texts and I do not have other notes, transcripts or recordings from any of these occasions. In addition to the events listed above, I have also participated in numerous other panel discussions sponsored by the Federal Judicial Center, United States Sentencing Commission, Federal Defender Services, Department of Justice, Department of State, California Continuing Education of the Bar, Harvard Law School Evidence Project, Practising Law Institute, California Association of Business Trial Lawyers, and the Hastings College of Trial Advocacy, but I am unable to recall the dates or topics of these discussions.

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

Gabe Friedman, *Binding Plea Deals Hold Their Own Risks*, Daily Journal, Nov. 28, 2011. Copy supplied.

Bob Egelko, *Judge's Move Opens Slot on Bench in S.F.*, San Francisco Chronicle, Oct. 21, 2011. Copy supplied.

Jill Redhage, *Judge's Senior Status Opens Opportunities*, Daily Journal, Oct. 21, 2011. Copy supplied.

Ginny LaRoe, *Breyer to Take Senior Status, Opening Another Slot on Bench*, The Recorder, Oct. 19, 2011. Copy supplied.

Ginny LaRoe, *Two New Magistrates Picked for Northern District*, The Recorder, Jan. 20, 2011. Copy supplied.

How Will the Judiciary Face Future Challenges?, United States Courts, Nov. 2010. Copy supplied.

Vitaly Gashpar and Adam Bender, *Judge Charles Breyer*, The Recorder, Oct. 5, 2010. Copy supplied and corresponding video interview available at http://tinyurl.com/crb-recint.

Phillip Matier and Andrew Ross, *Brown Campaign Didn't Drop Maid Bombshell*, San Francisco Chronicle, Oct. 3, 2010. Copy supplied.

Bob Egelko, *Surprise from Prop. 8 Judge – He'll Retire*, San Francisco Chronicle, Sept. 30, 2010. Copy supplied.

Ginny LaRoe, *Walker Says He'll Leave Northern District Bench in February*, The Recorder, Sept. 29, 2010. Copy supplied.

Jill Redhage, *Judicial Profile: Edward M. Chen*, Daily Journal, 2010. Copy supplied.

Rebecca Beyer, *Relishing the Spar*, Daily Journal, Aug. 21, 2009. Copy supplied.

Scott Herhold, *Go to Courthouse in S.J. or S.F., Get a History Lesson*, San Jose Mercury News, July 23, 2009. Copy supplied.

Heather Knight, *City Insider: Big Honor for S.F. Attorney*, San Francisco Chronicle, Jan. 27, 2009. Copy supplied.

March 6, 2008: Interview with Nancy Glass for her article, *The Social Workers of Sentencing? Probation Officers, Discretion, and the Accuracy of Presentence Reports Under the Federal Sentencing Guidelines*, 46 No. 1 Crim. Law Bulletin Art. 2 (Jan.-Feb. 2010). A copy of the article is supplied.

Dan Levine, *A Prosecutor Who Even Some Criminals Will Miss*, The Recorder, Nov. 2, 2007. Copy supplied.

Mike McKee, *Reaching Over Party Lines: Bar's New Leader Makes Friends on Both Sides of Aisle*, The Recorder, Sept. 28, 2007. Copy supplied.

Justin Scheck, *Apple Prosecutor Leaves for Fenwick*, The Recorder, Jan. 22, 2007. Copy supplied.

Amy Kolz, *Obstacle Course*, The American Lawyer, Jan. 1, 2007. Copy supplied.

Silent Witness Wrote History, Grand Rapids Press, Jan. 15, 2006. Copy supplied.

Jeff Chorney, *Orders in the Court*, The Recorder, July 20, 2005. Copy supplied.

James Oliphant, Jeff Chorney and Pam Smith, *Shootings Elevate Security Fears*, The Recorder, Mar. 14, 2005. Copy supplied.

Jeff Chorney, *Judicial Profile: Joseph Spero*, The Recorder, Sept. 21, 2004. Copy supplied.

Jeff Chorney, *Smith Back from Washington but Still Educating*, The Recorder, Aug. 10, 2004. Copy supplied.

Jeff Chorney, *S.F. Fraud Chief Flies DOJ Coop for Shearman*, The Recorder, July 8, 2004. Copy supplied.

Brenda Sandburg, *Penchant for Patents*, The Recorder, Nov. 14, 2003. Copy supplied.

Jason Hoppin, *Another Day, Another Case to the Supreme Court*, The Recorder, June 3, 2003. Copy supplied.

Chris Thompson, *How Not to Write a Law*, East Bay Express, May 14, 2003. Copy supplied.

David Kravets, *Breyer Brothers Recount San Francisco Childhood*, Associated Press, May 8, 2003. Copy supplied.

Pamela MacLean, *High-Security Makeover for Gang Trial*, Daily Journal, Apr. 15, 2003. Copy supplied.

Jason Hoppin, *Besieged at the Border*, The Recorder, July 23, 2001. Copy supplied.

David Kravets, *Bush May Have Found Right Man to Reshape FBI*, Associated Press, July 5, 2001 (reprinted in multiple outlets). Copy supplied.

Pamela MacLean, *Lounging Now Encouraged at Federal Court*, Daily Journal, Feb. 1, 2001. Copy supplied.

Jason Hoppin, *Judicial Profile: Charles Breyer*, The Recorder, July 1, 2000. Copy supplied.

Jason Hoppin, *Federal Building Lawyers Get a Place to Decompress*, The Recorder, June 13, 2000. Copy supplied.

Edward Epstein, *Willie Brown's Appointees for Muni Board Sworn In*, San Francisco Chronicle, Mar. 1, 2000. Copy supplied.

Mark Blumberg, *Breyer Noted for Wit, Charm and Bench Presence*, Daily Journal, June 25, 1999. Copy supplied.

Michele R. Wolf, *Judicial Profile: The Hon. Charles R. Breyer*, San Francisco Attorney/The Bar Association of San Francisco Magazine, Apr./May 1999. Copy supplied.

E. Mark Moreno, *County Judge Gets Federal Job*, San Jose Mercury News, Nov. 12, 1997 (quote reprinted in multiple outlets). Copy supplied.

Paul Elias, *Senate Confirms Two Federal Judges*, The Recorder, Nov. 11, 1997. Copy supplied.

Teresa Moore, *New Leader of Juvenile Agency Has Had Success*, San Francisco Chronicle, July 25, 1997. Copy supplied.

Bill Kisliuk, *Clinton Names Three for California Courts*, The Recorder, July 25, 1997. Copy supplied.

Jim Herron Zamora, *Juvenile Office Gets New Chief*, San Francisco Examiner, July 21, 1997. Copy supplied.

Teresa Moore, *Juvenile Reform Plan Wins State Funding*, San Francisco Chronicle, May 17, 1997. Copy supplied.

Leslie Goldberg and Jim Herron Zamora, *Juvenile Justice Face Lift Approved*, San Francisco Examiner, May 16, 1997. Copy supplied.

Bill Kisliuk, *Breyer Tapped for Federal Court*, The Recorder, May 15, 1997. Copy supplied.

Stephanie Simon, *Lawyer, Judge Nominated for Federal Bench*, Los Angeles Times, May 15, 1997. Copy supplied.

GraceAnn Walden, *What Killed the Heights?*, San Francisco Chronicle, Apr. 23, 1997. Copy supplied.

Teresa Moore, *Ambitious S.F. Juvenile Justice Plan*, San Francisco Chronicle, Mar. 19, 1997. Copy supplied.

Leslie Goldberg, *S.F. Plan Revamps Juvenile Justice*, San Francisco Examiner, Mar. 19, 1997. Copy supplied.

Teresa Moore, *Heading Off Teen Trouble*, San Francisco Chronicle, Mar. 18, 1997. Copy supplied.

Edward W. Lempinen, *Fragile Framework in Place to Reclaim Troubled Kids*, San Francisco Chronicle, Dec. 31, 1996. Copy supplied.

Leslie Goldberg, *Overtime at Juvenile Hall Soars*, San Francisco Examiner, Nov. 15, 1996. Copy supplied.

Keith Donoghue, *An Inside Track at City Hall*, The Recorder, Oct. 24, 1996. Copy supplied.

Leslie Goldberg, *Scandal Resignation; Juvenile Probation Official Replaced for Allegedly Ignoring Memo on Money Missing from Agency*, San Francisco Examiner, Oct. 19, 1996. Copy supplied.

Teresa Moore, *Shortfall Noted Long Before Embezzlement Uncovered*, San Francisco Chronicle, Oct. 18, 1996. Copy supplied.

Leslie Goldberg, *City Was Warned of Petty Cash Problems*, San Francisco Examiner, Oct. 18, 1996. Copy supplied.

George Cothran and Chuck Finnie, *Where Do Bad Children Go?*, SF Weekly, Oct. 2, 1996. Copy supplied.

Clarence Johnson, *Reform School's Lofty Goals Fall Short*, San Francisco Chronicle, Sept. 26, 1996. Copy supplied.

David Dietz, *S.F. Youth Rehab Program Suffers Growing Pains*, San Francisco Chronicle, Sept. 20, 1996. Copy supplied.

Leslie Goldberg, *$130,000 for Youth Probation Program*, San Francisco Examiner, Sept. 12, 1996. Copy supplied.

Annie Nakao, *The City Tallying Missing Money*, San Francisco Examiner, Aug. 26, 1996. Copy supplied.

Leslie Goldberg and Erin McCormick, *Embezzle Suspect Reportedly Confessed*, San Francisco Examiner, Aug. 25, 1996. Copy supplied.

San Francisco's Juvenile Hall Chief Quits, Contra Costa Times, Aug. 21, 1996. Copy supplied.

John King, *More Housecleaning at S.F. Juvenile Agency*, San Francisco Chronicle, Aug. 21, 1996. Copy supplied.

Leslie Goldberg, *Embattled Juvenile Probation Chief Quits*, San Francisco Examiner, Aug. 20, 1996. Copy supplied.

Leslie Goldberg, *Elite S.F. Lawyer Braves "Mosh Pit" of Juvenile Crime*, San Francisco Examiner, July 5, 1996. Copy supplied.

Krysten Crawford, *Litigator William Brockett Jr. Dies after Long Illness*, The Recorder, June 18, 1996. Copy supplied.

Michael Taylor, *William Brockett Jr.*, San Francisco Chronicle, June 17, 1996. Copy supplied.

Teresa Moore, *S.F. Juvenile Commission Chief's Protest*, San Francisco Chronicle, June 13, 1996. Copy supplied.

Clarence Johnson, *High-Profile Juvenile Justice Commissioner*, San Francisco Chronicle, May 20, 1996. Copy supplied.

State Commission Backs 11-1 Verdicts, Long Beach Press-Telegram, Apr. 30, 1996. Copy supplied.

Erin McCormick, *Mailing Firm's Owners Admit They Cheated S.F. Customers*, San Francisco Examiner, Mar. 21, 1996. Copy supplied.

Naftali Bendavid, *Watergate Veterans Assess Whitewater*, The Record, Jan. 31, 1996. Copy supplied.

Philip Matier, *Time of the Signs*, San Francisco Chronicle, Apr. 30, 1995. Copy supplied.

Ana Puga, *Justice Breyer Quietly Begins to Find His Place*, Boston Globe, Nov. 12, 1994. Copy supplied.

Saturday Celebrity, Boston Herald, Sept. 10, 1994. Copy supplied.

Interview for Breyer Confirmation Special, C-SPAN, July 16, 1994. Video available at http://www.c-spanvideo.org/program/ConfirmationS. My remarks begin at approximately 30:00.

Bob Hohler, *Backers, Critics Vie for Spotlight*, Boston Globe, July 13, 1994. Copy supplied.

Dan Freedman, *Breyer Looks Like Shoo-In for High Court*, San Francisco Examiner, July 12, 1994. Copy supplied.

Timothy M. Phelps and Michael Weber, *Breyer Accents the Conservative*, Newsday, July 10, 1994. Copy supplied.

Brother's View of Judge Stephen Breyer, C-SPAN, June 28, 1994. Video available at http://www.c-spanvideo.org/program/Brot.

Malcolm Gladwell, *Judge Breyer's Life Fashioned Like His Courthouse*, Washington Post, June 26, 1994. Copy supplied.

Grace Slick's Sentence Suspended, San Francisco Chronicle, June 7, 1994. Copy supplied.

David Lauter, *Breyer's Public Life Offers Few Clues to Private Beliefs*, Los Angeles Times, May 31, 1994. Copy supplied.

Garth Wolkoff, *S.F. Jews Proud One of Own Heading for Top Court*, Jewish Bulletin, May 20, 1994. Copy supplied.

Matthew Brelis, *A Reputation for Legal and Listening Skills*, Boston Globe, May 14, 1994 (reprinted in multiple outlets). Copy supplied.

Andrew Miga, *Judge Never Lost His Passion for Books*, Boston Herald, May 14, 1994. Copy supplied.

Venise Wagner, *Nominee Felt Out of Running for Court Seat*, San Francisco Examiner, May 14, 1994. Copy supplied.

Phillip Matier and Andrew Ross, *UC Gives Big Bonuses in Little-Known Department; Slick Deal*, San Francisco Chronicle, Apr. 4, 1994. Copy supplied.

Actor Handcuffed and Booked: Slick in Court, Long Beach Press-Telegram, Mar. 23, 1994 (reprinted in multiple outlets). Copy supplied.

Michael Dorgan, *Pretrial Fur Flies on Newsroom Fight*, San Jose Mercury News, Oct. 8, 1993. Copy supplied.

Holly A. Heyser, *Firm Pleads Guilty*, San Jose Mercury News, Sept. 16, 1993. Copy supplied.

Holly A. Heyser, *Lawyer: Firm Coerced: Chemtex Settles with Accusers*, San Jose Mercury News, July 17, 1993. Copy supplied.

Marsha Ginsburg and Jim Herron Zamora, *Youthful Breyer Was Known as Bookworm*, San Francisco Examiner, June 11, 1993. Copy supplied.

Dennis J. Opatrny and Scott Winokur, *Spy Probe Will Target Leaders of Jewish Group*, San Francisco Examiner, May 11, 1993. Copy supplied.

October 14, 1992: News conference on a State Department search of U.S. Embassy files on Bill Clinton. Press coverage of the conference is listed below:

> *Demos Angry Over Search of Clinton Files*, San Francisco Chronicle, Oct. 15, 1992. Copy supplied.
>
> William D. Murray, *Former Watergate Prosecutors Alarmed at Clinton File Search*, United Press International, Oct. 14, 1992. Copy supplied.

Lisa Stansky, *Watergate's Class of '74*, The Recorder, June 26, 1992. Copy supplied.

Mike McKee, *Estate Wins Battle Over $100 Million*, The Recorder, Mar. 16, 1992. Copy supplied.

Carl T. Hall, *California Gets Tough on Safety*, San Francisco Chronicle, Mar. 9, 1992. Copy supplied.

Howard Mintz, *Attention, Judge Shoppers*, The Recorder, Jan. 28, 1992. Copy supplied.

Anthony Scaduto, Doug Vaughan and Linda Stasi, *Inside New York; Back to Eden?*, Newsday, Jan. 9, 1992. Copy supplied.

Howard Mintz, *Judge Acquits Corporation in Bribery Case*, The Recorder, Mar. 20, 1991. Copy supplied.

Firm Cleared of Trying to Bribe Colombia, Associated Press, Mar. 19, 1991. Copy supplied.

Stephen G. Hirsch, *Orrick Closes Deal for $150 Million Joint Venture*, The Recorder, Jan. 17, 1991. Copy supplied.

Maline Hazle, *S.J. Settles Weiss Transit Mall Suit*, San Jose Mercury News, Dec. 8, 1990. Copy supplied.

Brandon Bailey, *Sentenced Contractor Seeks Millions from S.J.*, San Jose Mercury News, Dec. 1, 1990. Copy supplied.

Brandon Bailey, *Builder Fined for Conspiracy*, San Jose Mercury News, Nov. 30, 1990. Copy supplied.

Maline Hazle, *S.J. Mall Contractor Faces Fine*, San Jose Mercury News, Oct. 11, 1990. Copy supplied.

Maline Hazle, *Lawyer: Charges Filed against Weiss in Reprisal*, San Jose Mercury News, Dec. 9, 1989. Copy supplied.

Douglas Frantz, *Pension Fraud Regulators Run on 'Different Tracks' and a Big Case Folds*, Los Angeles Times, Oct. 29, 1989. Copy supplied.

South Bay Contractor, U.S. OK Plea Bargain, San Francisco Chronicle, July 25, 1989. Copy supplied.

Maline Hazle, *Weiss Makes Plea Deal on Embezzlement*, San Jose Mercury News, July 25, 1989. Copy supplied.

Susan Sward, *Trial Will Test Ruling to Protect Gays in Court*, San Francisco Chronicle, July 17, 1989. Copy supplied.

Maline Hazle, *Feds' Frequent Error*, San Jose Mercury News, May 11, 1989. Copy supplied.

Maline Hazle, *Weiss Acquitted of Tax Evasion but Mall Builder Still Faces Bribery, Embezzlement and Other Charges*, San Jose Mercury News, Mar. 28, 1989. Copy supplied.

David Dietz and Dave Farrell, *Boas Fined $100,000 – Gets a Year of Work*, San Francisco Chronicle, Nov. 19, 1988. Copy supplied.

William Carlsen, *Swap Is a Response to Crowding*, San Francisco Chronicle, Oct. 27, 1988. Copy supplied.

David Dietz, *Lawyer Says Quick Plea Was Boas' Idea*, San Francisco Chronicle, Oct. 22, 1988. Copy supplied.

David Dietz and Robert Popp, *Boas Pleads Guilty in Teen Sex Case*, San Francisco Chronicle, Oct. 21, 1988. Copy supplied.

Barbara Bradley, *Iran-Contra Judge: No Shenanigans*, Christian Science Monitor, May 16, 1988. Copy supplied.

Michael Kranish, *Eastern's Revolving Door*, Boston Globe, Apr. 19, 1988. Copy supplied.

Not Guilty Plea in San Jose Bribe Case, San Francisco Chronicle, Dec. 4, 1987. Copy supplied.

Leading Figure in San Jose Project Accused of Bribery, Los Angeles Times, Nov. 21, 1987. Copy supplied.

Charles Burress and Torri Minton, *San Jose Transit Mall Builder Arrested*, San Francisco Chronicle, Nov. 20, 1987. Copy supplied.

Patricia Bellew Gray, *Legal Warfare: Tobacco Firms Defend Smoker Liability Suits with Heavy Artillery*, Wall Street Journal, Apr. 29, 1987. Copy supplied.

Jan Klunder, *Vandross Trial Jury Selection Starts*, Los Angeles Times, Dec. 9, 1986. Copy supplied.

S.F. School Board Sues Alioto, Union, San Francisco Chronicle, Mar. 29, 1986. Copy supplied.

Charles Burress, *Employee Held Hostage Sues Oakland Airline*, San Francisco Chronicle, Dec. 31, 1985. Copy supplied.

Barbara Feinman and Ann L. Trebbe, *Watergate Reunion*, Washington Post, Oct. 24, 1983. Copy supplied.

Frank Cook, *Untitled*, United Press International, Oct. 22, 1983. Copy supplied.

Mail Fraud Case Settled, Associated Press, May 3, 1983. Copy supplied.

Irregularity Alleged in Presley Contract, Globe and Mail, Jan. 27, 1982. Copy supplied.

People in the News, Associated Press, Jan. 26, 1982. Copy supplied.

Untitled, Associated Press, Dec. 27, 1979. Copy supplied.

Untitled, Associated Press, May 24, 1979. Copy supplied.

Staff, *Deak & Co. Subsidiary Is Fined $20,000*, Wall Street Journal, May 18, 1978. Copy supplied.

Deak Faces Charges of Smuggling, New York Times, Oct. 20, 1977. Copy supplied.

Anthony Ripley, *White House Aids Jaworski Inquiry*, New York Times, Dec. 13, 1973. Copy supplied.

13. **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.

San Francisco Civil Grand Jury, appointed by Presiding Judge of the Superior Court, 1975.

San Francisco Juvenile Probation Commission, appointed by the Mayor of the City and County of San Francisco. 1996-1997.

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.

Transition Team for San Francisco District Attorney Terrence Hallinan, 1996.

14. **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:

August 1966 to July 1967
Law Clerk to Chief Judge Oliver J. Carter
United States District Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

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

I have never practiced as a sole practitioner.

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

October 1967 to December 1967
Counsel
Juvenile Hall Project
Legal Aid Society of San Francisco
1663 Mission Street
San Francisco, CA 94103

I served as counsel to indigent juveniles at the Youth Guidance Center in proceedings before Court Commissioners and Superior Court judges.

December 1967 to August 1973
Assistant District Attorney
San Francisco District Attorney's Office
880 Bryant Street, Room 322
San Francisco, CA 94103
I served as trial counsel representing the State of California in the prosecution of criminal offenses, both misdemeanors and felonies. These offenses ranged from traffic offenses to multiple homicides for which the death penalty was imposed. I tried over 50 felony jury trials and was certified as a criminal law specialist by the State Bar of California.

August 1973 to November 1974
Assistant Special Prosecutor
Watergate Special Prosecution Force
Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530
I was the second chair in the prosecution of the White House "plumbers" for violation of the civil rights of Dr. Louis Fielding. I also conducted grand jury proceedings into illegal wiretaps and illegal campaign contributions.

December 1974 to December 1979
Jacobs, Sills & Coblentz
Now: Coblentz, Patch, Duffy & Bass, LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
I joined the firm in December 1974, and became a partner in 1975. I specialized in civil and criminal complex litigation.

1979
Chief Assistant District Attorney
City and County of San Francisco
880 Bryant Street, Room 322
San Francisco, California 94103
As chief assistant district attorney, I was the administrative chief of the operations of the office.

1980 to 1997
Coblentz, Cahen, McCabe & Breyer
Now: Coblentz, Patch, Duffy & Bass, LLP
One Ferry Building, Suite 200
San Francisco, CA 94111

From 1980 to 1997, as a partner of a law firm I worked on litigation and conducted litigation teams. In 1980, the firm had seven members and when I resigned in 1997, the firm had approximately 30 members.

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.

No, I have never served as a mediator or arbitrator.

b. Describe:

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

From 1967 to 1974, as a prosecutor, I appeared in court on a daily basis and was certified by the State Bar of California as a criminal law specialist. Upon entering private practice, I had a general litigation practice specializing in the trial of cases. I represented defendants in criminal matters, with an emphasis on "white collar" offenses. In civil matters, I tried a wide variety of cases including matters relating to construction defects, trusts and estates, securities, entertainment law and real estate.

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

I had no "typical" client. My clientele ranged from private individuals to publicly-held corporations and financial institutions.

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

I appeared in court frequently throughout my career. As an Assistant District Attorney, I appeared in court daily. As a private practitioner, I appeared at least once a week and more often if I was in trial.

i. Indicate the percentage of your practice in:

1. federal courts: 60%
2. state courts of record: 30%
3. other courts: 10%
4. administrative agencies: None

ii. Indicate the percentage of your practice in:
1. civil proceedings: 50%
2. criminal proceedings: 50%

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

I have tried more than 100 cases to verdict and/or final decision. The majority of these cases I served as sole counsel.

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

15. **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. John D. Ehrlichman, et al., 546 F.2d 910 (D.C. Cir. 1977).

Judge: Honorable Gerhard A. Gesell (deceased)

Opposing Counsel:
William Snow Frates
4745 South West 76th Terrace

Miami, FL 33143
(305) 666-2553

Co-Counsel:
William H. Merrill
(Address Unknown)

Henry L. Hecht
University of California, Berkeley School of Law
Berkeley, CA 94720
(510) 642-1787

As a Watergate Assistant Special Prosecutor, I served as second chair during the trial of high government officials for conspiracy to violate the civil rights of Dr. Lewis Fielding (psychiatrist to Daniel Ellsberg, an author of the Pentagon Papers). This case, which involved the White House "Plumbers"—G. Gordon Liddy, Howard Hunt, David Young and Egil Krogh—and Special Assistant to the President, Charles Colson—demonstrated that no purported "national security" defense excuses the violation of a citizen's rights. The grand jury proceedings lasted eight months and the trial lasted one month. All defendants were convicted in July 1974. There were, of course, numerous other activities investigated in connection with this matter, including the use of wiretaps on the press, attempts to stop the publication of the Pentagon Papers, and improper contacts by the White House with the judiciary in an effort to influence the court.

2. People of the State of California v. Sandoval, San Francisco Superior Court, Case Nos. 78058, 78331

Judge:
Honorable Robert J. Drewes (deceased)

Opposing Counsel:
John Nash
P.O. Box 22032
San Francisco, CA 94122
[No telephone number available]

In 1972, I served as sole government counsel for the prosecution of Enrique Sandoval on two counts of murder. The trial lasted approximately four months with the jury returning verdicts of guilty on both counts. Upon completion of the penalty phase, the defendant was sentenced to death. This case was the first capital judgment rendered by a San Francisco jury in more than ten years. Subsequently, in People v. Anderson, 6 Cal. 3d 628 (1972), the California Supreme Court nullified all capital sentences. Mr. Sandoval was then sentenced to life in imprisonment.

3. People of the State of California v. Poole, San Francisco Superior Court, Case No. 82901

Judge:
Honorable John Ertola (Ret.)

Opposing Counsel:
Joe R. McCray
433 Turk Street
San Francisco, CA 94102
(415) 775-3900

In 1972, as an Assistant District Attorney, I prosecuted Junious Poole for the murder of a police officer. The trial lasted approximately two months during which time the defense of diminished capacity was presented. After extensive psychiatric testimony, this defense was rejected by the jury. The defendant was sentenced to life imprisonment.

4. People of the State of California v. Simmons, San Francisco Municipal Court (I do not recall the case number.)

No Judge.

Opposing Counsel:
Stanley J. Friedman
13255 San Pablo Avenue
San Pablo, CA 94806
(510) 215-7888

As Chief Assistant District Attorney in 1979, I presented evidence to the grand jury of laundering of political contributions by the defendant. This investigation covered a six-month period, and the grand jury ultimately returned an indictment to which the defendant pled guilty. This was the first case brought in San Francisco involving violation of the laws relating to the reporting of political contributions.

5. United States v. David Weiss, N.D. Cal. 1988, Case No. CR 88 20047 WAI.

Judge: Honorable William A. Ingram (deceased)

Opposing Counsel:
Terry Lee
United States District Court Santa Clara District Attorney's Office
70 West Hedding Street
San Jose, CA 95110
(408) 299-7503

People of the State of California v. Weiss, Santa Clara County Superior, Case No. 603123.

Judge: Honorable John S. Pasco (Ret.)

Opposing Counsel:
William Larsen
Santa Clara Municipal Court Santa Clara District Attorney's Office
70 West Hedding Street
San Jose, CA 95110
(408) 299-7503

In 1988, I represented defendant Weiss, charged with income tax evasion while serving as the contractor for the San Jose Transit Mall. He was the target of investigations conducted by more than ten governmental agencies and had acquired an extremely negative reputation in the community. The grand jury investigation was two years in duration and the trial lasted several months. The jury acquitted Weiss, and, in the companion state cases, after lengthy motions, the District Attorney dismissed the remaining principal charges.

6. Donna L. Whitney, et al. v. David W. Mitchell, et al., State of Minnesota, County of Hennepin, Court File No. 89-15980.

Judge: Honorable Thomas H. Carey (Ret.)

Opposing Counsel:
Herbert Stern and David Stone
Stern & Greenberg
75 Livingston Avenue
Roseland, NJ 07068
(201) 535-1900

Co-Counsel:
Richard G. Wilson
Maslon, Edelman, Borman & Brand
3300 Norwest Center
Minneapolis, MN 55402
(612) 672-8200

I represented an attorney in a legal malpractice matter involving a claim in excess of $50 million. Pre-trial matters consumed many months, including summary adjudication and motions. The court followed the unusual procedure of requiring counsel to preview their opening statements before opposing counsel and clients. Subsequent to this presentation, the matter settled.

7. Estate of Elvis Presley v. Col. Tom Parker, Court: Labor Commissioner, State of California, Case No. 4-82.

No judge.

Opposing Counsel:
Edmund S. Schaffer
1801 Century Park East, Suite 2222
Los Angeles, CA 90067
(310) 522-1707

Co-Counsel:
L. Peter Parcher
Parcher, Hayes & Liebman
500 Fifth Avenue
New York, NY 10010
(21 2) 382-0200

I was retained by the Presley Estate to bring this case against the late artist's unlicensed manager, requiring disgorgement of all fees received during the manager's representation of the artist. The case incorporated the doctrine set forth in *Buchwald v. Katz*, 8 Cal. 3d 493 (1972), in which I had participated on behalf of the band Jefferson Airplane once the case was remanded for trial. These cases protected the rights of artists who are often ill-equipped to exercise control over their commercial benefits. I was co-counsel with L. Peter Parcher in these matters, which ultimately settled without a hearing.

8. Max Sobel Wholesale Liquors v. Commissioner of Internal Revenue, 630 F.2d 670 (9th Cir. 1980) (C.J. Choy, Tang and D.J. Reed).

I do not recall the name of the judge at the tax court level.

Opposing Counsel:
Edward B. Simpson
Internal Revenue Service
160 Spear Street, 9th Floor
San Francisco, CA 94105
(415) 744-9208

My client included the cost of promotional merchandise (extra bottles of liquor) in the cost of goods sold although the sale of this promotional merchandise was in violation of state liquor laws. The Ninth Circuit upheld the tax court's ruling that the Internal Revenue Code was neutral in its application of accounting practices. Thus, even if the sale of the promotional merchandise was illegal, it was not for the taxing authorities to attempt either directly or indirectly to enforce state laws which were criminal in nature. I served as trial counsel with my tax partner in the tax court in a two-day trial and as the advocate before the Ninth Circuit.

9. United States v. Harris, N.D. Cal. 1991, Case No. CR 90-0456 CAL.

Judge: Honorable Charles A. Legge (Ret.)

Opposing Counsel:
Scott McKay
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2000

Co-Counsel:
Robert P. Feldman
Wilson, Sonsini, et al.
650 Page Mill Road
Palo Alto, CA 94304
(415) 493-9300

Jeff Chanin
Keker & Van Nest
710 Sansome Street
San Francisco, CA 94111
(415) 391-5400

My client, Ronald Schultz, was accused of bribing a foreign official in an effort to obtain a contract for telephone equipment in violation of the Foreign Corrupt Practices Act. The significance of this case lies in the degree of preparation required in order to defend against a two-year governmental investigation spanning three continents. After a three-week presentation by the Government of its case in chief, the Court directed verdicts of acquittal as to all defendants.

10. People of Micronesia, et al. v. Continental Airlines, Inc., et al., U.S. District Court for the Northern Mariana Islands, Civil Action No. 85-0002.

Judge: Honorable Alfred Laureta (Ret.)

Opposing Counsel:
Peter Donnici and Dennis Kerwin
Donnici, Kerwin & Donnici
One Post Street, Suite 2450
San Francisco, CA 94104
(415) 986-8881

Co-Counsel:
Donald C. Williams

Carlsmith, Wichman, Case, Mukai and Ichiki
P.O. Box 241 CHRB
Saipan, CNMI 96950
(671) 322-3455

In 1985, a default was entered against Continental Airlines based upon a complaint seeking more than $50 million in damages. I was retained for the purpose of seeking relief from the default. Our motion to set aside the default required two extensive hearings before the Court over a six-month period. Prior to the Court's ruling on our motion, the matter was settled.

16. **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.)

Since 1998, all of my legal activities have been in connection with my responsibilities as a United States District judge.

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

Since 2007, I have co-taught Federal Criminal Law at the University of California, Hastings College of the Law. A copy of the syllabus is supplied.

I also taught Federal Criminal Procedure at the University of San Francisco Law School from 2000 to 2003. I no longer have any course materials.

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

I have no deferred income or other future benefit financial arrangements.

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

No.

20. **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.

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

    See attached Net Worth statement.

22. **Potential Conflicts of Interest**:

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

       None.

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

       I do not expect any conflicts to arise in this position. I am careful to identify and avoid conflicts as a federal judge. Were any conflicts to arise in the position, I would identify and resolve them in the same way that I do in my role as a federal judge: by following the Code of Judicial Conduct. With respect to any potential conflict of interest, I always inform the attorneys and any interested parties to determine whether there is an objection. For instance, if my wife has a significant business relationship with a person or company, even if we do not have a financial interest in the company, I inform the counsel and any interested parties to see if there is an objection. I currently do and will continue to recuse myself where even an appearance of impropriety might otherwise result.

23. **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. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

    My participation on panels and committee work are pro bono. I would estimate that approximately 25% of my time is devoted to these activities.

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
Breyer, Charles R.	U. S. Sentencing Commission	4/25/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Commissioner	☑ Nomination. Date 04/25/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 3/31/2012
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
US District Court, Northern District of California 450 Golden Gate Ave. 17th Fl San Francisco, Ca. 94102	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Director	Berkeley Law UC Boalt Hall Alumni 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 8	Name of Person Reporting Breyer, Charles R.	Date of Report 4/25/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2011	University of California, Hastings College of the Law	$5,814.00
2.	2010	University of California, Hastings College of the Law	$5,814.00
3.			
4.			

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2011	Salary - City Arts & Lectures, Inc
2.	2012	Salary - City Arts & Lectures, Inc
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting	Date of Report
	Breyer, Charles R.	4/25/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Breyer, Charles R.	4/25/2012

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)
1. Pacific Gas & Electric, common stock	B	Dividend	K	T	Exempt				
2. First Niagara Group common stock	A	Dividend	J	T					
3. U.S. Bancorp, common stock	B	Dividend	L	T					
4. U.C. Hastings Retirement Savings Plan	A	Dividend	J	T					
5. Protective Life Insurance whole life plan	A	Dividend	M	T					
6. Wells Fargo Bank cash accounts	A	Interest	K	T					
7. Chase Bank cash accounts	A	Interest	J	T					
8. IRA #1									
9. - Columbia Acorn	C	Dividend	L	T					
10. - Fidelity Advantage Floating Rate High Inc	B	Dividend	M	T					
11. - Fidelity Adv High Income	A	Dividend	M	T					
12. - Third Avenue Int'l Fund	E	Dividend	L	T					
13. - Blackrock Inflation Pro Bond Port	B	Dividend	N	T					
14. - Global Macro Fund	A	Dividend	L	T					
15. - Permanent Portfolio Fund	A	Dividend	L	T					
16. - Northern Lights Fund	A	Dividend	K	T					
17. - iShares MSCI EAFE Index	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)
A = $1,000 or less
B = $1,001 - $2,500
C = $2,501 - $5,000
D = $5,001 - $15,000
E = $15,001 - $50,000
F = $50,001 - $100,000
G = $100,001 - $1,000,000
H1 = $1,000,001 - $5,000,000
H2 = More than $5,000,000
I = $15,000 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 = 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 8	Name of Person Reporting Breyer, Charles R.	Date of Report 4/25/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. - IShares Barclays Treasury Inflation	B	Dividend	N	T					
19. - IShares TR MSCI Emerging Markets Index	A	Dividend	K	T					
20. - IShares IBOXX $ Investor	C	Dividend	M	T					
21. - IShares S&P North American Natural	A	Dividend	L	T					
22. - IShares Tr Russell Midcap Index	A	Dividend	L	T					
23. - IShares Tr Russell 1000 Growth Index	A	Dividend	N	T					
24. - IShares TR Russell 2000	A	Dividend	L	T					
25. - Pimco Total Return	C	Dividend	M	T					
26. - Templeton Global Bond	A	Dividend	M	T					
27. - Vanguard Specialized Portfol Div App ETF	B	Dividend	N	T					
28. - Fidelity Cash Reserves	A	Dividend	K	T					
29 - Fidelity Cal Municipal Money Mkt Fund	A	Interest	K	T					
30. - Vanguard Intermediate Term Muni Bond Fund	A	Dividend	J	T					
31. IRA #2									
32. - Fidelity Cash Reserves	A	Interest	J	T					
33. - Blackrock Inflation Protected Bond Portfolio	A	Dividend	K	T					
34. - Columbia Acorn Fund	A	Dividend	J	T					

1. Income Gain Codes (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A = $1,000 or less
B = $1,001 - $2,500
C = $2,501 - $5,000
D = $5,001 - $15,000
E = $15,001 - $50,000
F = $50,001 - $100,000
G = $100,001 - $1,000,000
H1 = $1,000,001 - $5,000,000
H2 = More than $5,000,000
I = $1,000,001 - $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 = More than $5,000,000
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 8

Name of Person Reporting	Date of Report
Breyer, Charles R.	4/25/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. - Primecap Odyssey Growth	A	Dividend	J	T					
36. - Global Macro Fund	A	Dividend	J	T					
37. - Permanent Portfolio Fund	A	Dividend	J	T					
38. - Select American Shares	A	Dividend	J	T					
39. - IShares TR Barclay USAGG B	A	Dividend	K	T					
40. - IShares Barclay TIPS BD	A	Dividend	K	T					
41. - VanguardSpecialized Portfol Div App ETF	A	Dividend	K	T					
42. - IShares TR IBOXX INV CPBD	A	Dividend	K	T					
43. - IShares TR MSCI EAFE Index	A	Dividend	J	T					
44. - IShares TR MSCI EMERG MKT	A	Dividend	J	T					
45. - IShares TR Russell 2000	A	Dividend	J	T					
46. - IShares TR Russell MidCap	A	Dividend	J	T					
47. - IShares TR Russell 1000GRW	A	Dividend	K	T					
48. - IShares TR S&P NA NAT RES	A	Dividend	J	T					
49. - PIMCO Total Return	A	Dividend	K	T					
50. - Templeton Global Bond Fund-Class A	A	Dividend	K	T					
51. - Third Avenue International Value 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
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 7 of 8	Name of Person Reporting Breyer, Charles R.	Date of Report 4/25/2012

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

Part VII - Notes

1. All dividends (both regular and capital gain) were reinvested for the mutual funds shown on Part VII which results in a minor increase in the number of shares held.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Breyer, Charles R.	Date of Report 4/25/2012

IX. CERTIFICATION.

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

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

Signature

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		13	510	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	3	369	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				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		370	970
Real estate owned – see schedule	5	400	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		60	000	Auto loan		35	558
Cash value-life insurance		171	109	Home equity line of credit		62	693
Other assets itemize:							
U.C. Hastings Retirement Savings Plan		4	487				
				Total liabilities		469	221
				Net Worth	8	549	339
Total Assets	9	018	560	Total liabilities and net worth	9	018	560
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	
BlackRock Inflation Protected Bond Portfolio	$ 369,355
Columbia Acorn Fund-Z	89,116
Fidelity California Municipal Money Market Fund	20,113
Fidelity Cash Reserves	33,749
Fidelity Floating Rate High Income Fund	153,299
Fidelity High Income Fund	105,469
First Niagara Group stock	925
Global Macro Fund Class A	61,695
iShares Barclays Aggregate Bond Fund	40,045
iShares Barclays TIPS Bond Fund	388,898
iShares iBoxx $ Investment Gr. Corp. Bond Fund	266,119
iShares MSCI EAFE Index Fund	56,001
iShares MSCI Emerging Market Fund	44,586
iShares Russell 2000 Fund	77,912
iShares Russell MidCap Fund	91,000
iShares Russell 1000 Growth Index Fund	386,735
iShares S&P N.A. Natural Resources Sector Index Fund	82,098
Northern Lights Fund	48,099
Permanent Portfolio Fund	72,473
PG&E stock	47,602
PIMCO Total Return Fund	266,307
PRIMECAP Odyssey Growth Fund	8,825
Selected American Shares	7,380
Templeton Global Bond Fund Class A	150,281
Third Avenue International Value Fund	84,377
U.S. Bancorp stock	63,746
Vanguard Dividend Appreciation ETF	342,862
Vanguard Intermediate-Term Municipal Bond Fund	10,387
Total Listed Securities	$ 3,369,454

Real Estate Owned	
Personal residence	$ 4,000,000
Vacation home	1,400,000
Total Real Estate Owned	$ 5,400,000

AFFIDAVIT

I, CHARLES R. BREYER, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 23, 2012 (DATE)

(NAME)

NORMA G. HILTON
Commission # 1966065
Notary Public - California
San Mateo County
My Comm. Expires Jan 8, 2016

(NOTARY)

Senator FEINSTEIN. Thank you very much.

Why don't we begin our questions. I am going to begin with a softball, and they will get more difficult. And if each one of you would give a brief answer, I would appreciate it.

The Federal courts have a special responsibility to make sure that every person is treated fairly under the law, that our disputes are resolved according to the law, and that all our rights are protected.

Please describe briefly your view of the role of the courts, particularly the Federal courts, in our system and how you will strive to provide fair and impartial treatment to litigants who come before you as a district court judge if you are confirmed by the Senate. Judge Geraci, if we might begin with you.

Judge GERACI. Thank you, Senator, for that question. As my approach has been throughout my 20 years as a judge, it is very important to create in the courtroom an atmosphere under which all the litigants, the attorneys, and even the spectators understand that they are getting their day in court, which means that a judge has to be a good listener. You have to make good inquiry so you understand the issues before the court. You have to be deliberate in your decisions, be decisive. But then the most important thing I think a judge does is explain the rationale for their decision. That approach I believe is what gives confidence to the public, and that is what I would do as a Federal district court judge if I am so confirmed.

Senator FEINSTEIN. Thank you very much.

Judge Olguin.

Judge OLGUIN. Thank you, Senator. If I am fortunate enough to be confirmed as a district judge, I would continue what I have done for nearly 11 years as a magistrate judge, which is strictly follow the rule of law, treat all the litigants with respect and dignity, be transparent in the decisionmaking process, and be timely in the decisionmaking process.

Senator FEINSTEIN. Thank you.

Judge Mannion.

Judge MANNION. Yes, Senator, I agree with my colleagues. I think that one of the most important things is respect for everyone—the litigants, the attorneys, and everyone who comes before the court.

Second, I believe timeliness is very important, that we decide cases and move them as quickly as reasonably possible under the circumstances.

Third, and maybe most importantly, that we decide cases based upon the law and only upon the law.

And, finally, I believe that the written decisions that we enter should be those that are understood by the litigant. I think that simple is better. I do not think we have to write in legalese. We should write so that the litigants themselves can understand what we did and why we did it.

Senator FEINSTEIN. Thank you. I especially appreciate it. Thank you.

Mr. Brann.

Mr. BRANN. Senator Feinstein, I think the public has a right to expect that when they appear before the court, that the court most

importantly is going to possess integrity, that the court is going to be impartial, that the court is going to hear their case in a courteous fashion, and that the court is going to render a decision in a diligent fashion, that there will be no great delay.

I agree with my colleagues' statements that rendering decisions in a manner that is understandable by the public is also paramount. The public needs to understand that ultimately to have confidence in the judiciary, and I would hope that if I were confirmed that I would display those traits as a Federal district judge.

Senator FEINSTEIN. Thank you very much.

Judge Breyer, you have been through this once before, so I am going to change the question for you slightly. How do you see your experience relating to the Sentencing Commission?

Judge BREYER. Well, I have actually for nearly 45 years been involved in the sentencing process, first as district attorney, as a Federal prosecutor, as a defense lawyer, and finally 15 years as a judge. And I think the real experience of sentencing individuals, or corporations, depending on what the case is about, is probably one of the most difficult tasks for Federal judges. And I think that the Sentencing Guidelines have provided not just a reference point but a rock, an anchor from which individuals, individual judges can evaluate sentences, and that has been extraordinarily important.

What I would hope to do, if I am confirmed, is to ensure that judges do follow the guidelines, that the guidelines become very meaningful in the sentencing process, and I would hope to contribute to that effort.

Senator FEINSTEIN. Thank you.

Senator Grassley, would you like to—maybe we should just alternate questions since it is just the two of us. Is that all right?

Senator GRASSLEY. Why don't you just go ahead and finish yours. Then I will ask mine.

Senator FEINSTEIN. All right. Well, I have several questions. They get tougher as I go along.

Senator GRASSLEY. Then since mine do not get tougher as they go along, why don't you let me do all mine now and then back to you. Is that OK?

Senator FEINSTEIN. OK.

Senator GRASSLEY. I have a first question for Mr. Brann and Judge Geraci. For much of your career, you have been actively involved in party politics. Now, there is certainly nothing wrong with that, but should you be confirmed, your political history might concern future litigants. Can you assure this Committee that, if confirmed, your decisions will remain grounded in the precedent and the text of the law rather than any underlying political ideology or motivation?

Mr. BRANN. Would you like me to proceed first, Senator?

Senator GRASSLEY. You can, yes.

Mr. BRANN. Well, I think that is right, I have certainly been involved in politics, and I found that to be rewarding and interesting. But if I am confirmed as a Federal district judge, my role is to sit as a judge and to interpret the law, look at the text of the statute, look at the text of the Constitution, and apply it to the facts at hand. Partisan politics has no role whatsoever in the judiciary, and the public should be confident of that.

Senator GRASSLEY. OK. Thank you.

Now, Mr. Geraci.

Judge GERACI. Yes, Senator, I have actually not been involved in politics over most of my career. As an assistant district attorney, I was prohibited from participating in politics. As an Assistant United States Attorney, I was prohibited from participating in politics. And certainly as a judge over the last 20 years, except for my own campaigns.

During the time period when I was in private practice between 1987 and 1991, I did get involved with some local races because I think it is important to be involved with the political system. So I have not been actively involved throughout most of my career, and certainly politics has no role whatsoever in the role as a judge.

Senator GRASSLEY. OK. I am going to ask Judge Olguin: In a speech introducing California Supreme Court Justice Carlos Moreno, you praised his lone dissenting opinion in *Strauss* v. *Horton*, the decision by the California Supreme Court that upheld the validity of Proposition 8. You said that, "It was decency and compassion along with a great intellect that brought him to do what will no doubt be considered one of his most famous and courageous decisions."

You go on to conclude that, "The Proposition 8 decision was just one of a string of opinions in which Justice Moreno was guided as much by compassion as by legal talent."

So my question to you, I would like to give you the opportunity to comment on this remark, but more generally, from each of you—so this would apply to each of you—what role does compassion play in the judicial decisionmaking process? And I will start with Judge Olguin.

Judge OLGUIN. Thank you, Senator. I have known Justice Moreno for 15 years, and it was in part—the speech was in part because of my personal relationship with him. But having said that, having looked at the speech and reread it, I think some of the words I used, some of the wording was inappropriate. And I did not mean to suggest that compassion should be involved in the decisionmaking process, and I think my record as a magistrate judge for nearly 11 years demonstrates that I have strictly adhered to the rule of law.

Senator GRASSLEY. Could the other three of you, starting with Judge Geraci, comment as well?

Judge GERACI. Certainly, Senator——

Senator GRASSLEY. Not on his statement, but on——

[Laughter.]

Judge GERACI. Senator, as to the role of a judge, we have to understand that we affect people in our decisions, no matter if it is a civil or criminal decision. With that in mind, we have to understand that people come, there are certain feelings and sentiments in a legal proceeding. However, sympathy or compassion has no role in the ultimate decision. The decision has to be based upon the facts and the laws of that case. The only way that would come in is in explaining, and I think as I said in my opening remarks, as a judge we are obligated to explain the basis for our decision. But compassion or sympathy has no role in the ultimate decision of the court.

Senator GRASSLEY. Judge Mannion.

Judge MANNION. Senator, it has no role. It is based upon the law, period.

Senator GRASSLEY. Mr. Brann.

Mr. BRANN. Senator Grassley, I would agree with that, and I think that while you may choose to be personally sympathetic in some way, you have to compartmentalize that. The role of a judge is to apply the law to the facts of the case, and that is it.

Senator GRASSLEY. I would ask each of the four of you to comment on this issue I am going to bring up that I term a "judicial temperament." For each of you, I would note that an appointment to the Federal bench is a position of public trust. In some cases, judges forget that they are public servants. A former member of this Committee, Senator Strom Thurmond, frequently reminded nominees that the more power one has, the more an office holder has—let me say that again. He reminded the nominees that the more power one has as an office holder, the more courteous one should be.

Would each of you share your views on the proper temperament of a Federal judge and how you are prepared to deal with colleagues, court staff, attorneys, parties appearing before you, and the general public? We will go left to right here.

Judge GERACI. Senator, raising four children and having three grandchildren help that in the first instance, but obviously it is important that you treat everybody with respect, and that includes the staff, the attorneys, the litigants, anybody that appears in your courtroom.

When I first became a judge, a friend of mine, another judge, told me that that is what recesses are for. When sometimes the crunch or the volume of the case or the tension in the courtroom gets too strong, then you get off the bench and you relax for a while.

I believe my temperament has always been very sound, and the reaction of the attorneys has indicated that through the various ratings by the bar association.

Senator GRASSLEY. Go ahead.

Judge OLGUIN. Thank you, Senator. I will continue to do what I have done for my time as a magistrate judge. I believe I have the appropriate temperament. I believe it is important for a judge to respect all the parties, the litigants, and the witnesses, and treat everybody with dignity and respect.

Senator GRASSLEY. OK.

Judge MANNION. Senator, I agree with that. I believe that respect of litigants—they come to Federal court. This may be a first experience for them. It may be a very unusual experience for them, and I think respect is exceptionally important. Counsel often have positions they have to take, and we should be respectful to counsel all the time, and I certainly believe that I always have been in my 11 years.

In addition to that, I have got a small yellow "sticky" that I look at every time I go on to the bench, and it says, "Remember that you"—meaning me—"are the public servant." I am there to serve the public. They are not there to serve me. And I always believe that is the case, and I have tried to do that in my 11 years on the bench.

Senator GRASSLEY. Thank you.

Mr. Brann.

Mr. BRANN. Thank you, Senator. I am not a judge. The others have the advantage of having sat as judges, and they have developed those traits. I aspire to that, as I aspire to sit as a judge. And it seems to me the judges that I have appeared before that I have been most impressed by are those who are just very courteous to the litigants, very courteous to the attorneys, and they get their work done on time. They are diligent. They appreciate that the public has a right to expect that that is going to be done, and those are traits that I would hope to emulate if I am fortunate enough to be confirmed.

Senator GRASSLEY. OK. Then my last question would come under the title of what I call "judicial philosophy." There are a number of different theories explaining how judges should interpret the Constitution. Some theories emphasize original understanding. Some emphasize literal meaning, and some focus on general principles underlying the Constitution and applying a contemporary meaning to those principles. While all nominees recite the mantra that they will apply the law to the facts, in this particular question I am looking for an answer with a little bit more thought behind it.

What constitutional interpretation model would guide you when faced with constitutional questions? And, again, we will go from left to right.

Judge GERACI. Thank you, Senator. I believe that you have to look at the precedent from the Supreme Court in order to determine the meaning of the Constitution. It does not change over history. The words in the Constitution are what they were meant to be as originally written.

Judge OLGUIN. I agree with Judge Geraci, and I think stare decisis is the cornerstone of precedent and applying the rule of law. And that has been my judicial philosophy, and I will continue to do that.

Senator GRASSLEY. Judge Mannion.

Judge MANNION. Senator, I agree with that. The Supreme Court is, of course, precedential. It must be followed. The Third Circuit in my case is precedential. It must be followed. And I have done that and would do that.

Senator GRASSLEY. Mr. Brann.

Mr. BRANN. Senator Grassley, first I believe the Constitution is law, and I think you look to that first. You look to the text of the Constitution, and you interpret it accordingly, particularly if it is a matter of first impression. Certainly I am going to be bound by the decisions of the U.S. Supreme Court in my particular part of the State—or, excuse me, my particular part of the country, the United States Court of Appeals for the Third Circuit. But it seems to me that you should be looking as a district judge to the text of the Constitution or the text of the particular Federal statute that needs that level of interpretation.

Senator GRASSLEY. Mr. Breyer, I have just a couple questions for you. Given the discretionary nature of the Sentencing Guidelines, how would you define the function of the Sentencing Commission

in general? And would you describe your role on the Commission, should you be confirmed?

Judge BREYER. I think the Sentencing Commission has several roles.

First, I think it is to gather information based upon facts, based upon experiences, digest that information, and publish that information so that judges and so that Congress has that type of information through the sentencing process and the experience of judges.

Second, I think its role is to consult with Congress and to work with Congress in a way that the sentencing laws become rational and universally applied throughout the Federal system.

The whole point of the Sentencing Guidelines 1984 and forward was to introduce some type of uniformity with respect to sentencing so that judges' personal views do not control a sentence but, rather, the experience of judges over time controls what is rational in the sentencing process. That is one thing.

The second thing—or maybe it is the third. The next thing is that I think it is very, very important to have transparency in sentencing. We do the public's business. We are an independent branch. We do the public's business. And it is important that we explain to the public our reasons for doing it and that this information is provided to Congress. That is my view of it.

Senator GRASSLEY. As a sitting district judge, you had extensive experience with guidelines. Could you share some of your thoughts on the guidelines and give us some insight as to when you think it is appropriate to depart downward?

Judge BREYER. I think that the—first of all, an area of concern that I have is that judges, because the Sentencing Guidelines are advisory, have a tendency to depart from the Sentencing Guidelines. And I think that departures, which are set forth in the Sentencing Guideline Manual, should be viewed in the language of those departures and not created by virtue of a judge's personal views.

In terms of departures, I think that one has to look at the reasons and set forth the reasons with clarity because these reasons and the sentence that a judge gives in a district court should be reviewed by a court of appeals, and that the court of appeals should look at the reasons and determine whether or not those were valid reasons for any departure.

Senator GRASSLEY. I think you have answered my other two questions, so I will yield the floor.

Thank you, Madam Chair.

Senator FEINSTEIN. Thank you, Senator Grassley.

I think I have four questions here, and the first one is the issue of precedent. I have been on this Committee now for 19 years, going on 20, and have sat on the hearings of many Supreme Court Justices. And one of the big issues of concern has been the principle of stare decisis, precedent, and virtually everybody says to us, "Oh, yes, we will observe precedent." They even say, "Well, that is super-precedent. I will observe it." And then, of course, they turn around and do exactly the opposite.

So I have kind of reached the point where I am not going to vote for someone anymore if I believe they are not going to carry out precedent. So I would like to begin with a question in this area.

Nominees from both sides of the aisle are confronted with precedent, and precedent with which they might disagree. The question is: Will the nominee be able to follow the law notwithstanding his or her personal or political preference? So here is the first question, and I will begin with you, Mr. Brann. Are you committed to following precedent of the Supreme Court and the Third Circuit even though you may disagree with it?

Mr. BRANN. Absolutely. I mean, I think that is going to be my role. It is my job as a Federal district judge, and if I did not believe that I was able to undertake that, I would not have signed up for this nomination, I do not think. I mean, that is what I have to do.

Senator FEINSTEIN. OK. For example, in *Planned Parenthood* v. *Casey* in 1992, the Supreme Court reaffirmed that the Constitution affords a woman the right to choose. Are you committed to following that precedent?

Mr. BRANN. Yes. I must do so.

Senator FEINSTEIN. If the Supreme Court upholds the First Circuit's decision striking down Section 3 of the Defense of Marriage Act, or DOMA, would you faithfully follow the Supreme Court's decision?

Mr. BRANN. Yes, I would have no choice but to do so, Senator.

Senator FEINSTEIN. OK. Good.

Senator Grassley pointed out that you have been a member of the leadership of the Pennsylvania Republican Party, and I think that is just fine. You were a member of the party's Judicial Evaluation Panel, its Judicial Selection and Review Committee. You are a member of the Federalist Society—and I have voted for judges that are members of the Federalist Society—and the National Rifle Association. So you are a very active Republican, probably the most Republican judicial nominee from the Obama White House, I think.

Could you please describe the nature of your work in the Pennsylvania Republican Party and Republican political campaigns and describe your work on the Judicial Evaluation Panel and how you believe—and you answered this question of Senator Grassley I thought to some extent. Can you, in fact, separate what has been strong political views and activism from your role as an impartial decisionmaker?

Mr. BRANN. Yes, well, let me try to answer those questions in order, Senator Feinstein, if I may.

I became involved and interested in Republican politics when I came out of law school, and I was interested even then, even in college. And my views are basically conservative views, I think. And when I came back to my rural county, I was invited to be involved in Republican politics, served on the county committee, and then that eventually evolved into being involved in the State committee roles and activities. And I just enjoyed it. I enjoyed meeting people there.

My particular interest in that was interest in judicial candidates. I was interested in finding, selecting, and promoting good candidates, whether they were lower-court judges or attorneys, who were interested in running—in Pennsylvania, all judges are elect-

ed, as you may be aware, and those interested, parties interested in running for the appellate judiciary. And I come from a rural area which does not frequently have a lot of candidates for the appellate judiciary. Those candidates frequently come from the two large urban areas, Philadelphia and Pittsburgh. So I was interested in promoting competent attorneys and competent judges from the rural or the small-city areas to sit on the bench at the appellate level, and I think I did that with some level of success. You know, you never know what you are going to get, of course, as a judge, and that is your concern here, I think. What are you ultimately going to get? Anybody can make commitments to the committee, but how is it ultimately going to play out?

I am very appreciative of that because I was very interested in that particular role, and I tried to select people that I thought had the right temperament, good educational backgrounds, had experience, and that I thought would be interested—people that I would want to appear before myself, because I am an active advocate at local trial courts and, of course, in the appellate judiciary.

I am moving into, potentially moving into a different role entirely, and that is a role not as an advocate. I am an advocate for clients, and I have been an advocate for others seeking judicial office and other political office. That is done, or will be done shortly, I hope. And my role, I think, as a judge is to simply compartmentalize and say, yes, I have, I think, fairly firm political views on a variety of issues, including some of the matters that you have referenced in your earlier question. My job is to factor that out, and I think that is actually the most difficult role as a judge, frankly, to not bring your own personal views to bear, because, frankly, what confidence would the public have ultimately if you did that? I mean, they would think this person should not really be a judge, they do not have the temperament, they do not have the wisdom to be a judge.

I hope that I would ultimately have those traits on the bench, and I give you as much assurance as I can that that is what I would seek to do. Otherwise, I simply would not have made application for this position.

You had a number of questions in there, and I hope I have answered those in the right order.

Senator FEINSTEIN. I think you did. I actually find you believable, too.

[Laughter.]

Mr. BRANN. Well, thank you, Senator. I appreciate that.

Senator FEINSTEIN. So I take you at your word. And I actually believe people can do this. I think it is hard, but I think they can do it. I think, though, once you get there, the temptation is very strong not to do it. And I see that in judges who are active today on major courts. And, you know, after awhile, you kind of feel like a fool spending a lot of time, particularly on Supreme Court nominees, because we spend days, hour after hour after hour, and you get a view, and then you find that view is just smashed by performance. And so I do not want that to happen with you, and I listened very carefully not only to your words but also to your body language, and I think you are sincere. And I want you to know that is important to me.

Mr. BRANN. Well, my goal, Senator, is to be a good judge. And when I am done with my career, I want people to look back on that and say this person was a good judge. The best judges that I have appeared before are individuals you would have really no sense of where they were politically. You might know that their background is a Democrat or is a Republican. You would have no sense of that. You have no sense of that in there in the decisions or in the manner that you were treated or that you see other parties treated. And that is my goal.

Senator FEINSTEIN. Thank you very much.

I would like to go down the aisle on the question of stare decisis. Now, of course, you are district court, but, nonetheless, you are going to look at the law. Comment on what your feelings are on precedent. Judge Mannion, I will go to you next.

Judge MANNION. Thank you, Senator. Well, precedent obviously is how our system works. In other words, in order for the United States court system to work in a way that people can understand and expect certain rulings, we must follow precedent. As a magistrate judge for the last 11 years, I have judiciously followed precedent of the Supreme Court and the Third Circuit. I would continue to do that on the district court without fail.

Senator FEINSTEIN. Thank you.

Judge Olguin.

Judge OLGUIN. I do not really have anything to add to Judge Mannion's answer. I completely agree. We even have the same number of years of experience.

[Laughter.]

Senator FEINSTEIN. Thank you.

Judge GERACI. Senator, precedent is the foundation of the rule of law. It is very important there be consistency. And when we—if fortunate enough to be sworn in as a district court judge, we take an oath to uphold the laws of the United States, and that includes the precedent from the Supreme Court and in my case from the Second Circuit.

Senator FEINSTEIN. Thank you very much. And, of course, you know you are all under oath, and that oath means something. So I am going to watch your careers.

In any event, let us see. Let me talk a moment about judicial ethics because we are very proud of our Federal courts. They are the highest courts of our land. They should be. And if a judge's impartiality can reasonably be questioned, it is really essential that the judge recuse himself or herself.

Now, Federal judges have great discretion in determining when they will recuse themselves. I think this is an important question to consider, so here is the question: How do you interpret the recusal standard for Federal judges? And in what situations do you expect you will have to recuse yourself? Judge Geraci.

Judge GERACI. Yes, thank you, Senator. You need to consider the parties before you. If there is any relationship between the parties, you have to make a determination whether or not that in any way is going to affect the court's impartiality, even the appearance of impartiality. That is very critical. The parties must be examined to determine whether or not they feel for some reason there appears

to be any type of a conflict of interest, and if there is, I think you err on the side of being careful and recuse in that particular case.

Senator FEINSTEIN. Thank you.

Judge Olguin.

Judge OLGUIN. Thank you, Senator. I will continue to follow the practice that I have been for the last 11 years and comply and follow the canons of judicial conduct as well as 28 U.S.C. 455.

Senator FEINSTEIN. So what is your practice?

Judge OLGUIN. I interpret them very—I am very careful, and if there is any doubt, I recuse myself.

Senator FEINSTEIN. Have you recused yourself?

Judge OLGUIN. In many, many cases. Many cases over the years.

Senator FEINSTEIN. Do you have a number?

Judge OLGUIN. I do not have a number.

Senator FEINSTEIN. OK. Thank you.

Judge MANNION. Senator, I agree that you look at the canons of judicial conduct and, of course, 455. In addition to that, in the Middle District of Pennsylvania, we have an automated system that allows us to put in any conflicts of interest. Once a month, I judiciously review that system, add anybody or any corporate entity, anything that I have a financial investment in, a financial interest in, a personal relationship with to that list, then automatically if those cases would be assigned to me, they would run through the conflict list and not be assigned to me.

The ones that do get through, which occasionally has happened, if it was a personal relationship, I would notify counsel of that. If it was a financial relationship, I would notify counsel and recuse myself and have done that on a number of occasions. I will not say it is a great number, but on every occasion where it was required, I have.

Senator FEINSTEIN. Thank you.

Mr. Brann.

Mr. BRANN. Senator Feinstein, I am aware of that automated system. I obviously have not participated in that, but I think that is very helpful, having talked to the Federal judges in my district about that. And, again, I am going to be bound by the judicial canons. I am going to interpret those, I think, very carefully and, you know, certainly recuse myself as needed if those issues come up, whether it is a person I have had some affiliation with or a financial investment. Again, I want to be mindful of the fact that the public needs to have confidence in the judiciary, and they need to have confidence in the impartiality of the judiciary.

Senator FEINSTEIN. Thank you.

Judge Breyer, what did you do? I am curious.

Judge BREYER. Well, two things. First, when I served on the Executive Committee of the Judicial Conference, we implemented an automated system for judges to be alerted to conflicts for any securities or even individuals who we had put on a conflict list. This was extraordinarily helpful because—I do not know whether you have observed it or not, but I have found a number of judges not to be very good in terms of money managing and knowing what they have and what they do not have. And so when the system was developed, the Executive Committee dictated that it be not only available but mandatory in every judicial district so that judges

would know, because the judge does not want to find out about that share of stock that he or she owns on the front page of a newspaper. And that is one thing that at least I was a participant in.

Secondly, there is always the issue of the appearance of an impropriety, not that impropriety exists but that there is an appearance of bias or an impropriety. And the canon of ethics requires that where there is a reasonable appearance of an impropriety that a judge recuses himself.

So the first question you have is if any judge starts to think about it, that is a problem. That is an indication right there that the judge may have a problem. And what I have followed in my practice is disclosure—not just a question of whether I think I can be fair, but will the litigants think I am fair. And so my practice has been to disclose any potential conflict that I may have, and indeed, I think that that is a fairly good practice. I do not think any of my hopefully soon to be colleagues will find that there is a shortage of business. If, in fact, you recuse yourself in a case under the system of case assignments, you will get another case. And it may be more interesting, it may be less interesting.

But in any event, that is not the test. The test is not whether you are working hard or whether it is a matter that you should consider. The question is: When you decide a case, will the public and the litigants believe, and rightly so, that it was decided by an impartial decider.

Senator FEINSTEIN. Thank you very much. I think on those words it is time to close this hearing. I want to thank you all very much. You were very straightforward and direct, and it is very much appreciated.

At the end of the hearing, the record will be held open for 1 week plus an extra day. That is until July 5th because of the holiday. So all comments and letters should be in by that time.

Let me thank you very much, let me thank your families. It is a good day to be in Washington, so I hope you all take your families out to a nice dinner tonight.

Thank you, and the hearing is adjourned.

[Whereupon, at 11:04 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Matthew W. Brann
Nominee to be United States District Judge for the Middle District of Pennsylvania
to the Written Questions of Senator Chuck Grassley

1. **While you responded to questions at your hearing regarding your ability to be fair and objective, what further assurances or evidence can you give the Committee and future litigants that you will be fair to all who appear before you, if confirmed?**

   Response: I have spent twenty-one years as an attorney engaged in the private practice of law. During my career, I have represented a diverse cast of clients, from large corporations, banks, and affluent individuals to the poor and disadvantaged. I have made every effort to treat all of my clients, as well as opposing counsel, witnesses, judges and court staff fairly and courteously and without regard to their political beliefs or social status. If I am confirmed as a federal district judge, I firmly intend to continue to treat all litigants, counsel, staff and my prospective colleagues with the same courtesy, and render decisions fairly and diligently.

2. **You have spent your entire legal career as an advocate for your clients. As a judge, you of course will be asked to make decisions based on the law and facts before you. What do expect to be most difficult part of this transition for you?**

   Response: My objective as an attorney is to persuade. As an advocate for clients during my twenty-one years at the bar, I have been compelled to review, consider and analyze issues from multiple vantage points, but then to persuade. If I am confirmed as a federal district judge, I will be required to review all cases before me in a neutral role, attempting to apply the law to the facts at issue, while looking beyond the advocacy of counsel. I am committed to upholding the impartiality of the federal judicial system, but it will be difficult to end my career as an advocate.

3. **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 complete impartiality in the application of the law to the facts before the court. I firmly believe that I possess this trait.

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 United States district judge should be fair, impartial, cordial, timely, calm and dignified. The parties in litigation before the court, their counsel, fellow jurists, and the court staff should be treated with courtesy. The litigants and the public in general should also reasonably expect that a federal district judge will pay attention to the facts of record, understand and apply relevant and precedential law, and then carefully explain decisions. I believe that I possess the appropriate temperament to effectively serve as a federal district judge.

5. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes. The Supreme Court and the Third Circuit Court of Appeals sitting en banc may change precedential decisions with appropriate justification. A federal district judge may not do so.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: When faced with a case of first impression, I would first consider any relevant Supreme Court decision, any germane decision of the Third Circuit, as well as examining the text of the governing law. In the examination of the constitutional or statutory provision or regulation, I would certainly consider what other courts, in decisions not binding on my court, have said about the issue at bar, and render a decision accordingly.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: As a prospective federal district judge, I would be bound by Supreme Court or Third Circuit precedent even if I believed it to be in error.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: It is presumed that a federal statute is constitutional. This is, however, a rebuttable presumption. A federal district court should declare a federal statute unconstitutional when that statute cannot be read to avoid inconsistency with the Constitution.

9. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

   Response: No.

10. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I intend to actively monitor the cases assigned to my docket, establish appropriate scheduling deadlines in both criminal and civil matters, conduct hearings on outstanding dispositive motions where warranted, and rule on all matters in a timely fashion. I would also intend to work with the United States magistrate judges in my district to expedite the settlement or trial of cases in my docket. Finally, I would always attempt to be available to the parties in civil actions to facilitate and encourage settlement.

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: I believe that federal district judges have a role in controlling both the pace and conduct of litigation. Specifically, if confirmed, I intend to regularly monitor the cases in my docket; establish reasonable and firm scheduling deadlines; promptly resolve dispositive motions; and make myself available to the parties to facilitate settlement in civil cases.

12. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on July 5, 2012. I prepared my responses to the questions on July 5 and 6, 2012. I then forwarded my responses to representatives with the United States Department of Justice on July 6, 2012 and subsequently reviewed and discussed my responses with that representative. On July 9, 2012, I authorized the transmittal of my responses to the Committee.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Matthew W. Brann
Nominee to be United States District Judge for the Middle District of Pennsylvania
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 strong belief in and commitment to the rule of law. The role of a United States district judge in our constitutional system is to listen to the facts of the case at bar, apply the Federal Rules of Evidence to the admission or exclusion of evidence and testimony, and then interpret and apply all governing law. This law may be constitutional or statutory. The law should be applied with impartiality and a decision rendered diligently.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: The rule of law as it has developed in our constitutional system presumes both impartiality and neutrality. All litigants before the court should expect and should receive fair treatment. If confirmed, I will take an oath of office which requires that I act in a fair and impartial manner towards all litigants. Moreover, my legal career has been spent representing individuals from all walks of life, whom I have treated with dignity and respect, and without regard to their social standing in the community or their political views.

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 exists to ensure stability and predictability in the development of the law. As a prospective United States district judge, I am committed to honoring this doctrine and would strictly follow the controlling precedents established by the Third Circuit and the Supreme Court of the United States.

Responses of Charles R. Breyer
Nominee to be a Member of the United States Sentencing Commission
to the Written Questions of Senator Chuck Grassley

1. **Statistics compiled by the U.S. Sentencing Commission suggest that the rate of sentences imposed below the guideline range has risen post-*Booker*. (Not including government sponsored sentences below range, such as those where the defendant receives credit for substantial assistance.) For instance, according to the Commission's 2010 Annual Report, a national comparison of sentences shows that district court judges imposed sentences below the guidelines range approximately 18% of the time. That is nearly four times as many below range sentences than were reported for fiscal year 2005, when the percentage was 4.3%. *Booker* was decided in January of 2005.**

   a. **Do you believe there is cause for concern over the rise in below range sentences, and the sentencing disparities that will necessarily accompany this rise?**

      Response: Yes.

   b. **Do you believe that Congress should consider statutory reform that would create a binding but constitutional system?**

      Response: Congress should consider all avenues that would bring about uniformity, fairness, and transparency in sentencing, consistent with the Congressional dictates of 18 U.S.C. § 3553(a).

2. **According to the United States Sentencing Commission's 2010 Annual Report, the offense type with the highest within-guideline sentencing range was simple drug possession, with 94.9% of such cases resulting in a within-guidelines sentence. Manslaughter had the highest rate of above-range sentences based on *Booker*, at 10.9%. Conversely, child pornography offenses had the highest rate of below-range sentences, at 42.7%.**

   a. **I understand that many of these cases may have involved a government-sponsored departure, but do you think it is possible that the beliefs of judges about the nature and seriousness of particular offenses might be playing a role in the rates of above and below range sentencing, post-*Booker*?**

      Response: Government-sponsored departures, of course, reflect the views of the Department of Justice. Additionally, I recognize that the personal beliefs of judges have come to play a role in post-Booker sentencing. In my opinion, the personal views of judges should not drive sentences.

   b. **If not, what do you think explains this variance by offense?**

      Response: Not Applicable.

3. **Legal scholars generally recognize four purposes for imposing criminal sentences: retribution, incapacitation, rehabilitation and deterrence. Sometimes, these purposes may contradict one another. When such situations arise, the different purposes must be prioritized.**

   a. **If the two were in conflict such that both could not be emphasized equally, would you emphasize deterrence or rehabilitation in determining an appropriate sentencing range?**

      Response: Deterrence.

   b. **If you would emphasize rehabilitation, what effect do you think that emphasis might have on potential future offenders?**

      Response: Not Applicable.

4. **Do you believe that mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing?**

   Response: Mandatory minimum sentences certainly could serve as a deterrent to certain types of crime. The extent to which they do so has not been fully or satisfactorily addressed in the research to date. If confirmed, I would work to ensure that the issue of deterrence was central to any analysis of mandatory minimums.

Response of Charles R. Breyer
Nominee to be a Member of the United States Sentencing Commission
to the Written Questions of Senator Amy Klobuchar

Part of your role on the Sentencing Commission would be serving as a resource of information for all branches of government, criminal justice practitioners, the academic community, and the public.

What would you do to ensure that critical new research and updated information is getting to each of these different groups? How will you incorporate input from these parties into the Commission's policies?

Response: As to your first question, as you know, the Commission has in place an Office of Research and Data, which actively collects information and both reports on sentencing practices and tracks how the guidelines are actually applied. The Office also does research and analysis on various criminal justice issues, at the request not only of the Commission but of Congress, the courts and others. They produce a myriad of research publications, many of which are available to the public through the Commission's website. Of course, important research comes from many different sources, and as a member of the Commission, I would continue to gather such information and engage with the broader research community.

I think it is critically important to the Commission's mission that it serve as the nation's clearinghouse on sentencing data, policy and discussion for the groups you've mentioned. That mission dovetails with my longstanding commitment to public engagement on these issues. I frequently welcome academics, public servants, and ordinary citizens to my courtroom and chambers. I attend conferences, speak on panels, and track developments in the law through a variety of legal publications. The value of such engagements is sharing my perspective as a judge, and having the opportunity to listen and learn about how sentencing law generally, and the guidelines in particular, are affecting different constituencies on the ground.

As to your second question, 28 U.S.C. § 994(o) provides that the Commission "shall consult" with prosecutors, defense attorneys, probation officers, judges, the Federal Bureau of Prisons and others to review federal sentencing policy and revisions to that policy. The Commission's practice is also to seek out public input on proposed amendments to the guidelines. It is essential to the Commission's purpose that it not be isolated from this real world feedback, but open to it. As a judge I have daily contact with many of these stakeholders, and hear firsthand – sometimes at great volume – their thoughts on the present system. As a member of the Commission, I would work closely with the other members to see that these different perspectives are heard, thoughtfully analyzed, and central to the Commission's decision-making process.

Responses of Frank Paul Geraci, Jr.
Nominee to be United States District Judge for the Western District of New York
to the Written Questions of Senator Chuck Grassley

1. **In *People v. Reynolds*, you were faced with a case of first impression concerning whether New York's constitutional protection against "unreasonable search and seizures" prohibited pretextual traffic stops. You held that the stop violates the defendant's rights if the "primary purpose" of the "traffic check was no more than a pretext for conducting a criminal investigation unrelated to any observed traffic infraction." The New York State Court of Appeals overturned your holding relying in part on a unanimous U.S. Supreme Court decision that held "subjective intentions play no role in ordinary, probable-cause...analysis."**

   a. **One would presume that a unanimous decision by the Supreme Court of the United States would be highly persuasive on the meaning of an identical state provision. What weight did you give the Supreme Court decision? What principles guided you in reaching your decision in *Reynolds*?**

   Response: In *People v. Reynolds,* I was sitting as an appellate court for a decision from the City Court of Rochester. I affirmed the lower court's determination that the evidence uncovered during a traffic stop had to be suppressed because the stop was a pretext for conducting a criminal investigation unrelated to the observed traffic infraction. At the time, the four appellate departments in New York State were split on whether or not to apply the objective standard of *Whren v. United States* under New York State constitutional law. The Fourth Department, which includes Monroe County, had previously ruled that pretextual stops violated the state constitution. The Court of Appeals, New York State's highest court, resolved the conflict when it decided *People v. Robinson,* holding that *Whren v. United States* would be applied to the New York State constitution. I did give the Supreme Court decision in *Whren v. United States* great weight, but felt bound to follow the Fourth Department precedent.

   b. **If you are confirmed as a federal judge, what sources would you turn to for persuasive authority in a case of first impression?**

   Response: If confirmed as a federal judge, assuming no precedent in the Second Circuit or United States Supreme Court, I would resolve cases of first impression by looking to the clear and ordinary meaning of the statutory language, analogous precedent in other circuits, and the legislative intent.

   c. **What is your view on the proper approach for interpreting constitutional and statutory text?**

   Response: The interpretation of constitutional and statutory text involves the court looking at the clear meaning of the statutory language, legislative intent and precedent from the Circuit Court or the United States Supreme Court.

d. What do you see as the role of legislative history in interpreting a statute?

Response: Legislative history can be helpful in a court's analysis of a statute if the text of the statute is unclear and the intent of the legislature is clearly and unambiguously articulated.

2. You have shown support for "alternative solutions" to incarceration. In one case you ordered a defendant found guilty of possessing a sawed-off shotgun to pay for an anti-violence billboard message, rather than serve time in jail.

a. What facts in this case lead you to believe your order was more appropriate than a jail sentence?

Response: In the case referred to, the defendant was a small business owner with no prior criminal record convicted of a Class A Misdemeanor. The defendant admitted possession of the weapon at his business for protection. There was no allegation of any illegal use or intended use of the weapon. The alternative sentence involved having the business owner pay all costs for the display of an anti-violence billboard in a high crime neighborhood. This allowed the defendant to acknowledge responsibility for his illegal possession and send a message to the entire community that illegal possession of weapons often leads to acts of violence.

b. Do you agree that incarceration has a role to play in deterring criminal behavior?

Response: Clearly incarceration has a significant role in deterring criminal behavior. Throughout my judicial career I have not hesitated to impose long periods of incarceration where appropriate under the relevant law and the facts of the particular case.

3. Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?

Response: Although in *United States v. Booker*, the Federal Sentencing Guidelines have been deemed to be advisory rather than mandatory, the guidelines must be given significant deference because they help create consistency and fairness in assuring that similar cases will be treated in the same manner. Upward or downward departure from the guidelines must be supported by articulable facts, not on whim or speculation.

a. Under what circumstances would you be willing to depart from the Guidelines?

Response: Aggravating or mitigating factors, supported by the facts in the individual case, must be sufficiently articulated before a court should depart from the Guidelines. This is the principle I will follow in determining whether or not to depart from the Federal Sentencing Guidelines.

b. Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?

Response: A downward departure from the Sentencing Guidelines would be appropriate if the defendant provided significant cooperation to the government. Improper provocation by the victim, diminished capacity of a defendant or a defendant's voluntary disclosure of their involvement in an offense are other examples of factors that could justify a downward departure.

4. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

Response: The sentence that a defendant receives for a particular crime should never depend solely upon the judge presiding. The facts of the case, the applicable law and the appropriate guidelines must dictate the ultimate disposition.

5. What is the most important attribute of a judge, and do you possess it?

Response: A judge must have the ability to be a good, impartial listener and treat all parties before the court with dignity and respect. I believe that during my twenty years as a judge I have demonstrated the ability to be thoughtful, deliberate, decisive and impartial.

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 must be patient, calm and respectful. I believe that I have exhibited these qualities while serving as a judge during the past twenty years.

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: Under our system of law, a judge is bound by precedent. I am committed to following the precedent of all higher courts. A judge's personal opinion has no role in judicial decision making.

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: In deciding cases of first impression, the court must first look to the clear language of the statute. If the language is not clear, legislative intent may be considered. Assuming no precedent in the Second Circuit or the United States Supreme Court, a review of other relevant circuit court decisions would be appropriate.

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: A court is bound to follow the decisions of the Supreme Court or the Court of Appeals. Disagreement with the decisions of those courts does not justify ignoring precedent.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: If an act of Congress exceeds the authority specifically granted to it by the Constitution, the court has the authority and obligation to find it unconstitutional.

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: In order to appropriately manage large caseloads the court must be willing to utilize all tools available to it including, referral of appropriate matters to the Magistrate Judges, use of new technology for case management, referral of matters to alternative dispute resolution and being active in supervising all cases from the time of filing with the court.

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: In order to control the court's docket the judge must actively engage the parties early in the proceedings, develop scheduling orders, remain firm on requiring parties to meet reasonable deadlines and be willing to discuss narrowing or resolving issues in the litigation. The court must also be active in seeking settlements.

13. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on July 5, 2012 and immediately prepared my response. On July 6, 2012, I forwarded my response to representatives of the United State Department of Justice in order for them to forward this response to the Judiciary Committee of the United States Senate.

14. Do these answers reflect your true and personal views?

Response: Yes.

Response of Frank P. Geraci, Jr.
Nominee to be United States District Judge for the Western District of New York
to the Written Questions of Senator Amy Klobuchar

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?

Response: My judicial philosophy is that a judge shall calmly, rationally and objectively adjudicate all matters before the court. A judge must be a good listener, make sufficient inquiry to fully understand the issues, be deliberate, thoughtful and decisive. It is of utmost importance that the court articulates the basis for each decision. This process will instill the confidence of the public. A judge's role is to be independent and always apply the applicable law to the particular facts of the case.

2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?

Response: Throughout my career, specifically during my 20 years as a judge, I have been committed to treating each litigant with dignity and respect regardless of their background or stake in the litigation.

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: A court is bound by precedent. The doctrine of stare decisis helps provide consistency under our rule of law.

Responses of Malachy Edward Mannion
Nominee to be United States District Judge for the Middle District of Pennsylvania
to the Written Questions of Senator Chuck Grassley

1. **As an Assistant United States Attorney, did you ever prosecute someone who was death penalty eligible?**

   Response: No, as an Assistant United States Attorney I did not prosecute anyone who was death penalty eligible.

   a. **If so, did you ever seek the death penalty?**

      Response: Not Applicable

   b. **Did you ever elected not to seek the death penalty for a defendant who was eligible? If so, please explain why you determined the death penalty was not appropriate in that instance.**

      Response: No, as an Assistant United States Attorney I did not prosecute anyone who was death penalty eligible.

   c. **Do you believe that the death penalty is an acceptable form of punishment?**

      Response: Yes, the United States Supreme Court has determined the death penalty is constitutional except in certain limited circumstances. I would follow the binding precedents of the United States Supreme Court as well as the Third Circuit Court of Appeals in matters related to the death penalty.

   d. **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, unless required to do so by controlling United States Supreme Court or Third Circuit Court of Appeals precedent.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The ability to apply the law impartially is the most important attribute of a judge. I believe I possess this attribute and have continually displayed it during my eleven years as a United States Magistrate Judge.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe a judge must be respectful, patient, impartial, courteous and diligent with respect to each litigant and attorney who comes before him or her. I consider all of these attributes to be of the utmost importance. I believe my reputation as a United States Magistrate Judge clearly demonstrates that I have met these standards.

4. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: I would first review the text of the statute, and then I would review the legislative history and the general statutory scheme within which the specific language is contained. I would next look to see if there were any analogous cases from the United States Supreme Court or the Third Circuit Court of Appeals. If I were unable to find sufficient analogous precedent in this review, I would look to other United States Circuit Courts and District Courts who may have decided analogous cases and examine their analysis and reasoning.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: I am duty bound to apply the decisions of the United States Supreme Court and Third Circuit Court of Appeals. I would do so.

7. **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 presumptively constitutional. Interpretations of such statutes should be made to avoid an unconstitutional finding and only upon a plain and unequivocal showing that Congress has exceeded its constitutional authority or infringed upon a constitutional right should a statute be found to be unconstitutional.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

   Response: No, unless required to do so by controlling United States Supreme Court or Third Circuit Court of Appeals precedent.

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: I have effectively managed a large and complex caseload over the last eleven years as a United States Magistrate Judge. I have done this by becoming personally involved in my cases from their filing to their conclusion. In the Middle District of Pennsylvania, we require a joint case management plan be prepared, discussed and approved by the presiding judge. This allows the court, counsel and parties a realistic set of scheduling deadlines that control the movement of the case through litigation. I also make extensive use of our electronic case management system, its tracking tools and reports to actively supervise that movement. Finally, I have an assigned courtroom deputy who also has the responsibility of monitoring and reporting to me on the progress of each 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: Judges definitely have a role in controlling the pace and conduct of litigation. In order to achieve the maximum benefit, this should be done in coordination with counsel for the parties whenever possible. In addition to the actions mentioned in response to Question #9 above, I have a specific discovery dispute process that requires counsel to set up a teleconference with the court prior to the filing of any discovery related motions. I have found this process successfully resolves about 90% of all discovery disputes without the time consuming need for written motions and briefs. I have also found that counsel appreciates the speed and clarity this process brings to the litigation. Finally, I have used periodic status conferences to appraise the pace and status of the case, and when necessary make appropriate adjustments in the case management plan to effectuate the speedy, fair and just conclusion of the case.

11. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on July 5, 2012. I prepared my responses upon receipt and forwarded them to the Department of Justice. I spoke with a representative from the Department of Justice about my responses on July 6, 2012. At that time, I authorized the Department of Justice to submit my responses to these questions, as well as my answers to questions from Senator Klobuchar, to the Senate Judiciary Committee.

12. Do these answers reflect your true and personal views?

Response: Yes

Responses of Malachy Edward Mannion
Nominee to be United States District Judge for the Middle District of Pennsylvania
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy is to treat all litigants and attorneys before me with respect, give all parties a fair opportunity to be heard, make my decisions impartially in accordance with the controlling law and established facts, and render prompt decisions written in a simple, straightforward manner that allows the litigants themselves to understand what I did and why I did it. I believe the role of a judge in our constitutional system is to impartially decide the issues before him or her based upon 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 believe my record as a United States Magistrate Judge for over a decade demonstrates my unwavering commitment to treating all litigants, regardless of political beliefs, station in life or status in a case, with fairness, respect and courtesy. 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: In my opinion, the commitment to follow precedent is a paramount requirement for any United States Judge. Stability, predictability and consistency of decisions allow our citizens the comfort of knowing we are a nation of laws and not arbitrary actions. This commitment does not vary based upon the court on which one sits.

Responses of Fernando M. Olguin
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Chuck Grassley

1. **In 1989, you authored an article in which you wrote that "the United States has been instrumental in establishing a Central American political system 'characterized by the dominance of a wealthy landed elite governing...almost always with the collaboration of the military.'" You continued, "this system has resulted in extreme inequality, injustice, and poverty in most of the region."**

   a. **Does this article reflect your current views on the issues you raised in the article?**

      Response: No, I do not have any current views on the issues raised in the article.

   b. **You continued, in that article, "[a]s the people in Central America have challenged the inequality and poverty that exists in their respective countries, the local leaders have obtained US support in putting down the indigenous revolutionary movements by labeling them 'communist.'" Is it your view that this characterization of revolutionary movements was inaccurate? Did the US improperly provide support to local leaders?**

      Response: I wrote this article as my master's thesis and, in preparing it, I relied exclusively on secondary sources that are now more than 20 years old. Since the completion of the article, I have not done any research or study of any of the issues raised in the article nor have I been involved in any foreign policy work. Thus, I have no view as to whether the characterization of revolutionary movements was inaccurate nor do I have a basis to opine as to whether the United States improperly provided support to local leaders in Central America.

   c. **If confirmed, how would your view of international relations affect your judicial decision making process?**

      Response: If I am fortunate enough to be confirmed as a United States District Judge, I would be obligated and duty-bound to apply the decisions of the Ninth Circuit Court of Appeals and the United States Supreme Court, regardless of my views on international relations. My views on international relations have not had any bearing on my judicial decision-making as a Magistrate Judge for 11 years, and this would not change if I were confirmed.

   d. **Later, you wrote that the estimated number of refugees worldwide is likely too low because it does not include "the millions of illegal aliens who are neither receiving aid or recognized as refugees. Designation of these aliens as 'illegal' or 'economic migrants' reveals one of the major deficiencies in the**

current international refugee instruments." Could you clarify what you meant by this statement? Does this statement reflect your current views on the issue?

Response: The statement was intended to indicate that the number of refugees may be undercounted. Since I have not done any research or study of any of the issues raised in the article since the completion of the article more than 20 years ago, I have no current views on the issue.

2. **In the same article, you wrote that the implementation of the 1986 Immigration Reform and Control Act "will have and already has had an adverse effect on the Central Americans. The 1982 cut-off date disqualified most Central Americans from amnesty, and the IRCA increased border surveillance during a time of rising unemployment." Later, as the Education Director of the Mexican American Legal Defense and Education Fund (MALDEF), you were reported as saying that a national identification system might scare some undocumented parents into keeping their children at home. Given these strong personal views, what evidence can you provide to the committee to indicate, should you be confirmed, that you will uphold U.S. immigration laws?**

Response: I believe that my 11-year record as a United States Magistrate Judge demonstrates that I am committed to the rule of law and will apply and uphold all laws of the United States, irrespective of my personal views on any particular area of law.

3. **While you were Education Director at MALDEF, you stated that efforts to eliminate affirmative action would "undermine diversity in education, particularly at the university level." Should you be confirmed, would you have any difficulty in upholding a repeal of affirmative action laws? Please explain.**

Response: No. If confirmed, I would strictly follow and apply the law regardless of my personal views in all cases, including any matters involving affirmative action.

4. **Judge Muecke has been described as a "fiercely liberal" judge who "wore his liberalism as a badge of honor and once called to scold a reporter who had dared to write that there were no liberal judges in Arizona." Please describe your experience in working as a law clerk for Judge Muecke, and include any lessons you learned from the experience that you would apply to your own potential service as a District Court judge.**

Response: I learned several lessons from my clerkship that I have applied as a Magistrate Judge and would continue to apply if I am fortunate enough to be confirmed as a United States District Judge. The clerkship instilled in me the importance of adhering to the rule of law and always beginning the legal analysis with the text of the law at issue. I also learned that a judge cannot pre-judge any matter that comes before the court. Finally, I

learned that the position of a District Judge requires a lot of hard work and an unwavering commitment to the fair and impartial application of the law to the facts of each case.

5. **During your confirmation hearing, you stated in reference to your speech on Judge Carlos Moreno that "some of the wording was inappropriate" and "I did not mean to suggest that compassion should be involved in the judicial decision making process." Your response is appreciated. For clarity, do you believe compassion or empathy has any role in adjudication?**

Response: No, I do not believe that compassion or empathy has any role in judicial decision-making. Compassion or empathy may only come into play in how a judge treats litigants or witnesses in his or her courtroom, i.e., with dignity and respect rather than disdain or condescension.

6. **In *Stevenson v. Huntington Memorial Hospital*, you represented a client alleging wrongful termination from her employment based on age discrimination. Part of your handling of the case included requesting the state of California recognize a common law cause of action for wrongful termination based on age discrimination, even though the California Fair Employment and Housing Act (FEHA) already provided a clear statutory remedy for such an act. While I believe that actions taken on behalf of a client should not be viewed as indicative of what a lawyer personally believes, would you please explain why you decided to pursue recognition of a common law cause of action when a statutory remedy was readily available?**

Response: The plaintiff's trial counsel retained my firm to prepare the briefing before the California Supreme Court. The procedural posture of the case was established by the time I got involved. My recollection is that the plaintiff, who initially was proceeding pro se, failed to exhaust her remedies under California's Fair Employment and Housing Act (FEHA). Therefore, there was no statutory remedy available to the plaintiff. The common law wrongful termination cause of action was the only cause of action available to the plaintiff. Finally, as the California Supreme Court explained in the *Stevenson* case, the argument my colleagues and I made on behalf of our client was supported by precedent. The California Supreme Court had previously concluded that "the FEHA does not supplant other state laws, including claims under the common law, relating to employment discrimination[.]" Rojo v. Kliger, 52 Cal.3d 65, 70 (1990).

7. **A minority of the ABA Standing Committee on the Federal Judiciary found you "Not Qualified" for this position. What additional information can you provide the Committee about your background and experience that demonstrates you are fully qualified to sit as a federal district court judge?**

Response: I believe I am qualified to sit as a United States District Judge based upon my 23 years of experience as a United States Magistrate Judge and a civil litigator. I have served as a Magistrate Judge for the Central District of California for 11 years. As a Magistrate Judge, I preside over both civil and criminal matters. With respect to civil

matters, I handle cases in a variety of areas, including habeas corpus petitions, pro se civil rights cases, social security disability appeals, admiralty, extradition, applications for writs of attachment, and general civil cases (e.g., trademark, breach of contract, ERISA, etc.) where the parties have consented to the Magistrate Judge's jurisdiction for all purposes. Another significant portion of my civil duties involves discovery motions and settlement conferences. My criminal work involves taking guilty pleas and imposing sentences, bail and detention matters, making probable cause determinations on search and arrest warrants, and ruling on requests for pen registers, trap and trace devices, and electronic communications records.

Prior to my appointment as a United States Magistrate Judge, I spent most of my legal career in federal court. After law school, I completed a two-year judicial clerkship with a United States District Judge from the District of Arizona. Following my clerkship, I was selected to be a member of the United States Attorney General's Honors Program, where I was assigned to work as a career trial attorney in the Civil Rights Division of the United States Department of Justice. While at the Justice Department, I litigated in federal courts throughout the country. After I left the Department of Justice, many of the cases I handled were complex class action and civil matters that were litigated in federal court. In short, my tenure as a United States Magistrate Judge coupled with my experience working for the government as well as for private clients have provided me with the skills and experiences necessary to make me an effective United States District Judge.

8. What is the most important attribute of a judge, and do you possess it?

Response: In my view, integrity is the most important attribute of a judge. Integrity means being committed to the rule of law and making decisions in a fair and impartial manner, without regard to the judge's personal background and beliefs. In carrying out this process, I would give all litigants an opportunity to be heard and explain the basis for my decisions. I believe that my experience as a Magistrate Judge demonstrates that I possess this attribute.

9. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge must treat all litigants, witnesses, attorneys and court staff with dignity, respect and patience. A judge's demeanor must be calm and even-handed. I have and will continue to work towards meeting and maintaining this standard.

10. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

11. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In a case of first impression involving a statute, I would first look to the text of the applicable statute, and apply the canons of statutory construction and consider the parties' arguments in determining the meaning of the statute. If, after conducting this analysis, the meaning of the statute is still unclear, I would then look to the structure and framework of the statute as a whole to interpret the subject statute. If the statute is still unclear, then I would look at cases from the United States Supreme Court and the Ninth Circuit and, if necessary, persuasive authorities from other circuits that discussed and/or addressed analogous statutes.

12. What would you do if you believed the Supreme Court or the Court of Appeal 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 continue to do what I have done for the 11 years that I have served as a United States Magistrate Judge. That is, I will continue to fairly and impartially apply the decisions of the United States Supreme Court and the Ninth Circuit Court of Appeals, irrespective of whether or not I personally agree with those decisions.

13. 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 presumed constitutional. A court may declare a statute unconstitutional only when Congress has exceeded its authority under the Constitution or when the statute violates a provision of the Constitution.

14. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?

Response: In my view, unless directed to do so by binding precedent, I do not believe it is proper for judges to rely on foreign law or the views of the "world community" in determining the meaning of the Constitution. The text of the Constitution itself and case law interpreting the Constitution are the only sources that should be used in determining the meaning of the Constitution.

15. 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: One of the more difficult challenges judges face today is achieving and maintaining a balance between a large caseload and ensuring that all litigants receive their day in court. To achieve this balance, it is important for judges to develop and implement effective case management systems. As a Magistrate Judge for 11 years, I am familiar with the caseload for District Judges in my district and have had extensive experience managing a heavy docket. I monitor all the cases on my docket and set firm, realistic case deadlines. I conduct hearings on dispositive motions and other significant case-related issues and rule on motions in a timely manner. If confirmed, I would continue my current case management practices and, after consultation with more experienced District Judges, modify and/or adopt new case management practices to address the larger and more complex caseload maintained by District Judges.

16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Judges have perhaps the most significant role in controlling the pace and conduct of litigation. If confirmed as a District Judge, I would meet with the parties early and as frequently as necessary to move the cases towards resolution. In addition to utilizing the procedures set forth in question 15, I would consult with more experienced District Judges to educate myself as to the case management practices they utilize and adopt the best practices for my chambers.

17. Please describe with particularity the process by which these questions were answered.

Response: After receiving the questions, I prepared responses and forwarded them to the Department of Justice (DOJ) on July 6, 2012. That same day, I spoke with a representative from the DOJ about finalizing my responses. I then requested the DOJ to submit my responses to Senator Grassley.

18. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Fernando M. Olguin
Nominee to be United States District Judge for the Central District of California
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy is based on integrity and respect and an understanding that the role of a judge is a limited one in our constitutional system. As a trial court judge, I'm governed by the rule of law. It is not my job to make law; I take my direction from the Supreme Court and the appellate courts. My responsibility is to work hard to get a handle on the facts and the controlling law and reach a decision that is fair and just and timely. In carrying out my judicial duties, I will be respectful and even-handed to all litigants, witnesses and attorneys who appear before me.

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: Through my 11 years as a United States Magistrate Judge, I have endeavored to treat all litigants, witnesses and attorneys with patience, dignity and respect, regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff. In addition, I have always applied and followed the rule of law, irrespective of a party's wealth or political beliefs. If I am fortunate enough to be confirmed as a United States District Judge, I will continue to treat all litigants fairly and respectfully, and issue decisions grounded in precedent and the text of the law.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: *Stare decisis* is one of the cornerstones of our legal system. To a large extent, the integrity of the legal system is dependent upon judges respecting the doctrine of *stare decisis*. As a District Judge, I would be bound to follow the precedents established by the United States Supreme Court and the Ninth Circuit Court of Appeals.

SUBMISSIONS FOR THE RECORD

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VIA EMAIL AND FIRST CLASS MAIL

May 17, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Matthew W. Brann
To the United States District Court for the Middle District of Pennsylvania

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Matthew W. Brann who has been nominated for a position on the United States District Court for the Middle District of Pennsylvania. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Brann is "Qualified" for this position.

A copy of this letter has been provided to Mr. Brann.

Sincerely,

Allan J. Joseph
Chair

cc: Matthew W. Brann, 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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May 15, 2012

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Hon. Frank P. Geraci
To the United States District Court for the Western District of New York

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of the Hon. Frank P. Geraci who has been nominated for a position on the United States District Court for the Western District of New York. As a result of our investigation, a substantial majority of the Committee is of the opinion that Judge Geraci is "Well Qualified." A minority of the Committee is of the opinion that Judge Geraci is "Qualified" for this position.

A copy of this letter has been provided to Judge Geraci.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Frank P. Geraci
The Honorable Kathy Ruemmler
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

May 17, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Magistrate Judge Malachy E. Mannion
To the United States District Court for the Middle District of Pennsylvania

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Malachy E. Mannion who has been nominated for a position on the United States District Court for the Middle District of Pennsylvania. As a result of our investigation, the Committee is of the unanimous opinion that Judge Mannion is "Well Qualified" for this position.

A copy of this letter has been provided to Judge Mannion.

Sincerely,

Allan J. Joseph
Chair

cc: Magistrate Judge Malachy E. Mannion
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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60 East 42nd Street
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Philadelphia, PA 19104-2808

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Charlotte, NC 28202-6037

FIFTH CIRCUIT
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SIXTH CIRCUIT
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Suite 4000
500 Woodward Avenue
Detroit, MI 48226

SEVENTH CIRCUIT
Stephan Landsman
25 East Jackson Boulevard
Chicago, IL 60604

EIGHTH CIRCUIT
David L. Brown
5th Floor
U.S. Banking Building
520 Walnut Street
Des Moines, IA 50309-4113

NINTH CIRCUIT
Edith R. Matthai
Suite 1580
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl J. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
James B. Lee
Suite 1000
201 South Main Street
Salt Lake City, Utah 84111

ELEVENTH CIRCUIT
Ramón A. Abadin
Suite 3208
9155 South Dadeland Boulevard
Miami, FL 33156-2739

D.C. CIRCUIT
Harold A. Ogw
10560 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Flannery
1207 Pennsylvania Avenue, NW
Washington, DC 20004-2401

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Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

Please respond to:
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May 15, 2012

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Hon. Fernando M. Olguin
To the United States District Court for the Central District of California

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of the Hon. Fernando M. Olguin who has been nominated for a position on the United States District Court for the Central District of California. As a result of our investigation, a substantial majority of the Committee is of the opinion that Judge Olguin is "Qualified." A minority of the Committee is of the opinion that Judge Olguin is "Not Qualified" for this position.

A copy of this letter has been provided to Judge Olguin.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Fernando M. Olguin
The Honorable Kathy Ruemmler
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq.(via email

316754.1

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169

LEROY D. BACA, SHERIFF

June 20, 2012

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United Sates Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

CONFIRMATION OF UNITED STATES MAGISTRATE JUDGE FERNANDO M. OLGUIN TO THE UNITED SATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

It is with great pleasure that I write to support the confirmation of United States Magistrate Judge Fernando M. Olguin for the position of United States District Judge for the Central District of California. Judge Olguin was raised by his grandparents from a very young age and was the first member in his family to attend college, earning an undergraduate degree from Harvard and a law degree from UC Berkeley. Judge Olguin grew up in the San Gabriel Valley, and was the first Latino appointed to serve as a United States Magistrate Judge for the Central District of California. He has demonstrated a high level of professionalism in his nearly 11 years as a Magistrate Judge, and he has an excellent reputation in the Southern California legal community for fairness, integrity and public service. Everything that I have seen and know of Judge Olguin's record is clear to me that he is fair, levelheaded and committed to the just application of the law.

Law enforcement officers at all levels count on the rule of law to prevail in court. It is this confidence in our judicial system that underlies our steadfast commitment to doing our job right. In exchange for judicial independence, we ask that judges perform their duties with fairness, integrity and unbiased objectivity. I believe strongly that Judge Olguin possesses the integrity and sense of fairness that will enable him to serve as a United States District Judge to benefit us all. In short, I strongly urge you and your colleagues to confirm Judge Olguin's nomination.

Sincerely,

LEROY D. BACA
SHERIFF

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Chief of Police

ANTONIO R. VILLARAIGOSA
Mayor

P. O. Box 30158
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TDD: (877) 275-5273
Ref #: 1.1

June 11, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D. C. 20510

Re: Nomination of Fernando M. Olguin

Dear Chairman Leahy and Ranking Member Grassley:

As the Chief of Police for the Los Angeles police Department, I have come to appreciate the many citizens who contribute to the greater good of this great city. One such person is United States Magistrate Judge Fernando M. Olguin. Judge Olguin is very well respected in the Los Angeles legal community as well as in the Latino community. Judge Olguin was the first Latino appointed to serve as a United States Magistrate Judge for the Central District of California. His service of nearly 11 years has been characterized by fairness, thoroughness, sound judgment and evenness of temperament. Based on my review of Judge Olguin's record, it is evident that he is not only well-equipped to deliver outstanding service as a United States District Judge, but also deeply committed to public service and the fair administration of justice.

I respectfully urge you to confirm Judge Olguin's nomination as a United States District judge. I believe that based on his performance and reputation, Judge Olguin will exhibit the same positive judicial temperament, respect for the law, and dedication to the pursuit of equal justice that have characterized his service as a United States Magistrate Judge.

Thank you for your time and consideration on this important nomination.

All the best,

CHARLIE BECK
Chief of Police

c: Honorable Dianne Feinstein

STATEMENT OF SEN. BARBARA BOXER ON MAGISTRATE JUDGE FERNANDO M. OLGUIN, JUDICIAL NOMINEE TO THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, AND JUDGE CHARLES R. BREYER, NOMINEE TO THE UNITED STATES SENTENCING COMMISSION (June 27, 2012)

Chairman Leahy, Ranking Member Grassley, I am proud to offer my support for the confirmation of Magistrate Judge Fernando M. Olguin to the U.S. District Court for the Central District of California. Judge Olguin was recommended to the President by my colleague, Senator Feinstein, and will be a great addition to the federal bench.

Judge Olguin will bring to the bench his broad experience as a skilled lawyer and a federal magistrate. A graduate of Harvard University and the University of California, Berkeley School of Law, Judge Olguin worked from 1995 to 2001 as a Partner for the law firm of Traber, Voorhees, and Olguin. In 2001, he received an appointment to become a Magistrate Judge in the Central District of California, where he has served with distinction.

I congratulate Judge Olguin and his family on this important day, and urge my colleagues in the Senate Judiciary to support this highly qualified nominee to the federal bench.

I am also proud to support the nomination of Judge Charles R. Breyer to the United States Sentencing Commission. Judge Breyer presided over the United States District Court for the Northern District of California from 1997 until 2012, when he took senior status. Judge Breyer has been an outstanding jurist and he will bring decades of experience and knowledge to the Sentencing Commission.

Statement of Senator Chuck Grassley
Before the Committee on the Judiciary
On the Nominations of:

Frank Paul Geraci, Jr., to be United States District Judge for the Western District of New York

Fernando M. Olguin, to be United States District Judge for the Central District of California

Malachy Edward Mannion, to be United States District Judge for the Middle District of Pennsylvania

Matthew W. Brann, to be United States District Judge for the Middle District of Pennsylvania

Charles R. Breyer, to be a Member of the United States Sentencing Commission

June 6, 2012

I join you in welcoming the nominees, their friends and families. We have four District Court nominees before us today, as well as Judge Breyer for the Sentencing Commission.

This Committee continues to make good and steady progress in confirming judicial nominees. After today we will have had a hearing for 39 nominees this year alone. Yesterday we confirmed the 151st District or Circuit nominee

during President Obama's term so far. This is good progress. Again, welcome to the nominees and I look forward to this hearing.

Matthew W. Brann is nominated to be United States District Judge for the Middle District of Pennsylvania. Upon graduation from The Dickinson School of Law in 1990, Mr. Brann served as a law clerk to the Honorable John C. Mott on the Court of Common Pleas in Bradford County, Pennsylvania. Since 1991, he has been an attorney with Brann, Williams, Caldwell & Sheetz. He was promoted to partner in 1995. His legal experience includes domestic/matrimonial, criminal, commercial, personal injury, and probate litigation. Since 2007, his practice has also included oil and gas law, including the negotiation of leases and collateral documents; complex estate planning; and litigation representing landowners and owners of oil, gas and mineral estates. Additionally, since 1999 he has served as a solicitor for a public school district, a borough,

and a municipal authority providing them full representation, including litigation and contract preparation and review.

The American Bar Association's Standing Committee on the Federal Judiciary rated Mr. Berg with a unanimous "Qualified" rating for this position.

Frank Paul Geraci, Jr. is nominated to be United States District Judge for the Western District of New York. After graduation from the University of Dayton Law School in 1977, Judge Geraci served as the Executive Assistant to the Chairman of the Monroe County Democratic Committee. In 1978, he began his legal career as a Special Assistant District Attorney in the Monroe County District Attorney's Office. In 1979, he was appointed Chief of the DWI Bureau where he was responsible for the prosecution of felony DWI cases as well as vehicular assaults and homicides. He later joined the Career Criminal Bureau where he handled cases involving rape, robbery, homicide, and burglary.

In 1983, Judge Geraci was appointed as an Assistant United States Attorney for the Western District of New York. There, he handled a variety of civil cases, including social security matters and personal injury litigation. In 1986, he was assigned to the Organized Drug Task Force. In 1987, Judge Geraci started his own law firm, Geraci and Feldman, where he handled civil and criminal cases, real estate, collections, and disciplinary proceedings with his partner.

In 1992, Judge Geraci sat as a Rochester City Court Judge, a position to which he had been elected. There, he had jurisdiction over civil and criminal matters and handled misdemeanors and civil lawsuits involving claims up to $15,000. After his ten year term as a Rochester City Court Judge, Judge Geraci was elected to a 10-year term as a Monroe County Court Judge. He was re-elected to this position in 2008. In 2005, he was appointed as an Acting Supreme Court Justice by the Administrative Judge of New York's Seventh Judicial District. As a Judge in Monroe County, Judge Geraci handles criminal prosecutions of felonies and misdemeanors committed within the county.

The American Bar Association's Standing Committee on the Federal Judiciary gave Mr. Bernal a rating of Substantial Majority "Well Qualified" and Minority "Qualified" for this position.

Malachy Edward Mannion is nominated to be United States District Judge for the Middle District of Pennsylvania. Upon graduation from Pace University Law School in 1979, Judge Mannion joined the firm of Bartels, Pykett & Aronwald, Esqs. as a litigation associate. From 1980 to 1986, he worked as an Assistant District Attorney in the Nassau County (New York) District Attorney's Office. From 1986 to 1993 and again from 1997 to 2001, he served as an Assistant United States Attorney for the Middle District of Pennsylvania. Early in his career, he represented the United States in both civil and criminal cases. His civil responsibilities included representing various federal agencies in Federal Tort Claim Act cases and complex medical malpractice. He also represented the United States in social security claims, civil litigation, tax matters and HUD

cases. His criminal responsibilities included investigation and prosecution of the full panoply of federal criminal matters, including organize crime and RICO violations, political corruption, fraud, violent crime, counterfeiting, interstate transportation in aid of racketeering, money laundering, income tax and narcotic violations. In addition, he was selected in 1989 as the Chief of the Organized Crime Drug Enforcement Task Force. As chief, he was responsible for all large-scale national and international drug prosecutions and organized crime prosecutions.

Between his periods of service as an AUSA, from 1993 to 1997, he was a litigation partner with Hourigan, Kluger, Spoherer, & Quinn, PC. In this role, he handled complex litigation matters in both federal and state court. The vast majority of caseload during this time consisted of sophisticated and complex medical malpractice matters.

In 2001, the U.S. District Judges for the Middle District of Pennsylvania appointed Judge Mannion to be a United States Magistrate Judge. In 2011, he was elevated to Chief United States Magistrate Judge. As Chief Magistrate Judge,

he manages all aspects of the pre-trial process in civil and criminal cases: conducts evidentiary hearings, rules on non-dispositive motions, makes reports and recommendations regarding dispositive motions, and issues criminal complaints, search warrants, and arrest warrants.

The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Judge Mannion as "Well Qualified" for this position.

Fernando M. Olguin is nominated to be United States District Judge for the Central District of California. After graduating from University of California Berkeley School of Law in 1989, Judge Olguin clerked for the Honorable C.A. Muecke, U.S. District Court Judge for the District of Arizona. In 1991, Judge Olguin began working as a trial attorney in the Civil Rights Division of the United States Department of Justice. There he prosecuted violations of the Fair Housing Act and the Public Accommodations Act. In 1994, Judge Olguin left the Department of Justice and spent a year at the Mexican American Legal Defense & Educational Fund as the Education Program Director, which required him to

coordinate and monitor educational issues on a national scale. From 1995 to 2001, Judge Olguin was a partner at *Traber, Voorhees & Olguin*, where he litigated housing and employment cases on behalf of underprivileged clients.

In 2001, the United States District Court for the Central District of California appointed Judge Olguin as a Magistrate Judge where he presides over both civil and criminal matters. This includes habeas corpus petitions, pro se civil rights cases, extradition, discovery motions, settlement conferences, bail and detention matters, guilty pleas, misdemeanor sentencing, and probable cause determinations. He regularly issues reports and recommendations to federal district courts on numerous non-dispositive matters. He has presided over one case, a civil jury trial, which went to verdict.

The American Bar Association's Standing Committee on the Federal Judiciary gave Mr. Bernal a rating of Substantial Majority "Qualified" and Minority "Not Qualified" for this position.

Judge Charles R. Breyer is nominated to be a Member, United States Sentencing Commission. Judge Breyer received his J.D. from the University of California, Berkeley in 1966. After graduation from law school, Judge Breyer served as a law clerk for Oliver J. Carter, Chief Judge of the United States District Court for the Northern District of California, from 1966 to 1967. In 1966, Judge Breyer also entered the U.S. Army Reserves, serving as an enlisted reserve until 1969, and later as a JAG Officer from 1969 to 1973.

In 1967, Judge Breyer briefly served as counsel for the Legal Aid Society of San Francisco where he served as a counsel to indigent juveniles in proceeding before Court Commissioners and Superior Court judges. In December of 1967, he joined the San Francisco District Attorney's Office as an assistant district attorney. As an Assistant D.A., he prosecuted both misdemeanor and felony cases, including multiple homicides.

From 1973 to 1974, Judge Breyer served as an assistant special prosecutor on the Watergate Special Prosecution

Force. Specifically, Judge Breyer served as second chair during the trial of several officials for conspiracy to steal files from Dr. Lewis Fielding, the psychiatrist of Daniel Ellsberg, the author of the Pentagon Papers.

In 1974, he joined the firm Jacobs, Sills & Coblentz as an assistant attorney and made partner in 1975. In 1979, he briefly reentered public service as the Chief Assistant District Attorney for the City and County of San Francisco, before returning to be a partner in the firm Coblentz, Cahen, McCabe & Breyer in 1980. He represented defendants in criminal matters, and tried a wide variety of cases involving construction defects, trusts and estates, securities, entertainment law, and real estate.

In 1997, President Clinton nominated Judge Breyer to serve as a District Court Judge for the United States District Court for the District of Northern California. The Senate confirmed his nomination by voice vote on November 8, 1997. Judge Breyer assumed senior status on December 31, 2011.

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June 6, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Hon. Fernando M. Olguin to the United States District Court for the Central District of California

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Los Angeles Police Protective League ("League"), we write this letter to support the confirmation of United States Magistrate Judge Fernando M. Olguin for the position of United States District Judge for the Central District of California. The League, which is the recognized employee organization for over 9,000 sworn Los Angeles police officers, has conducted appropriate due diligence and considered Judge Olguin's background and qualifications carefully and in the context of the requirements of the position he seeks.

Based on our review, it is clear that Judge Olguin possesses the experience, temperament, and high degree of professionalism required to distinguish himself as a United States District Judge. Judge Olguin has a reputation for integrity, fairness and objectivity, all qualities we believe to be essential for a member of our United States District Court. Given his nearly 11 years as a U.S. Magistrate Judge, we have no doubt Judge Olguin will continue to make his decisions based on the facts and the law.

Thank you for taking our view into consideration on this important nomination.

Sincerely

Tyler Izen, President

Cc: Honorable Dianne Feinstein

Fernando M. Olguin
United States Magistrate Judge
United States Courthouse / 312 N. Spring Street, Suite 901 / Los Angeles, CA 90012
213-894-5105 / Fernando_Olguin@cacd.uscourts.gov

JUDICIAL EXPERIENCE

United States Magistrate Judge for the Central District of California – Appointed July 2001

Decide social security disability appeals, writs of attachment, extradition requests, admiralty claims and general civil cases by consent of the parties. Conduct settlement conferences and handle discovery motions by referral. Prepare reports and recommendations in cases involving petitions for writs of habeas corpus and pro se § 1983 civil rights cases. Preside over criminal misdemeanor matters and bail and detention hearings, take guilty pleas and rule on applications for search and arrest warrants, pen registers and trap and trace devices.

LEGAL EXPERIENCE

Traber, Voorhees & Olguin — *Partner*
Pasadena, California — July 1995 – June 2001

Drafted complaints, settlement demands, answers, discovery requests and responses, discovery motions, motions for summary judgment and other pre-trial motions, and appellate briefs. Conducted depositions, argued a variety of pre-trial motions and participated in settlement and status conferences.

Mexican American Legal Defense and Educational Fund — *National Education Program Director*
Los Angeles, California — June 1994 – June 1995

Supervised litigation involving the enforcement of educational rights of elementary, secondary and college students. Developed and implemented national educational policy goals in consultation with regional counsel.

United States Department of Justice — *Trial Attorney*
Washington, D.C. — October 1991 – June 1994

Enforced violations of the federal Fair Housing Act and the Public Accommodations Act. Developed, filed and settled U.S. v. Denny's Restaurants, Inc., a public accommodations case that resulted in over $45 million in damages and a comprehensive, nationwide consent decree.

United States District Judge Carl A. Muecke — *Judicial Law Clerk*
Phoenix, Arizona — September 1989 – September 1991

Conducted legal research and drafted memoranda and opinions on a variety of civil and criminal issues.

EDUCATION

U.C. Berkeley Law School (Boalt Hall) & U.C. Berkeley (Graduate Division), J.D./M.A. 1989
Harvard University, B.A., Cum Laude, 1985

BAR ADMISSIONS AND MEMBERSHIPS

Admitted to: California State Bar, United States Supreme Court and U.S. District Court for the Central District of California. Member of: Federal Magistrate Judges Association, Federal Bar Association, Los Angeles County Bar Association, American Bar Association, Mexican-American Bar Association, Latina Lawyers Bar Association, Hispanic National Bar Association, and Asian Pacific American Bar Association.

NOMINATION OF THOMAS M. DURKIN, OF ILLINOIS, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS; HON. JON S. TIGAR, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA; AND WILLIAM H. ORRICK III, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

WEDNESDAY, JULY 11, 2012

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

The Committee met, pursuant to notice, at 2:06 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Christopher Coons, presiding.

Present: Senators Coons, Feinstein, and Grassley.

OPENING STATEMENT OF HON. CHRISTOPHER COONS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator COONS. Good afternoon. I am pleased to call this nominations hearing of the Senate Judiciary Committee to order.

I would like to welcome each of the nominees, their families, their friends, to the U.S. Senate and congratulate them on their nomination to serve in the Federal judiciary.

I would also like to welcome Senator Boxer of California, who is here to introduce the district court nominees for the Northern District.

Today there are 76 vacancies in our Federal judiciary, which is nearly 3 times the number of vacancies at a comparable period in the previous administration. Most of these vacancies are in district courts, which are the courts Americans most need to be fully staffed so they can receive their day in court. Nearly half these vacancies are considered by the nonpartisan Judicial Conference to be judicial emergencies, where vacancies are doing the most harm to the regular and reliable administration of justice.

Today's nominees are all district court nominees to judicial emergency districts, and so I am eager to hear from the nominees and look forward to the Senate's swift action on the President's nominations.

Before we turn to introductions and witness statements and questions, I would like to first invite Senator Grassley to make an opening statement. Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Well, of course, just like the Chairman, I welcome all the nominees and congratulate them. I want to talk about the timetable that we have had in the past and our record.

I would note that the nominations of Mr. Orrick and Mr. Tigar were delivered to the Senate just 1 month ago, on June 11, 2012, with their nomination materials coming in after that date, so that we have had about 13 legislative days to review the nominations. We have had a little more time to review Mr. Durkin's file.

By contrast, President Bush's district nominees waited an average of about 120 days from nomination to having a hearing like we are having right now, so I think that this is a good example of the fair treatment that we are giving President Obama's nominees.

Having said that, I do not want anyone to think that these nominees are on some sort of fast-track process. We will give close scrutiny to the record of the nominees. This hearing is an important part of that record formation. This Committee continues to make good and steady progress in confirming judicial nominees. After today, we will have had a hearing on 42 nominees this year alone. Yesterday we confirmed the 152nd district or circuit nominee during President Obama's term so far. Good progress.

Again, I welcome the nominees and look forward to the hearing, and I will place 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.

Now we turn to the introduction of our needs, beginning with Senator Boxer, who will introduce Mr. Orrick and Judge Tigar from her home State of California.

Senator Boxer, I know your schedule is pressing, so please feel free to excuse yourself after giving these introductions. Senator Boxer.

PRESENTATION OF HON. JON S. TIGAR, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND WILLIAM H. ORRICK III, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, BY HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Well, I want to thank both Senators Coons and Grassley, and I think you are going to be very pleased with these nominees as I introduce them to you.

Bill Orrick is here with his wife, Caroline, and two of their daughters: Sarah, a second-year law student at UC-Berkeley—I hope Sarah would stand—and Libby—and I hope that Caroline, his wife, will stand. And Libby is a senior at the University of Puget Sound. A third daughter, Catherine, is in South Africa doing conservation biology studies.

Judge Tigar is joined by his wife, Carrie, who I hope will stand, Carrie Avery, and he is joined by his father, Michael. I hope he will stand. And he is also joined by Judge Jeb Boasberg, of the District of Columbia, and William King, who clerked with Jon in the 11th Circuit.

So I will start with Mr. Orrick. Mr. Orrick brings a depth of legal experience in both the private and public sectors which will make him a tremendous asset to the Northern District Court. He received his bachelor's from Yale. He earned his law degree from Boston College Law School, graduating cum laude from both schools.

After law school, he spent 5 years providing pro bono legal services for low-income clients in Georgia. Then Mr. Orrick returned home to the San Francisco Bay Area, and he joined the firm of Coblentz, Patch, Duffy & Bass, where he spent 25 years as an associate, a partner, and then head of the firm's employment litigation practice. He rose to the top of the firm.

Since 2009, Mr. Orrick has worked at the Justice Department where he currently is Deputy Assistant Attorney General in the Civil Division. Bill considers service to the community to be a hallmark of his legal career. He spent 11 years as chancellor and legal adviser to the Episcopal Diocese of California and 13 years working with the Good Samaritan Family Resource Center, a low-income housing nonprofit in San Francisco.

At his law firm, he supervised much of the firm's pro bono work for which he received the San Francisco Bar Association's Outstanding Lawyer in Public Service Award.

If confirmed, Bill would not be the first of his family—and, Senators, this is really wonderful. He will not be the first of his family to serve in the Northern District. His father, William Orrick II, sat for more than 25 years in the same seat his son is nominated to today. What an honor it would be for him and his family to follow his father to the very same Federal bench.

Now I want to introduce Judge Jon Tigar. He has had a diverse legal career, including more than 9 years as an exemplary superior court judge and will be an excellent addition to the bench. He received his bachelor's degree from Williams College, and he earned his law degree from the University of California-Berkeley Boalt Hall School of Law.

Following law school, Judge Tigar clerked for Judge Robert Vance of the 11th Circuit Court of Appeals in Birmingham, Alabama. In 1989, Judge Vance was killed by a mail bomb that was sent to his home. Judge Tigar assisted FBI agents with their investigation at the field office that very evening. This nightmare experience has had a lasting effect on Judge Tigar's commitment to justice. He remembers Judge Vance for his fealty to the rule of law, for his work ethic, for his judicial temperament, his humanity, and his common sense—qualities he will bring to the Federal district court. After his clerkship, Judge Tigar spent a number of years as a civil and criminal litigator in private practice and 2 years as a trial attorney in the public defender's office.

Since 2002, Judge Tigar has served on the Alameda County Superior Court with great distinction, presiding over civil, criminal, and family law cases. In his current assignment, he manages 570 cases. Before he joined the State court bench, Judge Tigar received

an award from the State Bar of California for his pro bono services. He is a member of the California Judicial Council Advisory Committee on Civil Jury Instructions. He is an adviser to the American Law Institute's forthcoming restatement of torts. He has lectured at UC-Berkeley Law School, and he sits on the Board of Directors of the Alameda County Bar Association's Volunteer Legal Services Corporation.

His nomination has the very strong support of law enforcement officials. The Berkeley chief of police writes that Judge Tigar "meets with our officers in his home or wherever he happens to be when he receives a phone call for a meeting. He has even reviewed facts warrants while on vacation."

The Alameda County sheriff writes that Judge Tigar "is a man of integrity who will bring wisdom and experience to this position."

I would like to submit for the record letters of recommendation I have received in his support, if that is all right with you, Mr. Chairman.

Senator COONS. I ask unanimous consent they be entered for the record.

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

Senator BOXER. So, in closing, I am so proud to be here with these two amazing nominees, Mr. Orrick and Judge Tigar, who both received a well qualified rating from the American Bar Association. I am honored that they would continue their life in public service, and I know that Senator Feinstein will have comments to add to these. But I could not be happier or more proud to introduce these two Californians to you, and I thank you both for convening this, and I thank Senator Feinstein for coming here just at the right moment.

Senator COONS. Thank you, Senator Boxer.

I yield to Senator Feinstein for the introductions of Mr. Orrick and Judge Tigar.

PRESENTATION OF HON. JON S. TIGAR, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND WILLIAM H. ORRICK III, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman and Senator Grassley and my colleague Senator Boxer.

I do not want to repeat everything Senator Boxer said, but I am just here to indicate my support for these two nominees to what are essential judicial emergency vacancies on the District Court of Northern California. We have Alameda County Judge Jon Tigar and Deputy Assistant Attorney General William Orrick. As you know, both nominees were recommended by Senator Boxer's judicial screening committee and both have my strong support. Let me just say a few words about each.

You probably know this. Judge Tigar earned his bachelor's degree from Williams in 1984 and his law degree from the University of California at Berkeley in 1989. He began a clerkship with Judge Robert Vance in the United States Court of Appeals for the 11th Circuit.

Four months later, in December, Judge Vance opened a package in his kitchen in Birmingham, Alabama. The package contained pipe bombs and nails, and it exploded, and Judge Vance was killed. His wife, Helen, was injured. The murderer, a convicted felon, was upset that the 11th Circuit had previously denied his appeal. Judge Tigar was the first to receive a call from the FBI after the murder, and he had to close up Judge Vance's chambers. And it is my understanding that to this day he keeps a photograph of Judge Vance in his own chambers.

So after that, he spent 2 years at Morrison & Foerster, a year and a half in the office of the public defender in San Francisco, 8 years at Keker & Van Nest, and there he focused on complex commercial litigation.

In 2002, he was appointed to the Alameda County Superior Court, and he has presided over 175 trials and written over 1,000 decisions. He has been rated well qualified, as you know, by the Bar and was named Judge of the Year by the Alameda Contra Costa Trial Lawyers Association. And it kind of goes on and on with all good things, needless to say.

Now let me turn to Mr. Orrick, whose name is familiar to anyone in the San Francisco legal community. And in the interest of full disclosure, his family was a neighbor of my family. His father was an extraordinary bond counsel for the city and county of San Francisco, so I obviously knew him in my days as supervisor and mayor.

His grandfather founded the international law firm of Orrick, Harrington & Sutcliffe, and his father was a district court judge on the court to which Mr. Orrick has been nominated. He earned his bachelor's at Yale, law degree from Boston School of Law, and both degrees with honors.

He worked for Georgia Legal Services, returned to San Francisco, joined the distinguished firm of Coblentz, Patch, Duffy & Bass that I also know well. And for the next 25 years, he maintained a successful commercial litigation practice, became partner, and led the firm's employment litigation practice.

It goes on and on and on, all with good things, and I know time is a-wasting, but you have before you, Mr. Chairman and my friend and colleague Senator Grassley, two very well qualified nominees, and I am very proud to support them both, and I thank you.

Senator COONS. Thank you very much, Senator Feinstein.

As I invite the nominees to come forward, it is my honor to also join in the introduction of Thomas Durkin. If all three nominees would come forward.

To Thomas Durkin, I just wanted to note at the outset, if I could, Senator Durbin called me personally before we began here today to ask me to express his personal regret at not being able to chair this hearing today. But for having been called to a meeting at the White House now, he would be here, and he wanted me to convey his best wishes to you, to your entire extended family, and his gratitude to Senator Grassley and to the Committee for the opportunity to have this hearing here today.

I would like to ask unanimous consent that the record include both the written statements of Senator Durbin in introduction of Mr. Durkin and a comparable letter of introduction from Senator Kirk. I note the continued absence of Senator Kirk, a friend and

colleague who continues to recover at home in Illinois from a stroke that he suffered earlier this year. Senator Kirk is as strong, if not more, a supporter of Mr. Durkin as is Senator Durbin. You have the benefit of both of your home State Senators having expressed strong support, and I look forward to the day when Senator Kirk, in the very near future, I hope, is able to resume his work here in Washington, as he has already resumed from Chicago.

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

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

Senator COONS. Tom Durkin has been nominated to the Chicago-based seat that was formerly occupied by Judge Wayne Andersen. Mr. Durkin is a partner at the law firm of Mayer Brown LLP where his practice concentrates on complex commercial litigation and criminal defense. He received his bachelor's with honors from the University of Illinois at Urbana-Champaign—I thought it was Champaign-Urbana. What do I know?—and received his J.D. with honors from DePaul University College of Law. After graduating from law school, he served for 2 years as a law clerk to the Honorable Stanley Roszkowski of the District Court of the Northern District.

Following his clerkship, Mr. Durkin joined the United States Attorney's Office for the Northern District and worked there for 13 years and served in many leadership positions, including Chief of Special Prosecutions, Chief of Criminal Receiving and Appellate Division, and First Assistant U.S. Attorney. He received the U.S. Attorney General's John Marshall Award for Participation in Litigation. He then joined Mayer Brown as a partner in 1993 and has worked there until the present day. His practice ranges from patent litigation to internal investigations to securities litigation to white-collar criminal defense.

Mr. Durkin also has a broad record of community service, has served for 9 years on the Board of the Legal Assistance Foundation of Chicago, and taught as an adjunct professor of law at DePaul and at the John Marshall Law School. For nearly a decade, he was also the Chair of Mayer Brown's pro bono committee. Welcome, Mr. Durkin.

At this point I would ask that all three of the nominees stand and raise your right hand as I administer the oath. 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?

Mr. DURKIN. I do.

Judge TIGAR. I do.

Mr. ORRICK. I do.

Senator COONS. Thank you. Please be seated, each of the witnesses having been sworn.

I would now like to invite the nominees to give an opening statement and to recognize your loved ones, family, and supporters who might be present. Thank you, and I would like to invite Mr. Durkin to begin.

STATEMENT OF THOMAS M. DURKIN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Mr. DURKIN. Thank you, Senator. I would first like to thank the President for nominating me and thank both you and Senator Grassley and Senator Feinstein for convening this meeting and giving me the honor of appearing here today.

I would also like to thank Senators Durbin and Kirk for both of them sending my name to the President, and congratulating them on having merit selection committees which participate in the process of selecting nominees from the Northern District of Illinois. The Chair of Senator Kirk's Committee, Peter Baugher, is here, and I would like to acknowledge him.

Present here from my family is my wife, Gail, who is seated behind me; my son, Chris, who is a fireman and paramedic in Portland, Oregon, who came in from Portland; his fiancee, Chrissy, could not, but he is here. My son, Colin, and his wife, Meaghan. Colin works for the Department of Defense here in D.C., and Meaghan also works here for the Government in D.C. My son, Connor, and his wife, Lindsay, who are here. They are both educators in the Chicago area. My daughter, Jessica, who is here, is a recent graduate of the University of Iowa.

Three of my seven brothers—Jim, Bob, and Bill—are here, and my brother-in-law, Dave, is here.

Finally, I would like to acknowledge my parents, Tom and Collette, who are back in Chicago, could not make the trip, but hopefully with the help of one of their 27 grandchildren they have been able to dial into the Web and are watching this live.

[Laughter.]

Mr. DURKIN. So thank you very much.

[The biographical information of Mr. Durkin follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Thomas Michael Durkin

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: Downers Grove, Illinois

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

   1953; 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.

   1975 – 1978, DePaul University College of Law; J.D., with honors, 1978
   1971 – 1975, University of Illinois at Champaign-Urbana; B.S., with honors, 1975

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

   1993 – present
   Mayer Brown LLP
   71 South Wacker Drive
   Chicago, Illinois 60606
   Partner

1996; 1998 – 2000; 2009
DePaul University College of Law
25 East Jackson Boulevard
Chicago, Illinois 60606
Adjunct Professor

1980 – 1993
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Assistant United States Attorney (1980 – 1993)
Deputy Chief, Special Prosecutions Division (1988)
Chief, Criminal Receiving and Appellate Division (1989)
Chief, Special Prosecutions Division (1990)
First Assistant United States Attorney (1991 – 1993)

1988 – 1991
The John Marshall Law School
315 South Plymouth Court
Chicago, Illinois 60604
Adjunct Professor

1978 – 1980
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Law Clerk to Judge Stanley J. Roszkowski

Summer 1978
Sloan & Connelly
111 West Washington, Suite 1020
Chicago, Illinois 60602
Law Clerk

Fall 1977
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Intern to Judge Stanley J. Roszkowski

Summer 1977
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Intern

Summer 1976
Federal Defender Program
55 East Monroe Street
Chicago, Illinois 60603
Intern

Summer 1975
Thomas W. Havey & Company
30 North LaSalle Street
Chicago, Illinois 60602
Payroll Auditor

Other Affiliations (uncompensated):

1999 – 2008
Legal Assistance Foundation
120 South LaSalle Street, Suite 900
Chicago, Illinois 60603
Board Member

1993 – 1997
Downers Grove Grade School District 58
1860 63rd Street
Downers Grove, Illinois 60516
School Board Member

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

I have not served in the military. I have 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.

Selected for inclusion in *The Best Lawyers in America* (2008 – 2011)
Listed in *Illinois Super Lawyers* (2005 – 2011)
Recognized in *Chambers USA: America's Leading Lawyers for Business* (2004 – 2011)
Selected by *Above the Law.com* as a Top Partner to Work For – Chicago (2010)
Award for Excellence in Pro Bono Service, U.S. District Court for the Northern District of Illinois and the Federal Bar Association (2010)
Chicagoland Chamber of Commerce Excellence in Law Enforcement Award (1993)
U.S. Attorney General's John Marshall Award for Participation in Litigation (1991)

Fellow, American College of Trial Lawyers
Certified Public Accountant (1975)

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

American Bar Association
American College of Trial Lawyers
Legislative Committee (2007 – 2011)
Chicago Bar Association
Judicial Evaluation Committee (1993 – 1995)
Federal Bar Association
Illinois State Bar Association
Seventh Circuit Bar Association
Pro Bono and Public Service Committee (2010 – present)
Co-Chair, 2012 Annual Meeting (2011 – present)
U.S. District Court for the Northern District of Illinois
Magistrate Judge Merit Selection Panel (1994)

10. **Bar and Court Admission**:

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

Illinois (1978)

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 Seventh Circuit (1978)
United States Court of Appeals for the Federal Circuit (2000)
United States District Court for the Northern District of Illinois (1978)

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Chicago Board Options Exchange Nominating Committee (2004 – 2005)
Downers Grove Grade School District 58
School Board Member (1993 – 1997)
Legal Assistance Foundation (1999 – 2008)
Board Member (1999 – 2008)
Co-Chair, Annual Luncheon (2012)
Mayer Brown Pro Bono Committee (1996 – 2004)
Chairman (1996 – 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.

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.

This list represents the published material I have identified through searches of my memory, my files, local newspaper archives, and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to recall or identify.

With Elizabeth Herrington, Letter of Invitation to the Seventh Circuit Bar Association Annual Dinner in May 2012. Copy supplied.

With Vincent J. Connelly, *Defending Federal Grand Jury Investigations, in* Securities Investigations: Internal Civil and Criminal, Practising Law Institute (October 2011). Copy supplied.

With Alex C. Lakatos, *US Federal Indictments: The Current State of Play*, World Online Gambling Law Report (April 2011). Copy supplied.

With Anthony Alexis, Michael Bornhorst, and Schott Claffee. *Requests to Waive Corporate Attorney-Client Privilege: History and Analysis*, Mayer Brown LLP (2008). Copy supplied.

Crossing an Expert on Everything Except *his Opinion*, *in* Your Witness: Lessons on Cross-Examination and Life from Great Chicago Trial Lawyers, Law Bulletin Publishing Company (March 2008). Copy supplied.

With Amy Marlyse Burgert and Ryan P. Farley, *United States: Criminal Prosecutions and Offshore Operators*, World Online Gambling Law Report (July 2006). Copy supplied.

With J. Paul Forrester, *Doing the Right Thing*, Infrastructure Finance (August/September 1995). Copy supplied.

Guest Editorial: Two High Court Decisions Erode Immunity, Chicago Lawyer (August 1993). Copy supplied.

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

None.

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

February 27, 1993: Testimony before the Illinois Supreme Court Commission on the Administration of Justice in Cook County, Illinois (Solovy Commission). I testified about the Operation Gambat investigation of corruption in the Cook County courts and the resulting indictments and convictions. I have no notes, transcript or recording.

May 6, 1991: Remarks before the Downers Grove Grade School District 58 Board of Education. I have no notes, transcript or recording, but press coverage is supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the

date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

This list represents the speeches and talks I have identified through searches of my memory, my files, local newspaper archives, and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to recall or identify.

August 20, 2011: Presentation to Illinois Institute of Continuing Legal Education Seminar, "Ethics in the Cook County Court System: The History and Lessons of Greylord and GAMBAT," Springfield, Illinois. PowerPoint and video recording supplied.

July 11, 2011: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. PowerPoint supplied.

June 27, 2011: Panelist at American Conference Institute's 12th FCPA Boot Camp, "Third Party Auditing & Monitoring," Chicago, Illinois. PowerPoint supplied.

June 1, 2011: Mayer Brown Webinar presentation as part of In Focus Corporate Litigation WebSeries, "Strategic, Legal, and Ethical Issues in Providing Separate Counsel to Employees in Cartel Investigations," Chicago, Illinois. PowerPoint and audio recording supplied.

December 9, 2010: Global Financial Markets Initiative Teleconference, "FCPA Update: Congress Questions DOJ FCPA Enforcement Program," Chicago, Illinois. Audio recording supplied.

November 16-18, 2010: Presentations to the bar associations of Lima, Peru and Bogata, Columbia through the International Bar Association, "Foreign Corrupt Practices Act: Risks and Threats of Corruption and the Legal Profession," Lima, Peru and Bogota, Columbia. PowerPoint supplied.

July 14, 2010: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

May 18, 2010: Presentation to Navteq, "Foreign Corrupt Practices Act," Chicago, Illinois. PowerPoint supplied.

May 13, 2010: I spoke at the swearing-in of U.S. Magistrate Judge Sheila Finnegan, Chicago, Illinois. Transcript supplied.

March 19, 2010: Presentation at the Twentieth Annual DePaul Law Review Symposium, "Trial Technology," Chicago, Illinois. PowerPoint supplied.

February 17, 2010: Directors Roundtable, "World Recognition of Distinguished General Counsel," recognizing Marc S. Firestone, Executive Vice President, for Corporate & Legal Affairs, and General Counsel, Kraft Foods, Inc. I delivered a presentation on the Foreign Corrupt Practices Act. PowerPoint and transcript supplied.

January 26, 2010: Presentation to the Legal Department of Northern Trust on "Foreign Corrupt Practices Act: Focus on Financial Institutions," Chicago, Illinois. PowerPoint supplied.

December 4, 2009: Presentation at the FCPA/Fraud Conference sponsored by Crowe Horwath, "Foreign Corrupt Practices Act: Status Report on 2009 Enforcement Activity," Chicago, Illinois. PowerPoint with notes supplied.

October 6, 2009: I taught U.S. Magistrate Judge Michael Mason's John Marshall Law School class on settlements. I discussed plea discussions from the defense perspective. I have no notes, transcript or recording. The address of John Marshall Law School is 315 South Plymouth Court, Chicago, Illinois 60604.

June 17, 2009: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

May 8, 2009: Panelist on a CLE Program with U.S. District Judge Matthew Kennelly, Steve Weiss and Robert Clifford commenting on trial aspects of the movie "My Cousin Vinnie." I have no notes, transcript or recording, but an article describing the presentation is provided. The program was sponsored by the law firm of Schopf and Weiss LLP, One South Wacker Drive, 28th Floor, Chicago, Illinois 60606.

November 6, 2008: Presentation to the Illinois CPA Society, "Current Trends in Criminal Tax Enforcement," Rosemont, Illinois. PowerPoint supplied.

October 17, 2008: Presentation at the DePaul University College of Law, "Developments in the Practice of Handling Government Requests to Waive Privilege," Chicago, Illinois. PowerPoint supplied.

July 16, 2008: In Focus Corporate Litigation WebSeries, "Handling Government Requests to Waive Privilege," Chicago, Illinois. PowerPoint, white paper, and audio recording supplied.

June 27, 2008: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

October 8, 2007: Presentation to Navteq, "Foreign Corrupt Practices Act." Chicago, Illinois. PowerPoint supplied.

September 19, 2007: Presentation to John Deere, "Government and Internal Investigations: Identifying Issues and Avoiding Mistakes," Moline, Illinois. PowerPoint supplied.

July 27, 2007: Presentation to WMS Gaming, "Foreign Corrupt Practices Act," Waukegan, Illinois. PowerPoint supplied.

July 26, 2007: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

June 8, 2007: Joint presentation to clients and Mayer Brown lawyers with PriceWaterhouseCoopers, "Anti-Corruption & FCPA Considerations in Transactional Due Diligence," Chicago, Illinois. PowerPoint supplied.

March 20, 2007: Speaker at seminar for Mayer Brown lawyers conducted by Ernst & Young and Mayer Brown, "Conducting International Investigations," Chicago, Illinois. PowerPoint with notes supplied.

August 4, 2006: Panelist at "Online Gambling and the United States" conference in London, England, sponsored by World Online Gambling Law Report. I discussed recent indictments of online gambling companies and their owners. I have no notes, transcript or recording. The address of the World Online Gambling Law Report is 17 The Timber Yard, Drysdale Street, London, N1 6ND, United Kingdom.

June 29, 2006: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

May 11, 2006: Panelist on presentation to BellSouth Legal Department on "Corporate Perspective on Internal Investigations." Marietta, Georgia. Notes supplied.

June 21, 2005: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

December 14, 2004: Speaker at ABA Death Penalty Representation Project *pro bono* recruitment meeting. I have no notes, transcript or recording. The address of the ABA Death Penalty Representation Project is 740 15th Street NW, 8th Floor, Washington, DC 20005.

June 14, 2004: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

June 2, 2004: I delivered remarks and presented a Lifetime Achievement Award to Robert Helman at the Legal Assistance Foundation of Metropolitan Chicago annual luncheon. I have no notes, transcript or recording. The address of the Legal Assistance Foundation is 120 South LaSalle Street, Suite 900, Chicago, Illinois 60603.

June 26, 2003: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

May 22-23, 2003: Remarks at a Practising Law Institute seminar, Chicago, Illinois. I have no notes, transcript or recording, and have been unable to recall the topic of my remarks. The address of the PLI is 810 Seventh Avenue, 21st Floor, New York, New York 10019.

June 20, 2002: Presentation to Summer Associates at Mayer Brown LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

May 23, 2000: Excellence in Pro Bono Services Award Acceptance, Federal Bar Association and U.S. District Court for the Northern District of Illinois, Chicago, Illinois. I briefly thanked the FBA and District Court for the award. I have no notes, transcript or recording. The address of the FBA is Federal Center Plaza, P.O. Box 1200, Chicago, Illinois 60690. The address of the District Court is 219 South Dearborn Street, Chicago, Illinois 60604.

April 22, 1999: I spoke to clients at a Mayer Brown seminar on the Foreign Corrupt Practices Act. I have no notes, transcript or recording. The address of Mayer Brown is 71 South Wacker Drive, Chicago, Illinois 60606.

November 13, 1997: I spoke to my son's 8th grade class at Herrick Jr. High School about careers in the law. I have no notes, transcript or recording. The school is located at 4435 Middaugh Avenue, Downers Grove, Illinois 60515.

December 1995: Presentation about the U.S. criminal legal system to a group of visiting prosecutors from Poland. I have no notes, transcript or recording. The

presentation was held at Mayer Brown, 71 South Wacker Drive, Chicago, Illinois 60606.

Summer 1994 – Summer 2001: Presentation to Summer Associates at Mayer Brown, LLP, "Opening Statements," Chicago, Illinois. The PowerPoint is substantially similar to the one used in the July 11, 2011 presentation.

November 18, 1993: Panelist on an environmental law panel at Kent Law School discussing criminal environmental enforcement. I have no notes, transcript or recording. The address of the law school is 565 West Adams, Chicago, Illinois 60661.

October 13, 1993: Participated in a forum for candidates running for the Downers Grove District 58 School Board. I have no notes, transcript, or recording, but press coverage is supplied. The address of Downers Grove Grade School District 58 is 1860 63rd Street, Downers Grove, Illinois 60516.

February 1993: Remarks during a farewell reception hosted by the U.S. Attorney's Office for the Northern District of Illinois. I have no notes, transcript, or recording, but press coverage is supplied. The address of the U.S. Attorney's Office is 219 South Dearborn Street, Chicago, Illinois 60604.

August 17, 1992: Remarks at the U.S. Attorney's Office to visiting Russian court officials regarding the U.S. criminal legal system. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 219 South Dearborn Street, Chicago, Illinois 60604.

May 1, 1992: Remarks at the U.S. Attorney's Office to visiting Canadian Queens Counsel investigators regarding the U.S. criminal legal system. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 219 South Dearborn Street, Chicago, Illinois 60604.

April 29, 1992: Remarks at the U.S. Attorney's Office to visiting Taiwanese investigators regarding the U.S. criminal legal system. I have no notes, transcript or recording. The address of the U.S. Attorney's Office is 219 South Dearborn Street, Chicago, Illinois 60604.

March 3, 1992: Opening remarks regarding criminal enforcement priorities at the Environmental Protection Agency's Environmental Criminal Enforcement seminar. I have no notes, transcript or recording. The address of the Environmental Protection Agency is 77 West Jackson Boulevard, Chicago, Illinois 60604.

January 7, 1992: Speaker at FBI training seminar on dealing with informants, Quantico FBI training facility, Quantico, Virginia 22134. I have no notes, transcript or recording.

March 22, 1991: Evaluator at National Criminal Justice Trial Advocacy Competition, John Marshall Law School. I have no notes, transcript or recording. The address of the law school is 315 South Plymouth Court, Chicago, Illinois 60604.

May 18, 1990: Speaker at a seminar of the Criminal Investigation Division of the IRS regarding net worth method of proof in criminal tax prosecutions. I have no notes, transcript or recording. The address of the IRS is 230 South Dearborn Street, Chicago, Illinois 60604.

January 24, 1990: Speaker about jury selection to U.S. District Judge Marvin Aspen's Northwestern Law School class. I have no notes, transcript or recording. The address of the law school is 375 East Chicago Avenue, Chicago, Illinois 60611.

September 14, 1989: Speaker at DePaul Law School Career Day about careers in the government. I have no notes, transcript or recording. The address of the law school is 25 East Jackson Boulevard, Chicago, Illinois 60604.

February 1, 1989: Speaker at Northwestern University Law School seminar on federal criminal law enforcement. I have no notes, transcript or recording. The address of the law school is 375 East Chicago Avenue, Chicago, Illinois 60611.

1988 – 1993: On approximately four occasions, I was an instructor at the Department of Justice Advocacy Institute in Washington, D.C. All of the classes dealt with trial and appellate advocacy. I have no notes, transcript or recording. The address of the Department of Justice is 950 Pennsylvania Avenue, NW, Washington, DC 20530.

December 2, 1982: Presentation on Search and Seizure Requirements at a U.S. Department of Agriculture Training Seminar. I have no notes, transcript or recording. The address of the Department of Agriculture is 111 North Canal Street, Chicago, Illinois 60606.

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.

This list represents all interviews I have given to newspapers, magazines or other publications, or radio or television stations through searches of my memory, my files, local newspaper archives, and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to recall or identify.

Tomoeh Murakami Tse, *Impact of Bail Denial to Madoff Deputy Debated*, Washington Post, Aug. 13, 2009 (quotes reprinted in multiple outlets). Copy supplied.

Tomoeh Murakami Tse, *Madoff Sentenced to 150 Years*, Washington Post, June 30, 2009 (quotes reprinted in multiple outlets). Copy supplied.

Diana B. Henriques, William K. Rashbaum and Zachery Kouwe, *Guilty Plea is Expected by Madoff*, New York Times, Mar. 7, 2009 (quotes reprinted in multiple outlets). Copy supplied.

Press Release, *Rep. Cross Appoints Tom Durkin as Special Counsel on Ethics*, Illinois General Assembly, Feb. 5, 2009. Copy supplied.

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3 Charged in Phony Marriages for Aliens, Associated Press, Aug. 20, 1982. Copy supplied.

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

I have not served as a judge.

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

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

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

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

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

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

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

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

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system

by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

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.

Member, District 58 School Board, Downers Grove, Illinois (1993 – 1998); appointed by the School Board to finish unexpired term and elected to four-year term in 1993.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

In 2009, I was appointed by Illinois Representative Tom Cross (R-Oswego) to serve as Special Counsel to the House Republicans on Ethics. I held that position until 2010.

When my brother, Jim Durkin, ran for the U.S. Senate in 2002, I encouraged friends to contribute to his campaign, handed out some pamphlets at a train station one day, and also put up some yard signs.

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 1979 to 1980, I served as a law clerk to the Honorable Stanley J. Roszkowski, U.S. District Judge for the Northern District of Illinois.

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

I have not practiced law alone.

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

1980 – 1993
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604
Assistant United States Attorney (1980 – 1993)
Deputy Chief, Special Prosecutions Division (1988)
Chief, Criminal Receiving and Appellate Division (1989)
Chief, Special Prosecutions Division (1990)
First Assistant United States Attorney (1991 – 1993)

1993 – present
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
Partner

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

I have not served as a mediator or arbitrator 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 law practice from 1980 to 1993 exclusively involved investigating and prosecuting federal criminal cases for the U.S. Attorney's Office. When I began working in the office, I primarily investigated, indicted and tried relatively straightforward bank robbery, postal theft, narcotics, immigration and firearms cases. I also prepared a number of appellate briefs and argued before the Seventh Circuit nearly a dozen times. My case load eventually developed into investigating and trying more complex cases, including large scale narcotics matters, commodities, securities and tax fraud, and political corruption.

Maintaining my own caseload, I also held a number of supervisory roles in the office. As a Deputy Chief of Special Prosecutions, I supervised a number of senior attorneys and reviewed their cases, all of which involved complex financial and political corruption investigations. As Chief of the Criminal Receiving and Appellate Division, I was responsible for the supervision and training of the office's newest attorneys, as well as overall supervision of all criminal appeals. As Chief of the Special Prosecutions Division, I had supervisory responsibility for all of the senior lawyers in the division, along with monitoring every major investigation and trial the office was handling. As First Assistant United States Attorney, I was generally responsible for the review and supervision of every criminal and civil matter in the office. In the absence of the U.S. Attorney, I served as Acting U.S. Attorney. Finally, in all of the senior level supervisory positions I held, I often was consulted on trial issues.

When I began at Mayer Brown in 1993, much of my practice focused on white collar criminal defense and internal investigations. The nature of my practice quickly changed to a mix of civil and criminal litigation. I began to handle patent litigation, and it has remained a part of my practice since, especially in the pharmaceutical patent area. I have primarily been involved in securities litigation, civil rights litigation, consumer class action litigation, product liability litigation and criminal defense. Much of the commercial litigation involves damage claims that often exceed $50 million. In my white collar criminal defense practice, I have conducted a large number of internal investigations. I have represented corporations and individuals in dealings with the Department of Justice, the SEC and the CFTC. My practice is

nationwide, and I have appeared in a number of federal and state courts outside of Chicago. In the patent and civil rights areas, I have represented both plaintiffs and defendants. In the securities, product liability, consumer and criminal areas, I have always represented defendants. My criminal practice primarily relates to white collar offenses, except for my pro bono clients. In that regard, I have represented clients who have been charged with a wide variety of offenses under Title 18, Title 21, and Title 26 of the U.S. Code.

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 United States Attorney, I represented the United States in federal felony and misdemeanor prosecutions. While in private practice, I have often represented large corporations, including financial institutions such as JPMorgan Chase and CIBC; pharmaceutical and healthcare companies, such as Abbott Laboratories and Baxter Healthcare; and a number of international accounting firms, law firms, insurers, telecommunications companies, investment companies, and energy companies. I have also frequently represented individuals both in civil and criminal areas. In my pro bono cases, I have typically represented indigent defendants charged with various crimes, though I have also occasionally represented these individuals in civil matters.

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

100% of my practice has been in litigation or litigation-related (*i.e.*, internal investigations). I have appeared in court frequently since 1980. As an Assistant United States Attorney, I appeared in court on a nearly daily basis. Since joining Mayer Brown in 1993, 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:	80%
2. state courts of record:	10%
3. other courts:	0%
4. administrative agencies:	10%

ii. Indicate the percentage of your practice in:

1. civil proceedings:	60%
2. criminal proceedings:	40%

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

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

I estimate that I have tried approximately 80 cases to verdict. Approximately 65 of those were when I was in the U.S. Attorney's Office, some lasting several months. In private practice, I have tried approximately 15 cases to verdict, with several jury trials lasting three months. The vast majority of these cases were tried in federal court. When at the U.S. Attorney's Office, my responsibilities were usually divided equally with a trial partner. To the extent there was a first chair (chief counsel) on the case, I was typically the first chair on all but my earliest cases. Since I have been in private practice, I have typically tried cases with other counsel, but I have always been chief counsel.

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 have never appeared before the Supreme Court of the United States.

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

a. the date of representation;

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

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

1) *United States v. Marcy*, Case No. 90-CR-1045 (N.D. Ill. 1993). This five-week jury trial was held before the Honorable Marvin E. Aspen. One of the defendants was a Chicago alderman, while the other defendant was a First Ward political official. They were charged with causing the payment of bribes in a variety of court cases and administrative matters: 1) two organized crime murder cases; 2) an aggravated assault case where a police officer was nearly beaten to death; 3) a civil case pending in Cook County; and 4) a zoning dispute. I conducted the direct examination of the

undercover lawyer who recorded most of the incriminating conversations, the direct examination of several other government witnesses, and also the rebuttal argument. The defendant alderman was found guilty and was sentenced to prison. The other defendant became ill during trial, his case was severed, and he died before he could be re-tried.

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2) *United States v. Shields*, Case No. 90-CR-1044 (N.D. Ill. 1992), *aff'd*, 999 F.2d 1090 (7th Cir. 1993). This six-week jury trial was held before the Honorable Ilana D. Rovner. The defendants were the Presiding Judge of the Chancery Division of the Circuit Court of Cook County and an attorney. They were charged with extortion and tax charges. I gave the opening statement and rebuttal argument, conducted the direct examination of several government witnesses including the undercover attorney who recorded many of the incriminating conversations, and conducted the cross-examination of the judge. Both defendants were found guilty and sentenced to prison.

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Sam Banks (deceased)

3) *United States v. D'Arco*, Case No. 90-CR-1043 (N.D. Ill. 1992). I was the co-lead counsel. This six-week jury trial was held before the Honorable George W. Lindberg. The defendant was an Illinois state senator who received bribes to assure passage of certain legislation and to pay Cook County judges to affect the outcomes of cases. I gave the opening statement and rebuttal argument, conducted the direct examination of several government witnesses, and conducted the cross-examination of several defense witnesses. The defendant was found guilty and sentenced to prison.

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4) *United States v. Dempsey*, Case No. 89-CR-68 (N.D. Ill. 1991), 768 F. Supp. 1277 (N.D. Ill. 1991), *aff'd in part and rev'd in part, United States v. Ashman*, 979 F.2d 469 (7th Cir. 1992). This four-month jury trial involving illegal commodity trading in the soybean pit of the Chicago Board of Trade was held before the Honorable George M. Marovich. For several years, I and other AUSAs had supervised an FBI investigation where undercover FBI agents posed as commodity traders and gathered

evidence of illegal trading at the Chicago Board of Trade and Chicago Mercantile Exchange. Over 46 traders were eventually indicted. The largest of the indictments related to the soybean pit, where 21 traders were indicted. Ten of them went to trial. I gave the opening statement, conducted the direct examination of numerous witnesses including several cooperating witnesses and FBI agents, and cross-examined one of the two defendants who testified. All of the defendants were found guilty and sentenced to prison.

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5) *United States v. McDonnell*, Case No. 88-CR-199 (N.D. Ill. 1988). This three-week jury trial was held before the Honorable James H. Alesia. The case was part of the Operation Greylord investigation into official corruption in the Circuit Court of Cook County. The defendant was a Cook County judge who was accused of extorting attorneys to pay bribes to him, and then failing to pay taxes on those bribes. I conducted the direct examination of several convicted attorneys who were cooperating with the government, and conducted the direct examination of several IRS agents. I also gave the closing argument. The defendant was found guilty and sentenced to prison.

Co-counsel:
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Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
(312) 923-2903

Opposing Counsel:
Patrick Tuite (retired)

6) *Rufer v. Abbott Laboratories*, Case No. 99-2-27090-8SEA (Super. Ct. of Wash., King Co. 2001), *aff'd in part and vacated in part*, 118 Wash. App. 1080 (Wash. Ct. App. 2003), *aff'd in part and rev'd in part*, 114 P.3d 1182 (Wash. 2005). I was lead counsel representing Abbott Laboratories in this suit alleging that it manufactured a defective medical device that produced false positive test results in patients when used as a cancer marker. The three-month jury trial took place in state court in Seattle before the Honorable William Dowing. The jury heard over 50 witnesses, many dealing with expert scientific testimony on medical device manufacturing, immunoassay development, medical standard of care for diagnosis and treatment of gestational trophoblastic disease, and standard of care in laboratory testing. I gave the opening statement, most of the closing argument, and conducted direct and cross examinations of many of the scientific witnesses. The jury returned a $16 million verdict in favor of the plaintiff, allocating responsibility equally between Abbott and co-defendant University of Washington Medical Center. The verdict was affirmed on appeal.

Co-counsel:
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United States Magistrate Judge
United States District Court for the Northern District of Illinois
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7) *Forest Labs. v. Abbott Labs.*, Case No. 96-CV-159 (W.D.N.Y. 1998), *aff'd*, 239 F.3d 1305 (Fed. Cir. 2001). I was the lead attorney representing Abbott Laboratories in a pharmaceutical patent case involving a product that treated neonatal respiratory distress syndrome. The three-month jury trial was held in Buffalo, New York, before the Honorable Richard Arcara. Abbott Laboratories was the assignee of a patent from the Japanese inventor of the product, which was a breakthrough in the treatment of prematurely born infants, most of whom died before the commercial embodiment of this invention became available. Abbott was sued by a company which sought a declaratory judgment that their commercial product did not infringe the Abbott patent. Extensive trial testimony of the inventor, experts in the fields of neonatology, physical chemistry, analytical chemistry, and other complex sciences were presented to the jury. I gave the opening statement, closing argument, and conducted direct and cross examinations of over a dozen witnesses. The jury returned a verdict in favor of Abbott. The verdict was reversed by the trial court, and that decision was affirmed by the Federal Circuit.

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(212) 596-9000

Richard Barnes (Contact information unknown)

8) *United States v. Walker*, Case No. 87 CR 584 (N.D. Ill. 1987). I was the lead prosecutor in the grand jury investigation and indictment of former Illinois Governor Dan Walker. The case was heard by the Honorable Ann C. Williams. After Walker left office, he purchased a bank. Facing financial difficulties, but unable to borrow from his own bank, he arranged to have loans made in the names of his son and his former Naval Academy roommate. Once these individuals obtained the loan funds, they passed the money back to Walker. Walker was represented by Thomas Foran, the former U.S. Attorney for the Northern District of Illinois. After presenting evidence from the investigation to Walker's attorney, Walker entered into a plea agreement and pled guilty to bank fraud. I presented the sentencing argument for the government, and Walker was sentenced to prison.

Co-counsel:
Mark D. Pollack
Paul Hastings LLP
191 North Wacker Drive, 30th Floor
Chicago, IL 60606
(312) 499-6050

Opposing Counsel:
Tom Foran (deceased)

9) *Wells Fargo v. Evirobusiness, Inc.*, Case No. 04-L-1070L (Cook Co. Cir. Ct.). I was the lead attorney for CIBC in this one-month combined bench and jury trial before the Honorable Richard Goldberg. The subject matter related to breaches of warranties regarding commercial mortgage-backed securities. The amount of the underlying loan was over $11 million. I gave the opening and closing arguments, and conducted the direct examinations of my client's major witnesses and the cross-examinations of the chief witnesses for our opponents. The jury reached its verdict, where they allocated a small portion of the fault to my client, on October 15, 2010. The judge delivered his decision on August 22, 2011 for the bench portion of the case, finding for my client on some claims and against it on other claims.

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10) *Aventis Pharma v. Baxter Healthcare Corp.*, Case No. 06-CV-636 (D. Del. 2008). This pharmaceutical patent matter was heard as a private arbitration after it had been filed in federal court. On behalf of Baxter, I was the lead attorney, and I delivered the opening statement, closing argument and conducted direct examinations of several scientific witnesses, all of whom testified about the complex science relating to the development and characteristics of recombinant Factor VIII, a blood protein developed as a biological drug product to facilitate blood clotting in patients with hemophilia, as well as the historical and ongoing development of drug therapies for hemophilia. The results of the arbitration are confidential.

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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 performed no lobbying activities.

The most significant legal activities I have pursued, other than trials listed in number 17, include the following:

I have argued approximately 12 cases before the Seventh Circuit and three cases before the Federal Circuit. I have written several dozen appellate briefs, and edited dozens more in my position as chief of the appellate section in the U.S. Attorney's Office.

I provided pro bono assistance to the Illinois House Impeachment Committee and the Special Prosecutor in the Illinois Senate relating to the impeachment and conviction of former Governor Rod Blagojevich. In particular, I led the effort to persuade the U.S. Attorney's Office to release certain tape recordings for use at the trial, and to make an FBI agent available to testify at the impeachment trial.

I have represented AT&T Mobility in a consumer class action involving over 32 million class members, making it one of the larger class actions ever litigated. The fairness hearing on a proposed settlement was heard by U.S. District Court Judge Amy J. St. Eve on March 10, 2011, and final approval of the settlement occurred on June 2, 2011.

As head of the Mayer Brown Pro Bono Committee, I organized our "Seventh Circuit Project," arranging for Mayer Brown attorneys to be appointed to represent indigent parties in both criminal and civil appeals before the Seventh Circuit. To date, Mayer Brown attorneys from around the country have been appointed to represent individuals in approximately 137 appeals. Mayer Brown received the inaugural Justice John Paul Stevens Law Firm Pro Bono Award from the Seventh Circuit Bar Association's Pro Bono and Public Bar Service Awards Committee in 2010.

Finally, as a panel attorney of the Federal Defender Program, I have represented dozens of indigent individuals either under investigation or charged with federal criminal offenses. I believe all of these matters have been significant. They afforded me the opportunity to represent individuals in federal criminal cases, which can occur infrequently in a large law firm practice. They also allowed me to train younger attorneys in the practice of federal criminal defense.

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.

DePaul Law School, Adjunct Professor, Advanced Criminal Procedure (1996, 1998 – 2000, 2009). Copy of most recent syllabus supplied.

John Marshall Law School, Adjunct Professor, Trial Advocacy (1988 – 1991). I do not have a copy of the syllabus.

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

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Upon leaving Mayer Brown, I would receive a payout of my capital contribution in the amount of approximately $360,000. This amount would be paid to me in a lump sum, typically about a year after my departure.

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

None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

Although four of my brothers are attorneys, only two are litigators, and they appear very infrequently in federal court. If they were to appear before me, I would recuse myself. Several Assistant U.S. Attorneys in the Northern District of Illinois are former Mayer Brown associates who I worked with on a number of cases at Mayer Brown. If they appeared before me, I would disclose that fact to the opposing side.

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 a few years, to recuse myself from matters in which the firm represents any party.

I do not anticipate that any other family members or other persons, parties, categories of litigation, and financial arrangements are likely to present potential

conflicts of interest. If confirmed, I would carefully and diligently review cases and parties to determine if any actual or potential conflicts of interest were present. I would adhere to the Code of Conduct for United States Judges, as well as other applicable 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.

If confirmed, I would 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 applicable canons and statutory provisions. Where necessary, I would recuse myself or ask that a case be reassigned to another judge in accordance with the policies and procedures of the court.

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

Since 1993, I have worked approximately 100 to 150 hours per year on pro bono matters.

I have done an extensive amount of criminal pro bono work since I left the U.S. Attorney's Office. I have volunteered for at least one Federal Defender "duty day" nearly every year since 1993. Typically, I will obtain five to ten new matters on such a day. Some matters have involved simply providing advice. A number were arrest cases where I have handled the matter from arrest to disposition, and in some cases, appeal.

I recently represented a defendant charged with murder by the Cook County State's Attorney's Office. This was not a capital case. A four-day jury trial was held April 25-28, 2011. The defendant was found guilty and sentenced to 22 years imprisonment. (187 hours)

I have also become involved in several pro bono cases through outside legal assistance organizations. For example, in 1995 to 1996, I, along with several other Mayer Brown attorneys, assisted in persuading the Cook County State's Attorney's office to vacate the conviction of a prisoner on death row based on actual innocence. He already had served nearly 28 years in jail when we obtained his release. We also represented him in his suit against the Cook County Sheriff's Office where the four plaintiffs shared a $36 million settlement. (59.50 hours)

In 2005 to 2006, I was involved in representing a Rwandan national arrested in Chicago who was accused by the International War Crimes Tribunal of being involved in the Rwandan genocide. I represented him in numerous dealings with the

International War Crimes Tribunal. He was unable to reach an agreement with the tribunal, and upon completion of a federal sentence for illegal entry into the United States, was deported to Rwanda to face murder charges. (93 hours)

For a number of years, I was the Chairman of the Pro Bono Committee at Mayer Brown. In that capacity, I organized the firm's efforts in providing pro bono legal assistance, while also personally participating in individual pro bono matters.

I served as a board member on the Legal Assistance Foundation for eight years.

Finally, over the years I have called several federal judges who are friends, asking them to appoint me to any case where they think a trial may occur and there is need for an appointed lawyer. I have received several appointments in this manner, including in 2009 representing a detained defendant who was charged with holding other prisoners hostage in a prisoners' bus in the basement of the federal building. He eventually pled guilty and was sentenced to prison. (71 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.

Both Senator Durbin and Senator Kirk have selection committees which recommend candidates for nomination to the federal courts. On May 8, 2009, I submitted an application for the position of District Judge to the office of Senator Durbin. I was interviewed by representatives of his selection committee and then by the full committee in May and June 2009, respectively. On June 20, 2009, I was interviewed by Senator Durbin. On August 7, 2009, Senator Durbin forwarded my name to the President for consideration as a District Judge.

On March 18, 2011, I submitted an application for the position of District Judge to the office of Senator Kirk. I was interviewed by his selection committee on May 9, 2011. On May 27, 2011, I was interviewed by Senator Kirk. On July 5, 2011, Senator Kirk forwarded my name to the President for consideration as a District Judge.

Since December 1, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 2, 2012, I met with officials from the White House Counsel's Office and the Office of Legal Policy in

Washington, DC. On May 21, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2012

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
Durkin, Thomas M.	Northern District of Illinois	05/22/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Court judge	☑ Nomination Date 05/21/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 04/30/2012
7. Chambers or Office Address		
71 South Wacker Drive, Chicago, Illinois 60606		

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. Insert signature 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		
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 Durkin, Thomas M.	Date of Report 05/22/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1	2012	Self-employed (attorney)	$270,000.00
2	2011	Self-employed (attorney)	$609,951.00
3	2010	Self-employed (attorney)	$651,376.00
4			

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

(Before amount not required to, opt to include.)

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

	DATE	SOURCE AND TYPE
1	2012	Bead Heaven- hourly worker
2	2011	Bead Heaven-hourly worker
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 Durkin, Thomas M.	Date of Report 05/22/2012

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

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1	exempt		
2			
3			
4			
5			

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

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1			
2			
3			
4			
5			

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting Durkin, Thomas M.	Date of Report 05/22/2012

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

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

	A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1	Merrill Lynch Bank Deposit Program (cash account)	B	Interest	O	T	Exempt				
2	Los Angeles California Uni. CA General Obligation Muni Bond	C	Interest	K	T					
3	Toledo Ohio Cap IMPT, OH General Obligation Muni Bond		None	L	T					
4	Cocoa Fla WTR&SWR REV, FL Revenue Muni Bond	B	Interest	K	T					
5	Grand Rapids Mi Bldg AT, Pre-Refunded Muni Bond	B	Interest	K	T					
6	Miami-Dade CNTY FLA WTR, FL Revenue Muni Bond	C	Interest	K	T					
7	Michigan ST Grant, MI Revenue Muni Bond	C	Interest	K	T					
8	New Jersey Economic Dev, NJ Revenue Muni Bond		None	L	T					
9	New Jersey St Transn TR, NJ Revenue Muni Bond	B	Interest	K	T					
10	University Tex Univ REV S, TX Pre-Refunded Muni Bond	B	Interest	K	T					
11	AUD Australian Govt, Australian Dollar Bond Taxable	C	Interest	L	T					
12	BNY Capital Trust IV preferred stock	B	Interest	K	T					
13	Goldman Sachs Group Inc preferred stock	B	Interest	L	T					
14	JPMorgan Chase Cap XXIX preferred stock	A	Interest	K	T					
15	Wells Fargo Capital XI preferred stock	B	Interest	K	T					
16	iShares Gold Trust		None	K	T					
17	iShares Silver Trust		None	K	T					

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

2 Value Codes
(See Columns C1 and D3)

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: $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
P3: $25,000,001 - $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

E: $15,001 - $50,000

FINANCIAL DISCLOSURE REPORT Page 5 of 8	Name of Person Reporting Durkin, Thomas M.	Date of Report 03/22/2012

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

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

	A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	B (2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D (2) Date mm/dd/yy	D (3) Value Code 2 (J-P)	D (4) Gain Code 1 (A-H)	D (5) Identity of buyer/seller (if private transaction)
18.	Lubbock Tex CTFS OBLIG, TX Pre-Refunded Muni Bond	A	Interest							
19.	Massachusetts St Cons LN, MA Pre-Refunded Muni Bond	B	Interest							
20.	Lakeview MI PUB Sch DT, MI Pre-Refunded Muni Bond	A	Interest							
21.	ISHARES Russell 1000 Growth Index Fund	A	Dividend							
22.	ISHARES Russell 1000 Value Index Fund	B	Dividend							
23.	ISHARES Russell Midcap Value Index Fund	A	Dividend							
24.	ISHARES MSCI EAFE Index Fund	A	Dividend							
25.	ISHARES RS 2000 Growth Index Fund	A	Dividend							
26.	ISHARES RS 2000 Value Index Fund	A	Dividend							
27.	ISHARES MSCI Indonesia Investible Market Blackrock	A	Dividend							
28.	ISHARES MSCI Bric Index Holding	A	Dividend							
29.	ISHARES Russell Midcap Growth Index Fund	A	Dividend							
30.	Dodge & Cox Stock Fund	B	Dividend	J	T					
31.	Cavanal Hill Cash Management Fund Institutional Class	A	Dividend	N	T					
32.	T Rowe Price Emerging Mkts Stk Fund	A	Dividend	J	T					
33.	Vanguard Target Rtrmnt 2025 Fund	A	Dividend	K	T					
34.	Harbor Capital Appreciation 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 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
I - $1,000 or less
J - $1,001 - $2,500
K - $2,501 - $5,000
L - $5,001 - $15,000
M - $15,001 - $50,000
N - $50,001 - $100,000
O - $100,001 - $250,000
P1 - $250,001 - $500,000
P2 - $500,001 - $1,000,000
P3 - More than $1,000,000

Q - Appraisal
R - Book Value
S - Assessed
T - Estimated
U - Cost (Real Estate Only)
V - Other
W - Unknown

D1 - Buy
D2 - Sell
D3 - Redemption
D4 - Exchange
D5 - Other

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Durkin, Thomas M.	05/22/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross Value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date (mm dd yy)	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. Vanguard Instl Index Fund	B	Dividend	J	T					
36. Vanguard Inflation Protect Sec Fund	D	Dividend	N	T					
37. Chase accounts (various cash accounts)	A	Interest	M	T					
38. Northern Trust account (cash account)		None	J	T					
39. Bank of America account (cash account)		None	J	T					
40. University of Iowa Credit Union account (cash account)		None	J	T					
41. Nikrad LLC		None	N	W					
42. Euro Pacific Growth R6 Fund	A	Dividend							
43. Invesco Constellation Fund		None	K	T					
44. JPMorgan TR 2 Liquid Assets - Money Market Fund		None	J	T					
45. Franklin Templeton Founding Funds Allocation Class A		None	J	T					
46. BlackRock Large Cap value(c share)		None	K	T					
47. Next Gen Client Direct Series, Principal Plus Port (C share)		None	K	T					
48.									

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 - $15,001 - $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 - $5,000,001 - $25,000,000
P2 - More than $25,000,000
P3 - More than $50,000,000
P4 - More than $50,000,000
Q - Appraisal
R - Cost (Real Estate Only)
S - Assessment
T - Cash Market
V - Other
W - Estimate

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
U - Book Value

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting	Date of Report
	Durkin, Thomas M.	05/22/2012

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting	Date of Report
	Durkin, Thomas M.	05/22/2012

IX. CERTIFICATION.

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

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

Signature_____

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		105	516	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	853	446	Notes payable to relatives		100	000
Unlisted securities – see schedule		458	343	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – personal residence		650	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		40	000				
Cash value-life insurance							
Other assets itemize:							
Prepaid College Tuition Plus		1	087				
Corporate Bonds		55	210				
Municipal Bonds		358	616	Total liabilities		100	000
Mayer Brown Cash Balance Plan		897	856	Net Worth	4	320	074
Total Assets	4	420	074	Total liabilities and net worth	4	420	074
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts		5	625	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	
BlackRock Large Cap Value Fund	$ 19,295
BNY Capital Trust IV stock	22,185
Cavanal Hill Cash Management Fund - Instl	463,534
Dodge & Cox Stock Fund	7,232
Franklin Templeton Founding Funds Alloc. Fund	9,989
Goldman Sachs Group Inc. stock	50,260
Harbor Capital Appreciation Fund	7,444
Invesco Constellation Fund	35,338
iShares Gold Trust	23,206
iShares Silver Trust	19,071
JPMorgan Chase Cap XXIX stock	25,800
JPMorgan Trust II Liquid Assets	8,427
Merrill Lynch Bank Deposit Program	687,435
Principal Plus Portfolio	31,070
T. Rowe Price Emerging Markets Stock Fund	6,794
Vanguard Inflation-Protected Securities Fund	376,625
Vanguard Institutional Index Fund	4,830
Vanguard Total Retirement 2025	32,069
Wells Fargo Capital XI stock	22,842
Total Listed Securities	$ 1,853,446

Unlisted Securities	
Mayer Brown Capital Contribution	$ 358,343
Nikrud LLC	100,000
Total Unlisted Securities	$ 458,343

AFFIDAVIT

I, Thomas M. Durkin, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5-21-2012
(Date)

Thomas Michael Durkin
(Name)

Monika Castiglioni
(Notary)

OFFICIAL SEAL
MONIKA CASTIGLIONI
Notary Public - State of Illinois
My Commission Expires Nov 29, 2014

Senator COONS. Judge Tigar.

STATEMENT OF HON. JON S. TIGAR, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Judge TIGAR. Thank you, Senator. I would like to start by thanking you and Ranking Member Grassley for conducting this hearing today, also Senator Feinstein. I would like to thank Senator Leahy and the Ranking Member for scheduling this hearing and thank each of the Senators on the Committee for their participation in this process. I feel privileged to be here today, and I am looking forward to answering any questions that you have about my application.

I would like to thank President Obama for the honor of this nomination and Senator Boxer for her confidence in recommending me to the White House and both Senators Boxer and Feinstein for their very generous remarks of introduction.

I am fortunate to be joined here today by a few family and friends. With me today is my wife of 20 years, Carrie Avery. Since we met 25 years ago in law school, Carrie has been my constant friend, companion, and adviser in all of my life's endeavors, and I am very privileged to have her here today.

My two sons were not able to be here today, but they are watching these proceedings on the Webcast. Will is a history major at Williamette University in Salem, Oregon, and Adam is a high school junior.

Also joining me here today are my father, Professor Michael Tigar; my friend William King from Birmingham, Alabama, whom I first met 23 years ago when we were both clerking for Judge Vance; and my friend Judge Jeb Boasberg of the Federal District Court for the District of Columbia, whom some of the Committee members may remember from prior proceedings. I have known Jeb ever since we practiced law together in San Francisco.

I would also like to acknowledge the many family and friends who could not be here in person but who are watching on the Webcast, including my mother and stepfather, Pam and George Wagner; my grandmother, Elizabeth Tigar, who turned 95 years old last May; and too many others—excuse me, and many others too numerous to mention.

Senators, I thank you for allowing me to make these introductions and for the opportunity to address you this afternoon. I have no opening statement, and I look forward to your questions.

[The biographical information of Judge Tigar follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jon Steven Tigar

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

   United States District Judge for the Northern District of California

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

   Alameda County Superior Court
   1221 Oak Street, Department 15
   Oakland, California 94612

   Residence: Berkeley, California

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

   1962, London, England

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

   1986 – 1989, Berkeley Law School (formerly Boalt Hall School of Law); J.D., 1989

   1980 – 1984, Williams College; B.A., 1984

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

   2002 – present
   Alameda County Superior Court
   1225 Fallon Street, Room 209

Oakland, California 94612
Superior Court Judge

Spring 2011
Berkeley Law School
University of California
Berkeley, California 94720
Lecturer, Pre-Trial Litigation Skills

1994 – 2002
Keker & Van Nest LLP
633 Battery Street
San Francisco, California 94111
Partner (1997 – 2002)
Associate (1994 – 1996)

1993 – 1994
Office of the Public Defender
555 Seventh Street
San Francisco, California 94103
Trial Attorney

1990 – 1992
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
Litigation Associate

1989 – 1990
Chambers of Hon. Robert S. Vance
United States Court of Appeals for the Eleventh Circuit
900 United States Courthouse
Birmingham, Alabama 35203
Law Clerk

Summer 1988
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
Summer Associate

Summer 1987
Wyman, Bautzer, Kuchel & Silbert
Century City, California
The firm is no longer in existence.
Summer Associate

1985 – 1986
Allen, Matkins, Leck, Gamble & Mallory
515 South Figueroa Street, Ninth Floor
Los Angeles, California 90071
Paralegal

February 1985
Legal Aid Foundation of Los Angeles
1550 West Eighth Street
Los Angeles, California 90017
Temporary Paralegal

January 1985
Bank (I no longer recall the name of the bank)
Real Estate Owned Department
San Vicente Boulevard
Los Angeles, California 90049
Temporary clerical staff

Summer 1984
Dorsey & Whitney
51 West 52nd Street
New York, New York 10019
Paralegal

Other Affiliations (uncompensated):

2010 – present
Volunteer Legal Services Program
Alameda County Bar Association
70 Washington Street, Suite 200
Oakland, California 94607
Director

2001 – 2005
Berkeley Biotechnology Education, Inc. (now Biotech Partners)
P.O. Box 2186
Berkeley, California 94702
Director

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

I have not served in the military. I have 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.

Volunteer Legal Services Corporation, Guardian of Justice Award (2011)

Alameda/Contra Costa Trial Lawyers Association, Trial Judge of the Year (2009)

Boalt Hall School of Law, Young Alumnus Award (2006)

State Bar of California, Wiley W. Manuel Award for Pro Bono Legal Services (2001)

Boalt Hall School of Law, Order of the Coif (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.

Alameda County Bar Association (2001 – present)
Alameda County Bar Association/East Bay Diversity Bar Coalition Judicial Mentoring Project, Mentor (2008 – present)
Volunteer Legal Services Program, Director (2010 – present)

American Bar Association (1988 – 2001, 2003 – present)
Section of Litigation, Task Force on the Judiciary (2003 – 2006)
Steering Committee on State Court Assessment Project (2004 – 2006)

American Constitution Society (2005 – present)

American Law Institute (2003 – present)
Adviser, Restatement (Third) of Torts: Liability for Economic Loss (forthcoming)
Members Consultative Group, Model Penal Code: Sentencing (forthcoming)
ALI Young Scholars Medal Committee (2012 – present)

California Judges Association (2002 – present)

California Judicial Council, Advisory Committee on Civil Jury Instructions (2006 – present)

Center for Judicial Education and Research, Judicial Ethics Education Committee (2004 – 2007)

Edward J. McFetridge American Inn of Court (1994 – 1996, 1999 – 2002)

Martin C. Kauffman 100 Club of Alameda County (2011 – present)

San Francisco Bar Association (1990 – 2002)

State Bar of California (1990 – 2002)
Co-Chairman, Litigation Section Trial Symposium Committee (1997 – 1998)

10. **Bar and Court Admission**:

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

California, 1990

There has not been any lapse in membership. Pursuant to California law, however, a person serving as a judge of a court of record is not considered to be a member of the bar while in office.

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, 2000
United States Court of Appeals for the Eleventh Circuit, 1990
United States Court of Appeals for the Ninth Circuit, 1992
United States District Court for the Northern District of California, 1992

11. **Memberships**:

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

Alameda County Moot Court, Volunteer Judge (2003 – present)
Berkeley Biotechnology Education, Inc. (now Biotech Partners), Director (2001 – 2005)
Berkeley High Student Court, Volunteer Judge (2005 – present)
Berkeley Law School Professional Skills Advisory Committee (2009 – present)
Centro Legal de la Raza Youth Law Program, Mentor (2006 – present)
Rockridge Soccer Club, Youth Soccer Referee (2002 – 2008)
St. Paul's Episcopal School, Parent Council (2001 – 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.

To the best of my knowledge, none of the organizations listed in response to 11a above 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.

California Justice Goodwin Liu Addresses Bay Area Members, ALI Reporter, Fall 2011. Copy supplied.

CALIFORNIA CONTRACT LITIGATION (Matthew Bender looseleaf). I am a Contributing Editor to this publication. Hard copy supplied.

ACSR Releases Progress Report, Williams Record, Nov. 22, 1983, at 4. Copy supplied.

WAAC Asks Senior Class to Withhold Donations, Williams Record, May 10, 1983, at 1. Copy supplied.

Declaration Bid Exhausts Gifts, Williams Record, May 3, 1983, at 1. Copy supplied.

Hunger Strike?, Williams Record, Apr. 26, 1983, at 6. Copy supplied.

Trinity Pres: "Keep Frats," Williams Record, Apr. 26, 1983, at 6. Copy supplied.

Controversies Spark Faculty Meeting, Williams Record, Feb. 15, 1983, at 1. Copy supplied.

Party Party Is a Party Party, Williams Record, Feb. 8, 1983, at 6. Copy supplied.

Cuban Diplomat Blasts Trade Embargo, Williams Record, Jan. 11, 1983 at 3. Copy supplied.

Admissions Letter Sparks Official, Student Concern, Williams Record, Feb. 23, 1982, at 1. Copy supplied.

Searching for the Definition of the Ideal Student, Williams Record, Feb. 23, 1982, at 4. Copy supplied.

Muddling Through the Williams Political Scene, Williams Record, Feb. 9, 1982, at 4. Copy supplied.

Shifting the Power: Women Must Say No, Williams Record, Jan. 19, 1982, at 4. Copy supplied.

Trivia Prepares to Warp Out, Williams Record, Dec. 8, 1981, at 6. Copy supplied.

Faculty Morale Wavers, Williams Record, Nov. 24, 1981, at 6. Copy supplied.

Peer Health Plans Contraceptive Clinic, Williams Record, Oct. 27, 1981, at 1. Copy supplied.

Town Wages Hill Battle, Williams Record, Oct. 13, 1981, at 1. Copy supplied.

Party Controls Tighten, Williams Record, Sept. 22, 1981, at 1. Copy supplied.

Food Service Installs Computer I.D. System, Williams Record, Sept. 9, 1981, at 1. Copy supplied.

PRS Active to Enlighten Community, Williams Record, May 12, 1981, at 7. Copy supplied.

Town Meets on El Salvador, Williams Record, May 5, 1981, at 6. Copy supplied.

Freshman Warnings Reach 4-Year High, Williams Record, May 5, 1981, at 3. Copy supplied.

Panel Looks at Crime, Williams Record, Apr. 21, 1981, at 10. Copy supplied.

Letter to the Editor, *Slave Auction*, Williams Record, Mar. 17, 1981, at 2. Copy supplied.

Lecture Funding to Change Hands, Williams Record, Mar. 17, 1981, at 1. Copy supplied.

Woman Ob/Gyn Added to Staff, Williams Record, Mar. 10, 1981, at 7. Copy supplied.

CC Officers Ready for Spring, Williams Record, Mar. 10, 1981, at 1. Copy supplied.

PMA Remains Suspect, Williams Record, Mar. 3, 1981, at 1. Copy supplied.

Police Remove Suspicious Salesman from Campus, Williams Record, Feb. 17, 1981, at 1. Copy supplied.

Early D. Applicants Drop 15%, Williams Record, Feb. 10, 1981, at 1. Copy supplied.

Press Conference Held, Williams Record, Jan. 27, 1981, at 1. Copy supplied.

Two Professors to Receive Tenure, Williams Record, Jan. 20, 1981, at 1. Copy supplied.

Econ Test Found: Profs Delay Exam, Williams Record, Jan. 13, 1981, at 1. Copy supplied.

College Renovates Campus for Handicapped, Williams Record, Dec. 9, 1980, at 1. Copy supplied.

WCOD Holds Rally at Stetson, Williams Record, Nov. 25, 1980, at 1. Copy supplied.

Draft Counseling Begins, Williams Record, Nov. 25, 1980, at 1. Copy supplied.

Sprague Defines Company Policy, Williams Record, Oct. 28, 1980, at 6. Copy supplied.

CES Holds Festival, Williams Record, Oct. 14, 1980, at 7. Copy supplied.

McCammond Wins CC Veepship, Williams Record, Oct. 14, 1980, at 1. 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 2006, I have been a member of the Advisory Committee on Civil Jury Instructions, which has issued periodic reports to the Judicial Council of California. Copies supplied.

The Missouri Court System: An Assessment, ABA Steering Committee on State Court Assessment Project, Feb. 11, 2006. 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.

November 20, 2006: I testified before the California Commission on Judicial Performance on behalf of Alameda County Superior Court Judge Robert Freedman. Transcript supplied.

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

May 17, 2012: I was an instructor in a one-day course for judges entitled "Basic Case Management," Irvine, California. The class was sponsored by the Center for Judicial Education and Research of the Administrative Office of the Courts. I have no notes, transcript, or recording. The address of the Center for Judicial Education and Research is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

December 6, 2011: I was a panelist on the continuing legal education program "Avoiding Evidentiary Pitfalls In Law & Motion" sponsored by the Alameda County Bar Association, Oakland, California. PowerPoint slides and outline supplied.

November 11, 2011: I was a panelist on the program sponsored by the Consumer Attorneys of California, "False Claims Act & Elder Abuse Cases," San Francisco, California. I have no notes, transcript, or recording. The address of the Consumer Attorneys of California is 770 L Street, Suite 1200, Sacramento, California 95814.

September 15, 2011: I was the moderator at a trial skills demonstration program at the American Bar Association's Fall 2011 National Legal Malpractice

Conference entitled "Not Your Peers, But Your Judges: Jurors Tell All." San Francisco, California. Recording of the program supplied.

June 4, 2011: I was a panelist during a Centro Legal de la Raza conference about the legal field and law school for members of disadvantaged communities, Berkeley, California. I spoke generally about the work habits, skills, and personal traits that lead to a successful legal career. I have no notes, transcript, or recording. The address of Centro Legal de la Raza is 3022 International Boulevard, Suite 410, Oakland, California 94601.

April 15, 2011: I was a panelist on a program entitled "Discovery And Beyond: Lessons for Young Lawyers," sponsored by Boalt Advocates Alumni, San Francisco, California. I have no notes, transcript, or recording. The address of Boalt Advocates Alumni is c/o Spencer Pahlke, Walkup, Melodia Kelly & Schoenberger, 650 California Street, 26th Floor, San Francisco, California 94103.

October 20, 2010: I was a panelist on a program entitled "What To Do And What Not to Do In the Courtroom," sponsored by the Santa Clara Law School chapter of the American Constitution Society, Santa Clara, California. I have no notes, transcript, or recording. The address of the American Constitution Society Student Chapter at Santa Clara Law School is 500 El Camino Real, Santa Clara, California 95053.

September 15, 2010: I was a panelist on a program entitled "An Insider's View of the American Justice System" at the University of Hamburg, Hamburg, Germany. I have no notes, transcript, or recording. The address of the University is Universität Hamburg, Rothenbaumchaussee 33, 20148 Hamburg, Germany.

September 14, 2010: I gave a speech entitled "Pre-Trial Discovery in Business Law Cases: Experiences of a California Judge" at the University of Hamburg, Hamburg, Germany. Draft speech and PowerPoint slides supplied.

September 13, 2010: I gave a speech entitled, "The Developing Law on Punitive Damages in American Courts," at the University of Cologne, Cologne, Germany. Draft speech and PowerPoint slides supplied.

September 13, 2010: I gave a speech entitled "The Developing Law on Punitive Damages in American Courts," to the Frankfurt chapter of the German-American Lawyers' Association, Frankfurt, Germany. I used the same remarks and PowerPoint slides supplied for the September 13, 2010 event in Cologne.

September 11, 2010: I gave a speech entitled, "The Developing Law on Punitive Damages in American Courts" to the student chapter of the German-American Lawyers' Association, Munich, Germany. I used the same remarks and PowerPoint slides supplied for the September 13, 2010 event in Cologne.

September 10, 2010: I was the keynote speaker at the annual meeting of the German-American Lawyers' Association, Munich, Germany. My speech was entitled, "Discovery in Civil Cases: Is the American Model Broken? Should America Be More Like Germany?" Draft speech and PowerPoint slides supplied.

July 2010: I was an instructor for the judicial education course, "Qualifying Ethics IV," sponsored by the Center for Judicial Education and Research of the Administrative Office of the Courts, San Francisco, California. I have no notes, transcript, or recording. The address of the Center for Judicial Education and Research is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

April 1, 2010: I was a panelist on a program entitled, "Judges' 'Must Haves' and 'Can't Stands' In The Courtroom," sponsored by the Berkeley Law School chapter of the American Constitution Society, Berkeley, California. I have no notes, transcript, or recording. The address of the Berkeley Law School Student Chapter is 215 Boalt Hall, Berkeley, California 94720.

March 15, 2010: I gave a speech on effective methods for alternative dispute resolution in litigation to the Berkeley-Albany Bar Association, Berkeley, California. Speech outline supplied.

September 30, 2009: I was a panelist on a program entitled "The Art of Advocacy" at the Bar Association of San Francisco, San Francisco, California. I have no notes, transcript, or recording. The address of the Bar Association of San Francisco is 301 Battery Street, Third Floor, San Francisco, California 94111.

August 26, 2009: I gave a presentation on "Recent Developments in Contract Law." I do not recall the sponsor or additional details of the presentation. Outline supplied.

June 24, 2009: I participated in a judges panel sponsored by the University of California, Berkeley Law School. I and the other panelists discussed how our background, experience, and interests had led us to a career on the bench. I have no notes, transcript, or recording. The address of Berkeley Law School is 215 Boalt Hall, Berkeley, California 94720.

June 20, 2009: I was a panelist on a program entitled, "Judicial Elections: Financing, Recusal, and Judicial Independence" at the annual convention of the American Constitution Society, Washington, D.C. Audio recording of the program supplied.

May 2009: I was a speaker at a program entitled "Resolving Litigation Disputes Without Motions," sponsored by the Alameda County Bar Association, Oakland, California. I have no notes, transcript, or recording. The address of the Alameda

County Bar Association is 70 Washington Street, Suite 200, Oakland, California 94607.

March 2009: I was an instructor for the "Ethics & Fairness" portion of the mandatory New Judge Orientation for California state trial judges, San Francisco, California. The class is provided by the Center for Judicial Education and Research of the Administrative Office of the Courts. I have no notes, transcript, or recording. The address of the Center for Judicial Education and Research is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

March 19, 2009: I was one of two speakers on the judicial education program "Getting It Right: Drafting Civil Jury Instructions and Special Verdicts," sponsored by the Civil Law Institute, Millbrae, California. PowerPoint slides supplied.

March 2009: I was one of two speakers on the judicial education program "Getting It Right: Drafting Civil Jury Instructions and Special Verdicts," sponsored by the Center for Judicial Education and Research of the Administrative Office of the Courts, Burlingame, California. Course and presentation outlines supplied.

November 11, 2008: I was a panelist on the program, "Making The Most Of Expert Witnesses," sponsored by the San Francisco Trial Lawyers Association, San Francisco, California. PowerPoint slides supplied.

September 18, 2008: I was a speaker at the program, "Top Ten Dos and Don'ts," sponsored by the Northern California Association of Defense Counsel, San Francisco, California. I spoke on "Civil Direct Calendaring." PowerPoint slides supplied.

January 2008: I was a panelist on the program, "Ask The Judges," sponsored by the Association of Business Trial Lawyers, San Francisco, California. I have no notes, transcript, or recording. The address of the Association of Business Trial Lawyers is P.O. Box 696, Pleasanton, California 94566.

January 2008: I was an instructor for the "Ethics & Fairness" portion of the mandatory New Judge Orientation for California state trial judges, San Francisco, California. The class is provided by the Center for Judicial Education and Research of the Administrative Office of the Courts. I have no notes, transcript, or recording. The address of the Center for Judicial Education and Research is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

October 2007: I was a panelist on the program, "Ask The Judge," sponsored by the State Bar of California Labor and Employment Section, Berkeley, California. I have no notes, transcript, or recording. The address of the State Bar of California is 180 Howard Street, San Francisco, California 94105.

September 29, 2007: I was a panelist at the program, "Planning, Managing and Winning Jury Trials in the 21st Century," at the Annual Meeting of the State Bar of California, Anaheim, California. I have no notes, transcript, or recording. The address of the State Bar of California is 180 Howard Street, San Francisco, California 94105.

June 2007: I was an instructor at the National Institute for Trial Advocacy (NITA) Western Regional Trial Practice Seminar, San Francisco, California. I have no notes, transcript, or recording. The address of NITA is 1685 38th Street, Suite 200, Boulder, Colorado 80301.

February 2007: I was an instructor for the "Ethics & Fairness" portion of the mandatory New Judge Orientation for California state trial judges, San Francisco, California. The class is provided by the Center for Judicial Education and Research of the Administrative Office of the Courts. I have no notes, transcript, or recording. The address of the Center for Judicial Education and Research is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

October 7, 2006: I was a speaker at the program, "Recent Expert Witness Decisions," at the Annual Meeting of the California Judges Association, Monterey, California. My presentation was titled "Expert Witnesses: The Year in Review." PowerPoint slides and outline supplied.

June 12-13, 2006: I was an instructor for the Evidence course given at the B.E. Witkin Judicial College, Berkeley, California. The Judicial College is a two-week mandatory education program for new California state judicial officers provided by the Center for Judicial Education and Research of the Administrative Office of the Courts. My presentation focused on expert witnesses. Outline and PowerPoint slides supplied.

May 5, 2006: I gave a speech when I accepted the Young Alumni Award from Boalt Hall School of Law (now Berkeley Law School). The topic of my speech was personal reminiscence about the school and my classmates. I have no notes, transcript, or recording, but press coverage is supplied. The address of Berkeley Law School is 215 Boalt Hall, Berkeley, California 94720.

April 8, 2006: I was a panelist on the program, "Self-Represented Litigants," sponsored by the Berkeley Law School Student Chapter of the American Constitution Society, Berkeley, California. PowerPoint slides provided.

January 2006: I was an instructor for the "Ethics & Fairness" portion of the mandatory New Judge Orientation for California state trial judges, San Francisco, California. The class is provided by the Center for Judicial Education and Research of the Administrative Office of the Courts. I have no notes, transcript,

or recording. The address of the Center for Judicial Education and Research is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

December 2005: I was an instructor for family law training provided by the Alameda County Superior Court to prospective pro tem judges in Oakland, California. PowerPoint slides supplied.

October 2005: I was a speaker at the program, "Top Do's And Don'ts in Contract Litigation," sponsored by the Bar Association of San Francisco, San Francisco, California. PowerPoint slides supplied.

September 2005: I was the moderator at a program entitled, "Ethical Implications of Stem Cell Research, Cloning, and Neuroscience," at the Statewide Judicial Branch conference sponsored by the Administrative Office of the Courts, San Diego, California. I have no notes, transcript, or recording. The address of the Administrative Office of the Courts is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

June 2005: I was a Seminar Leader at the B.E. Witkin Judicial College, Berkeley, California. The Judicial College is a two-week mandatory education program for new California state judicial officers provided by the Center for Judicial Education and Research of the Administrative Office of the Courts. I have no notes, transcript, or recording. The address of the Judicial College is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

March 2005: I was the moderator of a program entitled "Disappearing Trials," sponsored by the Association of Business Trial Lawyers, San Francisco, California. The program discussed the historical decline in the number and percentage of civil cases proceeding to trial and the causes of that decline. PowerPoint slides supplied.

January 2005: I was an instructor in a judicial education course entitled, "Family Law Overview," provided by the Center for Judicial Education and Research of the Administrative Office of the Courts, Burlingame, California. My presentations were entitled "Child Custody Jurisdiction," "Credits, Reimbursements, Tracing," "Community Property," "Community Property Characterization," and "Dividing Community Property." PowerPoint slides supplied.

January 2005: I was a panelist on a program entitled "Discovery With An Eye Towards Trial," sponsored by the Bar Association of San Francisco, San Francisco, California. PowerPoint slides supplied.

October 25-29, 2004: I was an instructor for a judicial education course entitled, "Evidence in Civil and Criminal Cases," provided by the Center for Judicial Education and Research of the Administrative Office of the Courts, Burlingame,

California. My presentations were titled "Family Law Experts," "Some Evidentiary Issues in Declarations," "Documentary Evidence," and "Evidence Code as a Management Tool." PowerPoint slides supplied.

October 2004: I was the moderator of a program entitled, "Without Precedent: Are Jury Trials An Endangered Species?," sponsored by the Boalt Hall School of Law (now Berkeley Law School), Berkeley, California. PowerPoint slides and speech outline supplied.

April 2004: I was an instructor for the judicial education class, "Fiduciary Duties," provided by the Center for Judicial Education and Research of the Administrative Office of the Courts, Los Angeles, California. I have no notes, transcript, or recording. The address of the Center for Judicial Education and Research is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

March 2004: I was an instructor for the "Ethics & Fairness" portion of the mandatory New Judge Orientation for California state trial judges, San Francisco, California. The class is provided by the Center for Judicial Education and Research of the Administrative Office of the Courts. I have no notes, transcript, or recording. The address of the Center for Judicial Education and Research is 455 Golden Gate Avenue, 6th Floor, San Francisco, California 94102.

January 26-30, 2004: I gave presentations on "Dividing Community Property," "Community Property Characterization," and the "UCCJEA" for the Continuing Judicial Studies Program. PowerPoint slides supplied.

October 2003: I was a panelist on a program entitled "Discovery With An Eye Towards Trial," sponsored by the Bar Association of San Francisco, San Francisco, California. PowerPoint slides supplied.

August 2003: I was an instructor in a judicial education course entitled, "Family Law Overview," provided by the Center for Judicial Education and Research of the Administrative Office of the Courts, San Diego, California. I gave presentations on "Contempt" and "Settlement Issues." PowerPoint slides supplied.

September 2001: I gave a speech entitled, "The California False Claims Act: A Guide for the Business Litigator," to the Business Litigation Section of the San Mateo County Bar Association, Burlingame, California. I have no notes, transcript, or recording. The address of the the San Mateo County Bar Association is 333 Bradford Street, 2nd Floor, Redwood City, California 94063.

September 22, 2000: I was a speaker at a program entitled, "Fundamentals of Business Torts," sponsored by the Continuing Education of the Bar, San Francisco, California. PowerPoint slides supplied.

August 1999: I gave a presentation entitled "Internal Investigations" to the Economic Damages Section of the California Society of Certified Public Accountants. I have no notes, transcript, or recording. The address of the California Society of Certified Public Accountants is 1800 Gateway Drive, Suite 200, San Mateo, California 94404.

February 1999: I was a speaker at a program entitled, "Courtroom Conduct: Tactics, Contempt, and Common Sense," sponsored by the Continuing Education of the Bar, San Francisco, California. I have no notes, transcript, or recording. The address of Continuing Education of the Bar is 2100 Franklin Street, Suite 500, Oakland, California 94612.

Since I became a judge in 2002, I have judged various moot court and mock trial competitions including the "Masters In Trial" sponsored by the American Board of Trial Advocates; "Champions of the Courtroom" mock trial program sponsored by the Litigation Section of the California State Bar; Alameda County Moot Court; Santa Clara School Moot Court Competition; American Constitution Society Constance Baker Motley Moot Court Competition; and the Center for Youth Development through Law Mock Trial. I have no notes, transcripts, or recordings from these events, but press coverage from a few of these events is supplied.

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

Teresa Wall-Cyb, *Jon Tigar*, The Recorder, Aug. 9, 2011. Copy supplied.

Tim Hallahan, *In Conversation With Hon. Jon Tigar: Credibility Counts, Part 2*, ACBA Bulletin, Volume 39, Number 2, Spring 2008, at 24. Copy supplied.

Tim Hallahan, *In Conversation With Hon. Jon Tigar: Credibility Counts, Part 1*, ACBA Bulletin, Volume X [sic], Number 1, Winter 2008, at 16. Copy supplied.

Nancy McCarthy, *A Renaissance Man Takes On The Bar Presidency*, California Bar Journal, Oct. 2007, at 1. Copy supplied.

Mike McKee, *Reaching Over Party Lines*, The Recorder, Sept. 28, 2007, at 1. Copy supplied.

Matthew Hirsch, *Alameda Taps Judges for New Civil System*, The Recorder, Mar. 27, 2007. Copy supplied.

Warren Lutz, *Judge Serves Justice With Side of Wry Humor*, The Recorder, Nov. 8, 2005, at 4. Copy supplied.

Kellie Schmitt, *Cutting their Teeth*, The Recorder, Nov. 1, 2005, at 3 (reprinted in multiple outlets). Copy supplied.

Press release, *Alameda County Superior Court Increases Protection of Victims of Domestic Violence*, Alameda County Superior Court, Aug. 31, 2005. Copy supplied.

Mike McKee, *Judicial Profile: M. Lynn Duryee*, The Recorder, June 22, 2004. Copy supplied.

Dennis Pfaff, *Young Judge Cast in Altman Film*, San Francisco Daily Journal, Sept. 25, 2002, at 1. Copy supplied.

Dennis J. Opatrny, *S.F. Judge to Slap Old Republic with $16.8M Bill*, The Recorder, May 14, 2001, at 5. Copy supplied.

Dennis J. Opatrny, *Old Republic Owes Millions to Customers*, The Recorder, Apr. 17, 2001, at 5. Copy supplied.

Dennis J. Opatrny, *Judicial Profile: Stuart Pollak*, The Recorder, July 10, 2000 (reprinted in multiple outlets). Copy supplied.

Mark A. Silber, *HUPD Warns of Subscription Scheme*, Harvard Crimson, Feb. 26, 1981. Copy supplied.

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

Since January 2002, I have been a Superior Court Judge for the Superior Court of the State of California, County of Alameda (the "Alameda County Superior Court"). I was appointed to that position by then-Governor Gray Davis in December 2001. I was reelected without opposition in 2004 and 2010. The Superior Court is a court of general jurisdiction. During 2002, I was assigned to Department 102, a General Criminal department, and was responsible for the pre-trial management of misdemeanor cases. During approximately the last six weeks of that year, I also conducted misdemeanor jury trials. From January 2003 through June 2005, I was assigned to a Family Law department. From June 2005 through December 2009, I was assigned to a Civil Trial department, first in a "master calendar system" and then in a "direct calendar" system. From January 2010 through approximately September 2010, I presided over a Felony Trial department. From September 2010 until the present, I have presided over a Civil Trial department.

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

175. This estimate assumes conservatively that I presided over 40 bench trials per year while I was assigned to a Family Law department. It also excludes small claims appeals (which are conducted as trials de novo) and most credit card collections trials.

i. Of these, approximately what percent were:

jury trials:	25%
bench trials:	75%
civil proceedings:	94%
criminal proceedings:	6%

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

As a state court trial judge, I have not written any published opinions. In my civil cases, I am sometimes required to issue statements of decision or written rulings on motions, including dispositive motions. I also issue case management orders periodically in the cases that are assigned to me. All of these orders are filed in the Register of Actions for each individual case and are accessible through the court's website.

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. *Farrell v. Cate*, Case No. RG03-079344 (Cal. Super. Ct.); 2008. Opinion supplied.

Farrell was filed in 2003 as a taxpayer lawsuit alleging that the state's juvenile justice system (formerly known as the California Youth Authority, now known as the Division of Juvenile Justice of the California Department of Corrections and Rehabilitation ("DJJ")) was failing to provide adequate services to its juvenile wards in six areas: education, medical care, mental health care, safety and welfare, sex behavior treatment, and disabilities. In November 2004, the parties stipulated to the issuance of a consent decree that required DJJ to develop and implement remedial plans in these six areas. The purpose of the case now is to monitor DJJ's implementation of the remedial plans. The consent decree also provides for the appointment of a Special Master, who periodically reports on DJJ's progress. The current Special Master is Nancy Campbell of Tacoma, Washington.

Counsel for Plaintiff:	Donald H. Specter Sara L. Norman Prison Law Office 1917 Fifth Street Berkeley, California 94710 (510) 280-2621
Counsel for Defendant:	William C. Kwong Deputy Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, California 94102 (415) 703-5724

2. *Stillman v. Allied Packing & Supply, Inc.*, Case No. RG10-528222 (Cal. Super. Ct. 2011).

Plaintiff, who had been diagnosed with mesothelioma, alleged that his exposure to defendants' asbestos-containing brake products increased his risk of contracting cancer. As is common in asbestos cases, most of the defendants settled or were dismissed prior to trial. By the conclusion of opening statements, only one defendant remained. After approximately a month of pre-trial motions hearings and six weeks of trial, the remaining defendant settled.

Counsel for Plaintiffs:	Joseph D. Satterley Sales & Satterley 1900 Waterfront Plaza 325 West Main Street, Suite 1900 Louisville, Kentucky 40202 (502) 410-3819
	Justin A. Bosl Kazan, McClain, Lyons, Greenwood & Harley, P.C. Jack London Market 55 Harrison Street, Suite 400 Oakland, California 94607 (510) 302-1000
Counsel for Defendant Eaton Corporation:	Eric D. Bergstrom Howard, Rome, Martin & Ridley LLP 1775 Woodside Road, Suite 200 Redwood City, California 94061 (650) 365-7715

3. *Simulat, Inc. v. Freeconference.com, Inc.*, Case No. RG09-446485 (Cal. Super. Ct. 2011). Opinion supplied.

Plaintiff sued for breach of a software contract. By stipulation of the parties, the court bifurcated the legal and equitable issues. Simulat prevailed at the jury trial of its legal claim, but the court subsequently found for Freeconference on its equitable estoppel defense, and judgment was entered for Freeconference. The case settled after entry of judgment and while post-trial motions were pending.

Counsel for Plaintiff: Mark Hooshmand
Hooshmand Law Group
22 Battery Street, Suite 610
San Francisco, California 94111
(415) 318-5709

Counsel for Defendant: John E. Walker
SNR Denton US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017
(213) 892-5020

4. *People v. Gee*, Case No. 162406 (Cal. Super. Ct. 2010).

Defendant was convicted of felony armed robbery after trial by a jury. After taking account of defendant's prior convictions for violent felonies and other enhancements, defendant was sentenced pursuant to California's "three strikes" law to a term of 35 years to life. The conviction was affirmed on appeal.

Counsel for the People: Venus Johnson
Deputy District Attorney
Office of the District Attorney
1225 Fallon Street
Oakland, California 94612
(510) 272-6222

Counsel for Defendant: John McDougall
2041 Bancroft Way #207
Berkeley, California 94704
(510) 849-0898

5. *Roberts v. Bisno*, Case No. RG05-247811 (Cal. Super. Ct. 2006-2010); *Roberts v. Bisno*, Case No. A119474 (Ct. App. Nov. 21, 2007); *Miske v. Bisno*, Case No. A127061 (Ct. App. Apr. 12, 2012). Opinion supplied.

Plaintiffs alleged fraud in the sale of units in a partnership for the commercial development of downtown Berkeley real estate. The case was designated as "complex" but was reassigned to me for all purposes by the Complex Litigation department. The case proceeded in three phases: an individual case filed by a single investor, which was tried in 2005 (by a different judge), and which settled

after a verdict; a second jury trial, involving the claims of "preference" plaintiffs, in which plaintiffs prevailed, the result of which was affirmed on appeal; and the trial of the remaining, "non-preference" plaintiffs' claims, in which plaintiffs also prevailed, the result of which was affirmed on appeal except for the award of attorneys' fees, which was reversed. There was also substantial post-judgment litigation in the trial court.

The trial court order included with this questionnaire is an order issued in August 2007 disqualifying plaintiffs' counsel. That order was affirmed in part (as to attorney Stratton) and reversed in part (as to attorney Kahn) by the Court of Appeal.

Counsel for Plaintiffs:	Robert J. Kahn 2033 North Main Street, Suite 363 Walnut Creek, California 94596 (925) 932-9800 William S. Berland Ferguson & Berland 1816 Fifth Street Berkeley, California 94710 (510) 548-9005
Former counsel for Plaintiffs:	Richard J. Stratton Hanson Bridgett LLP 425 Market Street, 26th Floor San Francisco, California 94105 (415) 777-3200
Counsel for Defendant Coxeter:	Lawrence W. Resnick Gregory P. Regier Jackson DeMarco Tidus & Peckenpaugh, LLP 2815 Townsgate Road, Suite 200 Westlake Village, California 91361 (805) 230-0023
Counsel for Defendants Bisno and Transactional Financial Corporation:	Robert H. Bisno c/o Trans-Action Commercial Investors, Ltd. 1880 Century Park East, Suite 1411 Los Angeles, California 90067 (310) 277-3787
Counsel for Defendant Transaction Commercial Investors Ltd.:	Charles Evans Patterson, II 1640 School Street, Suite 100 Moraga, California 94550 (925) 631-9100

Counsel for Third Parties EMG-Lakewater, LLC, DeClerq & Santopietro:	Tracy Green Wendel Rosen Black & Dean 1111 Broadway, 24th Floor Oakland, California 94607 (510) 834-1928
Former Counsel for All Defendants:	Patricia L. Glaser Craig H. Marcus Glaser, Weil, Fink, Jacobs & Shapiro, LLP 10250 Constellation Boulevard, 19th Floor Los Angeles, California 90067 (310) 553-3000
Former Counsel for Third Party Santopietro:	Jonathan P. Chodos 1559 South Sepulveda Boulevard Los Angeles, California 90025 (310) 446-8656

6. *Gardner v. Schwarzenegger*, Case No. RG06-278911 (Cal. Super. Ct. 2009). Opinion supplied.

Plaintiffs brought suit to enjoin enforcement of Senate Bill No. 1137, which amended California's Proposition 36 drug offender rehabilitation laws. Proposition 36 was passed by California voters in the November 2000 general election, and generally provides that those convicted of drug possession offenses are initially to receive probation with drug treatment, rather than incarceration. Senate Bill 1137 would have provided for incarceration in circumstances where it would have been prohibited by Proposition 36. Plaintiffs claimed that the amendments were invalid because Proposition 36 had been enacted by initiative, and therefore significant changes could be made only by voter approval. I granted summary judgment in favor of plaintiffs and enjoined enforcement of the amendments. In a separate order, I awarded attorneys' fees to the plaintiffs. Both orders were affirmed on appeal.

Counsel for Plaintiffs:	Jonathan D. Weissglass Altshuler Berzon LLP 177 Post Street, Suite 300 San Francisco, California 94108 (415) 421-7151 Daniel Abrahamson Drug Policy Alliance 819 Bancroft Way Berkeley, California 94710 (510) 229-5211

Counsel for State Defendants:	Kathleen A. Lynch Deputy Attorney General 1300 I Street P.O. Box 944255 Sacramento, California 94255 (916) 445-7480
Counsel for County Defendants:	Donna Ziegler 1221 Oak Street, Suite 450 Oakland, California 94612 (510) 272-6700

7. *Brooks v. San Francisco Chronicle*, Case No. RG08-400868 (Cal. Super. Ct. 2009). Opinion supplied.

Oakland City Councilwoman Desley Brooks filed a defamation action against the San Francisco Chronicle after it published a column accusing her of official misconduct. I granted the Chronicle's demurrer and motion to strike based on California's anti-SLAPP (Strategic Lawsuit Against Public Participation) motion and dismissed the case. The order was affirmed on appeal.

Counsel for Plaintiff:	Wayne Johnson P.O. Box 19157 Oakland, California 94619 (510) 451-1166
Counsel for Defendant:	Thomas R. Burke Davis Wright Tremaine LLP 505 Montgomery Street, Suite 800 San Francisco, California 94111 (415) 276-6552
	Jonathan R. Donellan Hearst Corporation 300 West 57th Street, 40th Floor New York, New York 10019 (212) 649-2020

8. *Baccarat Fremont, LLC v. Alameda County Flood Control & Water Conservation District*, Case No. RG05-195872 (Cal. Super. Ct. 2008). Opinion supplied.

This was a complaint for inverse condemnation and negligence by a private landowner against a municipal conservation district and a sanitary district. The court sustained the defendants' demurrer without leave to amend, finding that

plaintiff failed to bring the case within the statute of limitations. The order was affirmed on appeal.

Counsel for Plaintiff:	Robert R. Moore Allen, Matkins, Leck, Gamble & Mallory, LLP Three Embarcadero Center, 12th Floor San Francisco, California 94111 (415) 837-1515
Counsel for Defendant Alameda County Flood Control and Water Conservation District:	Todd Boley Law Offices of Todd Boley 1212 Broadway, 16th Floor Oakland, California 94612 (510) 836-4500 Dante Foronda 271 Wayne Avenue Oakland, California 94606 (510) 325-4025
Counsel for Defendant Union Sanitary District:	Peter W. McGaw Archer Norris 2033 North Main Street, Suite 800 Walnut Creek, California 94596 (925) 930-6600

9. *Anthem Venture Partners v. Novartis AG*, Case No. RG06-297379 (Cal. Super. Ct. 2007). Opinion supplied.

Plaintiffs in this lawsuit claimed that Chiron (Novartis' corporate predecessor) had harmed a smaller company called Corus by withdrawing its support for the company and by filing a lawsuit in Washington State for misappropriation of trade secrets. The court granted a motion to strike on anti-SLAPP grounds and entered judgment for defendants. The case settled on appeal.

Counsel for Plaintiffs:	Niall P. McCarthy Cotchett, Pitre & McCarthy 840 Malcolm Road, Suite 200 Burlingame, California 94010 (650) 697-6000
Counsel for Defendants:	Mark D. Petersen Farella, Braun & Martel LLP Russ Building 235 Montgomery Street, 17th floor

San Francisco, California 94104
(415) 954-4400

10. *Alameda Belt Line v. City of Alameda*, Case No. C-826373 (Cal. Super. Ct. 2006). Opinion supplied.

Plaintiff Alameda Belt Line ("ABL") purchased a belt line railroad from defendant City of Alameda in 1924. The contract between the parties provided that the City could repurchase the belt line railroad for the cost of acquisition, plus the cost of investment, without interest. ABL sued for declaratory relief that the 1924 Agreement was invalid. The City of Alameda cross-complained for specific performance. The court ruled in favor of the City of Alameda and found the contract enforceable at the 1924 price. The judgment was affirmed on appeal.

Counsel for Plaintiff: William M. Bitting
Hill, Farrer & Burrill LLP
300 South Grand Avenue, 37th Floor
Los Angeles, California 90071
(213) 620-0460

Counsel for Defendant: Thomas J. Trachuk
Dang and Trachuk
1999 Harrison Street, Suite 700
Oakland, California 94612
(510) 874-4113

Michael W. Stamp
479 Pacific Street, Suite 1
Monterey, California 93940
(831) 373-1214

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. *Farrell v. Cate*, Case No. RG03-079344 (Cal. Super. Ct. 2008). Opinion supplied in response to 13(c).

Counsel for Plaintiff: Donald H. Specter
Sara L. Norman
Prison Law Office
1917 Fifth Street
Berkeley, California 94710
(510) 280-2621

Counsel for Defendant:	William C. Kwong Deputy Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, California 94102 (415) 703-5724
Special Master:	Nancy M. Campbell 56 East Road Tacoma, Washington 98406 (253) 503-0684

2. *Simulat, Inc. v. Freeconference.com, Inc.*, Case No. RG09-446485 (Cal. Super. Ct. 2011). Opinion supplied in response to 13(c).

Counsel for Plaintiff:	Mark Hooshmand Hooshmand Law Group 22 Battery Street, Suite 610 San Francisco, California 94111 (415) 318-5709
Counsel for Defendant:	John E. Walker SNR Denton US LLP 601 South Figueroa Street, Suite 2500 Los Angeles, California 90017 (213) 892-5020

3. *Roberts v. Bismo*, Case No. RG05-247811 (Cal. Super. Ct. 2007). Opinion supplied in response to 13(c).

Counsel for Plaintiffs:	Robert J. Kahn 2033 North Main Street, Suite 363 Walnut Creek, California 94596 (925) 932-9800 William S. Berland Ferguson & Berland 1816 Fifth Street Berkeley, California 94710 (510) 548-9005
Former counsel for Plaintiffs:	Richard J. Stratton Hanson Bridgett LLP 425 Market Street, 26th Floor San Francisco, California 94105 (415) 777-3200

Counsel for Defendant James C. Coxeter:	Lawrence W. Resnick Gregory P. Regier Jackson DeMarco Tidus & Peckenpaugh, LLP 2815 Townsgate Road, Suite 200 Westlake Village, California 91361 (805) 230-0023
Counsel for Defendants Robert H. Bisno and Transactional Financial Corporation:	Robert H. Bisno c/o Trans-Action Commercial Investors, Ltd. 1880 Century Park East, Suite 1411 Los Angeles, California 90067 (310) 277-3787
Counsel for Defendant Transaction Commercial Investors Ltd.:	Charles Evans Patterson, II 1640 School Street, Suite 100 Moraga, California 94550 (925) 631-9100
Counsel for Third Parties EMG-Lakewater, LLC, DeClerq & Santopietro:	Tracy Green Wendel Rosen Black & Dean 1111 Broadway, 24th Floor Oakland, California 94607 (510) 834-1928
Former Counsel for All Defendants:	Patricia L. Glaser Craig H. Marcus Glaser, Weil, Fink, Jacobs & Shapiro, LLP 10250 Constellation Boulevard, 19th Floor Los Angeles, California 90067 (310) 553-3000
Former Counsel for Third Party Santopietro:	Jonathan P. Chodos 1559 South Sepulveda Boulevard Los Angeles, California 90025 (310) 446-8656

4. *Gardner v. Schwarzenegger*, Case No. RG06-278911 (Cal. Super. Ct. 2009). Opinion supplied in response to 13(c).

Counsel for Plaintiffs:	Jonathan D. Weissglass Altshuler Berzon LLP 177 Post Street, Suite 300 San Francisco, California 94108 (415) 421-7151

	Daniel Abrahamson Drug Policy Alliance 819 Bancroft Way Berkeley, California 94710 (510) 229-5211
Counsel for State Defendants:	Kathleen A. Lynch Deputy Attorney General 1300 I Street P.O. Box 944255 Sacramento, California 94255 (916) 445-7480
Counsel for County Defendants:	Donna Ziegler 1221 Oak Street, Suite 450 Oakland, California 94612 (510) 272-6700

5. *Brooks v. San Francisco Chronicle*, Case No. RG08-400868 (Cal. Super. Ct. 2009). Opinion supplied in response to 13(c).

Counsel for Plaintiff:	Wayne Johnson Post Office Box 19157 Oakland, California 94619 (510) 451-1166
Counsel for Defendant:	Thomas R. Burke Davis Wright Tremaine LLP 505 Montgomery Street, Suite 800 San Francisco, California 94111 (415) 276-6552
	Jonathan R. Donellan Hearst Corporation 300 West 57th Street, 40th Floor New York, New York 10019 (212) 649-2020

6. *SEIU United Healthcare Workers – West v. Siegel*, Case No. RG09-441642 (Cal. Super. Ct. 2009). Opinion supplied.

Counsel for Plaintiff:	Joel P. Schiff Kehr Schiff & Crane LLP 12400 Wilshire Boulevard, Suite 1300 Los Angeles, California 90025 (310) 820-3455

Counsel for Defendants:	Daniel W. Hager Roeca Haas Hager LLP 351 California Street, Suite 900 San Francisco, California 94104 (415) 352-0980

7. *Baccarat Fremont, LLC v. Alameda County Flood Control & Water Conservation District*, Case No. RG05-195872 (Cal. Super. Ct. 2008). Opinion supplied in response to 13(c).

Counsel for Plaintiff:	Robert R. Moore Allen, Matkins, Leck, Gamble & Mallory, LLP Three Embarcadero Center, 12th Floor San Francisco, California 94111 (415) 837-1515
Counsel for Defendant Alameda County Flood Control and Water Conservation District:	Todd Boley Law Offices of Todd Boley 1212 Broadway, 16th Floor Oakland, California 94612 (510) 836-4500
	Dante Foronda 271 Wayne Avenue Oakland, California 94606 (510) 325-4025
Counsel for Defendant Union Sanitary District:	Peter W. McGaw Archer Norris 2033 North Main Street, Suite 800 Walnut Creek, California 94596 (925) 930-6600

8. *Anthem Venture Partners v. Novartis AG*, Case No. RG06-297379 (Cal. Super. Ct. 2007). Opinion supplied in response to 13(c).

Counsel for Plaintiff:	Niall P. McCarthy Cotchett, Pitre & McCarthy 840 Malcolm Road, Suite 200 Burlingame, California 94010 (650) 697-6000
Counsel for Defendant:	Mark D. Petersen Farella, Braun & Martel LLP Russ Building

235 Montgomery Street, 17th floor
San Francisco, California 94104
(415) 954-4400

9. *Oak To Ninth Referendum Committee v. City of Oakland*, Case No. RG06-290487 (Cal. Super. Ct. 2007). Opinion supplied.

Counsel for Plaintiff:	Stuart M. Flashman 5626 Ocean View Drive Oakland, California 94618 (510) 652-5373
Counsel for Defendant City of Oakland:	Rachel Wagner Mark Morodomi Office of the City Attorney One Frank Ogawa Plaza Oakland, California 94612 (510) 238-3601
Counsel for Real Party in Interest Oakland Harbor Partners, LLP:	James R. Parrinello Sean P. Welch Nielsen, Merksamer, Parrinello, Gross & Leoni LLP 2350 Kerner Boulevard, Suite 250 San Rafael, California 94901 (415) 389-6800

10. *Alameda Belt Line v. City of Alameda*, Case No. C-826373 (Cal. Super. Ct. 2006). Opinion supplied in response to 13(c).

Counsel for Plaintiff:	William M. Bitting Hill, Farrer & Burrill LLP 300 South Grand Avenue, 37th Floor Los Angeles, California 90071 (213) 620-0460
Counsel for Defendant:	Thomas J. Trachuk Dang and Trachuk 1999 Harrison Street, Suite 700 Oakland, California 94612 (510) 874-4113 Michael W. Stamp 479 Pacific Street, Suite 1 Monterey, California 93940 (831) 373-1214

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

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.

1. *Bui v. Potashnick*, Case No. RG07-349762 (Cal. Super. Ct. 2009); *Bui v. Potashnick*, Case No. A127061 (Ct. App. May 6, 2011). Plaintiff alleged that he was defrauded in the purchase and sale of a pharmacy, and sued for rescission and damages. Following a bench trial, I awarded rescission and monetary compensation to plaintiff in the amount of $1.6 million plus interest and costs. I found that the defendant had waived the benefit of the exclusive remedy provision of the parties' contract. The Court of Appeal reversed, finding that rescission was not an appropriate remedy on the facts of the case, and remanded to give plaintiff an opportunity to prove damages. Order and Court of Appeal opinion supplied.

2. *Ignacio v. Ilario*, Case No. RG08-380066 (Cal. Super. Ct. 2009); *Ilario v. Superior Court (Ignacio)*, Case No. A124553 (Ct. App. June 16, 2009). I granted a motion to quash a subpoena seeking access to the plaintiff's medical records for the purpose of determining whether he had used drugs. The Court of Appeal found that the defendant had made a sufficient showing to require production of the records, and reversed my order. Order and Court of Appeal opinion supplied.

3. *Hoopes v. Dolan*, Case No. HG05-197375 (Cal. Super. Ct. 2007); *Hoopes v. Dolan*, 168 Cal. App. 4th 146 (2008). Plaintiff operated a hardware store on property that was also occupied by another business, and claimed that his lease gave him the right to exclusive use of a parking area. He sued his landlord and the co-tenant to enforce this alleged right. The jury found in his favor on his legal claims, but I ruled against him on the landlord's estoppel defense and entered judgment in the defendant's favor. The Court of Appeal affirmed the judgment, and found that my rulings were supported by substantial evidence. The court also stated, however, that I should have tried the equitable issues before the legal ones, so as to save the need for a jury trial. My opinion is supplied.

4. *Roberts v. Bisno*, Case No. RG05-247811 (Cal. Super. Ct. 2007); *Roberts v. Superior Court (Bisno)*, Case No. A119474 (Ct. App. Nov. 21, 2007). Plaintiffs alleged fraud in a real estate partnership investment. Ruling on an issue of first impression as to the extent of imputed disqualification, I ruled

that both plaintiffs' attorneys were disqualified because one of them had undertaken to represent defendants' former attorneys in another case. The Court of Appeal affirmed as to one attorney and reversed as to the other. Order supplied in response to 13(c) and Court of Appeal opinion supplied.

5. *Roberts v. Bisno*, Case No. RG05-247811 (Cal. Super. Ct. 2006-2010); *Miske v. Bisno*, Case Nos. A127061 (Ct. App. Apr. 12, 2012). This was the same action described in the preceding paragraph. Plaintiffs alleged fraud in the sale of units in a partnership for the commercial development of downtown Berkeley real estate. Plaintiffs were divided into three different groups, each of whose claims were tried separately. In the third and final trial, plaintiffs prevailed, and defendants appealed. The Court of Appeal reversed the award of attorneys' fees and otherwise affirmed the judgment. The Court of Appeal opinion is supplied.

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

As a state trial court judge, none of my decisions is published. I have issued in excess of one thousand statements of decision, rulings on motions, and other substantive rulings while I have been a judge. All of these rulings are filed in the Register of Actions for each individual case and are accessible through the court's website.

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

1. *Gardner v. Schwarzenegger*, Case No. RG06-278911 (Cal. Super. Ct. 2009). Opinion supplied in response to 13(c).

2. *Oak To Ninth Referendum Committee v. City of Oakland*, Case No. RG06-290487 (Cal. Super. Ct. 2007). Opinion supplied in response to 13(d).

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

I have not sat by designation on a federal court of appeals.

14. **Recusal**: If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be 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.

California Code of Civil Procedure section 170.6 allows each party in a case to exercise one peremptory challenge to a sitting judge without showing cause. Such motions are routine in Superior Court, and must be granted if they are timely. In Alameda County, we do not keep data on these requests or index them in any way, although a record of each challenge becomes part of the file of the case.

I have received a handful of such challenges in the ten years I have been on the court. I do not recall the names of any of the cases or the attorneys who filed them, except as set forth below.

The plaintiff in *Al-Hakim v. California State Automobile Association*, Case No. C-811337, filed approximately eight challenges against me for cause at various points in the case. All of them except for the one filed on April 30, 2007 were stricken for failure to state a claim or failure to follow the service rules applying to such challenges. (Previously, he had filed at least ten challenges for cause against other judges.)

With respect to the challenge filed on April 20, 2007, Mr. Al-Hakim alleged that my conduct in the case evidenced bias and prejudice. His challenge and my answer were referred to another court for decision. On May 25, 2007, Judge Robert A. Atack denied Mr. Al-Hakim's challenge, finding no evidence in the record of bias, prejudice, or misconduct.

In addition, on June 7, 2007, Mr. Al-Hakim filed a peremptory challenge, which I granted. The defendant subsequently filed a motion for reconsideration of that order on the grounds that Mr. Al-Hakim's peremptory challenge was untimely. After notice and a hearing, the request for reconsideration was granted, and the challenge was denied.

In *Choy v. Nopuente*, Case No. RG04-180582 (Cal. Super. Ct. 2011), the defendant and cross-complainant Nopuente filed a challenge for cause on the grounds that my wife's employer's investment in a mutual fund that contained shares in Wells Fargo created a conflict of interest because Nopuente proposed to add Wells Fargo as a party. I struck

the challenge for failure to state a claim, since under California law a judge is not required to inform himself of his wife's employer's investments, and because even if I owned shares in the mutual fund myself, it would not have created a conflict of interest. Nopuente filed a petition for review in the Court of Appeal, which was denied.

In *Ryan v. Garrison*, Case No. RG08-420235 (Cal. Super. Ct. 2011), counsel for the parents of the minor plaintiff filed a challenge for cause on the grounds that they disagreed with certain of my rulings. I struck the challenge for cause because, under California law, disagreement with the court's rulings is not a basis for disqualification.

In all cases, I assess the necessity or propriety of recusal based on my evaluation of the facts known to me and the requirements of the California Canons of Judicial Ethics and the Code of Civil Procedure. These authorities generally require recusal when a judge has a financial interest in the litigation or other conflict of interest or a preexisting relationship with a party or litigant, or when the facts are such that a reasonable person aware of them might entertain a doubt about the judge's impartiality.

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

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

I have not held any public office other than judicial office. I have not been a candidate for any elective office or an unsuccessful nominee for appointed office.

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

I have never held any membership in, or rendered any services to, any political party or election committee.

In 2001, I organized a fundraiser for Sean Connolly, a candidate for non-partisan judicial office on the San Francisco Superior Court. I had no other role in the campaign.

I have occasionally endorsed judicial candidates in California. Candidates to whom I have leant my name for public endorsement include James Chou, Tara Flanagan, Kathy E. Mount, Richard B. Ulmer, Aaron Persky, and Sean Connolly.

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 clerked for the Hon. Robert S. Vance, United States Court of Appeals for the Eleventh Circuit, from August 1989 to February 1990. The clerkship ended early due to Judge Vance's untimely death.

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.

1990 – 1992
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
Associate

1993 – 1994
Office of the Public Defender
555 Seventh Street
San Francisco, California 94103
Trial Attorney

1994 – 2002
Keker & Van Nest LLP
633 Battery Street
San Francisco, California 94111
Partner (1997 – 2002)
Associate (1994 – 1996)

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

Other than serving as a settlement conference judge, 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.

During my tenure at both Keker & Van Nest and Morrison & Foerster, the majority of my practice was focused on complex commercial litigation. The matters included breach of contract, unfair competition, intellectual property, fraud, antitrust, RICO, the California False Claims Act, and partnership and shareholder disputes. A small percentage of my practice was devoted to representing both criminal defendants and victims of crime, mostly on a pro bono basis. While in private practice, I tried four cases as lead counsel and one as "second chair," as well as providing assistance to other trials. In addition, during this time I regularly appeared in law and motion departments.

During the year-and-a-half I was in the San Francisco Public Defender's Office, I represented indigent criminal defendants in misdemeanor cases. I appeared in court every day, and tried cases regularly. I did not appear in felony matters.

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

Most of my clients at Keker & Van Nest and at Morrison & Foerster were commercial entities. I did not specialize in one area of the law. The substantive areas of law in the cases I handled included breach of contract, unfair competition, intellectual property, fraud, antitrust, RICO, and the California False Claims Act.

My clients at the San Francisco Public Defender's Officer were all criminal defendants charged with misdemeanor violations of the California criminal law.

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

All of my practice has been in litigation. While I was in private practice, I appeared frequently in court on law and motion matters and tried five cases as lead or "second-chair" counsel. While I was in the San Francisco Public Defender's office, I appeared in court daily and tried 14 cases as sole counsel.

i. Indicate the percentage of your practice in:
   1. federal courts: 25%
   2. state courts of record: 74%

3. other courts: 0%
4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 85%
2. criminal proceedings: 15%

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

I tried 19 cases in practice. In 15, I was sole counsel; in three, I was chief counsel or co-chief counsel; and in one, I was associate counsel.

i. What percentage of these trials were:
1. jury: 89%
2. non-jury: 11%

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. *Old Republic Title Insurance Company Litigation (State of California ex rel. Hallinan, et al. v. Old Republic Title Company, et al., and Consolidated Actions)*, Case No. 993507 (Consolidated with Nos. 996705; 996929; 300686; 301804; and 302585); San Francisco Superior Court; Hon. Stuart R. Pollak; 1998 – 2002

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This was an action against Old Republic Title Company under the California False Claims Act, Business & Professions Code § 17200, the Consumer Legal Remedies Act and common law claims in connection with certain accounting and escrow practices. The case was tried to the court. I was co-lead counsel in this case on behalf of Old Republic Title Company. I conducted approximately one-half of the witness examinations, gave the closing argument, and argued all post-trial motions. Judgment was entered for plaintiff. After I left the case to assume the bench, the case settled on appeal.

Co-Counsel:

Robert A. Van Nest
Keker & Van Nest LLP
633 Battery Street
San Francisco, California 94111
(415) 391-5400

Steven R. Walker
Law Offices of Steven R. Walker
1610 Leimert Boulevard
Oakland, California 94602
(510) 530-2244

Plaintiff's Counsel:

Niall P. McCarthy (lead counsel for class plaintiffs)
Cotchett, Pitre & McCarthy
840 Malcolm Road, Suite 200
Burlingame, California 94010
(650) 697-6000

Matthew D. Davis (lead counsel for plaintiff City and County of San Francisco)
Walkup, Melodia, Kelly & Schoenberger
650 California Street, 26th Floor
San Francisco, California 94103
(415) 981-7210

Other Counsel:

Joel S. Sanders (for defendant PriceWaterhouse Coopers)
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, California 94105
(415) 393-8268

George D. Niespolo (for defendant Collopy)
Duane Morris LLP
One Market, Spear Tower, Suite 2000

San Francisco, California 94105
(415) 957-3013

Stephen E. Taylor (for defendant Dosa)
Taylor & Company
1 Ferry Building, Suite 355
San Francisco, California 94111
(415) 788-8200

Michael J. Shepard (for defendant Trudeau)
Hogan & Hartson LLP
4 Embarcadero Center, 22nd Floor
San Francisco, California 94111
(415) 374-2310

2. *City of Hope National Medical Center v. Genentech, Inc.*, Case No. BC215152; Los Angeles Superior Court; Hon. David Horowitz and Hon. Edward Y. Kakita; 1999 – 2001

This was an action for breach of contract and breach of fiduciary duty for alleged failure to pay royalties on patent license agreements. I was co-lead counsel (with Susan Harriman of Keker & Van Nest) on behalf of defendant Genentech. I examined approximately one-half of the witnesses and gave the closing argument. The case was tried to a jury, which deadlocked in Genentech's favor. After I became a judge, the case was retried and the jury found for plaintiff on both claims. The judgment was affirmed in part and reversed in part by the California Supreme Court.

Co-Counsel: Susan Harriman
Keker & Van Nest LLP
633 Battery Street
San Francisco, California 94111
(415) 391-5400

Associate Counsel: Kara Andersen Reiter
Vice President of Regulatory Affairs, Quality Assurance and In-House Counsel
PneumRx, Inc.
530 Logue Avenue
Mountain View, CA 94043
(650) 625-8910
(formerly with Keker & Van Nest LLP)

Plaintiff's Counsel: Morgan Chu
David Gindler
Irell & Manella LLP

1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
(310) 277-1010

3. *Clements v. Oechsle International Advisors, LLC, et al.*, Case No. 830914-5; Alameda County Superior Court; Hon. Judith Ford; 2000 – 2002

Plaintiff Clements claimed that defendant Oechsle, an investment management firm, had violated the California False Claims Act in connection with its management of the San Francisco Employee Retirement System. I represented Oechsle as co-lead counsel. The case did not go to trial; I assisted in writing various motions filed with the court. After I assumed the bench, the court granted summary judgment in favor of Oechsle.

Co-Counsel: Mark P. Szpak
Ropes & Gray
One International Plaza
Boston, Massachusetts 02110
(617) 951-7606

Plaintiff's Counsel: Raymond E. Willis
Law Offices of Raymond E. Willis
P.O. Box 70214
Oakland, California 94612
(510) 451-1113

4. *Tudor Enterprises, Inc. v. American Honda Motor Co., Inc., et al.*, Case No. C-99-20098 JW, and *Burgess British Cars, Inc. v. American Honda Motor Co., Inc., et al.*, Case No. C-99-20099 JW; United States District Court for the Northern District of California; Hon. James Ware and Hon. Edward Infante; 1998 – 2000

These were breach of contract and federal RICO actions brought by an individual Honda dealer against American Honda Motor Co., alleging that other dealerships had been given preference in the allocation of automobiles because of the payment of kickbacks. I was lead counsel for American Honda. I conducted all communications with the client, opposing counsel, and the court. The case ended in a confidential settlement favorable to American Honda.

Plaintiff's Counsel: William Faulkner
McManis, Faulkner & Morgan
160 West Santa Clara Street, 10th Floor
San Jose, California 95113
(408) 279-8700

5. *Fogarty v. Applied Medical Devices*, Case No. 723085; Santa Clara Superior Court; Hon. Richard Turrone; 1997

I represented Fogarty, an inventor, who alleged that defendant had underpaid royalties on certain medical device inventions; defendant Applied Medical counterclaimed for breach of fiduciary duty and other business torts. I was brought in to "second chair" the case approximately a month before trial, which lasted six weeks. I examined approximately one-half of the witnesses; prepared trial briefs and other filings with the court; and assisted co-counsel in his preparation for witness examinations. The jury awarded all claimed royalties to Fogarty and rejected defendants' counterclaims.

Co-Counsel:	William McGrane McGrane LLP Four Embarcadero Center, Suite 1400 San Francisco, California 94111 (415) 766-3590
Counsel for Defendant And Cross-Complainant AMD:	Michael G. Rhodes Cooley Godward LLP 4365 Executive Drive, Suite 1100 San Diego, California 92121 (858) 550-6017
Other Counsel:	James G. Gilliland (for Cross-Defendant Baxter) Kilpatrick Townsend & Stockton LLP Two Embarcadero Center, 8th Floor San Francisco, California 94111 (415) 576-0200

6. *The North Face, Inc. v. Saab Cars USA, Inc., et al.*, Case No. C 97-3542 SI; United States District Court for the Northern District of California; Hon. Susan Illston; 1996

I was sole counsel for The North Face in a suit against Saab for injunctive relief and damages, based on Saab's unauthorized use of North Face's name and images in its advertising materials. I conducted all communications with the client and opposing counsel and prepared the complaint. The case settled favorably to The North Face and all disputed advertising materials were withdrawn.

Defense Counsel:	Wallace M. ("Tad") Allan O'Melveny & Myers 400 South Hope Street, 15th Floor Los Angeles, California 90071 (213) 430-6670

7. *Tekmax, Inc. v. Exide Corporation*, CV95-32-HA; United States District Court for the District of Oregon; Hon. Ancer L. Haggerty; 1995 – 1996

This was an action by Tekmax for infringement of its patents on machines for sealing separator material for lead plates in automotive batteries. I was associate counsel on behalf of Tekmax. I conducted depositions all over the country, prepared pre-trial motions, and assisted with the preparation of trial evidence and trial briefs. Tekmax won an award of $5 million at trial, which was upheld by the Federal Circuit.

Co-Counsel:	Henry C. Bunsow (formerly of Keker & Van Nest) Post Montgomery Center One Montgomery Street, Suite 3500 San Francisco, California 94104 (415) 951-1110
	Julianne Davis One Bowerman Drive, DF-4 Beaverton, Oregon 97005 (503) 671-6255
Defense Counsel:	James T. Hosmer 901 North Glebe Road, 11th Floor Arlington, Virginia 22201 (703) 816-4000

8. *Chemical Bank, et al. v. Cason, et al.*, Adv. No. 94-4596; United States Bankruptcy Court for the Northern District of California; Hon. Randall Newsome; 1994 – 1995

This was an adversary action in bankruptcy by creditors against trustees of a bankrupt corporation for violation of their fiduciary duties. I was associate counsel for the trustees, Cason and McFarlane. I conducted depositions across the country and conducted other discovery. The case settled after substantial discovery.

Plaintiffs' Counsel:	Rolf S. Woolner Winston & Strawn LLP 333 South Grand Avenue, 38th Floor Los Angeles, California 90071 (213) 615-1700
Co-Counsel:	Robert A. Van Nest Keker & Van Nest LLP 633 Battery Street

San Francisco, California 94111
(415) 391-5400

Robert A. Greenfield
Stutman, Treister & Glatt, P.C.
1901 Avenue of the Stars
Los Angeles, California 90067
(310) 228-5630

9. *Richardson v. Ischemia Research & Education Foundation, et al.*, Case No. 964656; San Francisco Superior Court; Hon. William Cahill (motions); 1994 – 1997

This was an action under the California False Claims Act, in which plaintiff alleged that defendant Ischemia Research & Education Foundation ("IREF") had obtained research grant funds that should have been administered by the University of California. I was associate counsel for IREF. I conducted and defended depositions, supervised discovery, drafted pre-trial motions, and participated in settlement preparations. The case settled after substantial discovery.

Opposing Counsel:

Joseph Cotchett
Niall P. McCarthy
Cotchett, Pitre & McCarthy
840 Malcolm Road, Suite 200
Burlingame, California 94010
(650) 697-6000

Co-Counsel:

John W. Keker
Keker & Van Nest LLP
633 Battery Street
San Francisco, California 94111
(415) 391-5400

Other Counsel:

William G. Gaede III (for defendant UCB Pharmaceuticals, Inc.)
McDermott Will & Emery
3150 Porter Drive
Palo Alto, California 94304
(650) 813-5000

Kirke M. Hasson (for defendant Gensia Pharmaceuticals)

Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, California 94105
(415) 983-1000

William C. Wilka (for defendant Orion-Farmos)
Dudnick Detwiler Rivin & Stikker LLP
351 California Street, 15th Floor
San Francisco, California 94104
(415) 982-1400

10. *Advanced Technology Laboratories v. Acuson, Inc.*, Case No. 2:89-cv-00343-WLD; United States District Court for the Western District of Washington; Hon. William L. Dwyer; 1990 – 1991

Advanced Technology Laboratories ("ATL") and Acuson were manufacturers of ultrasound diagnostic equipment. ATL sued Acuson for unfair competition in connection with Acuson's advertising and marketing materials. The case was referred to binding private arbitration before retired judge Lester Olson, who ruled in ATL's favor. I represented Acuson as associate counsel at the arbitration and in post-arbitration proceedings. I prepared evidence for use at arbitration, argued motions during the arbitration, and examined witnesses, as well as assisting in the preparation of post-arbitration materials.

Co-Counsel: Rochelle D. Alpert
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, California 94105
(415) 442-1326

James J. Garrett
734 Los Palos Drive
Lafayette, California 94549
(925) 295-3365

Plaintiff's Counsel: Thomas L. Boeder
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101
(206) 359-8416

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.)

Since 2006, I have served on the California Judicial Council Advisory Committee on Civil Jury Instructions (the "CACI Committee"). The CACI Committee drafts pattern jury instructions for use by trial courts in civil cases. The instructions cover most of the frequently recurring areas of California substantive law. The Committee also revises instructions based on changes in the statutory law, new appellate authority, or comments from lawyers and judges.

I have been an active teacher of other California state trial judges, through courses given by California's Center for Judicial Education and Research ("CJER"). CJER is the official educational body of the Administrative Office of the Courts. I have taught a variety of topics, including case management, evidence, and family law, and several times have taught the Ethics and Fairness portion of the New Judge Orientation course that new judges are required to take.

Since 2003, I have been an elected member of the American Law Institute, and now serve as an Adviser to the forthcoming RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR ECONOMIC LOSS. Restatements attempt to clarify and harmonize the common law of the fifty United States to provide guidance to state courts and practitioners in areas where their own states' law may be unclear or unsettled.

From 1997 to 1998, I was the Co-Chairman of the California State Bar Litigation Section's Trial Symposium Committee. In that capacity, I organized symposia on trial practice.

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.

"Pretrial Litigation Workshop," Berkeley Law School, University of California at Berkeley, 2011. I provided an overview of practical pre-trial civil litigation skills to J.D. and LL.M. students, with hands-on exercises and discussion. Syllabus supplied.

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

I receive a small royalty each year from LexisNexis in connection with my work as a contributing editor on the Matthew Bender publication, California Contract Litigation. I have no other arrangement for the payment of 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 it is permissible as a federal judge, I plan to continue my work as a contributing editor on the Matthew Bender publication, California Contract Litigation.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My wife, Caroline Avery, holds stock in Avery Dennison Corporation. I would recuse myself in any litigation involving that entity.

       There are five or fewer Bay Area attorneys whose relationship is so close to our family that I would recuse myself if they appeared before me.

       My wife and I contribute to several charitable organizations. I would recuse myself in any case involving those entities.

       I am not aware of any other relationship or financial arrangement that would present a conflict of interest or require recusal.

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

       If confirmed, I would refer to 28 U.S.C. §§ 144 and 455a, the Code of Conduct for United States Judges, and the Advisory Opinions of the Committee on Codes of Conduct, and would disclose any pertinent information to the litigants or recuse

myself from deciding a case, as appropriate. I will review my initial caseload immediately to determine the presence of conflicts, and thereafter review cases as they are assigned to me.

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 prohibited from giving legal advice and have not provided *pro bono* legal services since my appointment. However, I serve on the board of directors of the Voluntary Legal Services Corporation of Alameda County, which encourages and facilitates *pro bono* legal services.

I provided *pro bono* legal services at all times when I was a lawyer, in several different matters. I am not presently able to recall all of my *pro bono* cases. Some of the matters I worked on were:

Ms. Kazemi. I represented Ms. Kazemi in connection with an allegation that she had failed to pay employment taxes at a family-owned hardware store. My investigation showed that she was a victim of domestic violence; that she had no role in the financial management of the store; and that her husband, who had previously been convicted of credit card fraud, had managed the books of the business. I assisted Ms. Kazemi and the Marin County District Attorney's Office in petitioning the court to revoke her husband's felony probation based on his acts of domestic violence. I also represented Ms. Kazemi before the Internal Revenue Service in connection with payroll and other taxes that her husband failed to pay at their jointly-owned business. Her former husband's probation was revoked, and the IRS concluded that he should bear all responsibility for those taxes. I received this case as a referral from Marin Legal Aid.

Ms. Neal. Ms. Neal was a cancer survivor raising two teenage children in the Tenderloin District in San Francisco. I helped Ms. Neal resolve a potentially non-dischargeable claim in bankruptcy. I received this case as a referral from the San Francisco Bar Association's Volunteer Legal Services Panel.

Mr. Morgan. Mr. Morgan was charged with felony domestic assault in San Mateo County. I represented him at trial. He was convicted at trial of some of the charged offenses, but received probation after a finding of good cause by the court. The conviction was affirmed on appeal; I was not appellate counsel.

In addition, for two years I was chairman of the Pro Bono Committee at Keker & Van Nest. In that capacity, I assisted other lawyers (primarily associates) in bringing in and managing *pro bono* cases.

26. **Selection Process**:

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

In April 2009, I submitted a written application and writing sample to Senator Barbara Boxer's Judicial Advisory Committee. On May 6, 2009, that Committee interviewed me. The committee does not report its recommendations to judicial candidates or to the public, so I do not know whether the committee recommended my nomination.

Since March 13, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 3, 2012, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 11, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2012

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
Tigar, Jon S.	U.S. District Court for the Northern District of California	06/11/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	**5a. Report Type (check appropriate type)** ☑ Nomination Date 06/11/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	**6. Reporting Period** 01/01/2011 to 05/31/2012
7. Chambers or Office Address Alameda County Superior Court 1221 Oak Street, Dept. 15 Oakland, CA 94612		

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. Insert signature on last page.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Director	Volunteer Legal Services Corporation of Alameda County
2.	Trustee	Trust #1
3.	Trustee	Trust #2
4.	Trustee	Trust #3
5.	Trustee	Trust #4
6.	Trustee	Trust #5

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2012	State of California (Alameda County Superior Court) - salary	$63,836.25
2.	2012	County of Alameda (Alameda County Superior Court) - salary	$3,607.50
3.	2012	Royalties -- Matthew Bender	$1,730.13
4.	2011	State of California (Alameda County Superior Court) - salary	$152,187.00
5.	2011	County of Alameda (Alameda County Superior Court) - salary	$8,658.00
6.	2011	University of California - salary	$5,161.00
7.	2011	Royalties -- Matthew Bender	$3,253.00
8.	2010	State of California (Alameda County Superior Court) - salary	$152,612.00
9.	2010	County of Alameda (Alameda County Superior Court) - salary	$8,023.00
10.	2010	Royalties -- Matthew Bender	$3,110.00

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2012	The Durfee Foundation - salary
2.	2011	The Durfee Foundation - 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				

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Tigar, Jon S.	Date of Report 06/11/2012

2.

3.

4.

5.

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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.			

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Name of Person Reporting	Date of Report
Tigar, Jon S.	06-11-2012

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

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

A	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 "EXT" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(3) Value Code 2 (J-P)	(4) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer-seller (if private transaction)
1. Avery Dennison Common Stock	D	Dividend	N	T					
2. Driehaus Emerging Markets Growth Fund	B	Dividend	K	T					
3. Fidelity International Discovery Fund	A	Dividend	K	T					
4. PRIMECAP Odyssey Aggressive Growth Fund	A	Dividend	K	T					
5. RidgeWorth Intermediate Bond Fund	C	Dividend	K	T					
6. Schwab 1000 Index Fund	E	Dividend	O	T					
7. TIAA-CREF Traditional Annuity		None	K	T					
8. Vanguard Dividend Appreciation Index Fund	B	Dividend	L	T					
9. Vanguard Mid-Cap Index Fund	A	Dividend	K	T					
10. Vanguard Prime Money Market Fund	A	Dividend	M	T					
11. Vanguard Small-Cap Growth Index Fund	A	Dividend	L	T					
12. Wasatch Small Cap Growth Index Fund	C	Dividend	L	T					
13. Schwab Money Market Accounts – Cash	A	Interest	M	T					
14. Bank of America Accounts	A	Int./Div.	J	T					
15. Trust #1	E	Int./Div.	P1	T					
16. – Eaton Vance Tax-Managed Emerging Markets Fund									
17. – Fidelity International Discovery Fund									

1 Income Type Codes (Does not apply to "ST" and "DV")
2 Value Codes (Does not apply to "CT" and "DB")
3 Value Method Codes (Does not apply to "CT")

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 = $1,000,000 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

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Name of Person Reporting	Date of Report
Tigar, Jon S.	06/17/2012

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 "(NP)" 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.	– Nuveen Real Estate Securities Fund Class A									
19.	– Oakmark Global Fund									
20.	– PIMCO Total Return Fund III									
21.	– PRIMECAP Odyssey Aggressive Growth Fund									
22.	– RidgeWorth Intermediate Bond Fund									
23.	– RS Partners A Fund									
24.	– Vanguard Dividend Appreciation Index Fund									
25.	– Vanguard Mid-Cap Index Fund									
26.	– Vanguard Prime Money Market Fund									
27.	–Vanguard Small-Cap Growth Index Fund									
28.	Trust #2	D	Int. Div	M	T					
29.	– Avery Dennison Common Stock									
30.	– Driehaus Emerging Markets Growth Fund									
31.	– Fidelity International Discovery Fund									
32.	– PRIMECAP Odyssey Aggressive Growth Fund									
33.	– RidgeWorth Intermediate Bond Fund									
34.	– Vanguard Dividend Appreciation Index 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
K = $15,001 - $50,000
P1 = $250,001 - $500,000
P2 = $500,001 - $1,000,000
Q = Appraisal
U = Book Value

B = $1,001 - $2,500
G = $100,001 - $1,000,000
L = $50,001 - $100,000
M = $100,001 - $250,000
O = $250,001 - $1,000,000

R = Cost (Real Estate Only)
W = Other

C = $2,501 - $5,000
H1 = $1,000,001 - $5,000,000
N = $250,001 - $500,000
P3 = More than $1,000,000
S = Assessed
X = Estimated

D = $5,001 - $15,000
H2 = More than $5,000,000
O = $100,001 - $250,000
P4 = More than $50,000,000

T = Cash Market

T = $15,001 - $50,000

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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 "EX" 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. Trust #3	D	Int./Div.	M	T					
36. – Century Small Cap Select Fund									
37. – Fidelity International Discovery Fund									
38. – PRIMECAP Odyssey Aggressive Growth Fund									
39. – RidgeWorth Intermediate Bond Fund									
40. Trust #4	C	Int./Div.	L	T					
41. – Avery Dennison Common Stock									
42. – RidgeWorth Intermediate Bond Fund									
43. – Vanguard Dividend Appreciation Index Fund									
44. Trust #5	C	Int./Div.	M	T					
45. – Century Small Cap Select Fund									
46. – Driehaus Emerging Markets Growth Fund									
47. – Fidelity International Discovery Fund									
48. PRIMECAP Odyssey Aggressive Growth Fund									
49. – RidgeWorth Intermediate Bond Fund									
50. – Vanguard Dividend Appreciation Index Fund									

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

2: Asset 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 = $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

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

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IX. CERTIFICATION.

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

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

Signature: s/ Jon S. Tigar

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		371	290	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	3	429	629	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – personal residence	1	000	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities			0
				Net Worth	4	900	919
Total Assets	4	900	919	Total liabilities and net worth	4	900	919
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	
Avery Dennison Corp. common stock	$ 284,604
Century Small Cap Select Fund	57,944
Driehaus Emerging Markets Growth Fund	44,270
Eaton Vance Tax-Managed Emerging Markets Fund	48,435
Fidelity International Discovery Fund	203,414
Nuveen Real Estate Securities Fund Class A	75,518
Oakmark Global Fund	41,525
PIMCO Total Return Fund III	179,642
PRIMECAP Odyssey Aggressive Growth Fund	264,029
RidgeWorth Intermediate Bond Fund	393,261
RS Partners A Fund	54,864
Schwab 1000 Index Fund	800,179
TIAA-CREF Traditional Annuity	39,804
Vanguard Dividend Appreciation Index Fund	367,767
Vanguard Mid-Cap Index Fund	138,985
Vanguard Prime Money Market Fund	286,136
Vanguard Small-Cap Growth Index Fund	59,176
Wasatch Small Cap Growth Fund	90,076
Total Listed Securities	$ 3,429,629

AFFIDAVIT

I, Jon S. Tigar, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 6, 2012
(DATE)

(NAME)

(NOTARY)

State of California County of ALAMEDA

Subscribed and sworn to (or affirmed) before me on this 6th day of June, 20 12 by JON S. TIGAR,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature

(Seal)

COREY JAY PRIEST
Commission # 1942001
Notary Public - California
Contra Costa County
My Comm. Expires Jun 24, 2015

Senator COONS. Thank you, Judge Tigar.
Mr. Orrick.

STATEMENT OF WILLIAM H. ORRICK III, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Mr. ORRICK. Senator Coons, Senator Grassley, Senator Feinstein, thank you so much for convening this hearing. I want to express my appreciation to Senator Boxer——

Senator FEINSTEIN. Do you want to use your mic? Thank you.

Mr. ORRICK. I want to thank you all——

Senator GRASSLEY. It was on, and you just now turned it off.

[Laughter.]

Mr. ORRICK. Well, I thought—it looked on to me.

So I want to express my appreciation to all of you. I want to express my appreciation to Senator Boxer for her kind remarks today and for her role in my nomination, to Senator Feinstein for her kind remarks, and especially to the President of the United States for nominating me. This is a great honor, and I will do my best to fulfill the trust placed in me if I am confirmed.

I want to introduce my family, most of my wonderful family that is here today: my wife, Caroline; my daughters, Sarah and Libby; my daughter, Kaggie, is in South Africa, but she will be watching on the Webcast, along with many other relatives and friends, and I appreciate very much their support.

Thank you very much.

[The biographical information of Mr. Orrick follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   William Horsley Orrick, III

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

   United States District Judge for the Northern District of California

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

   United States Department of Justice
   Civil Division
   950 Pennsylvania Avenue, NW
   Washington, DC 20530

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

   1953; San Francisco, California

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

   1976 – 1979, Boston College School of Law; J.D. (*cum laude*), 1979

   1971 – 1972, 1973 – 1976, Yale University; B.A. (*cum laude*), 1976

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

   2009 – Present
   United States Department of Justice, Civil Division
   950 Pennsylvania Avenue, NW
   Washington, DC 20530

Deputy Assistant Attorney General (2010 – Present)
Counselor (2009 – 2010)

1984 – 2009
Coblentz, Patch, Duffy & Bass, LLP
One Ferry Building, Suite 200
San Francisco, California 94111
Partner (1988 – 2009)
Associate (1984 – 1987)

1979 – 1984
Georgia Legal Services Program
Savannah Regional Office
6602 Abercorn Street, Suite 203
Savannah, Georgia 31405
Supervising Attorney (1982 – 1984)
Acting Managing Attorney (1981 – 1982)
Attorney (1979 – 1981)

1977 – 1979
Boston College Legal Assistance Bureau
24 Crescent Street
Waltham, Massachusetts 02453
Student Attorney

1977
Massachusetts Advocacy Center
(no longer in operation)
Summer Intern

Other Affiliations (uncompensated unless otherwise indicated):

1992 – 2009
Episcopal Diocese of California
1055 Taylor Street
San Francisco, California 94108
Chancellor (1998 – 2009)
Co-Chancellor (1996 – 1997)
Vice Chancellor (1992 – 1995)
(compensated)

2005 – 2009
Historical Society, U.S. District Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, California 36060
Board member

2006 – 2009
OneCalifornia (now OnePacific) Bank
1438 Webster Street
Oakland, California 94612
Board member

2004 – 2008
Groton School
282 Farmers Row
Groton, Massachusetts 01450
Board member

1991 – 1997, 2006 – 2008
North Fork Association
P.O. Box 909
Soda Springs, California 95728
President of Board (1995 – 1997, 2006 – 2008)
Secretary (1993 – 1995)
Board member (1991 – 1993)

1995 – 2003
Katherine Delmar Burke School
7070 California Street
San Francisco, California 94121
President of Board (2001 – 2003)
Board member (1995 – 2003)

1986 – 1999
Good Samaritan Family Resource Center
1294 Potrero Avenue
San Francisco, California 94110
President of Board (1986 – 1988)
Vice-President/Officer (1989 – 1999)

1986 – 1992
Ellicott Machine Corporation
1611 Bush Street
Baltimore, Maryland 21230
(declared bankruptcy in 2002)
Board member (compensated)

1978 – 1979
Boston College Legal Assistance Bureau
24 Crescent Street
Waltham, Massachusetts 02453

President, Board of Directors (1978 – 1979)
(compensated, Summer 1978)

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 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.

   Named in *Super Lawyers (San Francisco Bay Area)* (2004 and 2006 – 2009)
   Co-honoree, Episcopal Charity Awards, San Francisco (1997)
   Outstanding Lawyer in Public Service, Bar Association of San Francisco (1989)
   Susan Grant Desmarias award for distinguished public service, Boston College Law School (1979)

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

   American Bar Association (1982 – present)
   Bar Association of San Francisco (1984 – present)
   California State Bar Association (1984 – present)
   Georgia State Bar Association (1980 – 1994)

10. **Bar and Court Admission**:

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

       Georgia, 1980. I resigned in 1994 because I no longer practiced in Georgia.

       California, 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, 1988
       United States Court of Appeals for the Ninth Circuit, 1987
       United States Court of Appeals for the Tenth Circuit, 1986

United States District Court for the Northern District of California, 1984
United States District Court for the District of Kansas, 1987
United States District Court for the Eastern District of California, 1997
United States District Court for the Central District of California, 2000
United States District Court for the District of Colorado, 2004
United States District Court for the Southern District of Georgia, 1980
Georgia Supreme Court and all the courts of the State of Georgia, 1980
California Supreme Court and all the courts of the State of California, 1984

I resigned from the Georgia bar in 1994. There have been no other lapses in membership.

11. **Memberships**:

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

Ellicott Machine Corporation
Board member (1986 – 1992)
Episcopal Diocese of California (1992 – 2009)
Chancellor (1998 – 2009)
Co-Chancellor (1996 – 1997)
Vice Chancellor (1992 – 1995)
Good Samaritan Family Resource Center (1986 – 1999)
President of Board (1986 – 1988)
Vice-President/Officer (1989 – 1999)
Groton School
Board member (2004 – 2008)
Chair of Audit and Chapel/Community Service committees (2004 – 2008)
Historical Society, U.S. District Court for the Northern District of California
Board member (2005 – 2009)
Katherine Delmar Burke School (1995 – 2003)
President of Board (2001 – 2003)
Chair, Strategic Planning Committee (1999 – 2001)
Board member (1995 – 2003)
North Fork Association
President of Board (1995 – 1997, 2006 – 2008)
Secretary (1993 – 1995)
Board member (1991 – 1993)
Proprietary member (1991 – present)
Associate member (1988 – 1990)

OneCalifornia (now OnePacific) Bank
Board member (2006 – 2009)
Chair, Compensation and Governance Committees (2006 – 2009)
Rafael Racquet Club (1990 – 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.

Letters to the School Community: January 3, 2003; November 5, 2002; April 23, 2002; December, 2001; and October 8, 2001. Katherine Delmar Burke School Tuesday Notes and Kay Dee Bee (school magazine). Copies supplied.

Letter to the Editor, "Let Terrorism Inspire Renewed Commitment to Fighting Racism," The Recorder, December, 1989. Copy supplied.

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

Episcopal Diocese of California

Governance – Constitution Article III, Committee on Canons Report to the 160th Convention of the Diocese of California. Copy supplied.

Governance, Committee on Canons Report to the 159th Convention of the Diocese of California, October 17 and 18, 2008. Copy supplied.

Report of the Committee on Canons and Corporation Sole Fact Sheet, Guide to the Special Convention of the Diocese of California, May 10, 2008. Copy supplied.

Report of the Committee on Canons, Guide to the Convention, October 21, 2006. Copy supplied.

Report of the Committee on Canons, Guide to the Convention, October 22, 2005. Copy supplied.

Report of the Committee on Canons, Guide to the Convention, October 19, 2002. Copy supplied.

Report of the Committee on Canons, Guide to the Convention, October 21, 2000. Copy supplied.

Report of the Committee on Canons, Guide to the Convention, October 18, 1997. Copy supplied.

Expansion of Child Abuse and Neglect Reporting Requirements Memo, November 1, 1996. Copy supplied.

Other Reports

Letters to the School Community, Katherine Delmar Burke School Annual Reports, 2001-2002 and 2002-2003. Copies supplied.

Report of the Boston College Legal Assistance Bureau, Spring 1979. 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.

I do not believe I issued or provided any such 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.

July 26, 2011: Speech to the U.S. Immigration and Customs Enforcement Office of the Principal Legal Advisors conference. Chicago, Illinois. Remarks supplied.

September 30, 2010: Presentation on "Hot Topics in Immigration Law" at Office of Immigration Litigation conference. I discussed the case *U.S. v. Arizona*. Columbia, South Carolina. Outline supplied.

June 2009: Introduction of Kamala Harris at a fundraiser for her campaign to become Attorney General of California. San Francisco, California. I have no notes, transcript or recording. The sponsoring organization, Kamala Harris for Attorney General, does not have a physical address.

January 10, 2009: Presentation during the orientation of the newly constituted Executive Council of the Episcopal Diocese of California on their duties and responsibilities. San Francisco, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

October 18, 2008: Presentation of the Report of the Committee on Canons to the Convention of the Episcopal Diocese of California. San Francisco, California. I have no notes, transcript or recording, but the report is supplied in response to 12(b).

October 2008: Remarks at a gathering of Obama supporters at a park in Tiburon, California. San Francisco, California. I have no notes, transcript or recording. San Francisco, California. The sponsoring organization, Obama for America, does not have a physical address.

May 16, 2008: Talk at the retirement dinner of Ann and Charlie Alexander from Groton School. Groton, Massachusetts. Remarks supplied.

April 24, 2008: Speech, with question and answer period, on the proposed changes to the organizational structure of the Episcopal Diocese of California to the Alameda Deanery. Piedmont, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

April 19, 2008: Speech, with question and answer period, on the proposed changes to the organizational structure of the Episcopal Diocese of California to the Marin Deanery. Novato, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

April 17, 2008: Speech, with question and answer period, on the structure and liability of Episcopal social service organizations, Episcopal Diocese of California. San Francisco, California. Remarks supplied.

April 13, 2008: Speech, with question and answer period, on the proposed changes to the organizational structure of the Episcopal Diocese of California to the South Alameda Deanery. Fremont, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

January 2008: Participant in a debate as a Senator Barack Obama surrogate against surrogates for Senator Hillary Clinton and Senator John McCain at the Fromm Institute for Lifelong Learning, University of San Francisco. I have no notes, transcript or recording. The address of the Fromm Institute is 2130 Fulton Street, San Francisco, California 94117.

February 2007: Introduction of Senator Barack Obama at a fundraiser for his Presidential campaign. San Francisco, California. I have no notes, transcript or recording. The sponsoring organization, Obama for America, does not have a physical address.

December 11, 2006: Presentation on property ownership rights of parishes in the Episcopal Diocese during consideration of amended Articles of Incorporation at St. Clement's Episcopal Church. Berkeley, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

September 26, 2006: Presentation on jury selection to the Association of Business Trial Lawyers for a program entitled, "The Use and Abuse of Peremptory Challenges." San Francisco, California. Remarks supplied.

October 22, 2005: Presentation of the Report of the Committee on Canons to the Convention of the Episcopal Diocese of California. San Francisco, California. Minutes of the convention are supplied, and the report is supplied in response to 12(b).

October 2005: Talk on the importance of pro bono litigation and introduction of San Francisco Bar Association's "Champion of Justice" award recipient at the San Francisco Bar Association Gala. San Francisco, California. I have no notes, transcript or recording. The address of the San Francisco Bar Association is 301 Battery Street, Third Floor, San Francisco, California 94111.

June 13, 2005: Co-presenter for employment law training, with emphasis on sexual harassment, to employees of the Episcopal Diocese of California. San Francisco, California. I have no notes, transcript or recording. The address of the

Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

September 2004: Introduction of Governor Elliot Spitzer at a fundraising event for the Presidential campaign of Senator John Kerry, and then moderator of a question and answer session with him. San Francisco, California. I have no notes, transcript or recording. The sponsoring organization, John Kerry for President, does not have a physical address.

August 2004: Remarks on behalf of Senator Kerry at a house party. San Francisco, California. I have no notes, transcript or recording. The sponsoring organization, John Kerry for President, does not have a physical address.

June 2004: Remarks on panel on behalf of Senator Kerry at a gathering at a senior citizen housing complex. Walnut Creek, California. I have no notes, transcript or recording. The sponsoring organization, John Kerry for President, does not have a physical address.

April 23, 2004: Chapel Talk on "Being Kind." Groton School, Groton, Massachusetts. Remarks supplied.

June 2003: Introduction of Susan Leal at a fundraiser for her campaign for Mayor of San Francisco. San Francisco, California. I have no notes, transcript or recording. The sponsoring organization, Susan Leal for Mayor, does not have a physical address.

May 2003: Introduction of Senator Kerry at a fundraising event for his Presidential campaign. San Francisco, California. I have no notes, transcript or recording. The sponsoring organization, John Kerry for President, does not have a physical address.

October 2002: Presentation of the Report of the Committee on Canons to the Convention of the Episcopal Diocese of California. San Francisco, California. I have no notes, transcript or recording, but the report is supplied in response to 12(b).

October 2000: Presentation of the Report of the Committee on Canons to the Convention of the Episcopal Diocese of California. San Francisco, California. I have no notes, transcript or recording, but the report is supplied in response to 12(b).

October 16, 1999: Presentation of the Report of the Committee on Canons to the Convention of the Episcopal Diocese of California. San Francisco, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

December 1, 1998: Presentation on sexual harassment to employees at Farallon Capital Management. San Francisco, California. I have no notes, transcript or recording. The address of Farallon Capital is 1 Maritime Plaza, Suite 2100, San Francisco, California 94111.

January 15, 1998: Presentation to the lawyers in the Guild of St. Yves on the role of the Chancellor of the Episcopal Diocese of California. San Francisco, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

October 18, 1997: Presentation of the Report of the Committee on Canons to the Convention of the Episcopal Diocese of California. San Francisco, California. Minutes of the convention supplied, and the report is supplied in response to 12(b).

April 18, 1997: Speech at grand opening of Good Samaritan Family Resource Center and Apartments. San Francisco, California. Remarks supplied.

January 16, 1997: Speech at the Episcopal Charities Dinner. San Francisco, California. Remarks supplied.

October 19, 1996: Presentation of the Report of the Committee on Canons to the Convention of the Episcopal Diocese of California. San Francisco, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

October 21, 1995: Presentation of the Report of the Committee on Canons to the Convention of the Episcopal Diocese of California. San Francisco, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

September 20, 1995: Presentation on the new Disciplinary Canons in the Episcopal Church of America to the clergy of the Episcopal Diocese of California. Healdsburg, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

April 1995: Speech at retirement dinner honoring Richard J. Congleton, Groton School faculty member. Boston, Massachusetts. I have no notes, transcript or recording. The address of Groton School is 282 Farmers Row, Groton, Massachusetts 01450.

January 22, 1994: Training of the newly constituted "support team" to implement the new misconduct policy in the Episcopal Diocese of California. San Francisco, California. I have no notes, transcript or recording. The address of the Episcopal Diocese of California is 1055 Taylor Street, San Francisco, California 94108.

January 1983: Training on recent Supreme Court cases for Georgia Legal Services Program lawyers. Atlanta, Georgia. I have no notes, transcript or recording. The address of GLSP is 104 Marietta Street, Suite 250, Atlanta, Georgia 30303.

September 7, 1978: Speech at the 10th anniversary of the Boston College Legal Assistance Bureau dinner. Boston, Massachusetts. Remarks supplied.

Winter 1972: Chapel talk on the importance of the Groton-Lowell Upward Bound, a program for low income high school students in Lowell, Massachusetts. Groton, Massachusetts. I have no notes, transcript or recording. The address of Groton School is 282 Farmers Row, Groton, Massachusetts 01450.

May 1971: Chapel talk on the importance of the Groton-Lowell Upward Bound, a program for low income high school students in Lowell, Massachusetts. Groton, Massachusetts. I have no notes, transcript or recording. The address of Groton School is 282 Farmers Row, Groton, Massachusetts 01450.

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.

Marisa McQuilken, "Familiar Place," The National Law Journal, June 29, 2009. Copy supplied.

Petra Pasternak, "Another Coblentz Partner Joins DOJ," The Recorder, June 23, 2009. Copy supplied.

Press release, "Obama Administration Recruits Partner William H. Orrick for DOJ Post," Coblentz Patch Duffy & Bass LLP, June 22, 2009. Copy supplied.

Claire Cooper, "Campaign Lawyers—May the Best Candidate Win," San Francisco Attorney Magazine, Fall 2008. Copy supplied.

Sue Cox, "Bar Association of San Francisco Foundation Announces Gala Co-Chairs," BASF Newsletter, Summer 2008. Copy supplied.

Bob Egelko, "Downey Orrick—SF Lawyer," The San Francisco Chronicle, Feb. 2, 2008. Copy supplied.

Justin Scheck, "Marin Mediator Looks Beneath the Economics," The Recorder, Apr. 17, 2007. Copy supplied.

Anna Palmer, "Trial Bar Turns from Edwards," The Recorder, Apr. 9, 2007 (reprinted in multiple outlets). Copy supplied.

Susan Kostal, "The 1% Solution—BASF's Charitable Giving Task Force Sets Bar for Law Firm Philanthropy," San Francisco Attorney Magazine, Spring 2007. Copy supplied.

Mary Anne Ostrum, "Bay Area's Election Exodus: Thousands Heading Out to Help in Swing States," San Jose Mercury News, Oct. 27, 2004. Copy supplied.

Brenda Sandburg, "Personal Politics," The Recorder, July 21, 2004. Copy supplied.

Susan Kostal, "Adventures in Politics," San Francisco Attorney Magazine, Summer 2004. Copy supplied.

Curtiss, Swisher and Lewin, *Java Man: How Two Geologists Changed Our Understanding of Human Evolution*, University of Chicago Press, 2000. A copy of the section of a chapter for which I was interviewed is provided.

Suzanne Solis, "Good Samaritan Fosters Immigrants' Self-Reliance," The San Francisco Chronicle, Nov. 28, 1995. Copy supplied.

David J. Jefferson, "This Anthropologist Has A Style That Is Bone of Contention," Wall Street Journal, Jan. 31, 1995. Copy supplied.

"Saturday Celebrity," The Boston Herald, Sept. 10, 1994. Copy supplied.

Associated Press, "Man Tied To Marin S&L Failure Paid Little," Marin Independent Journal, Feb. 25, 1993. Copy supplied.

Richard Keil, "S&L Plea Bargains a Steal for Defendants," San Jose Mercury News, Feb. 25, 1993. Copy supplied.

Carrie Dolan, "Talking Baysball: The A's and Giants Have Scores To Settle," Wall Street Journal, Oct. 13, 1989. Copy supplied.

Frederick C. Klein, "Another Season of Baseball by the Numbers," Wall Street Journal, Feb. 24, 1983. Copy supplied.

I was interviewed on television in approximately 1981 about the services which Georgia Legal Services Program provided in Savannah, Georgia. I do not have any transcript or recording.

Ben Birnbaum, "After Ten Years of Service, Legal Assistance Bureau a 'Rite of Passage' for Many Law Students," Boston College Colleague, Feb. 1979. Copy supplied.

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

I have not served as a judge.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

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 was appointed by the California Superior Court for the City and County of San Francisco to be a member of the Civil Investigative Grand Jury for the City and County of San Francisco from 1989 - 1990. Otherwise, I have not held any public offices nor run for any.

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

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

I was a precinct captain for San Francisco Mayor Art Agnos in his unsuccessful campaign for reelection in 1991.

I raised money for Senator Bill Bradley for a fundraiser in San Francisco during his campaign for president in 1999.

I held a house party/fundraiser for the unsuccessful campaign to elect Susan Leal for mayor in San Francisco in June 2003.

I was co-chair of the Bay Area Lawyers Committee to Elect John Kerry in 2003-2004. The committee raised money, recruited lawyers for voter protection efforts, and organized surrogate speakers when asked.

I was a member of a group of lawyers who supported Phil Angelides for Governor in 2005 to 2006. I was on the host committee for a fundraiser for which I raised and gave money.

I was co-chair of the Bay Area Lawyers Committee to Elect Barack Obama from 2006 to 2008, and was a member of the National Finance Committee from 2007 to 2008. The lawyers committee raised money, recruited lawyers for voter protection efforts, and organized surrogate speakers when asked. I spoke at several events.

I raised money and sponsored an event for the campaign of Kamala Harris for Attorney General in 2009, before I joined the Department of Justice.

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 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.

1979 – 1984
Georgia Legal Services Program
Savannah Regional Office
P.O. Box 8667
Savannah, Georgia 31412
Supervising Attorney (1982 – 1984)
Acting Managing Attorney (1981 – 1982)
Attorney (1979 – 1981)

1984 – 2009
Coblentz, Patch, Duffy & Bass, LLP
One Ferry Building, Suite 200
San Francisco, California 94111
Partner (1988 – 2009)
Associate (1984 – 1987)

2009 – Present
United States Department of Justice, Civil Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Deputy Assistant Attorney General (2010 – Present)
Counselor (2009 – 2010)

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

As a lawyer with the Georgia Legal Services Program in Savannah, Georgia from 1979 to 1984, I brought litigation in United States District Court and handled a general legal services caseload, circuit riding weekly to a rural county for hearings and appointments. I was in court frequently.

I then worked with Coblentz, Patch, Duffy & Bass, LLP, where I had a broad-based, complex commercial litigation practice from 1984 to 2009. I became a partner in 1988 and headed the firm's employment litigation practice. I also served as Vice Chancellor, Co-Chancellor and Chancellor to the Episcopal Bishop of California from 1992 to 2009, essentially

performing the work of an outside general counsel. My clients ran the gamut from individuals to small companies to much bigger ones. An example of my varied practice is seen from matters handled in my last six months with the firm: I settled a wage and hour class action for Boudin Bakeries and related companies; tried (and won) a two-week jury trial involving fraud, construction and real estate causes of actions for Albertson's, LLC and Save Mart, Inc.; tried (and won) a will reformation case for St. Jude Children's Research Hospital; was lead counsel for a family in two complex partition actions involving hundreds of parcels of real property in California; won summary judgment on a multimillion dollar breach of contract matter; and settled a partnership dispute involving players in the financial services industry.

I started government service in June 2009, and through May 2010, I was Counselor to the Assistant Attorney General for the Civil Division at the Department of Justice. I spearheaded or participated in a wide range of projects, including matters related to the Freedom of Information Act, tobacco litigation, increasing the affirmative consumer litigation brought by the Civil Division, analysis of amendments to the False Claims Act, litigation reports concerning the Civil Division's national security cases, and efforts to increase access to justice, including expansion of the Civil Division's pro bono efforts. In addition, I began supervising immigration litigation in September 2009.

I was appointed Deputy Assistant Attorney General in the Civil Division in June 2010. I oversee the Office of Immigration Litigation ("OIL"), which includes two sections (District Court and Appellate) with more than 300 lawyers that handle all of the federal civil appellate litigation arising from petitions for review from the immigration courts and roughly 50% of the civil United States District Court immigration matters, primarily class actions, habeas and mandamus petitions, and certain *Bivens* actions. I participate in various interdepartmental task forces concerning immigration and national security, including the applicability of terrorism bars to various groups and individuals. I led an interagency task force against immigration services fraud. I also strategize regarding some non-immigration cases of interest and importance to the Civil Division.

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

With Georgia Legal Services, I represented low income persons on a variety of issues impacting people living at or below the poverty line.

In private practice, my clients ranged from individuals to large corporations. I emphasized employment issues over the course of my career, but had a broad-based, complex commercial practice.

As Counselor and Deputy Assistant Attorney General in the Civil Division of the United States Department of Justice, my sole client is and has been the United States government. My primary area of responsibility is immigration matters.

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

With Georgia Legal Services, my practice was 100% in litigation, and I appeared in court frequently, usually more than once a week.

With Coblentz, Patch, Duffy & Bass, LLP, my practice was at least 90% in litigation, and I appeared in court frequently (at least three times a month, and often more frequently).

As a Deputy Assistant Attorney General in the Civil Division, my responsibilities primarily involve decisions about litigation, but I do not typically handle the litigation myself. I have argued five cases in the Courts of Appeals and one in federal district court.

i. Indicate the percentage of your practice in:
   1. federal courts: 40%
   2. state courts of record: 60%
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 97%
   2. criminal proceedings: 3%

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

I have tried at least 16 cases to verdict in courts of record as sole or lead counsel. I did not try any as an associate counsel. Fifteen cases were civil and one was criminal. (These numbers do not include numerous short cause custody cases I tried to the court in Georgia.)

i. What percentage of these trials were:
   1. jury: 56%
   2. non-jury: 44%

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. Berkeley Geochronology Center v. Institute of Human Origins, No. 736234-9 (Cal. Super. Ct., Alameda County); Judge James Lambden; May 1994 – May 1995

I was lead counsel for Berkeley Geochronology Center, a non-profit whose board was led by Gordon Getty, and successfully prosecuted this breach of charitable trust action on behalf of a world renowned laboratory for dating geological sites against Donald Johanson's rival organization, the Institute of Human Origins. The case ultimately settled after Hon. James Lambden granted a preliminary injunction to my client in the summer of 1994. The lawsuit and my involvement in it is described in *Java Man: How Two Geologists Changed Our Understanding of Human Evolution*, written by Carl C. Swisher III, Garniss H. Curtiss and Roger Lewin, and published by The University of Chicago Press in 2000.

Opposing counsel:
James Carter
Carter, Carter, Fries & Grunschlag
44 Montgomery Street, Suite 2405
San Francisco, CA 94104
(415) 989-4800

2. Fowler v. The Regents of The University of California, No. 527662 (Cal. Super. Ct., Sacramento County); Hon. Eugene Gualco; approximately May 1991 – September 1993

I was lead counsel for The Regents and Aramark Corporation and won a three-week jury trial in the first same-sex sexual harassment and wrongful termination in violation of public policy case tried in California. The case involved a cafeteria employee's claims that his supervisor engaged in quid pro quo sexual harassment.

Opposing counsel:
Jill P. Telfer
331 J Street, Suite 200
Sacramento, CA 95814
(916) 446-1916

3. Genzano v. Coastal International and Green, No. CGC-02-405121 (Cal. Super. Ct., San Francisco); Hon Read Ambler, ret.; approximately June 2002 – January 2004

I was lead counsel for Coastal International and its CEO and majority shareholder, Green, and successfully defended them in a wrongful termination and partnership dispute in a several weeks-long, bet-the-company arbitration. Genzano had alleged that Green and his law firm (Squire Sanders) had breached their fiduciary duties to him and that Green had pushed them out of their lucrative partnership despite Genzano's outsized contribution to it.

Opposing Counsel:
Richard E. Levine
Levine and Baker
535 Pacific, Suite 201
San Francisco, CA 94133
(415) 391-8177

4. Gregory v. Albertson's, 104 Cal. App. 4th 845 (Cal. Ct. App. 2002); Judge James Richman (Alameda Superior Court), Judges Swager, Stein and Margulies (First District Court of Appeals); April 2001 – December 2002

I was lead counsel and demurred successfully to an Unfair Business Practices Act case under California Business and Professions Code 17200. Plaintiff alleged that a grocery store chain committed an unfair act or practice by creating blight in a neighborhood when it ceased operations in a particular location and did not sublet the premises. I then briefed, argued and won the case in the California Court of Appeals. The opinion in this matter helped develop the definition of unfair practices under California law.

Opposing counsel:
Cary L. Dictor (deceased)

5. Leonardo v. Crawford, 644 F. 3d 905 (9th Cir. 2011), amended by 646 F.3d 1157 (9th Cir. 2011); Singh v. Chertoff, 433 Fed. Appx. 549 (9th Cir. 2011); and Singh

v. Holder, 638 F.3d 1196 (9th Cir. 2011); Judges Fisher, Bybee, and Hall (with Judge Graber substituting for Judge Hall after her death); September – October, 2010

I argued three cases which had been briefed by others but consolidated for hearing in the United States Court of Appeals for the Ninth Circuit on October 4, 2010, concerning the procedures to be employed in bond hearings held for aliens in detention pursuant to INA Section 236(a). We prevailed in requiring administrative exhaustion through the BIA as a prerequisite to challenge a bond hearing determination in *Leonardo v. Crawford*, but lost in the *Singh v. Holder* case where the court ruled that the burden of proof on the government should be clear and convincing evidence and that bond hearings should be recorded or transcribed. *Singh v. Chertoff* was remanded for the trial court to apply the rulings in the other two cases.

Lead counsel for appellants and amici:
Ahilan T. Arulanantham
ACLU Foundation of Southern California
1313 West Eighth Street
Los Angeles, CA 90012
(213) 977-5211

Leonardo v. Crawford opposing counsel:
J. Ryan Moore
Assistant Public Defender
407 West Congress Street
Tucson, AZ 85701
(520) 879-7500

Singh v. Chertoff opposing counsel:
James Fife
Public Defenders Office
225 Broadway
San Diego, CA 92101
(619) 234-8467

Singh v. Holder opposing counsel:
Holly S. Cooper
UC Davis Immigration Law Clinic
One Shields Avenue, Building TB-30
Davis, CA 95616
(530) 754-4833

6. McKinney-Griff Inc. v. Albertson's, et al., No. RG-06-0250071 (Cal. Super. Ct., Alameda County); Judge Stephen Dombrink; approximately June 2006 – June 2009

I was lead counsel for Albertson's LLC and Save Mart, Inc. in a matter arising from the construction and operation of a large grocery store in the Lake Merritt Shopping Center in Oakland, California. A local business sued for fraud, interference with contract, construction defect, an accounting and injunctive relief because of alleged interference. After the other defendants settled or were dismissed, I tried the case and obtained a defense verdict in a two-week jury trial in 2009.

Opposing counsel:
Leodis Matthews and Dick Sindicich
Matthews Wilson Hunter LLP
4322 Wilshire Boulevard, Suite 200
Los Angeles, CA 90010
(323) 938-8300

Counsel for defendant Dawson Trust:
Martin Sproul
Sproul Law Offices
3675 Mt. Diablo Boulevard, Suite 250
Lafayette, CA 94549
(925) 962-1616

Michelle Trausch
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
(415) 781-7900

Counsel for defendant Tilton Pacific Construction:
Robert Lockhart
LaMore, Brazier, Riddle & Giampaoli
1570 The Alameda, Suite 150
San Jose, CA 95126
(408) 280-6800

7. Miniace v. Pacific Maritime Association, 2007 U.S. Dist. LEXIS 34420, 41 Employee Benefits Cas. (BNA) 1057 (N.D. Cal.); Hon. Susan Illston; approximately March 2004 – November 2007

I was lead counsel for plaintiff Miniace, the former president of Pacific Maritime Association (PMA), who was terminated for breach of fiduciary duty for conduct related to helping his CFO's widow obtain substantial life insurance benefits. We sued PMA for wrongful termination, and PMA cross-complained against Miniace and the CFO's widow for breach of fiduciary duty under ERISA and for recovery of the insurance proceeds. Judge Illston bifurcated the case and held a two-week bench

trial on the cross-complaint. Susan Harriman, counsel for the widow, and I successfully defended the cross-complaint. Mr. Miniace then settled after the trial court's decision.

Counsel for defendant and cross-complainant Pacific Maritime Association:
Michael Baker
Arnold and Porter (formerly Howard, Rice)
3 Embarcadero Center, 7th Floor
San Francisco, CA 94111
(415) 434-1600

Counsel for cross-defendant McMahon:
Susan Harriman
Keker & Van Nest, LLP
710 Sansome Street
San Francisco, CA 94111
(415) 676-2213

8. Pebble Beach Fire Litigation [consolidated], No. M19160 (Cal. Super. Ct., Monterey County); Judge Richard Silver; June 1987 – September 1990

I co-defended the Pebble Beach Company before Hon. Richard Silver in actions filed by 32 homeowners and their insurance companies arising out of a fire on May 31, 1987 that started in part of the Monterey forest controlled by my clients. The allegations were in part that the company had not maintained the open space in a reasonable manner to protect the homeowners from fire and had interfered with the ability to fight the fire by blocking vehicular access to the open space. This case settled on the eve of trial in the fall of 1990.

Lead opposing counsel:
Stephen N. Cole
The Cole Law Firm
3410 Industrial Boulevard, Suite 100
West Sacramento, CA 95691
(916) 376-0478

Frank L. Crist (deceased)

Co-counsel for Pebble Beach Company:
Richard K. Harray
Kennedy Archer and Harray
24591 Silver Cloud Court, Suite 200
Monterey, CA 93940
(831) 373-7500

Other insurance defense counsel:
Stephen W. Jones

Sedgwick, Detert, Moran & Arnold
One Market Street, Steuart Tower
San Francisco, CA 94105
(415) 781-7900

9. State Conference of Branches of NAACP v. State of Georgia, 570 F. Supp. 314 (S.D. Ga. 1983), 775 F.2d 1403 (11th Cir. 1985); Judge B. Avant Edenfield; approximately October 1981 – January 1984

I was the most junior of three primary trial counsel in a class action against 13 school districts and the State of Georgia for denial of equal educational opportunities by use of tracking policies which placed African American children in the slowest classes, and by the intentional misclassification of African American students as educable mentally retarded when their testing revealed that they should not have been placed in special education classes. After a two-month bench trial, Judge Edenfield found substantially for the defendants because he did not find intentional discrimination. I did not participate in the appeal, which affirmed Judge Edenfield's decision.

Co-counsel for plaintiffs:
Rose Firestein
New York State Department of Law-Consumer Fraud
120 Broadway, 3rd Floor
New York, NY 10271
(212) 417-4393

Jonathan Zimring
Zimring Law Firm
114 New Street, Suite K-1
Decatur, GA 30030
(404) 607-1600

Lead opposing counsel (13 counties separately represented):
Franklin Edenfield
Spivey, Carlton and Edenfield
P.O. Box 309
Swainsboro, GA 30401
(478) 237-6424

10. United States v. Alabama, 2011 U.S. Dist. LEXIS 112362 (N.D. Ala. 2011); Judge Sharon Blackburn; July 2011 – present

I helped supervise the district court preemption litigation brought by the United States against the states of Arizona, Alabama, South Carolina and Utah concerning statutes passed by those states in 2010 and 2011 that related to immigration. I argued the United States' motion for a preliminary injunction in *United States v. Alabama*, which was granted in part and denied in part. The Eleventh Circuit has

since granted additional parts of our requested injunction, and the matter is pending. Id., 443 Fed. Appx. 411 (Oct. 14, 2011) and Order (March 8, 2012).

Co-counsel:
Beth Brinkmann
Deputy Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 353-8679

Joyce White Vance
U.S. Attorney
U.S. Attorney's Office for the Northern District of Alabama
1801 Fourth Avenue North
Birmingham, AL 35203
(205) 244-2209

Counsel for the State of Alabama and Governor Bentley:
John C. Neiman, Jr.
Solicitor General, State of Alabama
Office of the Alabama Attorney General
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300

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

While I was in private practice, in my role as Chancellor of the Episcopal Diocese of California (and previously as Vice Chancellor and Co-Chancellor), I advised the Diocese on a host of matters, including interpretation of the Canons of the Episcopal Church, the property and other rights of parishes to "break away" from the Diocese, the duties of priests to report sexual abuse matters, personnel matters and their intersection with First Amendment rights, real property and construction issues, and other matters typical for a general counsel of a complicated organization. Additionally, I advised many clients on how to avoid litigation and successfully participated in many mediations, including one disputed trust/estate matter which involved dividing ownership of many lots comprising a substantial part of the downtown of one California city. In another matter designated as complex in San Mateo Superior Court involving five family groups that disputed the ownership and disposition of approximately 250 parcels of real property in numerous

counties in California before Hon. Carol Mittelstaedt, I helped negotiate the settlement prior to trial of the first of two consolidated lawsuits before starting my job with the Justice Department.

As a board member of a number of organizations, I participated in significant negotiations and decisions, though outside lawyers did the legal work. With Ellicott Machine Corporation, I was involved in the decision to split the corporation and sell each part in 1992. I negotiated with the Forest Service on behalf of the North Fork Association to help preserve thousands of acres in the Sierra Nevada as a research area. I helped settle in mediation allegations of child abuse and retaliation for Groton School. I advised Good Samaritan Family Resource Center when it was unionized. I negotiated with neighbors of the Katherine Delmar Burke School so that the school could rebuild its facility.

I have not performed any lobbying activities on behalf of any client or organization.

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

    I have not taught any courses.

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

    I do not have 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.

    None.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

Matters in which Coblentz, Patch, Duffy & Bass LLP is counsel of record would present a potential conflict of interest, since the firm currently represents me in estate matters. Any immigration case served during my tenure as Deputy Assistant Attorney General would also present a potential conflict. I also own stock in various companies. Matters relating to my immediate family and sibling, if any were to arise (none are pending) would also present a conflict of interest. I would recuse myself from all such matters consistent with applicable rules.

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, e.g., 28 U.S.C. § 455.

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

During the summer after my first year in law school, I represented clients in special education hearings as an intern with the Massachusetts Advocacy Center. In my second and third years in law school, I worked at the Boston College Legal Assistance Bureau, which provided free legal services for low-income residents in Waltham, Massachusetts. I represented a number of clients under the Massachusetts student practice rule in divorce, custody, landlord tenant and other matters, and argued a case before the Supreme Judicial Court of Massachusetts. I was elected president of the Legal Assistance Bureau by my peers.

After graduation from law school in 1979 through the beginning of January 1984, I represented indigent persons as a staff attorney, acting managing attorney and supervising attorney with Georgia Legal Services Program in Savannah, Georgia. I brought cases in

the United States District Court for the Southern District of Georgia, and circuit rode to Liberty County, Georgia each week for hearings and interviews involving all manner of legal services matters, from domestic relations to public benefits to contract to housing cases.

After returning to San Francisco in 1984 to practice with Coblentz, Patch, Duffy and Bass, LLP, I assisted the Good Samaritan Family Resource Center on many legal issues from 1986 to 2009. I represented the charities and schools of the Episcopal Diocese of California on an as-needed basis from 1992 to 2009 (my work advising the Bishop was partially compensated, but my work for the non-profits and schools as a general rule was not).

In addition, I was active in our pro bono program at the firm. I was honored by the Bar Association of San Francisco for my work in a pro bono case, *Akao v. Shimoda*, 832 F.2d 119 (9th Cir. 1987), in which I prevailed on appeal for inmates from Hawaii whose pro se complaint alleging deliberate indifference to serious medical needs had been dismissed for failure to state a claim. I was co-chair of my firm's Pro Bono Committee from approximately 1994 to 2009. During that time, I supervised most of our firm's pro bono litigation. I helped lead and staff the Tuesday night clinics for the Lawyers Committee for Civil Rights in which our firm participated from 2006 to 2008, taking primarily debt collection and landlord-tenant matters. I handled several cases myself, including two prisoner matters to which U.S. District Judges Vaughn Walker and James Ware appointed me.

When I began work with the Civil Division, access to justice issues were part of my portfolio. In the last three years, we doubled our sponsorships of the Advocacy and Referral Clinic offered by the DC Bar Association. I participated in one of those sessions. We also created an award for pro bono representation by Civil Division attorneys to encourage attorneys to fulfill their obligations under Canon 2.

26. **Selection Process**:

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

I submitted a Questionnaire to the Chair of the Judicial Screening Panel for Senator Barbara Boxer in December 2010. In September 2011, I was interviewed by Senator Boxer's committee. Since March 13, 2012, I have been in contact with officials in the Office of Legal Policy at the Department of Justice. On April

10, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 11, 2012, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2012

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
Orrick, William H.	U.S. District Court, Northern District of California	06/11/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U. S. District Judge	☑ Nomination Date 06/11/2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2011 to 5/17/2012
7. Chambers or Office Address		
Department of Justice, Civil Division 950 Pennsylvania Avenue, NW Washington DC 20530		

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. Insert signature on last page.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Co-Trustee	Trust #1
2.	Trustee	Trust #2
3.	Trustee	Trust #3
4.	Trustee	Trust #4
5.	Trustee	Trust #5
6.	Trustee	Trust #6

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2007	Coblentz, Patch Duffy & Bass LLP Cash Balance Plan, a pension plan with former law firm, no control (Part VII, line 10)
2.	2009	Coblentz, Patch, Duffy & Bass, LLP monthly payments for two months in 2011 from capital account/partnership share calculated June 17, 2009 (Part VII, line 11)
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 16	Name of Person Reporting Orrick, William H.	Date of Report 06/11/2012

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 16	Name of Person Reporting Orrick, William H.	Date of Report 06/11/2012

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	First Republic Bank	rental property #2, line of credit, San Francisco, California	N
2.	Citibank Mortgage, Inc.	rental property #2, mortgage, San Francisco, California	N
3.			
4.			
5.			

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Name of Person Reporting	Date of Report
Orrick, William H.	06/11/2012

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. First Republic checking accounts	A	Interest	K	T	Exempt				
2. OnePacificCoast Bank accounts	A	Interest	K	T					
3. Rental property #2, San Francisco, CA	F	Rent	P1	W					
4. Rental property #1, Stinson Beach, CA	E	Rent	P1	W					
5. 401K #1	F	Int./Div.	P1	T					
6. - Dodge & Cox Stock Fund									
7. - Fidelity Diversified International Fund									
8. - Spartan US Equity Fund									
9. - Vanguard Total Bond Market									
10. Coblentz, Patch, Duffy & Bass LLP Cash Balance Plan	D	Interest	N	T					
11. Coblentz, Patch, Duffy & Bass LLP capital account payout	D	Distribution							
12. Vanguard Int'l Growth Fund	D	Dividend	M	T					
13. Vanguard Int'l Growth Fund	D	Dividend	L	T					
14. Vanguard Int'l Growth Fund	C	Dividend	L	T					
15. Vanguard European Stock Index	C	Dividend	L	T					
16. Dodge & Cox Stock Fund	E	Dividend	N	T					
17. Dodge & Cox Balanced Fund	D	Dividend							

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 - $100,002; 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

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Name of Person Reporting	Date of Report
Orrick, William H.	06/11/2012

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. Trust #1	E	Dividend	P1	T					
19. -12% interest in rental property #1, Stinson Beach, CA.									
20. - General Electric Common Stock ("Com")									
21. - IBM Com									
22. - Eli Lilly & Co Com									
23. - Medco Health Solutions Com									
24. - Merck & Co Com									
25. - Monsanto Co Com									
26. - Pfizer Com									
27. - Procter & Gamble Com									
28. - Rayonier Com									
29. - JM Smucker Com									
30. - First Republic Bank account									
31. Trust #2	F	Dividend	P1	T					
32. - Aegon N V NY Registry ADR									
33. - Diageo PLC Spon ADR New									
34. - Ericsson L M Tel Co ADR B SEK 10									

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)
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

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Name of Person Reporting	Date of Report
Orrick, William H.	06/11/2012

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)
35. - Glaxosmithkline PLC Spons ADR									
36. - HSBC Hldgs PLC Spon ADR NEW									
37. - Nokia Corp Spon ADR									
38. -Novartis ADR (Y)									
39. Panasonic ADR (Y)									
40. - Roche Hldg Ltd Spon ADR									
41. - Sanofi Spon ADR									
42. -Vodafone Group PLC New Spon ADR New									
43. -3M Co Com									
44. - American Express Co Com									
45. - Amgen Inc Com									
46. - AOL Inc Com									
47. - Baker Hughes, Inc. Com									
48. - Bank of America Com									
49. -Bank of New York Mellon Com									
50. - BB&T Corp Com									
51. - Boston Scientific Corp Com									

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 =$15,000 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)

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Name of Person Reporting	Date of Report
Orrick, William H.	06/11/2012

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. - Cadence Design System Inc Com									
53. - Cardinal Health, Inc. Com (Y)									
54. - Capital One Fin'l Corp Com									
55. - Citrix Sys Inc Com (Y)									
56. -Chevron Corp Com									
57. -Chubb Corp Com									
58. -Comcast Corp new CLA com									
59. - Computer Sciences Corp Com									
60. - Dow Chemical Com									
61. -EBay Inc Com									
62. - Fedex Corp Com									
63. - General Electric Com									
64. - Hewlett Packard Co Com									
65. - Home Depot Inc Com									
66. - IBM Com									
67. - Liberty Interactive Corporation Int Com Ser A									
68. - Eli Lilly Com									

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

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Name of Person Reporting	Date of Report
Orrick, William H.	06/11/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. - Masco Corp Com (Y)									
70. - Medtronic, Inc Com									
71. - Merck & Co New Com									
72. - Microsoft Com									
73. - Molex Inc Cl A									
74. - Motorola Solutions Inc Com New									
75. - News Corp Cl A									
76. - Occidental Petroleum Corp Del Com									
77. - Pfizer Com									
78. - Pitney Bowes Com									
79. - Proctor & Gamble Com									
80. - Charles Schwab Corp New Com									
81. - Sprint Nextel Corp com ser 1									
82. - Suntrust Bks Inc Com									
83. - Symantec Corp Com									
84. - Target Corp Com									
85. - Time Warner Cable Inc Com									

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 16	Name of Person Reporting Orrick, William H.	Date of Report 06/11/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(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. - Time Warner Inc com new									
87. - Travelers Companies Inc Com									
88. - Tyco Electronics Ltd Com (Y)									
89. - Union Pacific Com									
90. - US Bancorp Del com new									
91. - Vulcan Materials Co Com									
92. - Walmart Stores Inc Com									
93. - Walgreen Com									
94. - Wellpoint Inc Com (Y)									
95. -Wells Fargo & Co new com									
96. - Xerox Corp Com									
97. - Covidien PLC Shs Com									
98. - Koninklijke Philips Electrs NY Reg Sh new com									
99. - Schlumberger Ltd									
100. - TE Connectivity Ltd Reg com shs									
101. - Tyco International Ltd Com									
102. - Union Bank account									

1. Income Gain Codes:
(See Columns B1 and D4)
A =$1,000 or less
E =$50,001 - $100,000
I =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P4 =More than $50,000,000
D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000
E =$15,001 - $50,000

2. Value Codes
(See Columns C1 and D3)
R =Cost (Real Estate Only)
V =Other

3. Value Method Codes
(See Column C2)
Q =Appraisal
U =Book Value
S =Assessment
W =Estimated
T =Cash Market

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Name of Person Reporting	Date of Report
Orrick, William H.	06/11/2012

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. Trust # 3	F	Dividend	P1	T					
104. - Calif.Infrastructure and Economic Dev. Wrk Comp bonds (Y)									
105. -Metropolitan Wtr Dist So Cal bonds									
106. - California St G.O. Ref bonds									
107. - Pasadena Calif Area cmnty College Dist GO College bonds									
108. - Calif. St Dept Wtr Res Cent Vy Proj bonds									
109. - Santa Clara Vy Calif Transn Auth Sales T Sales Tax Rev Bd									
110. - LA Cty Calif Met Transn Auth S Mens. R senior sales tax bd									
111. - Calif St Univ Rev systemwide Rev Bds									
112. - Santa Clara Cu Uni Sch Dist GO Bds									
113. - Calif St GO Refunding bonds									
114. - LA Calif Uni Sch Dist GO									
115. - Aegon N V NY Registry sh ADR									
116. - Ericcson LM Tel Co ADR B sek 10									
117. - Glaxosmithkline PLC Spons ADR									
118. - Novartis AG Spons ADR									
119. - Panasonic Corp ADR									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
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
D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000
E =$15,001 - $50,000

2. Value Codes (See Columns C1 and D3)

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

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Name of Person Reporting	Date of Report
Orrick, William H.	06/11/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. - Sanofi Spons ADR									
121. - Sony Corp ADR									
122. - Vodafone Group PLC New Spons ADR new									
123. - 3M Co Com									
124. - American Express Co Com									
125. - Amgen Inc Com									
126. - AOL Inc Com									
127. - Berkshire Hathaway Inc Del Cl B new Com									
128. - Capital One Finl Corp Com									
129. - Chevron Corp Com									
130. - Comcast Corp new cl A com									
131. - Computer Sciences Corp com (Y)									
132. - Domtar Corp Com									
133. - Dow Chem Com									
134. - EBay Inc Com									
135. - Exxon Mobil Corp Com									
136. - Fedex Corp Com									

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
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Name of Person Reporting	Date of Report
Orrick, William H.	06/11/2012

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. - General Electric Com									
138. - Hewlett Packard Com									
139. -Home Depot Com									
140. - Honeywell Int'l Com									
141. - IBM Com									
142. - Kimberly Clark Corp Com									
143. - Eli Lilly & Co Com									
144. - Merck & Co Com									
145. - Motorola Solutions Inc Com new									
146. - News Corp Cl A com									
147. - Pfizer Com									
148. - Proctor & Gamble Co Com									
149. - Charles Schwab Corp new com									
150. - Sprint Nextel Corp com ser 1									
151. - Target Corp Com									
152. - Time Warner Cable Inc Com									
153. - Time Warner Inc 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; 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

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 13 of 16	Name of Person Reporting Orrick, William H.	Date of Report 06/11/2012

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	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. - Travelers Companies Inc Com									
155. - Tyco Electronics, Ltd (Y)									
156. - Union Pac Corp Com									
157. - Walmart Stores Com									
158. - Wells Fargo & Co new com									
159. - Covidien PLC com									
160. - TE Connectivity Ltd Reg Shs Com									
161. - Union Bank account									
162. TIAA-CREF: Cref Stock Fund	B	Dividend	K	T					
163. TIAA Traditional Annuity	A	Interest	J	T					
164. 529 A College Funds									
165. -American Funds AMCAP Fund	A	Int./Div.	K	T					
166. -American Funds American High-Income Trust	B	Int./Div.	K	T					
167. -American Funds Bond Fund of America	B	Int./Div.	K	T					
168. -American Funds Income Fund of America	A	Int./Div.	J	T					
169. -American Funds -Intermediate Bond Fund of America	B	Int./Div.	K	T					
170. -American Funds New Perspective Fund	B	Int./Div.	K	T					

1. Income Gain Codes (See Columns B1 and D4)
A = $1,000 or less
B = $1,001 - $2,500
C = $2,501 - $5,000
D = $5,001 - $15,000
E = $15,001 - $50,000
F = $50,001 - $100,000
G = $100,001 - $1,000,000
H1 = $1,000,001 - $5,000,000
H2 = More than $5,000,000
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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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)

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Name of Person Reporting	Date of Report
Orrick, William H.	06/11/2012

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	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. American Funds Washington Mutual Investors Fund	B	Int./Div.	K	T					
172. JP Morgan Chase Bank NA, HSA Custodian	A	Interest	J	T					
173. Trust #4 : Dodge & Cox Stock Fund	D	Dividend	N	T					
174. Trust #5: Dodge & Cox Stock Fund	D	Dividend	O	T					
175. Trust #6: Dodge & Cox Stock Fund	D	Dividend	N	T					
176. Orphagen Pharmaceuticals preferred shares		None	J	W					

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 15 of 16	Name of Person Reporting Orrick, William H.	Date of Report 06/11/2012

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

In Part VII, I have listed Rental Property #1 twice, in lines 4 and 19. 12% of the property is held in Trust #1 (line 19), and 21 1/3% is owned by me separately (line 4), and the gross values of those percentage interests are estimated accordingly. Rental Property #1 is rented--my share of the gross rent is reflected on line 4.

FINANCIAL DISCLOSURE REPORT Page 16 of 16	Name of Person Reporting Orrick, William H.	Date of Report 06/11/2012

IX. CERTIFICATION.

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

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

Signature: **s/ William H. Orrick**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		30	457	Notes payable to banks-secured (auto)		22	744
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	2	136	432	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		10	000	Real estate mortgages payable – see schedule	1	760	340
Real estate owned – see schedule	5	366	050	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
Family trusts	6	255	593				
Thrift Savings Plan		22	065				
Law firm pension		470	063	Total liabilities	1	783	084
				Net Worth	12	597	576
Total Assets	14	380	660	Total liabilities and net worth	14	380	660
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	
Dodge & Cox Stock Fund	731,501
Fidelity Diversified International Fund	389,510
Spartan 500 Index Fund	378,577
TIAA-Cref: CREF Stock Fund	21,930
TIAA Traditional Annuity	8,805
Vanguard European Index Fund	41,990
Vanguard International Growth Fund	228,706
Vanguard Total Bond Market Fund	164,072
College Savings Plan Investments	
American Funds AMCAP Fund	17,083
American Funds American High-Income Trust	47,692
American Funds Bond Fund of America	21,522
American Funds Income Fund of America	9,718
American Funds Intermediate Bond Fund of America	18,883
American Funds New Perspective Fund	17,621
American Funds Washington Mutual Investors Fund	39,823
Total Listed Securities	$ 2,136,432

Real Estate Owned	
Primary residence	$ 1,316,050
Rental property #1 (1/3 interest)	1,500,000
Rental property #2	2,300,000
Vacation home	250,000
Total Real Estate Owned	$ 5,366,050

Real Estate Mortgages Payable	
Primary residence	$ 971,250
Rental property #2	345,090
Rental property #2 home equity line of credit	444,000
Total Real Estate Mortgages Payable	$ 1,760,340

AFFIDAVIT

I, William H. Orrick, III, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 6, 2012
(DATE)

(NAME)

(NOTARY)

EDDIE RIVERA
NOTARY PUBLIC
DISTRICT OF COLUMBIA
EXPIRES MAY 14, 2017

EDDIE RIVERA
Notary Public of District of Columbia
My Commission Expires May 14, 2017

Senator COONS. Thank you, Mr. Orrick.

The Committee will now proceed with 5-minute rounds of questioning, and if I might just to open our questions, I would like to ask each of you in order, if you would, to just briefly for the Committee describe your judicial philosophy and your approach to the use of precedent in making decisions, were you to be confirmed to the Federal bench. Mr. Durkin.

Mr. DURKIN. Thank you, Senator. I believe my judicial philosophy would be one of being as fair as possible, treating litigants the way they should be treated, following precedent because I think it is the obligation of district court judges to follow precedent, in my case of the Seventh Circuit and of the Supreme Court, and ultimately treating litigants fairly and being patient with attorneys who appear in front of me.

Senator COONS. Thank you, Mr. Durkin.

Judge Tigar.

Judge TIGAR. Thank you, Senator. My judicial philosophy over the last decade has been and would continue to be to listen carefully and respectfully to the parties who appear in the court and to treat them with respect; to apply the law conscientiously to the facts in the dispute before me; and to decide every case promptly so that the litigants can have the dispute behind them and move on with their lives.

In terms of the role of precedent, we live in a common law system, and precedent and stare decisis is the foundation of our system of justice, and I apply controlling precedent in every case, and I would like to think that my record over the last 10 years demonstrates that.

Thank you.

Senator COONS. Thank you, Your Honor.

Mr. Orrick.

Mr. ORRICK. Senator, I am not sure that I have a judicial philosophy. I revere the rule of law, and I believe it is my role to understand the facts and then apply the law to them. I would follow precedent directly. I think it is important to provide just and speedy administration of justice, as Rule 1 of the Federal Rules requires, and be respectful to the people who come into my court.

Senator COONS. Thank you.

I would appreciate it if, again, all three of you would just answer two more questions. As a district judge, how would you see your role in ensuring fair access to our legal system? And what are your views on the role of the court in interpreting laws written and passed by legislative bodies? If you would, Mr. Durkin.

Mr. DURKIN. Thank you, Senator. As to the first question, ensuring access to the courts, obviously for criminal defendants there are Sixth Amendment guarantees of the right to counsel, and there is a very strong Federal defender program in the Northern District of Illinois consisting of many panel attorneys and staff attorneys. I am one of those panel attorneys. And we are often appointed to represent people who have both the right to counsel and a need for counsel.

In the civil context, the Northern District of Illinois also has a program where judges appoint members of the Northern District

Bar to represent individuals who are in need of counsel in civil matters.

As to the question of interpreting laws of the United States, I believe that our obligation as district court judges, if I am lucky enough and fortunate enough to be confirmed, our obligation is to read the statute and interpret it according to the plain language of the statute itself and to follow controlling precedent, whether it be circuit court, the Seventh Circuit, or the Supreme Court.

Senator COONS. Thank you, Mr. Durkin.

Judge Tigar.

Judge TIGAR. Thank you, Senator. I think your question with respect to ensuring fair access to the courts for me really has two parts.

One is making sure that the litigants can get into court. And when I was in private practice, I was the Chair of my firm's pro bono committee. I did a lot of pro bono work myself. And as you heard earlier, I currently am on the Board of Directors of our county bar association's Volunteer Legal Services Corporation, which facilitates pro bono and connects lawyers in private practice who are willing to provide those services to needy clients in our county.

I think the second part—and this really is unique to the role of the judge—is to make sure that litigants in each proceeding understand what is happening in the proceeding and are treated respectfully and fairly so that they can know that the courtroom belongs to them just as much as it belongs to everybody else.

I like to tell litigants, whether they are self-represented or not, who appear in my courtroom, "You know, this room belongs to you, and I work for you. So you really need to feel comfortable. And one side is going to win and one side is going to lose, and there is nothing I can do about that." But everybody who appears in court should feel that they have a place there.

With respect to interpreting rules passed by a legislative body, I really think my fellow nominee hit the nail on the head. I really think the plain language of the statute is the place that the analysis starts, and usually that is where it ends. And if that is insufficient, then I would look to controlling precedent, as Mr. Durkin described.

Thank you.

Senator COONS. Thank you, Judge Tigar, for that refreshing and insightful restatement of what equal access to justice can and should mean.

Mr. Orrick.

Mr. ORRICK. Well, I do not have much to add to what my colleagues have said. I do believe that access to justice has two roles for a judge, and one is to exhort the bar to increase its efforts to do pro bono work. I did a substantial amount. I think it is a very important obligation of a lawyer.

Second, when people are in my courtroom, they do need to understand what is going on, and I think I have a duty to ensure that they do.

And then, finally, with respect to interpretation, you start with the statute, you apply controlling precedent.

Senator COONS. Thank you, Mr. Orrick, Judge Tigar, Mr. Durkin.

Senator Grassley.

Senator GRASSLEY. Thank you. I will start with Mr. Durkin.

You have been involved with the ABA's Death Penalty Representation Project. I have a couple questions in regard to that. If before you answer my questions you would like to describe your role there, I would be glad to listen. But my two questions involve: Is there any doubt in your mind that the death penalty is constitutional? And, second, if confirmed, would you be able to impose the death penalty where appropriate?

Mr. DURKIN. Thank you, Senator. I do believe the death penalty statute is constitutional. The Supreme Court has so held, and I certainly would be willing to impose it if the crime that I presided over made it an appropriate sentence.

My involvement with the ABA death penalty policy was—death penalty group was very limited. I simply went over to a meeting 1 day as Chair of the Mayer Brown pro bono committee and encouraged lawyers to participate and help assist unrepresented defendants.

Senator GRASSLEY. OK. On another issue dealing with school choice, you ran for a position on the school board in 1993. You indicated that you were opposed to the use of school vouchers. What are your opinions on the constitutionality of school choice considering the 2006 Supreme Court decision in the *Zelman* case?

Mr. DURKIN. I am not familiar with that, although I have a general knowledge that certainly vouchers are permissible. My comment at the time when I ran for school board back in 1993 related more to an issue of funding where I believe that the funding being supplied to our public school district was inadequate, and I was fearful that the use of vouchers would further diminish that funding. But I have no quarrel with the idea of vouchers being used, especially in light of the fact, I believe, that the Supreme Court has allowed it.

Senator GRASSLEY. Mr. Tigar, your questionnaire indicates that you were a member of the American Constitution Society for Law and Policy. Now, there is nothing wrong with membership in groups like that, but I have a question about goals of the organization, how they might affect your judgment.

Peter Edelman, as Chair of the American Constitution Society Board of Directors, indicated a goal of the organization was "countering right-wing distortions of the Constitution." He also has stated, "What we want to do is promote a conversation, the idea of what a progressive perspective of the Constitution is and what it means to the country."

So please identify what right-wing distortions of the Constitution you are concerned about or feel need to be countered?

Judge TIGAR. Senator, the short answer is I do not have any. I was not familiar with Mr. Edelman's comment, and I simply am not aware of anything that would be an answer to that question.

Senator GRASSLEY. OK. In your view on another question, if you have an opinion on this, what is the progressive perspective of the Constitution?

Judge TIGAR. I am afraid I do not know the answer to that question. I do not know.

Senator GRASSLEY. Well, then——

Judge TIGAR. Perhaps I could expand a little, Senator. My role with the American Constitution Society has been occasionally to speak at events where I have been invited by them to speak. I take very seriously the obligation of a judge to be involved in his community, and I have spoken at many, many, many events. My American Constitution Society appearances have been only a small fraction of those, and if I had addressed either of the topics that you have mentioned in any of my speeches, then, of course, I would be happy to discuss those further now. But those just have not been part of my participation, and that is why I am not able to provide further information.

Senator GRASSLEY. And that is OK. Let me move on.

In regard to the lectures you have given, you have been critical of Supreme Court cases limiting punitive damage awards based on due process concerns. Could you name three Supreme Court decisions in which you disagree with the holding of the majority?

Judge TIGAR. I cannot think—first of all, I think in my speeches what I have tried to indicate is that since the Supreme Court has started to issue opinions that place numerical limits on punitive damages, it is important for State legislatures to clarify those limits further, as some legislatures in the country have done. Off the top of my head, I am not a student of the Supreme Court, and I cannot think of three Supreme Court opinions where I disagree with the majority.

Senator GRASSLEY. Let me move on then, and I will end with this question, because my time is up. Specific cases you have mentioned previously include *BMW* v. *Gore*, *State Farm* v. *Campbell*, *Philip Morris* v. *Williams*, and *Exxon Shipping* v. *Baker* as among Supreme Court cases with which you disagree. Given your statements on these cases, what might we expect should you be confirmed and assigned a case dealing with punitive damages? And would you feel any obligation to recuse yourself?

Judge TIGAR. Senator, I believe that my remarks indicate that I am not opposed to the idea of limitation on the award of punitive damages, and I hope that whatever materials have been reviewed by the Senate do not indicate that, because it is not the case.

Second, I can assure this Committee that in this matter, as with any matter that would come before me, that I would apply controlling precedent without exception and without resort at any time to my personal opinion on the issue.

Senator GRASSLEY. Thank you.

Go ahead, Mr. Chairman.

Senator COONS. Thank you very much, Senator Grassley.

Senator Feinstein.

Senator FEINSTEIN. One of the reasons that I think the question on stare decisis or precedent is always asked is because we see so much of it being broken, and particularly for me, in the area of women's rights and women's reproductive systems. I would just like to ask this question of each of you. How do you view the precedent controlling *Roe* v. *Wade*?

Mr. DURKIN. Thank you, Senator. I believe the precedent controlling *Roe* v. *Wade* is—basically I think the *Casey* case is the controlling case at this point that Justice O'Connor authored, and that is the law of the land. And I would, of course, follow the law of the

land because it is Supreme Court precedent, and as a district court judge, I am obligated to follow that precedent.

Judge TIGAR. Senator, I think Mr. Durkin did a very good job of stating my own view, and that is that *Casey* is controlling law on this issue, and I would apply that law.

Thank you.

Mr. ORRICK. I have nothing more to add than that. It is absolutely the case that *Casey* is controlling.

Senator FEINSTEIN. Let me ask one other question. Particularly in California, the caseloads are very high. Let me ask the two judges, how do you view your talents vis-a-vis settlement of cases, the organization of your docket, how you would proceed in a very high caseload manner?

Judge TIGAR. Thank you, Senator. I live in a high-caseload environment now. As you heard earlier, my current docket is about 570 cases, and at various times I had very high caseloads. At one point I was the only family law judge in northern Alameda County, and I think my understanding is that the role in settlement is more restricted in Federal court than in State court. Obviously, I will not know that for sure unless I am fortunate enough to be confirmed.

In my current job, though, I do have a role to play in settlement. Although I do not settle my own cases, I think judges participating in settlement conferences can help reduce their colleagues' caseloads.

I also think that good case management plays a huge role in keeping the cases moving and in managing the size of the document, and that means usually in a civil department being available to the parties whenever they need you to resolve discovery disputes, to discuss case management issues, and to make sure that you are knowledgeable about every case that comes before you whenever that case is on your calendar. And I have tried to do those things, and hopefully I have had some success.

Senator FEINSTEIN. Thank you.

Mr. Orrick.

Mr. ORRICK. You referenced my father earlier, Senator Feinstein.

Senator FEINSTEIN. Yes.

Mr. ORRICK. I would hope to manage my docket the way that he did, with dispatch, with firm deadlines, to encourage people to move their cases along and exhort people to settle using the different alternative dispute resolution mechanisms the court has available to them at the earliest time.

Senator FEINSTEIN. Thank you.

Mr. Durkin, would you like to comment on that?

Mr. DURKIN. Thank you, Senator. I have been fortunate in my career to be an attorney for both plaintiffs and defendants. I have been a prosecutor and a criminal defense attorney, so I think I have a good appreciation for the motivations behind a lot of litigation, and I think that would serve me well in attempting to settle cases, which I think is a very, very important part of any judge's role.

Senator FEINSTEIN. Thank you. Thank you, gentlemen.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Feinstein.

If I could, each of you has made reference in some of your answers and in the introductions to your previous service, either as criminal prosecutor or defense attorney, as a public interest attorney, as a State court judge. I would be interested in hearing each of you in turn just describe for the panel for a moment, if you would, what are the most important lessons that you have learned in your various legal positions to date? And how would you then apply them as a Federal district court judge in what is a somewhat different role than any of you have previously held? Mr. Durkin.

Mr. DURKIN. Thank you, Senator. I think what I have learned, especially in my role as a Federal prosecutor, there is a fair amount of power that is part of that job, being an Assistant U.S. Attorney and in the end being First Assistant U.S. Attorney. And I think it is a necessary part of any power you have to recognize that it can be abused if you do not exercise it carefully. And that goes for prosecutors and it especially goes for lifetime-appointed judges. And I think I have learned that lesson by being a prosecutor, by being a defense attorney and observing other prosecutors, and appearing in front of many, many judges who have exercised, I believe, a fair amount of discretion and humility even though they have a position where they could abuse it if they wanted to. I have learned from appearing in front of all people, all judges like that.

Senator COONS. Thank you, Mr. Durkin.

Judge Tigar.

Judge TIGAR. Thank you for the question. I would say in the last 10 years the two lessons I have learned best in terms of good judicial practice are the need to have a good judicial temperament and the need to be decisive. Probably in my experience, the most important thing to litigants is not only being heard but feeling heard. We know at least half the people who come into court are not going to win. They are going to go away empty-handed, or they are going to go away with a loss. It is very important to everybody to know that the court heard what they had to say and considered it carefully before making a decision. And so that means never coming to a case with any prejudgment or bias, making sure that you have heard all the facts and heard all the arguments before you begin as a judge to make up your mind, treating everybody with respect, never using the power of your office to talk down to anybody or to use your authority in a way that would make anybody uncomfortable, so that when people leave the courtroom, they can know that the court carefully considered whatever it is they had to say in making this important decision in their lives.

I think decisiveness also, though, is very important because every lawyer I have talked to, plaintiff's lawyer or defense lawyer, will say, "For my clients, the most important thing about the litigation is not being in litigation, and being able to have this dispute behind him and just kind of move on with their lives." So I think it is important for judges to be fair, but it is also important to be prompt.

Thank you.

Senator COONS. Thank you, Judge.

Mr. Orrick.

Mr. ORRICK. Senator, I have represented low-income people in Georgia for 25 years. I represented corporations and people with more power in society in my private practice and in the last 3 years have represented the United States. I think the thing that I have learned from all of that is that nobody has got a monopoly on the truth or on justice, and that is why I believe so strongly in the rule of law. It is important for a judge to understand the facts and then follow the law that is in front of them because that is the best way to create and maintain a good system of justice.

Senator COONS. Thank you.

Senator Grassley.

Senator GRASSLEY. Yes, I have one question for all three of you, and then I have some questions I want to ask Mr. Orrick. I and other members of this Committee have previously emphasized the importance of a nominee being able to follow precedent, so my first question is very general, but I will follow it with a more specific question. Are each of you committed to following precedent of the circuit and Supreme Court even though you may disagree with it? And I want to bring up specifically whether you are committed to following precedent in the gun cases like *Heller* and *McDonald* that have been before the Supreme Court affording the individual right to possess arms. Mr. Durkin.

Mr. DURKIN. Thank you, Senator. I am committed to following precedent generally and regarding the *Heller* case.

Senator GRASSLEY. OK.

Judge TIGAR. Senator, yes, I am. Thank you.

Senator GRASSLEY. Thank you.

Mr. ORRICK. Senator, absolutely.

Senator GRASSLEY. OK. Mr. Orrick, you have told the Committee that you were involved in the Justice Department's preemption law concerning immigration of Arizona, Alabama, South Carolina, Utah. Two weeks ago, you know about the Arizona case addressing Senate bill 1070. And the Justice Department sued Arizona and sought to preempt.

Section B, a central provision in the statute, requires officers conducting a stop, detention, or arrest to make reasonable efforts to verify the person's immigration status with the Federal Government. The Court unanimously rejected the Justice Department's preemption argument on Section 2(B). In his concurring dissenting opinion, Justice Alito analyzed the meritless and extreme nature of the argument of this administration. Alito explained, "The United States' argument that Section 2(B) is pre-empted, not by any Federal statute or regulation, but simply by the Executive's current enforcement policy is"—and it emphasizes—"an astounding assertion of Federal executive power that the Court rightly rejects."

Alito also recognized the damage that could be done to our system of Government if the Obama administration argument were adopted by the Court. He thusly explained, "If accepted, the United States' preemption argument would give the Executive unprecedented power to invalidate State laws that do not meet with its approval even if the State laws are otherwise consistent with Federal statute and duly promulgated regulations. This argument, to say the least, is fundamentally at odds with our Federal system."

Hence, I have two questions. First, Justice Alito argued that the United States' preemption argument would give the Executive unprecedented power. In your view, if the Court had accepted the administration's argument, what limits, if any, would be on the Executive's power to invalidate State laws that it did not agree with?

Mr. ORRICK. Thank you for that question, Senator. I think that the opinion of Justice Kennedy on Section 2(B) laid out the lines of the appropriate argument. Justice Kennedy indicated that the line was different than where the Federal Government had. The burden on the Government was something that was significant but not proven, and that racial profiling was an issue that was significant but not proven.

And so I think the issue is—of the question that you asked is—was a very case-specific, statute-specific analysis. The Supreme Court drew the line differently than the Department did on that issue. It did agree with us on the other issues. But I do not see it as some sort of unlimited reach for the Federal Government. That was not the position that we intended to take.

Senator GRASSLEY. Second, Alito argued that the administration's argument was meritless because under the framework presented by the administration, what was or was not preempted would shift and change merely because the Executive's priority changed from one administration to the next, possibly even during the same administration. Do you agree? And if not, why not?

Mr. ORRICK. I do not agree that that was the position that we took, Senator. We tried to tie the arguments that we made to the INA and to the Constitution. The Supreme Court did not agree with the line that we drew.

We pointed out for conflict preemption that there was burden that was placed on the Department of Homeland Security. That was the Ninth Circuit agreed and the district court agreed, but obviously the Supreme Court did not.

Senator GRASSLEY. OK. On a question of your involvement with DOMA—and is this case called *Liu* v. *Holder*? Is that how that is pronounced?

Mr. ORRICK. Yes.

Senator GRASSLEY. The Department of Justice submitted a brief opposing the motion to dismiss. In that document, you summarized a key case from 1982, *Adams* v. *Howerton*, stating, "The Ninth Circuit Court of Appeals assumed that plaintiffs were parties to a valid same-sex marriage under State law." That misinterprets the *Adams* case. The Ninth Circuit actually said, "It is not clear whether Colorado would recognize a homosexual marriage. While we might well make an educated guess as to how Colorado courts would decide this case, it is unnecessary for us to do so. We decide this case solely upon the second step in our two-step analysis."

Moreover, the Court seemed to indicate that the Colorado State law and the Colorado State court system would likely decide the opposite, that a homosexual marriage would not be valid under existing Colorado State law. So I have two questions, and I will ask them separately.

Why did you and the Justice Department assert the *Adams* opinion "assumed that plaintiffs were parties to a valid same-sex mar-

riage" in your memorandum when that clearly is not what the opinion says?

Mr. ORRICK. Well, Senator, I am not specifically aware of that. I believe——

Senator GRASSLEY. Then I will ask you to respond in writing.

Mr. ORRICK. That would be fine. Thank you.

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

Senator GRASSLEY. Secondly, I recognize that as you sit here today you may not be able to recall the specifics of that brief, but assuming what I say is true, do you believe that it is appropriate to misrepresent a binding case law in this way?

Mr. ORRICK. Well, it is absolutely not appropriate under any circumstance to mis-cite a case.

Senator GRASSLEY. OK. Let me follow up with a question, and if you do not think you can answer it, I will take your answer in writing.

The district court in *Liu* upheld the prior precedent set by *Adams*, thus *Adams* is still binding precedent in the Ninth Circuit. If confirmed, would you follow the *Adams* precedent?

Mr. ORRICK. I will follow controlling precedent wherever it exists.

Senator GRASSLEY. OK. Given your prior representation of the Department of Justice, what would you do if you were given a similar case to preside over? Would you recuse yourself? And if not, how would you approach the case?

Mr. ORRICK. Senator, I would recuse myself from any case which had started under my watch because I think the appearance of impropriety would exist. But, otherwise, I would approach the case the same way that I approach any other case. I have spent my career handling lots of different cases and separating out my personal views from the views that—my duties as a lawyer, and I would do that as a judge.

Senator GRASSLEY. Can I proceed? I am getting close to the end here.

In a speech you gave to the U.S. Immigration and Customs Enforcement Office of the Principal Legal Advisers Conference in Chicago last year, you stated, "At the end of the day, the prosecutorial discretion decision is about doing justice and maintaining the credibility and integrity of the immigration system, and the better you know the implications of your decision from the perspective of others, the more likely that you will make the most informed best choice."

Do you believe that judges have a similar duty to evaluate the effects that their decisions will have in order to maintain the credibility and integrity of the judicial system? Or should judges apply the law without passion or bias, deferring to the legislature and binding precedents regardless of outcome?

Mr. ORRICK. The latter, Senator. The role of a judge is to apply the law to the facts without those other considerations.

Senator GRASSLEY. Lastly—and I only ask you this question because you have been politically active, and I do not find any fault with your being politically active, and I have got some information here that I am not going to bother to read because it does not really matter. But you are a big political operative as compared to most

judges that come before us. What assurances can you offer this Committee and prospective parties that you will be a fair judge who will not use the Federal bench to achieve political or philosophical goals? What can you tell us to give us confidence that you will be able to set aside your political views and separate those from the role of being an impartial adjudicator?

Mr. ORRICK. Senator, I really believe that ideology, politics, has no role in the courtroom, and for 25 years in private practice, I represented people who were wealthy, who were taking positions that I was perfectly comfortable to represent. Four years before that, I was representing poor people who were taking positions that I was perfectly comfortable to present. I have represented people on both sides of issues over time. I will not have a problem in separating that out if I am lucky enough to be confirmed as a judge.

Senator GRASSLEY. Thank you all very much.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Grassley. I want to say to our three nominees and to their families and friends and supporters, I am grateful for your willingness to serve our great Nation. An Article III judgeship is a great honor, but also an opportunity, an opportunity to serve and to administer justice, and I think it is important that this Committee ask questions that are searching and thorough.

Again, I just want to give Senator Durbin's regret for at the last moment really not being able to be with us today and his gratitude to Mr. Durkin for your willingness to serve, and my appreciation to all three of you for what you are bringing to the potential of service in the Federal judiciary.

With that, we will hold the record of this hearing open for a week if there are other members of the Committee who wish to submit questions in writing but who were not here with us today. And, again, I want to thank the nominees for being here and congratulate them on their nominations.

We stand in recess.

[Whereupon, at 3:01 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Senator Chuck Grassley
Questions for the Record

Thomas M. Durkin
Nominee, U.S. District Judge for the Northern District of Illinois

1. **Since *United States v. Booker*, the Federal Sentencing Guidelines have been advisory rather than mandatory. If confirmed, how much deference would you afford the Guidelines?**

   Response: If confirmed, I would give the Federal Sentencing Guidelines substantial deference, as is required by controlling precedent.

   a. **Under what circumstances would you be willing to depart from the Guidelines?**

      Response: I would be willing to depart from the guidelines if the requirements of Section 5K are met, or if controlling precedent from the Supreme Court or the Circuit Court of Appeals for the Seventh Circuit compelled such a departure.

   b. **Under what circumstances do you believe it is appropriate for a district court judge to depart downward from the Sentencing Guidelines?**

      Response: Please see answer to #1(a).

2. **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? Please explain how you would apply this, if confirmed.**

   Response: I agree that the sentence a defendant receives for a particular crime should not depend on the judge that defendant draws. I would apply that concept by giving substantial deference to the Federal Sentencing Guidelines, even though they are advisory, in fashioning a sentence that satisfies 18 U.S.C 3553.

3. **You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you reach a decision in cases that come before you and to what sources of information will you look for guidance. What do expect to be most difficult part of this transition for you?**

   Response: I would reach a decision on legal issues in a case by applying controlling precedent of the Supreme Court and the United States Court of Appeals for the Seventh Circuit. In matters where I am required to make factual determinations, I will listen carefully to the evidence, keep an open mind, and make those determinations based strictly on the evidence. For guidance on reaching a decision on a case, I will use the sources of information described above. Additionally, I would not hesitate to consult my fellow judges for advice on legal or procedural issues if I felt it would be helpful to do so. I do not expect the transition from advocate to judge to be difficult, as most of my professional career has

been spent in federal court as either a law clerk, an Assistant United States Attorney, or as a private lawyer. I will take special care to resist the urge to interfere in questioning of witnesses, rather than letting the lawyers try the case.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: A judge's most important attribute is fairness. Encompassed in fairness is the ability to follow controlling precedent, treating litigants and lawyers with respect, being patient, being humble, and keeping an open mind. I believe I possess these attributes.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: The appropriate temperament of a judge is to be calm and deliberate in making decisions, so that parties understand and respect the decision-making process, even if they may disagree with the ultimate decision. The elements of judicial temperament I consider the most important are respect for the rule of law and patience. No matter how heated arguments before the court become, a calm and deliberate analysis of those arguments utilizing controlling precedents is essential to the decision-making process. I believe I have the type of personality and possess the traits necessary to have the appropriate temperament to be a good judge.

6. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with a case of first impression, I would look to the cases of the Supreme Court and the United States Court of Appeals for the Seventh Circuit for persuasive authority. Absent such authority, I would look to other circuits of the United States Court of Appeals and district court decisions which have analyzed similar issues. If the case involves a statute, I would first look to the text of the statute, giving the words their plain and ordinary meaning. If ambiguous, I would turn to well-established tools of statutory construction.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: I would follow the controlling precedent of the Supreme Court and the Court of Appeals no matter what my own personal judgment is of the merits of that precedent.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court should only declare a statute enacted by Congress unconstitutional if the presumption of constitutionality has been overcome and Congress clearly acted beyond its constitutional authority. I would attempt to resolve any constitutional dispute before me by considering the question as narrowly as possible, and only if it cannot be resolved on a non-constitutional ground.

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: As a private attorney who has appeared before countless judges in my career, I have observed many procedures that make effective use of court time and resources. The best practice I have observed for effective case management is an early assessment of the case, followed by a realistic but firm schedule that includes a trial date, and frequent status conferences where the parties describe the progress they are making. The status conference is also used to attempt to resolve non-substantial disputes that may be impeding that progress. I would resolve dispositive and discovery motions promptly. I would offer my own services and those of the magistrate judge to assist the parties in resolving the matter short of trial. Finally, I would adhere to the trial date that has been set absent extraordinary circumstances. Nothing focuses the energies of the parties on the case more than a firm, imminent trial date.

11. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Judges have a crucial role in controlling the pace and conduct of litigation, and the steps I would take to control my docket are set forth in my response to Question No. 10. I truly believe that the only way to control a docket and afford parties timely resolution of their disputes is to be proactive and have the court aggressively but fairly require lawyers to adhere to realistic deadlines, and to swiftly render decisions. In the absence of such practices, cases languish and all parties with cases before the court are ill-served.

12. **Please describe with particularity the process by which these questions were answered.**

I read through the questions carefully and drafted my responses, which were reviewed by representatives of the Department of Justice. After finalizing my responses, I authorized their transmittal to the Senate Judiciary Committee.

13. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Thomas M. Durkin
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: My judicial philosophy is to treat all litigants fairly and with respect, keeping an open mind and being patient when hearing matters. The role of the judge in our constitutional system is to decide cases fairly without regard to the identities of the parties, and to follow controlling precedent.

2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?

Response: During my career, I have represented the government, and a large number of wealthy and poor plaintiffs and defendants of all political beliefs. I have represented all of my clients ethically and zealously without regard to their station in life. I can assure you I will treat all litigants fairly, as I believe that is the essence of being a good judge.

3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?

Response: Judges are absolutely bound by the doctrine of stare decisis, and should follow controlling precedent. That commitment to stare decisis does not vary depending on the court.

Questions for the Record

July 11, 2012 Nominations Hearing

Senator Mike Lee

Questions for Mr. Durkin

1. **Do you believe that Congress has implied powers beyond those enumerated in the Constitution?**

   Response: No. Congress has only such powers as are enumerated in the Constitution.

   a. **If so, which ones? And which provisions of the Constitution account for these implicit rights?**

      Response: Please see answer above.

   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: I am not aware of any requirement that Congressional legislation contain language with a specific authorizing provision from the Constitution. If there is such a requirement under controlling precedent, I would follow it.

      i. **Would you strike down laws not properly authorized by the Constitution?**

         Response: Yes.

2. **Do you believe that the Constitution protects rights not specified in the Constitution?**

   Response: No. The Constitution does not protect rights it does not specify.

   a. **Do you believe that the Constitution provides for a right of privacy?**

      Response: The Constitution does not contain specific language relating to a right to privacy, but a number of Supreme Court cases have found rights for citizens which can be characterized as privacy interests. As a district court judge, I would follow the precedent of the Supreme Court.

   b. **If so, which provision of the Constitution provides for that right?**

      Response: Please see answer to #2a.

3. 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 Constitution allows that certain fundamental rights of citizens cannot be infringed, even if that citizen is afforded procedural safeguards. As a district court judge I am obligated to follow Supreme Court precedent.

a. Which do you believe are protected under substantive due process?

Response: The Supreme Court has held 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, 720-721 (1997) (citations and internal quotation marks omitted).

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: The *Lochner* case has been the subject of significant Supreme Court jurisprudence since it was decided. I believe those cases have effectively overruled *Lochner*. I would follow the current precedent of the Supreme Court in this area.

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: As a district court judge, my role would be to follow the precedent of the Supreme Court in all areas, including rights protected by substantive due process.

Senator Jeff Sessions
Questions for the Record
Thomas M. Durkin

1. **It appears from your questionnaire that during your chairmanship of your firm's *pro bono* committee, your firm filed *amicus* briefs with the Supreme Court in *Rasul v. Bush* and *al-Odah v. U.S.*.**

   a. **As chair of the *pro bono* committee, did you approve your firm's involvement in these cases?**

      Response: As chair of Mayer Brown's pro bono committee, I was one of many people on the committee who approved the firm's involvement in the *Rasul* and *al-Odah* cases in which Mayer Brown filed amicus briefs on behalf of retired senior military officers.

   b. **Please describe what role, if any, you had in drafting the briefs.**

      Response: I had no role in drafting or reviewing the briefs.

2. **In your opinion, do the procedures put in place by the Military Commissions Act of 2009 meet constitutional standards?**

   Response: As a law duly passed by Congress and signed into law, it enjoys a presumption of constitutionality. Were I to review that statute as a judge, I would apply that presumption, and follow any controlling precedent of the Supreme Court and the Circuit Court of Appeals in the Seventh Circuit.

3. **Do you believe that Due Process requires that criminal charges, provision of counsel, and some prospect of release for foreign terrorists captured on the battlefield and detained outside of the United States?**

   Response: Although I was not substantively involved in the *Rasul* and *al-Odah* cases, and have not otherwise had occasion to study these issues, I am aware that the D.C. Circuit has concluded that the Due Process Clause of the Constitution does not apply to enemy combatants captured abroad and detained outside the sovereign territory of the United States. *See Kiyemba v. Obama,* 555 F.3d 1022 (D.C. Cir. 2009) *(opinion reinstated as amended,* 605 F.3d 1046 (D.C. Cir. 2010)). If confirmed as a district court judge, and presented with a case raising these issues, I would follow all relevant precedent of the Supreme Court and the Circuit Court of Appeals of the Seventh Circuit.

Senator Chuck Grassley
Questions for the Record

William H. Orrick, III
Nominee, U.S. District Judge for the Northern District of California

1. **You list *United States v. Alabama* as one of your most significant cases and summarize your work on that case as "helped supervise the district court preemption litigation against the states of Arizona, Alabama, South Carolina and Utah concerning statutes passed by those states in 2010 and 2011 that related to immigration." Describe in detail the work you did on the lawsuits against Arizona, Alabama, South Carolina and Utah.**

   Response: I helped coordinate the state immigration-related preemption litigation in district court. Regarding Arizona, I attended meetings where the impact of SB 1070 on the operations of DHS and law enforcement was discussed. I attended meetings where the preemption analysis of the lawyers working on this issue was discussed. I reviewed pleadings and circulated them in the Department of Justice and to both the Departments of Homeland Security and State for comment. I helped coordinate obtaining declarations from those departments. I discussed litigation deadlines, both external and internal. Along with several others, I helped prepare Mr. Kneedler for argument in the district court and attended the hearing. Once the case was appealed, my involvement diminished considerably. I was a recipient of drafts of briefs that were circulated and I was one of many who attended preparation sessions for oral arguments. In South Carolina and Utah, my role was similar to what I did in Arizona. In Alabama, my role was similar except that I also argued the government's case for a preliminary injunction in district court.

2. **In late June 2012, the Supreme Court issued its decision in *Arizona v. United States*. In it, the Court addressed an Arizona stature known as S.B. 1070, which was enacted in 2010 to address pressing issues related to the large number of illegal aliens in the State. Arizona passed S.B. 1070 to complement federal law and to exercise its police powers under the tenth amendment since the Obama administration has refused to enforce the immigration laws.**

   In response to the enactment of S.B. 1070, the Obama Justice Department had sued Arizona and sought to enjoin the statute as pre-empted by the federal immigration laws. In particular, the DOJ challenged four sections of statute.

   The Court, in a 5-3 decision, agreed that three of the sections were pre-empted. Section 2(B), a central provision in the statute, was the one exception. Generally speaking, that section of the statute requires officers conducting a stop, detention, or arrest to make reasonable efforts, in some circumstances, to verify the person's immigration status with the federal government.

The Court unanimously rejected DOJ's pre-emption argument on § 2(B), by an 8-0 vote. (Justice Kagan recused herself from the case). There was no division among the justices on this point of law.

In sum, the Obama Justice Department argued that a state law is pre-empted, not because it conflicts with a federal statute or regulation, but because it is inconsistent with a federal agency's current enforcement priorities.

The Obama administration failed to distinguish between its politically motivated policy, which it unilaterally declared and the immigration laws, which were duly enacted by Congress. The argument made by the Obama DOJ is particularly disturbing when one considers that what the administration calls its immigration priorities is in fact the President's unilateral decision not to enforce the laws passed by Congress.

Describe in detail your role in developing the Obama administration's pre-emption argument made in the *Arizona* case?

Response: My response to the first question describes in detail my role in the preemption litigation in the Arizona case. While I participated in discussions about our arguments, the arguments and analysis were developed and ultimately adopted by others.

3. **In his concurring/dissenting opinion in the *Arizona* case, Justice Scalia addressed the Obama administration's questionable claim that its pre-emption argument was supported by the need to allocate scarce immigration enforcement resources. Specifically, he wrote:**

> **The brief for the Government in this case asserted that 'the Executive Branch's ability to exercise discretion and set priorities is particularly important because of the need to allocate scarce enforcement resources wisely.'**
>
> **...**
>
> **.... It has become clear that federal enforcement priorities—in the sense of priorities based on the need to allocate 'scarce enforcement resources'—is not the problem here. After this case was argued and while it was under consideration, the Secretary of Homeland Security announced a program exempting from immigration enforcement some 1.4 million illegal immigrants under the age of 30.**
>
> **...**

The husbanding of scarce enforcement resources can hardly be the justification for this, since the considerable administrative cost of conducting as many as 1.4 million background checks, and ruling on the biennial requests for dispensation that the nonenforcement program envisions, will necessarily be *deducted* from immigration enforcement.

a. What is your reaction to Justice Scalia's analysis quoted above?

Response: As an employee of the Department of Justice and a prospective federal judge, I do not believe it would be appropriate for me to express any personal views on the Department of Homeland Security policies discussed in Justice Scalia's opinion.

b. The Obama administration justifies its immigration priorities and its refusal to deport illegal aliens due to the alleged need to allocate scarce enforcement resources. Please explain how scarce "enforcement" resources are utilized by DOJ and DHS employees reviewing files for the awarding of *de facto* amnesty under the prosecutorial discretion initiative, as opposed to enforcing the immigration laws as enacted by Congress.

Response: As an employee of the Department of Justice and a prospective federal judge, I do not believe it would be appropriate for me to express any views on the enforcement resource issues other than those related to the work of Office of Immigration Litigation, about which I have direct knowledge. Whether a case might warrant the exercise of prosecutorial discretion is always an issue when it is reviewed by the Office of Immigration Litigation, so the review that occurred as a result of the initiative sped up an analysis that would have occurred later. Therefore, it did not cause a material difference in the expenditure of OIL's resources, and to the extent ICE exercises prosecutorial discretion in any of those cases, OIL's law enforcement resources would be utilized in other, higher priority cases.

4. The Department of Justice has spent hundreds of thousands, if not millions, of taxpayers' dollars on its lawsuits against Arizona, Alabama, South Carolina and Utah. Meanwhile, some cities and local jurisdictions are enacting policies and practices that expressly prohibit law enforcement from cooperating with the federal government when it comes to illegal aliens. Cook County, Illinois, for example, is ignoring requests from ICE to hold individuals, letting criminals back into society and posing a threat to public safety.

a. Set forth in detail any role you have had in examining and/or responding to Cook County's policy.

Response: The Department of Justice does not confirm or deny that any particular matter is under investigation, and for that reason I cannot answer this question.

b. Why has the Obama administration failed to challenge localities like Cook County which have ordinances or policies that are contrary to federal law?

Response: I do not speak for the administration on this topic, and as a matter of policy the Department of Justice does not confirm or deny that any particular matter is under investigation.

5. **On June 15, 2012 President Obama and Homeland Security Secretary Napolitano announced a program exempting from immigration enforcement 1.4 million or more illegal aliens under the age of 30. Ultimately, millions more may be exempted from enforcement. Did you have any role in the planning of the program or participate in any discussions on the program announced on June 15? If you had a role in planning the program, describe your role in detail. If you participated in discussions, identify those discussions and their content in detail.**

Response: I did not have any role in developing this policy nor did I participate in any discussions concerning it prior to its announcement.

6. **In 2011, President Obama acknowledged that he did not have the authority to unilaterally order a program such as the one he announced on June 15, 2012. Describe in detail the constitutional authority that allegedly authorizes the program announced by President Obama on June 15, 2012?**

Response: As I indicated above, I did not have any role in developing this policy nor did I participate in any discussions concerning it prior to its announcement. Moreover, this issue is one which could come before me in court, if I am confirmed. As a result, I am hesitant to comment. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

7. **In a speech to ICE employees, you indicated that there are 320 attorneys in the Office of Immigration Litigation (OIL), the unit which you supervise. More specifically, you indicated that there are 270 attorneys in the court of appeals section and 50 attorneys in the district court section. In light of the prosecutorial discretion initiative announced by ICE Director Morton and the nonenforcement program announced by President Obama on June 15, 2012, wouldn't it be appropriate for there to be significant personnel and budget reductions at OIL? Are such reductions being planned? If you do not agree that significant personnel and budget reductions are appropriate, explain in detail why the size of the staff and budget should be maintained at its current levels.**

Response: I do not agree that significant personnel and budget reductions are appropriate for OIL for a number of reasons. First, the caseload of the appellate section is driven by the cases which are appealed by aliens from the Board of Immigration Appeals directly to the courts of appeals. Appeals to the federal courts increased 5% last year, while the number of attorneys in the appellate section has decreased because of the hiring freeze currently in effect. Second, the caseload of the district court section (primarily cases involving the detention of aliens, class actions over immigration practices and processes, mandamus cases, cases which have a national security component, naturalization defenses, and so forth) is unaffected by the prosecutorial discretion initiative. Its caseload has been increasing as well, while the number of attorneys has decreased because of the freeze. Third, it seems unlikely that the initiatives described will lead to a significant long term drop in cases appealed from the BIA to the courts of appeal. As I understand it, the purpose of the prosecutorial discretion initiatives is to move detained cases faster through the system and to insure that ICE can focus on its enforcement priorities. It does not follow that appeals to the BIA would decrease. There is no shortage of immigration proceedings pending before the Executive Office of Immigration Review, so it would not be my expectation that the number of cases appealed from the BIA, or that OIL's workload, would decrease.

8. **On February 6, 2012, the Ninth Circuit put five deportation cases on hold and asked the government how the illegal aliens in the cases fit into the Obama administration's immigration enforcement priorities.[1] In relevant part, the order in each case stated:**

> **In light of ICE Director John Morton's June 17, 2011 memo regarding prosecutorial discretion, and the November 17, 2011 follow-up memo providing guidance to ICE Attorneys, the government shall advise the court by March 19, 2012, whether the government intends to exercise prosecutorial discretion in this case and, if so, the effect, if any, of the exercise of such discretion on any action to be taken by this court with regard to Petitioner's pending petition for rehearing.**

On March 1, 2012, House Judiciary Committee Chairman Lamar Smith and I sent a letter to Attorney General Eric Holder and Secretary Janet Napolitano expressing concern about the Ninth Circuit's order. Moreover, the letter asked the Department of Justice and the Department of Homeland Security to respond to questions about how they were handling cases before immigration judges, the

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[1]/ *Rodriguez v. Holder*, Nos. 06-74444, 06-75524, 2012 WL 360759, at *1 (9th Cir. Feb. 6, 2012); *San Agustin v. Holder*, No. 09-72910, 2012 WL 360761, at *1 (9th Cir. Feb. 6, 2012); *Jex v. Holder*, No. 09-74038, 2012 WL 360764, at *1 (9th Cir. Feb. 6, 2012); *Pocasangre v. Holder*, No. 10-70629, 2012 WL 360774, at *1 (9th Cir. Feb. 6, 2012); *Mata-Fasardo v. Holder*, No. 10-71869, 2012 WL 360776, at *1 (9th Cir. Feb. 6, 2012).

Board of Immigration Appeals (BIA) and the federal courts of appeals. In particular, the letter contained four specific questions.

According to some reports, there are at least 1.6 million immigration cases pending before immigration judges, the BIA and the federal courts of appeals. Also, according to reports, the DHS and/or DOJ are "reviewing" 300,000 or more cases under the so-called "prosecutorial discretion" initiative.

The DOJ and the DHS are supposed to be prosecuting these cases and seeking to have illegal aliens deported. As part of that effort, line attorneys from the DOJ and DHS spend thousands of hours working on these cases. Simultaneously, immigration judges and federal judges, assisted by court staff, spend thousands of hours adjudicating these cases. Tens of millions of taxpayer dollars, if not more, are spent to pay the salaries of those attorneys, judges and court staff.

The answer to the Ninth Circuit's question set forth in the government's pleadings was nonresponsive. The government's pleadings tell the Court that the government does not presently intend to use prosecutorial discretion with the cases, but that the matter is totally within the discretion of the Executive Branch. If the government decides to use prosecutorial discretion while any of the cases are pending, it will inform the Court. What is unwritten is that the Obama administration can still use prosecutorial discretion after a case is concluded, even if a Court has issued a deportation order and after all the time, effort and money has been expended.

The DHS responded to the March 1 letter with a one-page letter dated April 23, 2012 and signed by Nelson Peacock, the Assistant Secretary for Legislative Affairs. The April 23 letter does not answer the four specific questions or requests for information in the March 1 letter.

The DOJ responded to the March 1 letter with a two-page letter dated June 6, 2012 and signed by Acting Assistant Attorney General Judith Appelbaum. The letter also had a one-page attachment with some information about the five cases before the Ninth Circuit. The DOJ's June 6 letter partially answers questions 1(a)-(g) from the March 1 letter. It also states that it cannot provide an accurate estimate of the number of hours worked on the five cases by immigration judges and their staffs, which was asked about in question 1(h). The DOJ letter does not acknowledge, let alone answer, questions 2-4.

a. Have you worked on any of the five cases that were the subject of the Ninth Circuit's February 6, 2012 order? If so, identify each case you worked on and describe in detail your work on the case.

Response: I did not work on the merits of any of the five cases. I did review and edit the initial response OIL drafted to the February 6, 2012 order.

b. Have you seen the March 1 letter sent to Attorney General Holder and Secretary Napolitano? If so, describe the circumstance under which you saw the letter.

Response: Yes, the March 1 letter was forwarded to me and others in the Department of Justice.

c. Did you participate in preparing the DOJ's June 6 letter? If so, describe in detail your role in the preparation of the letter.

Response: I requested available information from OIL and EOIR in response to the questions asked, and I provided a description of OIL's work in responding to the February 6, 2012 order.

d. Does the government seek to have federal courts of appeals affirm immigration removal orders, even though those orders may subsequently be disregarded pursuant to prosecutorial discretion or some similar program? If so, how do you justify wasting taxpayer dollars and wasting the time of the government attorneys working to achieve removal orders and the time of the federal judges presiding over the cases?

Response: In any case in which OIL has a question about the applicability of prosecutorial discretion, it raises the issue at the earliest possible time with ICE. When OIL wins a petition for review, it expects that ICE will remove the alien if it can do so, absent a changed circumstance that warrants the exercise of discretion in the opinion of ICE.

e. Are you aware of any immigration case where the government obtained an affirmance of a removal order from a federal court only to subsequently allow the illegal alien to remain in the United States, under the prosecutorial discretion initiative or a similar program? If so, identify the number of cases you are aware of and the name and docket number of each such case. Also, identify the justification for the failure to enforce the removal order in each such case. Also, for each such case, how do you justify the waste of taxpayer dollars and the time of the government attorneys who worked to achieve removal orders and the time of the federal judges presiding over the cases?

Response: No. I am not aware of a case in which prosecutorial discretion was exercised after affirmance of a removal order from a federal court. Once a case is affirmed in the court of appeals, neither OIL nor the Department of Justice typically is involved in removal issues except in the case of detention litigation or the removal of aliens who may raise a particular national security concern.

f. Have you ever personally discontinued the government's effort to obtain the affirmance of a removal order? If so, identify the name and docket number

of each such case. Also, identify the justification for discontinuing the effort to enforce the removal order in each such case.

Response: No. I have not personally discontinued the government's effort to obtain the affirmance of a removal order.

g. Have you ever ordered a DOJ attorney to discontinue the effort to obtain the affirmance of a removal order? If so, identify the name and docket number for each such case. Also, identify the justification for discontinuing the effort to enforce the removal order in each such case.

Response: No, I have not.

9. The pleadings filed in four of the five cases (*Rodriguez, San Agustin, Jex* and *Mata-Fasardo*) before the Ninth Circuit are almost identical. At page four of those pleadings, it states as follows:

> **At the review petition stage of a removal case, ICE's consideration of prosecutorial discretion is supplemented by the Office of Immigration Litigation's (OIL's) internal review of such cases. OIL attorneys routinely review cases at various stages of the appellate briefing and pre-argument process for possible remand to the Board of Immigration Appeals and referral to ICE for consideration of its prosecutorial discretion. In addition, OIL undertook a comprehensive review of the majority of pending court-of-appeals review petitions on its docket between November 17, 2011 and January 13, 2012, in order to assess whether, in light of DHS's prosecutorial discretion initiative, those cases merit referral to DHS for consideration. OIL's review and referral of pending court-of-appeals cases will continue on a routine basis as circumstances may warrant.**

a. Isn't it the principal, if not exclusive, duty of a DOJ attorney representing the government in a court case to use his or her best efforts to ensure that the law at issue is enforced? Please explain your response.

Response: Yes, the duty of a DOJ attorney is to use best efforts to defend or enforce the law, decision and/or policy at issue in any case.

b. Why are DOJ attorneys reviewing court cases for referral to ICE for consideration of its prosecutorial discretion, as opposed to using their best efforts to see to it that removal orders are affirmed?

Response: Reviewing cases for prosecutorial discretion is consonant with an attorney's best effort to see that removal orders are affirmed, and it is part of the obligation of an attorney in the Department of Justice to do justice in every case.

As the Supreme Court has explained, "[an attorney representing the United States] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest...is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer." *Berger v. United States*, 295 U.S. 78, 88 (1935).

OIL attorneys occasionally find problems in the record because of the reasoning of the BIA and the conduct of the hearing by the immigration judge (particularly in cases where valid justifications are not presented or alternative immigration benefits are not pursued because the alien is incompetent, unrepresented, or receives ineffective assistance of counsel, since those cases provide special challenges to affording a fair hearing). If an OIL attorney has such a concern, it is the responsible thing to do to talk about options with ICE, which holds the power to exercise discretion. If ICE chooses not to exercise discretion, DOJ attorneys should and do use best efforts to see that the removal orders are affirmed with respect to removals.

c. Who created or ordered the policy whereby DOJ attorneys are reviewing court cases for referral to ICE for consideration of its prosecutorial discretion?

Response: It is my understanding that DOJ attorneys have always reviewed their cases for the possible exercise of prosecutorial discretion.

d. Set forth in detail your role in reviewing court cases for referral to ICE for consideration of its prosecutorial discretion?

Response: I do not generally review cases for referral to ICE for consideration of its prosecutorial discretion. The exception is in the very small number of cases (less than ten) where ICE has decided not to exercise discretion but one of the OIL section directors has felt strongly that it should be elevated. Also, at the beginning of my tenure overseeing OIL's litigation I argued a handful of fully briefed petitions for review in the courts of appeals so that I would understand the challenges our attorneys face in the courts of appeals. I reviewed each of those cases for prosecutorial discretion. In one of those cases, involving the 71 year old asylum applicant from Iran to whom I referred in my speech to ICE attorneys, I asked the assistant director at OIL supervising the case whether it was an appropriate one for prosecutorial discretion. She then discussed it with ICE.

e. Since 2009, how many cases have been referred to ICE by the Office of Immigration Litigation's (OIL) for it to "exercise" prosecutorial discretion?

Response: I do not know the answer to this question. OIL does not keep statistics of this type.

f. As a result of the referrals to ICE by OIL, how many illegal aliens, who had removal orders entered against them, have been allowed to remain in the United States since 2009?

Response: None of OIL's referrals would have been in a case where there was a final order or removal from the court of appeals. With respect to administratively final orders that had been appealed to court of appeals, I do not know the answer.

g. Have you ever ordered a DOJ attorney to refer a case to ICE for consideration of prosecutorial discretion, despite his or her conclusion that the case should not be referred to ICE? If so, identify the name and docket number for each such case. Also, identify your justification for your order in each such case.

Response: No.

h. Have you ever referred a case to ICE for consideration of prosecutorial discretion, despite another attorney previously concluding that the case should not be referred to ICE? If so, identify the name and docket number for each such case. Also, identify your justification for overruling the other attorney in each such case.

Response: Not to my knowledge.

i. Who created or ordered the policy whereby the Office of Immigration Litigation (OIL) undertook a comprehensive review of the majority of pending court-of-appeals review petitions on its docket between November 17, 2011 and January 13, 2012, in order to assess whether, in light of DHS's prosecutorial discretion initiative, those cases merit referral to DHS for consideration?

Response: DHS developed the prosecutorial discretion initiative, which applied to pending judicial as well as administrative cases. To assist in the implementation of the initiative, I requested OIL's appellate section to review its cases in conformity with ICE's November guidance that provided additional interpretation of the June 2011 Morton memorandum for ICE attorneys.

j. As a result of the comprehensive review and the continuing review by OIL, how many cases have been referred to DHS?

Response: I do not know the answer to this question. OIL does not keep statistics of this type.

k. As a result of the comprehensive review and the continuing review by OIL, how many illegal aliens, who had removal orders entered against them, have been allowed to remain in the United States?

Response: I do not know the answer to this question. OIL does not keep this type of statistic. I also understand that some of the referrals were accepted, some were not, and some remain pending. Even if the referral was accepted, I do not know what type of discretion, if any, was exercised for the aliens (deferred action, remand to the BIA for administrative closure, or stay of proceedings, to name three alternatives).

l. Set forth in detail your role in (a) the comprehensive review and (b) the continuing review process.

Response: Besides requesting that the review take place to assist DHS in the implementation of the initiative, as set forth in (i) above, and occasionally discussing the initiative at OIL management meetings, I played no role in the comprehensive review or continuing review of pending OIL cases. That review was carried out by the appellate section of OIL.

m. Have you ever referred a court-of-appeals case to DHS for consideration, despite another attorney previously concluding that the case should not be referred? If so, identify the name and docket number for each such case. Also, identify your justification for overruling the other attorney in each such case.

Response: Not to my knowledge.

10. Did you have any role in the development of the prosecutorial discretion initiative discussed in Director John Morton's June 17, 2011 and November 17, 2011 memoranda? If so, describe your role in detail.

Response: No.

11. Describe in detail your role in implementing the prosecutorial discretion initiative.

Response: In addition to my actions described in response to question 9, above, I have participated in discussions with others in DHS and DOJ about the implementation of the initiative and have discussed its implementation in some weekly meetings with the OIL appellate section assistant directors.

12. For each year you have served at the Department of Justice, identify the percentage of your workload that was focused on immigration issues. For your immigration workload for each year, identify what percentage was devoted to enforcing removal orders, what percentage was devoted to having removal

orders disregarded via the so-called prosecutorial discretion initiative or similar programs and what percentage was devoted to suing States that enacted laws similar to Arizona's S.B. 1070.

Response: I do not keep time records, and therefore cannot answer this question numerically with any accuracy. I did no immigration work from June to September, 2009. Between September 2009 and May 2010, the percentage of my work devoted to immigration rose steadily. Since approximately May 2010 virtually all of my work has been focused on immigration issues.

I suspect I spend more time considering issues raised in OIL's district court section, which handles class actions concerning the processes used by the government to handle various detention and immigration proceeding matters, as well as detention litigation and matters involving national security in district court, than I do on the appellate section's petitions for review, which result in removal orders. As described above, there have only been a few occasions when I was called on to consider whether an exercise of prosecutorial discretion was appropriate concerning a specific administrative removal order, and none of those occasions involved judicially final orders. I did attend meetings on prosecutorial discretion generally, as I have previously described, but the overwhelming majority of my time dealing with OIL appellate issues has been spent on the legal issues arising in the cases themselves, not on any issues related to prosecutorial discretion. When we evaluated the Arizona statute and developed pleadings in the district court from April – July, 2010, a material portion of my time (but by no means the majority) was spent on that matter. Similarly, the Alabama case took a material portion of my time in the summer of 2011 but again not the majority of it except the two weeks prior to the hearing as I prepared for it. I spent less time on the lawsuits involving South Carolina and Utah.

13. **For each year of your tenure at the Department of Justice, how many cases were pending in the federal courts of appeals where an alien was challenging a removal order? For each year, identify the number of cases where the removal order was affirmed, the number of cases where the removal order was reversed and the number of cases where the government discontinued its prosecution of the case under the prosecutorial discretion initiative or a similar program.**

Response: I do not know how many petitions for review are or have been pending in the federal courts of appeals. According to the Administrative Office of the Courts, 7,111 immigration appeals were filed in the 12 months ending on March 31, 2010; 6,505 in the year ending March 31, 2011; and 6,821 in the year ending March 31, 2012. In all or virtually all of those cases, the alien would be challenging a removal order. OIL has estimated its win record in excess of 90% in each of those years. In any case that OIL did not win, the usual result is a remand to the BIA, and in many of those cases the matter is adjudicated again and returned to the court of appeals on another petition for review. As indicated earlier, I do not know the number of cases discontinued as a result of prosecutorial discretion as no such statistics are kept by

OIL on that question, but the number is not large in comparison with the number of appeals filed.

14. **If a panel of a federal circuit court has affirmed a removal order in an immigration case, do you believe it would be a violation of the separation of powers for the Executive Branch to disregard the mandate and allow the illegal alien to remain in the United States? If not, explain your answer in detail.**

Response: I am not aware that any case has raised this issue during my tenure with the Department of Justice and I have never researched it. This issue is one which could come before me in court, if I am confirmed. As a result, I am hesitant to comment. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

15. **If confirmed, what will be your recusal policy for cases involving the Department of Justice?**

Response: If confirmed, I would recuse myself from cases which were pending in OIL while I was Deputy Assistant Attorney General, whether or not I was aware of them at the time, because of the appearance of a conflict. I would also recuse myself from any other case in which I had any involvement during my time with the Department, and from any other case as required by the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

16. **If confirmed, what will be your recusal policy for cases involving other federal agencies?**

Response: If confirmed, I would recuse myself from any case in which I had any involvement during my time with the Department, and from any other case as required by the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

17. **If confirmed, what will be your recusal policy for cases involving immigration issues?**

Response: If confirmed, I would recuse myself from any case that was pending in OIL while I was Deputy Assistant Attorney General and from any other case as required by the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

18. **The materials you provided to the Committee include a speech that you gave to Immigration Customs and Enforcement (ICE). In that speech, you stated: "[w]hen I joined the Obama administration as senior counselor to the Assistant Attorney General for the Civil Division ... the idea was that I'd help the Civil Division figure out how to bring more affirmative cases."**

Describe in detail the "idea" that was the basis for your joining the Obama administration. Also, describe in detail what you mean by "affirmative cases," including the subject-matter and targets of these lawsuits and the justification for these individuals or entities being sued.

Response: The idea was to establish the Civil Division as the U.S. Government's primary affirmative civil enforcement litigation component for consumer protection and fraud. These cases were already within the purview of the Civil Division, and the goal of the Civil Division was to emphasize their importance.

19. **As part of your speech to ICE, you described attorneys at the Office of Immigration Litigation (OIL) speaking with ICE employees about pending cases. You said that the conversations "will go much better if [the OIL attorney] understands the institutional pressures and interests that put the individual into proceedings in the first place - the effort that has been expended on the individual and why prosecutorial discretion has not previously been exercised."**

Illegal aliens are in removal proceeding because they are unlawfully present in the United States and because they have violated the law. Your statements suggest that there is some other reason why illegal aliens are in removal proceedings.

a. **What did you mean when you referred to "institutional pressures and interests that put the individual into proceedings in the first place"?**

Response: I was referring to the panoply of reasons that individuals are put into proceedings. For example, it is mandatory for Customs and Border Patrol agents to issue a notice to appear to begin proceedings following their identification of an immigration violation, and when an asylum seeker is denied asylum it is mandatory that he or she be placed in removal proceedings, regardless of any other circumstances. OIL lawyers and courts sometimes forget that many of the cases in federal court are being pursued because the alien is seeking a benefit to which the BIA has concluded that he or she is not entitled, not necessarily because the alien is an enforcement priority for ICE.

b. **Are career ICE employees required to justify their decision not to discontinue removal proceedings under prosecutorial discretion or similar programs to OIL attorneys or anyone else? Please explain.**

Response: I am not aware of any such requirement.

c. **Do you believe that ICE employees should justify their decision not to discontinue removal proceedings under prosecutorial discretion or similar programs to OIL attorneys or anyone else? Please explain.**

Response: I do not think ICE employees have to justify their decisions to OIL attorneys, but I think it is good practice for them to explain their thinking. For the reasons described in my speech, I think that promoting communication between different agencies in the government on issues of common concern is a good idea. OIL attorneys are often asked during argument in the court of appeals whether prosecutorial discretion has been considered in a case, and it is helpful for OIL attorneys to know that it has in fact been considered so that they can answer the question.

20. **As part of your speech to ICE, you stated that federal judges had asked you or asked DOJ "[w]hy is the rate of removals after we order removal so low? Does that say something about the failure to choose the right cases to bring to the Court's attention?"**

    a. **Why is the rate of removals after a federal circuit court has ordered removal so low?**

    Response: DHS is responsible for removing aliens, and is better placed to answer this question than I am. ICE officials have explained, for example, that it can be difficult or impossible to remove aliens to some countries.

    b. **Why isn't the Department of Justice enforcing these court orders?**

    Response: The authority to remove aliens belongs to the Department of Homeland Security, not the Department of Justice.

    c. **After a federal circuit court issues a mandate and orders removal, do you maintain that the executive branch has the authority to effectively vacate that order or judgment by not deporting the individual?**

    Response: I am not aware that any case has raised this issue during my tenure with the Department of Justice and I have never researched it. This issue is one which could come before me in court, if I am confirmed. As a result, I am hesitant to comment. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

    d. **Do you believe that there are "right" and "wrong" immigration cases to bring to court? If so, describe the "right" cases and the "wrong" cases.**

    Response: I do not know what a "right" or "wrong" immigration case is, and do not consider them in those terms.

21. **As part of your speech to ICE, you stated "... we have to consider whether the technical application of the law will result in justice in the particular case. We need to do this because we have an ethical obligation to do justice."**

a. Do you believe that you have an obligation to enforce the law enacted by Congress? If not, explain the basis for your belief that you do not have such an obligation.

Yes.

b. If you admit that you have an obligation to enforce the law, do you believe that your personal interpretation of what constitutes justice relieves you of that obligation? Please explain.

Response: No. I do believe that lawyers for the government have an obligation to do justice which is consonant with our obligation to enforce the law. For example, federal prosecutors carry out that obligation every day in deciding which criminal cases to bring. In the immigration context, it is necessary to understand the factual context of the case, how the case will be perceived by the judges who will hear it, whether it is consistent with the law enforcement priorities of the agency we represent and with other provisions of the INA, and whether a bad result could damage our ability to defend the INA in other matters.

c. Is it your position that the enforcement of the immigration laws which have been enacted by Congress does not constitute doing justice? Please explain.

Response: No. To the contrary, enforcement of the immigration laws does constitute doing justice. The immigration laws provide both enforcement provisions and benefits provisions, and provide a great deal of discretion to the Executive branch, now exercised through DHS. In order to enforce the INA properly, and do justice, a lawyer should consider the factors I discussed above.

22. As part of your speech to ICE, you stated as follows:

> **The question to ask before issuing the NTA, and at all times afterwards, is not whether we can win a case. Given quite favorable laws and less able advocates on the other side, if the non-citizen is even represented, we're always in a position to win. The question is, will we get a just result when we win the case? We need to do the right thing, and recognize when the Government's resources should be used more wisely.**

a. If an individual is in the United States in violation of our immigration laws and a court affirms a removal order, isn't the deportation of that individual a "just result"? If you do not believe so, explain your answer in detail.

Response: In virtually every case, the answer would be "Yes." There may be certain exceptions including, for example, a case where the alien failed to assert valid defenses or to seek alternative immigration benefits available because the

alien was incompetent or had ineffective assistance of counsel, and the court failed to address those issues.

b. Doesn't the enforcement of the immigration laws enacted by Congress result in a "just result"? Please explain.

Response: Yes, as described in my responses to questions 21 and 22 a.

23. As part of your speech to ICE, you stated as follows:

> **At the end of the day, the prosecutorial discretion decision is about doing justice and maintaining the credibility and integrity of the immigration system. And the better you know the implications of your decision from the perspective of others, like the lawyers at OIL, the more likely that you'll make the most informed, best choice.**

Career ICE agents and employees are attempting to enforce our immigration laws. Your statement suggests that they should second-guess their efforts and their decisions.

Do you believe that your decisions and the decisions of OIL attorneys about cases would be improved if you considered the perspectives of the ICE employees who are trying to enforce our immigration laws by removing illegal aliens? If so, what have you done to understand that perspective?

Response: Yes, absolutely. ICE employees attend weekly meetings at both the appellate and district court sections of OIL, which I attend, to discuss litigation issues. I also have met often on a variety of issues with various ICE employees. And I have lunch on occasion with ICE employees with no agenda in mind, in order to listen and learn about their perspectives. My speech to ICE attorneys was part of my effort to communicate about issues of common concern.

24. As part of your speech to ICE, you stated: "... shortly after I arrived [at DOJ], Juan Osuna, the DAAG for the Office of Immigration Litigation (OIL), started working full time on comprehensive immigration reform. I was drafted to help supervise OIL's litigation."

Have you had any role in developing a plan for or participated in any discussion regarding "comprehensive immigration reform"? If you have had a role in developing a plan, describe your role and that plan in detail. If you have participated in any discussions, describe the circumstances and content of those discussions in detail.

Response: No.

25. **In *Lui v. Holder*, a challenge to the Defense of Marriage Act, you and the Department of Justice submitted a brief opposing a Motion to Dismiss. In that document, you summarized a key case from 1982, *Adams v. Howerton*, stating, "The Ninth Circuit Court of Appeals assumed that plaintiffs were parties to a valid same-sex marriage under state law."**

That summary clearly misrepresents the *Adams* opinion. The Ninth Circuit actually stated, "It is not clear... whether Colorado would recognize a homosexual marriage.... While we might well make an educated guess as to how the Colorado courts would decide this issue, it is unnecessary for us to do so. We decide this case solely upon... the second step in our two-step analysis."

Moreover, the court indicates through *dicta* that it believed that Colorado state law and the Colorado state court system would likely decide the opposite: that a homosexual marriage would not be valid under existing Colorado state law.

a. **In light of the language in *Adams*, why did you and the DOJ assert the opinion "assumed that plaintiffs were parties to a valid same-sex marriage?"**

Response: I did not draft the brief or footnote in question, so I cannot speak to the intent of the language. After my hearing on July 11, I did review the *Adams* case again. The Ninth Circuit explained that "a two-step analysis is necessary to determine whether a marriage will be recognized for immigration purposes. The first is whether the marriage is valid under state law. The second is whether that state-approved marriage qualifies under the [Immigration and Nationality] Act. Both steps are required." 673 F.2d 1036, 1038 (9th Cir. 1982). Section III of the opinion, which discusses the constitutional holding in the case, begins, "Even if the Adams-Sullivan marriage were valid under Colorado law, the marriage might still be insufficient to confer spouse status for purposes of federal law." *Id.* at 1039. That language supports the sentence quoted in the first paragraph of this question because the court necessarily assumed, without deciding, that the marriage at issue was "state approved" in order to decide the case at the second step of the two-step inquiry—it would not have reached the constitutional issue if the case had been decided on the first step of the test described in *Adams*.

b. **The *Adams* two-step test requires a plaintiff to show that a) they have a valid marriage under state law and b) that the marriage would "confer spouse status for purposes of federal immigration law." Why did you and the Department decide to include this distorted version of *Adams* when the plaintiffs in *Lui* met the first requirement of the test: that they had a valid marriage recognized by Massachusetts?**

Response: Again, I did not draft this footnote, so I do not know the motivation of the author. However, as explained above, the footnote accurately describes *Adams*. Notably, it does not claim that the Ninth Circuit had decided that the

marriage at issue was valid under Colorado law, only that the court had assumed that proposition in order to decide the case at the second step of the two-step test.

c. Did you personally review this memorandum before it was submitted to the court or did you rely on trial counsel to properly cite check the brief?

Response: I did review at least one draft of the memorandum, although I do not know if I reviewed the final draft. I did not cite check the memorandum.

d. Please describe how you anticipate using law clerks if confirmed and what processes you will implement in order to ensure that their legal research is sound.

Response: If I am confirmed, I anticipate that my law clerks will review the pleadings submitted in a case and draft bench memoranda to explain their analysis. I expect to read the critical cases and declarations relied upon with respect to any given issue, in addition to the briefs and bench memoranda, prior to argument. Testing my clerks' analysis against the parties' arguments, and my own review will ensure that their research (and more importantly, my opinion) is sound.

26. During the hearing, you were asked by Sen. Coons to describe your judicial philosophy. You replied,

> **Senator, I am not sure I have a judicial philosophy. I revere the rule of law, and I believe it is my role to understand the facts and then apply the law to them. I would follow precedent directly.**

I later asked you about the District Court's decision in *Lui v. Holder* to uphold the binding precedent set by the Ninth Circuit *Adams v. Howerton*. Specifically, I asked "If confirmed would you [Mr. Orrick] follow the *Adams* precedent?"

You responded, "I will follow controlling precedent wherever it exists."

a. Do you believe that *Adams* is the controlling case in the Ninth Circuit involving challenges to the government's refusal to grant a I-130 petition, even when plaintiffs are challenging the definition of marriage as defined by DOMA? Please explain why or why not.

Response: I am reluctant to comment on this question as this is a matter which may come before me if I am fortunate enough to be confirmed. As I indicated in my testimony, if I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

b. If faced with a similar case, as a district court judge in the Northern District of California, would you follow the *Adams* precedent, deferring to the parties to appeal to the Ninth Circuit, as did Judge Wilson in *Lui*? Please explain why or why not.

Response: I am reluctant to comment on this question as this is a matter which may come before me if I am fortunate enough to be confirmed. As I indicated in my testimony, if I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

27. Federal Judges hold a public trust and are responsible for being good stewards of public resources made available to them. In this regard, I have publicly expressed concern about the costs of a planned Ninth Circuit Judicial Conference planned for Maui, Hawaii in August 2012.

a. Have you attended Ninth Circuit Judicial Conferences in the past and do you plan to attend this Conference or similar conferences in the future?

Response: I have not attended a Ninth Circuit Judicial Conference in the past and I do not plan to attend the one in Hawaii this year. I have no plans concerning future conferences if they occur and I am invited to attend.

b. Given the fiscal crisis facing our nation, do you think it is appropriate that this conference go forward as planned?

Response: I do not know enough about the purpose, goals and cost of this conference to respond to this question.

c. If confirmed, what influence would you bring to bear on your colleagues planning future conferences to ensure that taxpayer funds are used in a prudent manner?

Response: I am frugal by nature, and I have experience being in government during a period of belt-tightening. I expect my actions if I am confirmed will continue to reflect my character and experience in this regard.

d. As a public officer, what will be your general approach to the management of public resources?

Response: As indicated above, my general approach to the management of public resources is one of frugality and restraint.

28. 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 needs to be respectful of, courteous to and patient with everyone in the courtroom. At the same time, he should move his docket with dispatch and make clear his expectations, particularly regarding the quality of advocacy. Treating others the way I would wish to be treated if I was in their shoes is important. I do (and will) meet that standard.

29. **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.

30. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: The starting point for deciding cases of first impression is the language of the statute involved. If it is unambiguous, the inquiry is at an end. If it is ambiguous, I would look to the structure of the entire statute in which the challenged provision occurs, apply canons of statutory construction, and look to see if there is similar or analogous precedent from the Supreme Court, Ninth Circuit and other circuits (in that order). I would also consider looking at the legislative history of the statute, although I am leery of putting much emphasis on legislative history since it is seldom complete and can be misleading.

31. **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 to apply the applicable precedent, regardless of whether I agree with it.

32. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court is not supposed to reach the constitutionality of a statute if there is a statutory basis for deciding the case. If the constitutionality of the statute must be decided, a federal court must apply a heavy presumption in favor of constitutionality. Only if there is no constitutional basis for the statute would I be duty-bound to strike it down.

33. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: I intend to be an active manager of my caseload if I am confirmed. That means promptly holding initial case management conferences, staying involved in the case with periodic case management sessions, urging counsel to narrow the issues and utilize alternative dispute resolution when appropriate, setting firm deadlines and ruling quickly on motions that are filed.

34. 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 should control the pace and conduct of litigation. If I am confirmed, at the initial case management conference I will set realistic and firm deadlines for the completion of trial preparation matters and dispositive motions. Absent unforeseen circumstances, I will not vary from those dates. Deadlines focus parties on dispute resolution. I will remain actively involved in the resolution of issues that arise in the course of the case in an effort to move it along. I will encourage mediation and other forms of alternative dispute resolution.

35. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you reach a decision in cases that come before you and to what sources of information will you look for guidance. What do expect to be most difficult part of this transition for you?

Response: I will start my decision-making process by gaining a thorough understanding of the facts of the case. I will diligently review the arguments of the parties and apply controlling precedent from the Supreme Court and Ninth Circuit. If there is none, I will look to similar cases in other circuits, and to analogous cases in the Supreme Court and the Ninth Circuit. If the case is a matter of first impression, I would proceed as described in answer to question 30.

I expect the most challenging part of this transition (and the most interesting) would be becoming fully conversant with criminal law and procedure. While I had some exposure to criminal work from 1984 – 1996, it was never a major staple of my practice. I intend to read deeply in this area and if I am fortunate enough to be confirmed, I will work closely with mentors on the bench.

36. Please describe with particularity the process by which these questions were answered.

Response: I worked on the answers to these questions on July 19 and 21, 2012, and provided them to the Department of Justice. I put them into final form and authorized their submission to the Senate Judiciary Committee on July 23, 2012.

37. **Do these answers reflect your true and personal views?**

Response: Yes.

Senator Chuck Grassley

Follow-up Questions for the Record

William H. Orrick III

Nominee, U.S. District Judge for the Northern District of California

You did not provide responsive answers to a number of my questions. The questions at issue and your responses to them are set forth below.

A. Question 3(a) and (b)

In his concurring/dissenting opinion in the *Arizona* case, Justice Scalia addressed the Obama administration's questionable claim that its pre-emption argument was supported by the need to allocate scarce immigration enforcement resources. Specifically, he wrote:

> The brief for the Government in this case asserted that 'the Executive Branch's ability to exercise discretion and set priorities is particularly important because of the need to allocate scarce enforcement resources wisely.'
>
> ...
>
> .... It has become clear that federal enforcement priorities—in the sense of priorities based on the need to allocate 'scarce enforcement resources'—is not the problem here. After this case was argued and while it was under consideration, the Secretary of Homeland Security announced a program exempting from immigration enforcement some 1.4 million illegal immigrants under the age of 30.
>
> ...
>
> The husbanding of scarce enforcement resources can hardly be the justification for this, since the considerable administrative cost of conducting as many as 1.4 million background checks, and ruling on the biennial requests for dispensation that the nonenforcement program envisions, will necessarily be *deducted* from immigration enforcement.

a. What is your reaction to Justice Scalia's analysis quoted above?

Response: As an employee of the Department of Justice and a prospective federal judge, I do not believe it would be appropriate for me to express any personal views on the Department of Homeland Security policies discussed in Justice Scalia's opinion.

b. The Obama administration justifies its immigration priorities and its refusal to deport illegal aliens due to the alleged need to allocate scarce enforcement

resources. Please explain how scarce "enforcement" resources are utilized by DOJ and DHS employees reviewing files for the awarding of *de facto* amnesty under the prosecutorial discretion initiative, as opposed to enforcing the immigration laws as enacted by Congress.

Response: As an employee of the Department of Justice and a prospective federal judge, I do not believe it would be appropriate for me to express any views on the enforcement resource issues other than those related to the work of Office of Immigration Litigation, about which I have direct knowledge. Whether a case might warrant the exercise of prosecutorial discretion is always an issue when it is reviewed by the Office of Immigration Litigation, so the review that occurred as a result of the initiative sped up an analysis that would have occurred later. Therefore, it did not cause a material difference in the expenditure of OIL's resources, and to the extent ICE exercises prosecutorial discretion in any of those cases, OIL's law enforcement resources would be utilized in other, higher priority cases.

B. Question 6

In 2011, President Obama acknowledged that he did not have the authority to unilaterally order a program such as the one he announced on June 15, 2012. Describe in detail the constitutional authority that allegedly authorizes the program announced by President Obama on June 15, 2012?

Response: As I indicated above, I did not have any role in developing this policy nor did I participate in any discussions concerning it prior to its announcement. Moreover, this issue is one which could come before me in court, if I am confirmed. As a result, I am hesitant to comment. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

C. Question 14

If a panel of a federal circuit court has affirmed a removal order in an immigration case, do you believe it would be a violation of the separation of powers for the Executive Branch to disregard the mandate and allow the illegal alien to remain in the United States? If not, explain your answer in detail.

Response: I am not aware that any case has raised this issue during my tenure with the Department of Justice and I have never researched it. This issue is one which could come before me in court, if I am confirmed. As a result, I am hesitant to comment. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

D. Question 15

If confirmed, what will be your recusal policy for cases involving the Department of Justice?

Response: If confirmed, I would recuse myself from cases which were pending in OIL while I was Deputy Assistant Attorney General, whether or not I was aware of them at the time, because of the appearance of a conflict. I would also recuse myself from any other case in which I had any involvement during my time with the Department, and from any other case as required by the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

E. Question 16

If confirmed, what will be your recusal policy for cases involving other federal agencies?

Response: If confirmed, I would recuse myself from any case in which I had any involvement during my time with the Department, and from any other case as required by the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

F. Question 17

If confirmed, what will be your recusal policy for cases involving immigration issues?

Response: If confirmed, I would recuse myself from any case that was pending in OIL while I was Deputy Assistant Attorney General and from any other case as required by the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

G. Question 20(c)

As part of your speech to ICE, you stated that federal judges had asked you or asked DOJ "[w]hy is the rate of removals after we order removal so low? Does that say something about the failure to choose the right cases to bring to the Court's attention?"

c. After a federal circuit court issues a mandate and orders removal, do you maintain that the executive branch has the authority to effectively vacate that order or judgment by not deporting the individual?

Response: I am not aware that any case has raised this issue during my tenure with the Department of Justice and I have never researched it. This issue is one which could come before me in court, if I am confirmed. As a result, I am hesitant to comment. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

H. Question 26

During the hearing, you were asked by Sen. Coons to describe your judicial philosophy. You replied,

> Senator, I am not sure I have a judicial philosophy. I revere the rule of law, and I believe it is my role to understand the facts and then apply the law to them. I would follow precedent directly.

I later asked you about the District Court's decision in *Lui v. Holder* to uphold the binding precedent set by the Ninth Circuit in *Adams v. Howerton.* Specifically, I asked "If confirmed would you [Mr. Orrick] follow the *Adams* precedent?"

You responded, "I will follow controlling precedent wherever it exists."

a. Do you believe that *Adams* is the controlling case in the Ninth Circuit involving challenges to the government's refusal to grant a I-130 petition, even when plaintiffs are challenging the definition of marriage as defined by DOMA? Please explain why or why not.

Response: I am reluctant to comment on this question as this is a matter which may come before me if I am fortunate enough to be confirmed. As I indicated in my testimony, if I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

b. If faced with a similar case, as a district court judge in the Northern District of California, would you follow the *Adams* precedent, deferring to the parties to appeal to the Ninth Circuit, as did Judge Wilson in *Lui*? Please explain why or why not.

Response: I am reluctant to comment on this question as this is a matter which may come before me if I am fortunate enough to be confirmed. As I indicated in my testimony, if I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

FOLLOW-UP and SUPPLEMENTAL QUESTIONS:

1. **Your involvement with the enforcement of the Obama administration's immigration policies via lawsuits against Arizona, Alabama, South Carolina and Utah and your involvement with the implementation of the so-called prosecutorial discretion initiative, gives you personal knowledge of the issues which are the subject of the question. Accordingly, please provide a responsive answer to question 3(a).**

Response: In announcing the deferred action policy discussed by Justice Scalia, the Department of Homeland Security stated that its action would "further enhance[] the Department's ability to focus on…priority removals," such as "individuals who pose a

national security or public safety risk, including immigrants convicted of crimes, violent criminals, felons, and repeat immigration law offenders." I did not have any role in developing this policy nor do I have any knowledge of the associated costs to which Justice Scalia referred. As a result, I am not in a position to express an opinion on Justice Scalia's comments.

2. **Question 3(b) was a reasonable question. It calls for a common sense answer. Contrary to your response, your employment by the Department of Justice does not immunize you from having to answer the question. Indeed, as a result of your involvement with the enforcement of the Obama administration's immigration policies via lawsuits against Arizona, Alabama, South Carolina and Utah and your involvement with the implementation of the so-called prosecutorial discretion initiative, you have personal knowledge of the issues which are the subject of the question. Similarly, your status as a nominee for a federal judgeship does not immunize you from having to answer questions, especially about a policy you were involved in implementing. Accordingly, provide a detailed answer to question 3(b).**

   Response: It is my understanding that the purpose of the review of the pending immigration cases at the Executive Office for Immigration Review is to remove low priority cases from the active dockets of the immigration courts so that the higher priority cases on the detained docket will move more quickly and that ICE will be able to concentrate its law enforcement resources on the higher priority aliens. As explained above, however, I do not have any personal knowledge of the costs associated with the prosecutorial discretion initiative at the Department of Homeland Security or Department of Justice, except for the impact on OIL that I previously described.

3. **As noted above, your responses to questions 6, 14, and 20(c) suggest that you believe that, if confirmed, you can hear cases involving issues related to the Obama Administration's immigration policies.**

   You are a senior political appointee in the Obama Justice Department. Indeed, you are the head of the Office of Immigration Litigation and have been handling immigration issues since at least May 2010. Given your involvement with the enforcement of the Obama administration's immigration policies via lawsuits against Arizona, Alabama, South Carolina and Utah and your involvement with the implementation of the so-called prosecutorial discretion initiative, common sense and an objective analysis would dictate that, if confirmed, you should be disqualified from hearing any case that involved the Obama administration's immigration policies. This should be so regardless of whether you were personally involved in the case or whether it was commenced after you left the Department of Justice.

   a. **Contrary to your response, Question 6 does not involve an issue that could come before you as a judge. And any purported concern you might have is not a basis for refusing to answer the question. Accordingly, provide a detailed answer to Question 6.**

Response: As I indicated before, I was not involved in developing this policy in any manner and I have not researched the President's constitutional authority with respect to it. I am aware that litigation has recently been filed concerning the Obama administration's policy, and although the Office of Immigration Litigation is not responsible for it, I agree that in the event I were confirmed and similar litigation would be initiated in my court, I would be obligated to recuse myself. But the same issue could also arise in a challenge to a different administration's immigration policies, and related issues concerning the scope of the Executive Branch's prosecutorial discretion could also arise in non-immigration contexts. Because I would not necessarily be recused in such cases, I believe it would be inappropriate for me to express any personal views on these matters.

b. Question 14 does not involve an issue that could come before you as a judge. And any purported concern you might have is not a basis for refusing to answer the question. Accordingly, provide a detailed answer to question 14.

Response: It is a violation of the separation of powers for the United States to refuse to comply with the final order of a federal court. This is not a question that I have researched, but in the context of deportations, the answer to the question would depend on what the court ordered and what DHS did in response to it. Broad discretion on how to allocate resources to effectuate removals is vested in the Secretary of the Department of Homeland Security, and it can be difficult or impossible to remove some aliens to their home countries. The presence of an alien in the country after a final order does not necessarily evidence a disregard of the court's order, no matter how the order is phrased.

c. Please provide a responsive answer to Question 20(c).

Response: My answer is the same as to the question above.

4. Your answer to question 15 is incomplete. While you discuss recusing yourself from "cases which were pending in OIL while [you were] Deputy Assistant Attorney General," you do not address cases from other units of the Justice Department. Nor do you address cases that were in the planning stages while you were at the Department or cases which involve issues, policies or initiatives developed by the Justice Department while you were employed by the Department. Accordingly, provide a complete answer to question 15.

Response: As I explained in my original answer, I would recuse myself from cases in which I had any involvement--direct or indirect--while I was employed at the Department of Justice. There would be no distinction based on the branch or division in which such a case arose. This would be true for cases in the planning stages, and cases involving issues, policies or initiatives in which I had a direct or indirect involvement. I would also

recuse myself from any other case as required by the Code of Conduct for United States Judges as well as other relevant canons and other statutory provisions.

5. **Your answer to question 16 is incomplete. You do not address cases which involve issues, policies or initiatives developed by the Obama administration while you were employed by the Department of Justice as a senior political appointee. Accordingly, provide a complete answer to question 16. In particular, do you maintain that you could preside over a case involving the Obama administration's prosecutorial discretion initiative or another one of the administration's immigration policies?**

   Response: I would recuse myself from cases involving issues, policies or initiatives developed by the Obama administration while I was employed at the Department of Justice in which I had direct or indirect involvement. This would include cases challenging the prosecutorial discretion initiative and recent deferred action policy discussed earlier. I would also recuse myself from any other case as required by the Code of Conduct for United States Judges as well as other relevant canons and other statutory provisions.

6. **With regard to Question 17 – If confirmed to be a United States Judge, would you be disqualified or would you recuse yourself from hearing a case that involved the Obama administration's immigration policies? If you maintain that you could hear a case involving the Obama administration's immigration policies, explain in detail how you could preside over such a case in compliance with the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.**

   Response: As I stated above, I would recuse myself from cases in which I had direct or indirect involvement, including those involving immigration policies developed by the Obama administration while I was employed in the Department of Justice and any other policies that may have been in the discussion stage during my employment of which I was aware. I would also recuse myself from any other case as required by the Code of Conduct for United States Judges as well as other relevant canons and other statutory provisions.

7. **Your involvement with the administration's refusal to enforce the Defense of Marriage Act (DOMA), common sense and an objective analysis would dictate that, if confirmed, you should be disqualified from hearing any case that involved the Obama administration's immigration policies or DOMA. This should be so regardless of whether you were personally involved in the case or whether it was commenced after you left the Department of Justice.**

   a. **Thus, contrary to your response, Question 26(a) does not involve an issue that could come before you as a judge. And any purported concern you might have is not a basis for refusing to answer the question. Accordingly, provide a detailed answer to Question 26(a).**

Response: Under my oversight and supervision, lawyers at the Office of Immigration Litigation have argued in support of the constitutionality of Section 3 of DOMA, and against it. They have argued that *Adams* is controlling, and that it is not. I agree with the observation that I should recuse myself from cases challenging the constitutionality of Section 3 of DOMA but it is also possible that a question about the precedential effect of the *Adams* case could arise in a different context in which I would not be recused, and for that reason I do not think it would be appropriate for me to express any personal opinion on this question.

b. Please provide a responsive answer to Question 26(b). Would you or would you not follow the *Adams* precedent? Explain your response.

Response: Please see my response to question 7a, above.

c. In addition, please confirm that you agree that, if confirmed as a judge, you would be disqualified from hearing a case that involved the Obama administration's immigration policies or DOMA. If you maintain that you could hear a case involving the Obama administration's immigration policies or DOMA, explain that position in detail.

Response: I would recuse myself from challenges to the immigration policies developed in the Obama administration while I have been employed by the Department of Justice in which I had direct or indirect involvement, and I would recuse myself from cases in which the constitutionality of Section 3 of DOMA is at issue. I would also recuse myself from any other case as required by the Code of Conduct for United States Judges as well as other relevant canons and other statutory provisions.

Responses of William H. Orrick, III
Nominee to be United States District Judge for the Northern District of California
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: I view my role as a judge, if I am confirmed, as enhancing respect for the rule of law. That means that I should be, as Federal Rule of Civil Procedure 1 suggests, just and speedy in decision-making. I should show respect to everyone in my courtroom. I should recognize that I am in a court of limited jurisdiction, and not attempt to exercise authority on issues over which I have no jurisdiction. Most importantly, I should insure a fair hearing so that I understand the facts and then apply controlling precedent and the law in an even-handed way to determine the result. I should explain my decision clearly so that the litigants understand the basis of my reasoning.

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 varied legal background is evidence that I will treat all litigants fairly and with respect, and that I will not let my personal views interfere with the administration of justice. I started my career with Georgia Legal Services, where I represented poor people for more than four years, often as plaintiffs. For the following twenty five years, I was in private practice, primarily defending corporate entities and wealthy people in employment and commercial litigation, while also representing the Episcopal Diocese of California and many other types of clients in my pro bono work. In the last three years, I have represented the United States. I have great respect for every type of client I have represented. I have never let my political beliefs affect my legal judgment, and believe that politics have no place in the courtroom.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: District court judges must bind themselves tightly to precedent. So must judges in the Courts of Appeals, unless they are sitting en banc to review their own precedent. Without that commitment to stare decisis, the judiciary would properly be accused of merely being another political branch, with the whims of the individual judge rather than the rule of law controlling the outcome.

Questions for the Record

July 11, 2012 Nominations Hearing

Senator Mike Lee

Questions for Mr. Orrick

1. **You supervised the Department of Justice's district court litigation against Utah, Arizona, Alabama, and South Carolina for implementing immigration enforcement provisions. In a speech at a conference for the ICE Office of Principal Legal Advisors, you said, "We have relied on cooperation from state and local law enforcement to do our job. But cooperation with the preeminent authority means that the states have to act in concert with federal priorities."**

   a. **Who determines what the federal priorities for immigration enforcement are?**

      Response: Federal priorities for immigration enforcement are set pursuant to Congressional enactments, such as the Immigration and Nationality Act, the relevant implementing regulations, and the Department of Homeland Security, which is vested with significant discretion in the aforementioned laws and regulations.

   b. **If Congress passed legislation outlining enforcement priorities, would the President be authorized to ignore that legislation and create priorities of his own?**

      Response: This is an issue which may come before me if I am fortunate enough to be confirmed, and I am reluctant to comment on it. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

   c. **If the President attempted and failed to pass legislation establishing enforcement priorities, should he be authorized to establish an enforcement scheme adopting those priorities?**

      Response: Again, this is an issue which may come before me if I am fortunate enough to be confirmed, and I am reluctant to comment on it. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

2. **In the speech at the ICE conference you said that "the prosecutorial discretion decision is about doing justice and maintaining the credibility and integrity of the immigration system."**

a. To what decision were you referring?

Response: I was referring to the decision made by ICE to exercise or not exercise prosecutorial discretion in an individual immigration proceeding.

b. Do you believe the prosecutorial discretion directives outlined in the recent ICE memorandum, allowing for deferred action on the "Dream Act" population, maintains the credibility and integrity of the immigration system?

Response: As a current employee of the Department of Justice and a prospective federal judge, I do not believe it would be appropriate for me to express any personal views on Secretary Napolitano's recent memorandum entitled "Exercising Prosecutorial Discretion With Respect To Individuals Who Came To The United States As Children."

c. Do you believe that a President should be able to enact under the label of prosecutorial discretion that which he could not pass through Congress?

Response: As I indicated above, this is an issue which may come before me if I am fortunate enough to be confirmed, and I am reluctant to comment on it. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

Senator Jeff Sessions
Questions for the Record
William Orrick, III

1. **Do you agree that federal law is clear that state and local law enforcement can initiate requests to the Department of Homeland Security to verify the immigration status of individuals for any purpose authorized by law and that no agreement between state and local law enforcement and the federal government is required for a state or local officer or employee to communicate with the Attorney General regarding the immigration status of any individual?**

   Response: I agree.

2. **In your opinion, what determines whether a state law is preempted, laws passed by Congress or the policy of a particular administration? Please explain your answer.**

   Response: Case law is clear that the Constitution, laws passed by Congress, and federal regulations implementing those laws, not a particular administration's policy, determine whether a state law is preempted.

3. **If a state chooses to assist in enforcing federal laws using its own resources and Congress has not expressly stated whether it states to assist in enforcing those federal laws, is the state preempted from assisting?**

   Response: In the immigration context, *Arizona v. United States* makes clear that there are certain areas where the state is preempted from acting. In other areas, the same preemption concerns may not apply.

   a. **Do you agree that the doctrines of federalism and dual sovereignty ensure that states are empowered to enforce federal laws unless Congress expressly prohibits them from doing so? Please explain your answer.**

   Response: Again, in the immigration context, *Arizona v. United States* makes clear that there are certain areas where the state is preempted from acting to enforce federal laws. In other areas, the same preemption concerns may not apply. I have never researched this question outside of the immigration context, and since this is an issue which may come before me if I am fortunate enough to be confirmed, I am hesitant to comment further. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

4. **In your view, under what circumstances is it acceptable for state and local governments to enforce immigration laws?**

   Response: In *Arizona v. United States*, the Supreme Court explained that with respect to immigration, as in other matters, state and local enforcement measures are preempted only where Congress has "withdraw[n] specific powers from the states by enacting a

statute containing an express preemption provision"; where states or localities seek to regulate "a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance"; or where the state or local laws "conflict with federal law." 132 S. Ct. 2492, 2500 – 2504 (2012).

5. **What limits are there on the executive's discretion in deciding whether to enforce the law?**

Response: I have never researched this question and do not have an answer to it.

a. **Do you believe the President's prosecutorial discretion authority gives him the power to exempt whole classes of individuals from application of the law?**

Response: This is an issue which might come before me if I am confirmed and as a result I am reluctant to express any views on this topic. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

b. **Do you agree that the "faithfully execute" clause in Article II of the Constitution requires that a President enforce the laws passed by previous Congresses and signed by previous Presidents?**

Response: I am not aware of any precedent suggesting that the President's duty to faithfully execute the laws of the United States varies depending on which Congress enacted, or which President signed, the statute at issue.

c. **Do you agree that the Constitution grants Congress plenary authority over immigration policy?**

Response: In *Arizona v. United States*, the Supreme Court stated that "[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." 132 S. Ct. 2492, 2498 (2012). If confirmed as a judge and presented with a case raising a question about the extent of Congress's authority over immigration, I would follow all applicable precedents of the Supreme Court and the Ninth Circuit.

6. **In a speech at the Immigration and Customs Enforcement Office Principal Legal Advisors Conference, you defended the President's authority to choose not to prosecute certain illegal aliens because "the judges before whom we argue our cases will do their best to do justice, and that may mean that they'll be tempted to interpret the law in a results-oriented way."**

a. **Do you believe it is ever proper for a judge to engage in results-oriented decisionmaking? If so, under what circumstances?**

Response: No. I do not believe it is ever proper for a judge to engage in results-oriented decisionmaking.

b. Does this statement accurately reflect your judicial philosophy?

Response: No. As stated above, it is not proper for a judge to engage in results-oriented decisionmaking. In my speech, I was actually criticizing the unfortunate reality that immigration cases can be particularly susceptible to judges who try to find a way not supported by the law to help sympathetic petitioners. If judges do so, they damage the INA and the government's ability to enforce the law as Congress intended. This risk of adverse decisions in sympathetic cases is one reason why, in order to fulfill their responsibility to enforce the INA effectively, government lawyers must be aware of the entire context of a case in determining whether the exercise of prosecutorial discretion is appropriate.

c. **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.

7. **When Attorney General Holder announced the Justice Department would sue Utah over the provision of its immigration law that requires law enforcement to check individuals' immigration status, he also stated that the Department would not challenge the state's guest worker laws, even though they were – according to the Attorney General – "clearly preempted by federal law." The Attorney General stated that "in light of the constructive conversations the Department continues to have with Utah officials about these provisions pursuant to the Justice Department's long-standing policy of exploring resolution short of litigation before filing suit against a state, the department is not challenging these provisions today."**

a. To your knowledge, did the Justice Department ever provide Arizona, Alabama, or South Carolina the opportunity to "explore a resolution short of litigation" before suing them?

Response: Yes, to my knowledge then Assistant Attorney General West and Assistant Attorney General Perez met with the Attorneys General of Arizona, Alabama and South Carolina prior to filing suit in order to explore resolution short of litigation, just as they met with the Attorney General of Utah.

b. What specific differences between the enforcement law and the guest worker law led to the decision to challenge one but not the other?

Response: The Attorney General has been unequivocal that the guest worker provision is preempted and will be challenged unless it is repealed or modified in a way that comports with federal law. As the Attorney General has indicated in public

statements, however, the guest worker law does not go into effect until July 2013, whereas the enforcement laws would have gone into effect in 2011 unless they were enjoined.

c. To what extent did political considerations influence the decision not to challenge Utah's guest worker law?

Response: To my knowledge, none.

d. What was your role in determining whether the Justice Department would challenge Utah's guest worker law and the state's enforcement law?

Response: I helped supervise the review of Utah's immigration statutes. I reviewed the work of the team assigned to the analysis of those statutes, helped coordinate the necessary fact-gathering with the Departments of Homeland Security and State and disseminated the litigation team's analysis to those Departments as well as internally at the Department of Justice. I was a member of groups that met with Utah Attorney General Shurtleff on two occasions. I met several times with others within the Department, as well as with attorneys from DHS and the State Department, to discuss the possible litigation scenarios.

e. Do you believe that a State should be able to issue work permits to illegal aliens?

Response: This is an issue that might come before me in the future if I am confirmed, and I am reluctant to express any views on it. If I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

8. **In *Liu v. Holder*, you are listed as counsel of record along with Assistant Attorney General of the Civil Division Tony West. In that case, the Justice Department argued that the court should apply heightened scrutiny, rather than rational basis review, to classifications based on sexual orientation, and hold Section 3 of the Defense of Marriage Act (DOMA) unconstitutional. It is my understanding that the courts have rejected your arguments.**

a. Do you agree that the Executive Branch has a clear and unwavering duty to vigorously defend the constitutionality of any law for which a reasonable defense may be made?

Response: I agree generally with the proposition espoused above, except in the rare instances where a determination by the President and Attorney General has been made that the law is unconstitutional or where the law represents an inappropriate legislative interference with the Executive Branch.

b. Do you agree that there is a difference between refusing to defend a law that the administration regards as unconstitutional and refusing to defend a law that the administration opposes on policy grounds?

Response: Yes.

c. Do you agree that if an administration refuses to defend clearly constitutional laws based on its own policy views, it is a violation of the oath to protect and defend the Constitution and the laws of the United States?

Response: Yes.

d. Would you characterize the Justice Department's brief in *Liu v. Holder* as a "vigorous" defense of the law?

Response: I would characterize the brief as a vigorous assertion of the United States government's position in light of the President's and Attorney General's determination regarding the constitutionality of Section 3 of DOMA.

e. Do you agree that there are several reasonable arguments in defense of DOMA, including that the law is rationally related to legitimate government interests in procreation and childrearing, or do you agree with the administration that it is not rationally related to those ends?

Response: As this is an issue which may come before me if I am fortunate enough to be confirmed, I am hesitant to express any views on it. I can assure you that if I were presented with a case raising this issue, my decision would be based solely on the applicable legal authorities and precedents, which I would follow unreservedly.

f. Do you acknowledge that the Bush administration successfully defended DOMA using precisely the foregoing arguments?

Response: Yes.

g. Do you acknowledge that those same arguments have been widely relied on by federal and state courts in upholding states' traditional marriage laws?

Response: Yes, some courts have upheld states' marriage laws using the same or similar arguments.

9. **Do you believe there is a federal constitutional right to same-sex marriage?**

Response: Neither the Supreme Court nor the Ninth Circuit has recognized a federal constitutional right to same-sex marriage. If I were presented with a case raising this issue, I would follow all applicable legal authorities and precedents.

a. Have you ever expressed an opinion as to whether there is a federal constitutional right to same-sex marriage? If so, what was that opinion?

Response: I have taken litigation positions both for and against DOMA's constitutionality while representing the United States. I do not recall expressing an opinion outside the context of those cases regarding DOMA's constitutionality or whether there is or is not a federal constitutional right to same-sex marriage.

10. **In your questionnaire, you stated that part of your duties at the Justice Department include "spearhead[ing] or participat[ing] in a wide range of projects, including matters related to... tobacco litigation." Please explain in detail the work you have done with respect to tobacco litigation matters.**

Response: When I arrived at the Department, I was asked to join the team in the Civil Division that was considering whether to recommend to the Solicitor General to seek en banc review or certiorari in the *United States v. Philip Morris* tobacco litigation. I attended several meetings on that topic. Once certiorari was denied, the case was remanded to district court and I had no material further involvement in tobacco litigation matters after that time.

11. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: It is settled law that the death penalty does not constitute cruel and unusual punishment under the Constitution. I will have no difficulty applying controlling precedent on this issue.

12. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Again, Supreme Court precedent establishes that the death penalty is a constitutional form of punishment and I will have no difficulty applying controlling precedent in this regard.

Responses of Jon S. Tigar
Nominee to be United States District Judge for the Northern District of California
to the Written Questions of Senator Chuck Grassley

1. **At your hearing, I asked you a series of questions related to your membership in the American Constitution Society. In responding to those questions, you indicated that your role in the organization was that you occasionally spoke at events. Of course, many prominent lawyers and judges speak at events hosted by the American Constitution Society without feeling the need to become members.**

   a. **What about the American Constitution Society led you to join the organization?**

      Response: I joined the American Constitution Society because I hoped it would provide the opportunity to hear discussions concerning some of the important legal questions of the day.

   b. **At your hearing, I specifically asked you about statements made by ACS Chair, Peter Edelman expressing his views in support of a "progressive" constitution. You generally declined to answer asserting you were unfamiliar with Peter Edelman's statements. However, as a member of the organization you should be familiar with the goals of the organization. One of the goals, according to the chair of the ACS Board of Directors is "countering right-wing distortions of our Constitution." Do you agree with this goal, and if so can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered? If you disagree with this goal of the organization, what have you done to distance yourself from this goal?**

      Response: I do not know Mr. Edelman. I was unaware of Mr. Edelman's statements and do not know to what alleged "right-wing distortions" his statements refer. Mr. Edelman's statements do not accurately reflect any goal of my membership in the American Constitution Society.

   c. **On the ACS website, it states that the organization seeks to shape the debate in America by bringing together "the country's best legal minds to articulate a progressive vision of our Constitution and our laws." In your view, what does it means to have a progressive vision of the Constitution and our laws?**

      Response: I do not know what ACS means by its use of the phrase "progressive vision of the Constitution and our laws." I have never held any leadership position in ACS and have not participated in the formulation of ACS policy or goals. As a state court judge for the last ten years, I have faithfully applied the Constitution, statutes, and decisional authority as written. If confirmed to the federal bench, I would continue to do the same.

   d. **If confirmed, will your interpretation of the Constitution and our laws be guided by a "progressive vision"? Please explain.**

Response: No. If confirmed to the federal bench, my interpretation of the Constitution and federal law will be guided solely by the text of the Constitution, the text of applicable federal statutes, and controlling decisional authority.

2. **At your hearing, I asked you about your criticism of Supreme Court cases imposing limits on punitive damage awards. You appeared to be unsure of the statement to which I was referring, so allow me to clarify. On September 13, 2010, you gave a speech on punitive damages in Cologne Germany. In this speech you discussed four Supreme Court cases limiting punitive damages ending with its decision *Exxon Shipping Co v. Baker*, 128 S.Ct. 2605 (2008). You then noted several "problems with the Supreme Court's analysis," including saying there is "no basis in precedents" for their decision and that the "Court is making up."**

   Given your statements, what might we expect should you be confirmed and assigned a case dealing with punitive damages? Would you apply the Supreme Court precedents you discussed in your speech? Would you feel any obligation to recuse yourself?

   Response: My comments were intended to be historical observations about American law to an audience unfamiliar with the topic of punitive damages. As I noted in my speech, it was not surprising that the Supreme Court has imposed limits on punitive damages, or that state courts and legislatures have also done so. I will apply the Supreme Court's precedents concerning punitive damages faithfully and without exception, as I would with all Supreme Court precedents and as I believe my decade of judicial service demonstrates. If I am confirmed, I will scrupulously adhere to the relevant recusal statutes and the Code of Conduct for federal judges. Because I will faithfully apply the law in this area, I cannot currently think of a circumstance in which recusal would be appropriate solely because a case involved punitive damages. But in all cases, I would carefully follow the applicable recusal standards, and I would not hesitate to recuse myself in any case in which it was appropriate.

3. **Though not listed on your Questionnaire, court documents indicate you partnered with the American Civil Liberties Union in the case of *Rodriquez v. California Highway Patrol*. According to the ACLU, this case resulted in a "landmark" settlement. Could you please discuss your role in this case?**

   Response: I participated briefly in the very early stages of the *Rodriguez* case as one of several lawyers at my law firm. My involvement ceased shortly after the filing of the complaint, when I left that case to work on the *City of Hope v. Genentech* case, which is discussed in my Questionnaire. I played no substantive role in the *Rodriguez* litigation and did not participate further after I left the case.

   a. **I understand the settlement was more restrictive than what the Supreme Court allowed in *Whren v. United States*, and that the settlement even precluded waivers and voluntary searches. Could you explain your understanding of the**

current state of the law in California as when a traffic stop is valid? Have you ruled in such cases, as a Judge?

Response: Because I left the case when it was in its very early stages, I did not participate in the negotiation or drafting of the settlement in the *Rodriguez* case, and to this day am unaware of its terms. In California, a traffic stop is valid "under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in the light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." *People v. Souza*, 9 Cal. 4th 224, 231 (1994); see also *People v. Letner*, 50 Cal. 4th 99, 149 (2010) (applying the same standard). I have ruled on motions to suppress as a judge, but have not ruled in any case where an officer's motivation was at issue.

b. **Let me be clear, I am not suggesting racial profiling is appropriate in any circumstance. In our post 9/11 world, with concerns about terrorism, and with the growing drug violence, do you think there is any role for profiling of any sort?**

Response: As explained above, I had only very limited involvement in the *Rodriguez* case, and I have not had other occasion to study these issues. If I were confirmed to the federal bench and presented with a case in this area, I would apply controlling authority from the Supreme Court and the Ninth Circuit, including *Whren v. United States*, 517 U.S. 806 (1996).

4. **In 1982, you interviewed a Cuban diplomat for your student newspaper. I recognize this was probably an extraordinary opportunity for a young reporter. In your interview, the Cuban diplomat repeatedly attacked the United States for its policies towards Cuba. For instance, he called the trade embargo "an aggressive, unilateral hostile, immoral action on the part of the United States towards Cuba."**

a. **In hindsight, do you believe it was wise to provide a representative from a communist dictatorship an uncontested stage on which to criticize the United States?**

Response: At the time of the interview, I was a 20-year-old college junior. Had I had more experience and perspective at that time, both my questions and the content of the article would have been fundamentally different.

b. **Did you or your newspaper seek to interview anyone who might represent an opposing view, to bring balance to the article or to this issue?**

Response: As the question indicates, the interview represented an extraordinary and unusual opportunity for a young college student. The *Williams Record* was a small weekly college newspaper without ready access to national or international political figures. I am sure that the *Record* would have welcomed additional content from

other perspectives regarding the subjects covered in the interview, but I do not recall that those opportunities presented themselves.

5. **As a judge, you have experience deciding cases. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

   Response: First, I determine which evidence is properly admissible under the California Evidence Code. Second, I determine what the facts are by carefully listening to all the testimony and considering any other admissible evidence offered by the parties. Lastly, I apply the relevant statutes and case law to the facts as I have determined them to reach a conclusion.

6. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is the commitment and ability to render decisions fairly and impartially, applying the relevant law to the facts without bias or prejudgment. I believe I possess this attribute.

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 should be patient, even-tempered, respectful, courteous, open-minded, and decisive. I believe I meet this standard, and have earned such a reputation as a state court judge.

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 faced with a case of first impression involving the interpretation of a statute, I would start with the plain language of the provision in question. If that text was unambiguous, I would apply it as written. If it was ambiguous, I would seek to apply precedent from the Supreme Court, the Ninth Circuit, and other Circuit and District Courts (in that order) concerning that provision or related provisions.

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 binding Supreme Court and Court of Appeals precedent without regard to my personal judgments.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A court may reach the constitutionality of a statute only if it first concludes that the case cannot be resolved on other grounds. Assuming that test is met, the court starts with a presumption that the statute is constitutional. The court may then declare a statute unconstitutional only if Congress has clearly exceeded its authority, or if the statute clearly violates 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: No.

13. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: As a state court judge, I currently manage a caseload of more than 560 cases. I have found a variety of techniques helpful in managing this caseload, including: working creatively with the parties to identify the issues actually in dispute and avoid unnecessary litigation practice; setting and enforcing realistic deadlines, including trial dates; resolving discovery disputes informally where possible; conducting hearings on motions that might narrow the issues in the case; ruling on matters promptly; working diligently; being thoroughly prepared in every matter; and making myself available to counsel with regard to issues that might arise in their cases. I would expect to continue these practices.

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. I would use all mechanisms at my disposal to control my docket, including the practices described above in response to Question Number 13.

15. Federal Judges hold a public trust and are responsible for being good stewards of public resources made available to them. In this regard, I have publicly expressed concern about the costs of a planned Ninth Circuit Judicial Conference planned for Maui, Hawaii in August 2012.

a. Have you attended Ninth Circuit Judicial Conferences in the past and do you plan to attend this Conference or similar conferences in the future?

Response: I have not attended the Ninth Circuit Judicial Conference in the past and have no plans to attend this year's Conference and have not considered whether I will attend similar conferences in the future.

b. Given the fiscal crisis facing our nation, do you think it is appropriate that this conference go forward as planned?

Response: I am not familiar with the circumstances surrounding the Ninth Circuit's 2012 Judicial Conference and do not have a view concerning the propriety of that conference proceeding as scheduled.

c. If confirmed, what influence would you bring to bear on your colleagues planning future conferences to ensure that taxpayer funds are used in a prudent manner?

Response: I would encourage my colleagues to plan future conferences in as fiscally responsible a manner as possible.

d. As a public officer, what will be your general approach to the management of public resources?

Response: As a long-time public servant, I have always understood that I hold the public's resources in trust. If confirmed to the federal bench, I would continue to manage the public's resources in a prudent and responsible manner.

16. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on July 18, 2012. I prepared my answers on July 18 and 19, 2012. I submitted them to a representative of the Department of Justice on July 19, 2012, and worked with them to finalize the responses. When they were final, I authorized the transmittal of my answers to the Committee.

17. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Jon S. Tigar
Nominee to be United States District Judge for the Northern District of California
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

   Response: My judicial philosophy is to treat all litigants with respect; to consider the litigants' arguments carefully and with an open mind; to apply the law to the facts before me, without prejudgment or bias; to rule only on the issues properly before the court; and to resolve all matters promptly. A judge's role is to interpret and apply the laws passed by Congress.

2. **What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

   Response: I have served as a state court judge since January 2002. During that time, I have earned a reputation for fairness and integrity. If confirmed to the federal court, I will continue to treat all litigants fairly and respectfully regardless of their political beliefs, their economic status, or whether they are a defendant or a plaintiff.

3. **In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

   Response: Stare decisis is a bedrock principle of our common law justice system. All judges are required to apply binding precedent to the cases before them. Although the United States Supreme Court and United States Courts of Appeals sitting en banc may reconsider their own precedents in limited circumstances, a district court judge must always follow controlling precedent.

Responses of Jon S. Tigar
Nominee to be United States District Judge for the Northern District of California
to the Written Questions of Senator Mike Lee

1. **How would you describe your judicial philosophy?**

   Response: My judicial philosophy is to treat all litigants with respect; to consider the litigants' arguments carefully and with an open mind; to apply the law to the facts before me, without prejudgment or bias; to rule only on the issues properly before the court; and to resolve all matters promptly.

   a. **To what sources would you look in deciding a case that turned on interpretation of a federal statute?**

      Response: When faced with a case of first impression involving the interpretation of a statute, I would start with the plain language of the provision in question. If that text was unambiguous, I would apply it as written. If it was ambiguous, I would apply precedent from the Supreme Court, the Ninth Circuit, and other Circuit and District Courts (in that order) concerning that provision or related provisions.

   b. **To what sources would you look in deciding a case that turned on interpretation of a constitutional provision?**

      Response: I would apply precedent from the Supreme Court, the Ninth Circuit, and other Circuit and District Courts (in that order). I would also consider the plain language of the provision, the history of the drafting of the provision, and the relationship between the provision in question and the other provisions of the constitution.

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: As a state court trial judge for the last ten years, I have not been called upon to consider or study the federal law of standing. My general understanding is that all plaintiffs in federal court must show that (1) they have suffered an injury in fact; (2) the injury is due to the defendant's conduct; and (3) the injury would be redressed by the relief sought in the complaint. These requirements apply in all cases, and the court has a *sua sponte* obligation to ensure that all plaintiffs have standing, whether the claims before the court are novel or the subject of prior judicial decisions.

3. **What role do the text and original meaning of a constitutional provision play in interpreting the Constitution?**

   Response: The text of a constitutional provision and the intent of the framers in drafting that provision are of paramount importance in interpreting the Constitution.

4. 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: As a state court trial judge for the last ten years, I have not had occasion to consider the limits on Congress's Commerce Clause power, although I am familiar with the test articulated in *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), which provides that Congress may regulate: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and (3) "those activities that substantially affect interstate commerce." I am also generally aware that in *National Federation of Independent Business v. Sebelius*, five justices concluded that the Commerce Clause does not authorize Congress to require uninsured individuals to obtain health insurance.

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 evaluated any federal statute with regard to Congress' Commerce Clause power, and do not have a view as to whether Congress overstepped its authority with respect to any statute.

SUBMISSIONS FOR THE RECORD

LAKESIDE PLAZA, 1401 LAKESIDE DRIVE, 12th FLOOR, OAKLAND, CA 94612-4305

Gregory J. Ahern, Sheriff
Coroner - Public Administrator - Marshal
Director of Emergency Services

(510) 272-6866

June 15, 2011

Senator Barbara Boxer
United States Senate
1700 Montgomery Street, Suite 240
San Francisco, CA 94111

Dear Senator Boxer:

SUBJECT: Jon Tigar, Alameda County Superior Court Judge, Application for the Position of Judge of the United States District Court for the Northern District

I am writing on behalf of Jon Tigar, Alameda County Superior Court Judge. Judge Tigar is seeking appointment to the position of Judge of the United States District Court for the Northern District. Jon Tigar possesses an impressive formal education, a superior background as a lawyer, and has earned an excellent reputation as a superior court judge.

Jon Tigar has been a judge in Alameda County for the last six years and has earned the deep respect of many professionals in the criminal justice system who have worked with him or who have appeared before him. As a superior court judge, he has sat in both general criminal and felony trial departments. He has also presided over the Domestic Violence Restraining Order calendar and handled numerous domestic violence cases. My staff speaks highly of Judge Tigar and his trial work; I share their opinions.

Jon tiger is committed to the Alameda County community, has volunteered much of his time and legal skills, serves as a mentor to two organizations, and continues to do even more. Former Alameda County Sheriff Charles C. Plummer endorsed Jon Tigar when he applied to Governor Gray Davis for the Superior Court. Sheriff Emeritus Plummer is held in high regard throughout the law enforcement community; he would only endorse a candidate who is a quality individual, above reproach, and well suited to the sought after position.

The Berkeley Police Department and Berkeley Police Association have endorsed Jon Tigar in connection with his application to the position of Judge of the United States District Court for the Northern District. Jon Tigar is a man of integrity who will bring wisdom and expertise to this position. I support Mr. Tigar and have every confidence that he will be an asset in this most important role. It is my honor to recommend that serious consideration be given to the elevation of Superior Court Judge Jon Tigar to the position of Judge of the United States District Court for the Northern District.

Sincerely,

Gregory J. Ahern
Sheriff-Coroner

GJA/daw

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Pursuing Justice

AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
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740 Fifteenth Street, NW
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VIA EMAIL AND FIRST CLASS MAIL

May 21, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Thomas M. Durkin
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 Thomas M. Durkin 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, the Committee is of the unanimous opinion that Mr. Durkin is "Well Qualified" for this position.

A copy of this letter has been provided to Mr. Durkin.

Sincerely,

Allan J. Joseph
Chair

cc: Thomas M. Durkin, 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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Standing Committee on
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VIA EMAIL AND FIRST CLASS MAIL

June 12, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of William H. Orrick, III
To the United States District Court for the Northern District of California

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of William H. Orrick, III who has been nominated for a position on the United States District Court for the Northern District of California. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Orrick is "Well Qualified" for this position.

A copy of this letter has been provided to Mr. Orrick.

Sincerely,

Allan J. Joseph
Chair

cc: William H. Orrick, 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)

318870.1

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VIA EMAIL AND FIRST CLASS MAIL

June 12, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Hon. Jon S. Tigar
To the United States District Court for the Northern District of California

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of the Hon. Jon S. Tigar who has been nominated for a position on the United States District Court for the Northern District of California. As a result of our investigation, the Committee is of the unanimous opinion that Judge Tigar is "Well Qualified" for this position.

A copy of this letter has been provided to Judge Tigar.

Sincerely,

Allan J. Joseph
Chair

cc: Hon. Jon S. Tigar
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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Senator Barbara Boxer Statement on Nominations of William Orrick and Jon Tigar to be United States District Judges for the Northern District of California
July 11, 2012

Senator Durbin, Ranking Member Grassley, I am honored to be here today to introduce William H. Orrick III, and Judge Jon S. Tigar, who have been nominated to the Northern District Court of California.

Bill Orrick is here with his wife Caroline and two of their daughters—Sarah, a second year law student at UC Berkeley, and Libby, a senior at the University of Puget Sound. A third daughter, Katherine, is in South Africa doing conservation biology research.

Judge Tigar is joined today by his wife, Carrie Avery, his father Michael, Judge Jeb Boseberg of the District Court of DC, and William King, who clerked with Jon in the 11th Circuit.

William H. Orrick III

Mr. Orrick brings a depth of legal experience in both the public and private sectors, which will make him a tremendous asset to the Northern District court.

He received his bachelor's degree from Yale University and earned his law degree from the Boston College Law School, graduating cum laude from both schools.

After law school, he spent 5 years providing pro bono legal services for low-income clients in Georgia.

Then Mr. Orrick returned home to the Bay Area and joined the San Francisco firm of Coblentz, Patch, Duffy, and Bass where he spent 25 years as an associate, a partner, and then the head of the firm's employment litigation practice.

Since 2009, Mr. Orrick has worked at the Department of Justice where he currently is Deputy Assistant Attorney General in the Civil Division.

Bill considers service to the community to be a hallmark of his legal career.
He spent 11 years as Chancellor and legal advisor to the Episcopal Diocese of California, and 13 years working with the Good Samaritan Family Resource Center, a low-income housing non-profit in San Francisco.

At his law firm he supervised much of the firm's pro bono work, for which he received the San Francisco Bar Association's "Outstanding Lawyer in Public Service" Award.

If confirmed, Bill would not be the first of his family to serve the Northern District. His father, William Orrick II, sat for more than 25 years in the very same seat his son is nominated to today - what an honor it would for him to follow his father to the same Federal bench.

Judge Jon S. Tigar
Judge Tigar has had a diverse legal career, including more than nine years as an exemplary Superior Court Judge, and will be an excellent addition to the bench.

He received his bachelor's degree from Williams College and earned his law degree from the University of California-Berkeley Boalt Hall School of Law.

Following law school, Judge Tigar clerked for Judge Robert Vance of the 11th Circuit Court of Appeals in Birmingham, Alabama. In 1989, Judge Vance was killed by a mail bomb that was sent to his home.

Judge Tigar assisted FBI agents with their investigation at the field office that very evening.

This nightmare experience has had a lasting effect on Judge Tigar's commitment to justice.

He remembers Judge Vance for his fealty to the rule of law, his work ethic, his judicial temperament, his humanity, and his common sense - qualities he will bring to the federal district court.

After his clerkship, Judge Tigar spent a number of years as a civil and criminal litigator in private practice, and two years as a trial attorney in the San Francisco Public Defender's office

Since 2002, Judge Tigar has served on the Alameda County Superior Court with great distinction, presiding over civil, criminal, and family law cases. In his current assignment, he manages approximately 570 cases.

Before he joined the state court bench, Judge Tigar received an award from the State Bar of California for his pro bono services.

He is a member of the California Judicial Council Advisory Committee on Civil Jury Instructions.

He is an Adviser to the American Law Institute's forthcoming Restatement of Torts, he has lectured at UC Berkeley Law School, and he sits on the board of directors of the Alameda County Bar Association's Volunteer Legal Services Corporation.

His nomination has the strong support of law enforcement officials. The Berkeley Chief of Police writes that Judge Tigar "meets our officers in his home, or wherever he happens to be when he receives a phone call. He has even reviewed faxed warrants while on vacation."

The Alameda County Sheriff writes that Judge Tigar "is a man of integrity who will bring wisdom and expertise to this position."

I would like to submit for the record letters of recommendation I have received in support of Judge Tigar.

In closing, I am proud to be here today with Mr. Orrick and Judge Tigar, who both received a "well qualified" rating from the American Bar Association.

I urge the Senate to move swiftly to confirm them to the federal bench.

Thank you.

Statement of Senator Richard J. Durbin
On the Nomination of Thomas M. Durkin to be United States District Judge for the Northern District of Illinois
July 11, 2012

I am pleased to offer my strong support for the nomination of Tom Durkin to serve on the United States District Court for the Northern District of Illinois. Mr. Durkin has the ability, experience and integrity to serve with distinction on the federal bench. Throughout his career, he has demonstrated strong leadership in his community and a solid commitment to public service. I thank the President for nominating Mr. Durkin and thank the Chairman for scheduling this hearing. I look forward to seeing this nomination approved by the Senate this year.

Mr. Durkin is currently a partner at the law firm Mayer Brown LLP, where his practice concentrates on complex commercial litigation and criminal defense. He received his bachelor's degree with honors from the University of Illinois at Urbana-Champaign, and received his J.D. with honors from DePaul University College of Law. After graduating from law school, he served for two years as a law clerk to the Honorable Stanley J. Roszkowski of the District Court for the Northern District of Illinois.

Following his clerkship, Mr. Durkin joined the United States Attorney's Office for the Northern District of Illinois. He worked there for thirteen years and served in numerous leadership positions, including Chief of the Special Prosecutions Division, Chief of the Criminal Receiving and Appellate Division, and First Assistant United States Attorney. He received the U.S. Attorney General's John Marshall Award for Participation in Litigation.

He joined Mayer Brown as a partner in 1993, and has worked there since then. His practice areas include patent litigation, internal investigations, securities litigation, and white collar criminal defense. He has received numerous awards, including listings in *The Best Lawyers in America* and *Illinois Super Lawyers*. For nearly a decade, he was also the chair of Mayer Brown's pro bono committee.

Mr. Durkin also has an impressive record of community service. He served for nine years on the board of the Legal Assistance Foundation in Chicago. He also taught as an adjunct professor of law at DePaul and at the John Marshall Law School.

Tom Durkin is a consensus, bipartisan nominee and Senator Kirk and I both strongly support his nomination. Senator Kirk and I have each established screening committees in Illinois to recommend judicial candidates to us. Tom Durkin was recommended by my screening committee back in 2009, and he was also separately recommended by Senator Kirk's screening committee last year. The non-partisan American Bar Association has awarded Mr. Durkin its highest rating of unanimously well-qualified to serve on the federal bench.

It is important that the Senate work quickly to confirm Tom Durkin. The seat that he has been nominated to fill has been designated as a judicial emergency by the Administrative Office of the U.S. Courts. Senator Kirk and I will work together to see that Tom Durkin's nomination is confirmed before the end of this year.

Statement of Senator Chuck Grassley
Before the Committee on the Judiciary
On the Nominations of:

Thomas M. Durkin, to be United States District Judge for the Northern District of Illinois

Jon S. Tigar, to be United States District Judge for the Northern District of California

William H. Orrick, III, to be United States District Judge for the Northern District of California

July 11, 2012

I join you in welcoming the nominees, their friends and families. We have three District Court nominees before us today.

I would note that the nominations of Mr. Orrick and Mr. Tigar were delivered to the Senate just one month ago, on June 11, 2012 with their nomination materials coming in after that date. So we have had about 13 legislative days to review these nominations. We have had a little more time to review Mr. Durkin's file with his nomination on May 21.

By contrast, President Bush's District nominees, waited, on average nearly 120 days from nomination to a hearing.

This is just another indication of the fair treatment we are giving President Obama's nominees. Having said that, I do not want anyone to think that these nominees are on some sort of "fast-track" process. We will give close scrutiny to the records of all nominees. This hearing is an important part of that record.

This Committee continues to make good and steady progress in confirming judicial nominees. After today we will have had a hearing for 42 nominees this year alone. Yesterday we confirmed the 152nd District or Circuit nominee during President Obama's term so far. This is good progress. Again, welcome to the nominees and I look forward to this hearing. I will place the balance of my statement in the record regarding the biographical information on each nominee.

Mr. Durkin received his B.S. with honors from University of Illinois at Champaign-Urbana in 1975 and his J.D. with honors from DePaul University College of Law in

1978. Upon graduation, he clerked for Stanley J. Roszkowski, United States District Court Judge for the Northern District of Illinois. After his clerkship, Mr. Durkin joined the U.S. Attorney's Office for the Northern District of Illinois. There, he handled a variety of cases, including bank robbery, postal theft, narcotics, immigration cases, firearms cases, commodities, securities and tax fraud, and political corruption. Mr. Durkin also held a number of supervisory roles in the office, including Deputy Chief of Special Prosecutions, Chief of the Criminal Receiving and Appellate Division, Chief of the Special Prosecutions Division, and First Assistant United States Attorney.

In 1993, Mr. Durkin joined Mayer Brown and focused on white collar criminal defense, internal investigations, patent litigation, securities litigation, civil rights litigation, consumer class action litigation, and product liability litigation.

Following graduation from Boston College Law School in 1979, Mr. Orrick began practicing law in Savannah, Georgia at Georgia Legal Services, a general legal practice

representing low-income individuals in litigation. In 1984, Mr. Orrick moved to California to join the law firm of Coblentz, Patch, Duffy, & Bass, LLP. His practice with the firm initially focused on complex commercial litigation. After making partner in 1998, his practice broadened to include employment litigation.

During this same period, Mr. Orrick also served the Episcopal Bishop of California, essentially acting as outside general counsel. This included advising the Diocese on interpretation of church canons, the various rights of congregations leaving the Diocese, and clergy's duties to report child abuse.

In June 2009, Mr. Orrick joined the Department of Justice as a counselor to the Assistant Attorney General for the Civil Division in Washington, D.C. His responsibilities included handling matters related to the Freedom of Information Act, tobacco litigation, increasing affirmative consumer litigation brought by the Civil Division, analysis of amendments to the False Claims Act, and efforts to increase access to justice.

In June 2010, Mr. Orrick was appointed Deputy Assistant Attorney General in the Civil Division, Department of Justice. In this role, he oversees the Office of Immigration Litigation, which is comprised of over 300 lawyers. This office handles all federal appellate litigation arising from petitions for review from the immigration courts and roughly fifty percent of the civil United States District Court immigration matters, primarily class actions, and habeas and mandamus petitions. He also participates on several coordinating task forces that oversee immigration and national security related issues.

Upon graduation from Berkeley Law School in 1989, Judge Tigar clerked for the Honorable Robert S. Vance on the United States Court of Appeals for the Eleventh Circuit Judge Tigar then worked as an associate at the law firm of Morrison & Forester LLP, worked as a public defender in the San Francisco Public Defenders office, then joined the firm of Keker & Van Nest LLP in 1994, making partner in 1997.

The majority of Judge Tigar's private practice has focused on complex commercial litigation representing commercial entities. The matters included breach of contract, unfair competition, intellectual property, fraud, antitrust, RICO, the California False Claims Act, and partnership and shareholder disputes.

Governor Gray Davis appointed Judge Tigar as a Superior Court Judge for the Superior Court of the State of California, County of Alameda in December of 2001. He was reelected to this position in 2004 and 2010. During 2002, he was assigned to a General Criminal department, and was responsible for the pre-trial management of misdemeanor cases. From January 2003 through June 2005, he was assigned to a Family Law Department. He was assigned to a Civil Trial department from June 2005 through December 2009 and again reassigned to a Civil Trial department in September 2010.

Statement for the Record
Senator Mark Kirk
July 11, 2012

I would like to thank Senator Coons for chairing today's hearing and my colleague Senator Durbin for his leadership on this Committee and on behalf of Illinois.

I offer my strong support for Thomas Durkin to fill a vacancy on the U.S. District Court in the Northern District of Illinois. I am confident that Mr. Durkin will be an excellent judge. His outstanding legal experience and proven community leadership will serve the Northern District well.

Mr. Durkin is currently a partner at Mayer Brown LLP, where he concentrates on business litigation and also handles a wide variety of white-collar criminal matters, especially in the fraud, tax, and public corruption areas. He was also the Chair of the firm's Pro Bono Committee for nearly a decade.

Prior to joining the firm as a partner in 1993,Durkin served as an Assistant United States Attorney in the Northern District of Illinois for more than a decade. During that time, he served in numerous leadership positions, including Chief of the Special Prosecutions Division, Chief of the Criminal Receiving and Appellate Division, and First Assistant United States Attorney. Mr. Durkin received his J.D. with honors from DePaul University College of Law and received his B.S. with honors from the University of Illinois at Urbana-Champaign.

Because of his outstanding experience and record of public service, I submitted Thomas Durkin's candidacy to the White House in July 2011, following the recommendation of my bipartisan judicial screening committee. Senator Durbin had previously forwarded Mr. Durkin's name to President Obama in 2009, based on the recommendation of his screening committee.

I urge my colleagues to support this bipartisan nomination and look forward to working closely with Senator Durbin and members of this Committee to expeditiously confirm Mr. Durkin to the federal bench.

Thank you.

Statement for the Record
Senator Mark Kirk
July 11, 2012

I would like to thank Senator Coons for chairing today's hearing and my colleague Senator Durbin for his leadership on this Committee and on behalf of Illinois.

I offer my strong support for Thomas Durkin to fill a vacancy on the U.S. District Court in the Northern District of Illinois. I am confident that Mr. Durkin will be an excellent judge. His outstanding legal experience and proven community leadership will serve the Northern District well.

Mr. Durkin is currently a partner at Mayer Brown LLP, where he concentrates on business litigation and also handles a wide variety of white-collar criminal matters, especially in the fraud, tax, and public corruption areas. He was also the Chair of the firm's Pro Bono Committee for nearly a decade.

Prior to joining the firm as a partner in 1993,Durkin served as an Assistant United States Attorney in the Northern District of Illinois for more than a decade. During that time, he served in numerous leadership positions, including Chief of the Special Prosecutions Division, Chief of the Criminal Receiving and Appellate Division, and First Assistant United States Attorney. Mr. Durkin received his J.D. with honors from DePaul University College of Law and received his B.S. with honors from the University of Illinois at Urbana-Champaign.

Because of his outstanding experience and record of public service, I submitted Thomas Durkin's candidacy to the White House in July 2011, following the recommendation of my bipartisan judicial screening committee. Senator Durbin had previously forwarded Mr. Durkin's name to President Obama in 2009, based on the recommendation of his screening committee.

I urge my colleagues to support this bipartisan nomination and look forward to working closely with Senator Durbin and members of this Committee to expeditiously confirm Mr. Durkin to the federal bench.

Thank you.

Police Department

February 23, 2011

Office of U.S. Senator Barbara Boxer
1700 Montgomery Street, Suite 240
San Francisco, CA 94111
Fax (202) 224-0454

Dear Senator Boxer:

I write to you in support of the Honorable Judge Jon Tigar's application for appointment to the United States District Court for the Northern District of California. Judge Tigar is well-regarded by the members of our department and his dedication to the communities of Berkeley demonstrates he is a judge committed to public safety, livability and fairness.

As you know, police officers must obtain judicial approval for search or arrest warrants. In addition, judges also consider applications to deny bail for dangerous defendants. In Alameda County the Superior Court has a rotating "duty judge" who respond in the event of after-hours police officer requests at night and on the weekends. Typically, each judge serves approximately one-and-a-half weeks in this capacity.

As the duty judge, Judge Tigar provided our officers with his personal cell phone number so that he could be reached anytime they were not able to reach the regularly assigned duty judge. He also made it clear that in the event of serious crimes officers are free to call upon him at any time whether or not a duty judge was also available.

The assistance and responsiveness that Judge Tigar provides saves valuable time and has led to the timely arrest of suspect(s) and the recovery of evidence. His immediate responses to our requests for a warrant signature have assisted in moving investigations forward. In homicide investigations, where the initial hours in the investigation are critical, this assistance has been invaluable.

Judge Tigar has reviewed numerous Berkeley Police Department applications in cases involving homicide, narcotics, home invasion robberies, and other serious violent crimes. He meets our officers in his home, at our department headquarters, or wherever he happens to be when he receives a phone call. He has even reviewed faxed warrants while on vacation. Judge Jon Tigar has effectively become a full-time back-up duty judge for the citizens of Berkeley.

I believe that Judge Jon Tigar is well-qualified for the federal bench and I hope you will give his application serious consideration.

Sincerely,

Michael K. Meehan
Chief of Police

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